



RESIGHINI RANCHERIA

P.O. Box 529 • Klamath, CA 95548
Tel (707) 482-2431 • Fax (707) 482-3425

RESOLUTION NO: 2003-05
DATE APPROVED: March 7, 2003

RESOLUTION TO ADOPT THE INTERFERENCE WITH TRIBAL AND INDIAN PROPERTY ORDINANCE NUMBER 2003-01

WHEREAS: The Resighini Rancheria is a federally recognized Indian Tribe and exercises tribal powers of self-government under the authority; of the Indian Reorganization Act of 1934 (48 Stat. 9670); and,

WHEREAS: The Resighini Rancheria is eligible for all rights and privileges afforded to federally recognized Indian Tribes; and

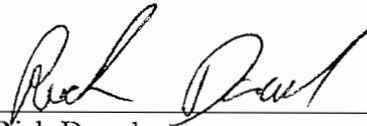
WHEREAS: The Resighini Rancheria have a duty to find ways to protect the Tribe's property, both real and personal, and its duty to protect the property of persons authorized to do business on the Reservation; and

WHEREAS: The Resighini Rancheria shall utilize the Resighini Environmental Protection Authority for enforcement procedures of this Ordinance.

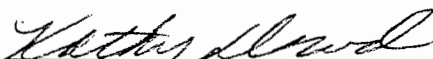
NOW THEREFORE BE IT RESOLVED THAT, the Business Council hereby adopts the Resighini Rancheria Interference with Tribal and Indian Property Ordinance Number 2003-01

CERTIFICATION


This is to certify that Resolution 2003-05 was approved at a duly notices meeting of the Resighini Rancheria Tribal Business Council on March 7, 2003, at which a quorum was present and that this Resolution was adopted by a vote of 4 FOR 0 AGAINST 0 ABSTAIN. This Resolution has not been rescinded or amended in any way.


Rick Dowd
Tribal Chairman

3-7-03
Date


ATTESTOR

3-7-03
Date



**RESIGHINI RANCHERIA
INTERFERENCE WITH TRIBAL
AND
INDIAN PROPERTY ORDINANCE**

NUMBER 2003-01
[Adopted March 5, 2003]

Section 1 Short Title, Findings and Purpose

- 101 Short Title:** This Ordinance shall be known as the Interference with Tribal and Indian Property Ordinance.
- 102 Findings:** The Business Council of the Resighini Rancheria hereby finds as follows:
- (a) The Business Council finds that it is its duty to find ways to protect the Tribe's property, both real and personal, and it is its duty to protect the property of persons authorized to do business on the Reservation, and that the most appropriate way to accomplish its duty is through the enactment of this Ordinance.
- 103 Purpose:** The purpose of this Ordinance is to exercise comprehensive regulatory control over all Tribal property, Indian property and non-member property as herein defined.

Section 2 Definitions

- 201** For the purposes of this Ordinance, the following words and phrases shall have the following meanings:
- (a) "Owner" means the person having title to any property.
- (b) "Tribe" means the Resighini Rancheria.
- (c) "Property" or "Tribal Property" includes any real or personal property owned by the Tribe or members thereof and any property under the care, custody and control of a Tribal member which is owned by the Tribe and any property owned by a non-member authorized to conduct business on the Reservation.

- (d) "Tribal Lands" shall mean any land owned in fee by the Tribe and land held in trust for the Tribe or individual members of the Tribe by the United States Government, and other territory over which the Tribe has jurisdiction, to include, but not limited to, all land, air and water, meaning any water, surface water or ground water, located on or running through the Reservation or other territory over which the Tribe has jurisdiction, along with other natural resources such as wetlands, trees, grasses, plants, rocks, sand and gravel.
- (e) "Operator" means an enrolled member of the Tribe, employee thereof or non-member authorized to operate a business on the Reservation whether or not such person possesses a Trader's License.
- (f) "Reservation" means all land, air, water and other natural resources located within the exterior boundaries of the Resighini Rancheria.
- (g) "Interfere" means to take, possess, seize, impound, damage, destroy, manipulate (such as diverting waterways) vandalize, trespass or otherwise take actual or constructive control of property regulated by this Ordinance, without the express written permission of the Business Council or permission of the owner.
- (h) "Custodian" means any person having care, custody and control of property regulated by this Ordinance.
- (i) "Trespass" means the unauthorized entry upon Tribal lands. Although posting and fencing of Tribal lands is not necessary, the following actions are presumptive evidence of trespass: entry onto Tribal lands that are posted to prohibit trespassing, is fenced, or contains obvious signs of habitability without the express written consent of the Business Council, owner or owner's agent; damaging any fence or gate erected on any Tribal lands; entry upon property regulated by this Ordinance; the dumping of waste materials, trash, refuse or other items on property regulated by this Ordinance; the refusal to depart from or re-entry onto the Reservation in violation of an exclusion order issued by the Tribal Court or by the Business Council.
- (j) "Vandalism" means any act that injures, damages or destroys:
 - (1) property regulated by this Ordinance;
 - (2) private property in which any other person has an interest without the consent of such person;

- (3) Tribal or other public property without the lawful consent of the Business Council;
- (4) an obvious place of burial or otherwise sacred or historical site; or
- (5) any act of depositing, throwing or propelling any substance, item, object or thing of any nature whatsoever upon or in any highway, roadway, trail, creek, pond, wetland or any vehicle while such vehicle is either in motion or stationary.

Section 3 Interference Prohibited

301 Interference with property and remedies.

(a) Any person who interferes with property regulated by this Ordinance without a Tribal Court or Business Council order shall be guilty of an offense against the public peace, health and safety and such interference is hereby prohibited.

(b) A violation of this Ordinance shall be punishable by a fine of not more than \$5000.00, or by such other lawful remedy as the Tribal Court or Business Council deems appropriate depending on the nature and severity of the interference, and whether the perpetrator has been found guilty of such an offense in the past.

(c) In addition to the above remedies, duly authorized Tribal employees or law enforcement officers may take immediate possessions of any property taken, seized, possessed or impounded by any person without proper Tribal Court or Business Council order and return same immediately to the owner or custodian thereof, and the Tribe may erect fences or other barriers to protect Tribal property.

(d) In addition to any other remedies provided herein any authorized Tribal employees or law enforcement officers may immediately remove from Tribal lands any person attempting to possess Tribal property without a valid order of the Tribal Court or Business Council as provided in this Ordinance, upon such attempted possession having taken place in the presence of such Tribal employees or law enforcement officers or such employees or officers having reasonable cause to believe that such attempt at possession has taken place.

302 Enforcement Procedures. The following procedures shall govern enforcement actions taken pursuant to this Section 3:

- (a) The Resighini Environmental Protection Authority shall issue a Notice of Violation, describing the violation and the proposed penalty or other enforcement action to the person(s) charged with the violation.
- (b) The Notice of Violation shall be served by personal delivery or United States Mail, postage paid, return receipt requested. Notice shall be considered received on the date of personal delivery or three (3) days after the Notice of Violation is deposited in the United States Mail.
- (c) The Notice of Violation shall include a warning that if the person(s) charged does/do not respond within seven (7) days of receipt of the Notice of Violation, the assessed civil penalty or other enforcement action will become final and the person(s) charged will lose all rights of appeal.
- (d) Within seven (7) days of receipt of the Notice of Violation, the person(s) charged with the violation may submit a written request for hearing before the Resighini Environmental Protection Authority on the proposed enforcement action described in the Notice of Violation.
- (e) If a hearing is requested, the Resighini Environmental Protection Authority shall hold an administrative hearing within thirty (30) days of receiving the request. If the person(s) requesting the hearing make(s) a showing supported by a verified declaration, that may include other supporting documentation, in the request for hearing that the proposed enforcement action will result in great financial loss or harm to persons or property before the required hearing is held, the Resighini Environmental Protection Authority may hold the hearing as soon as practicable or may delay or reverse any enforcement action pending the hearing.
- (f) If the person(s) charged does/do not request a hearing within seven (7) days of receipt of the Notice of Violation, the assessed civil penalty or other enforcement action shall become final and the person(s) charged will lose all rights of appeal.
- (g) At any hearing before the Resighini Environmental Protection Authority, the person(s) charged shall be entitled to produce evidence, including direct testimony, declarations, written documents, and verified statements of witnesses indicating that the person(s) is/are not guilty of the violation described in the Notice of Violation. The Resighini Environmental Protection Authority shall make a written record of the hearing.
- (h) Within fifteen (15) days of the hearing the Resighini Environmental Protection Authority shall issue its decision based on the evidence

adduced at the hearing, affirming, modifying or retracting the proposed penalty or other enforcement action described in the Notice of Violation.

(i) Notice of Decision shall be served on the person(s) charged by personal delivery or by United States Mail, postage paid, return receipt requested. Notice shall be considered received on the date of personal delivery or three (3) days after the Notice of Decision is deposited in the United States Mail.

(j) The decision may be appealed to the Business Council by submitting a written Request for Appeal to the Council within five (5) days of the receipt of the Notice of Decision. The Request for Appeal must state the grounds for appeal and must be verified.

(k) The record on appeal shall consist of the written record of the hearing, together with all evidence adduced at the hearing and all other papers filed in the matter with the Resighini Environmental Protection Authority. The Resighini Environmental Protection Authority shall forward the record on appeal to the Business Council. The Appellant may, at Appellant's expense, request a copy of the record on appeal. Upon advance payment of the cost of duplicating the record on appeal the Tribal Secretary shall prepare a copy for Appellant. Appellant shall pick up the copy at the Tribal Administrative Office or otherwise arrange for its delivery.

(l) Within thirty (30) days of the filing of the Request for Appeal, the Business Council shall meet and review the record on appeal. In the absence of evidence in the record that the decision of the Resighini Environmental Protection Authority was arbitrary or capricious, or that the Resighini Environmental Protection Authority abused its discretion, or otherwise did not act in accordance with the law and the decision is supported by substantial evidence, the decision shall be affirmed.

(m) In the event the Business Council finds that the decision of the Resighini Environmental Protection Authority was arbitrary or capricious, or that the Resighini Environmental Protection Authority abused its discretion, did not act in accordance with the law, or that its decision is not supported by substantial evidence, the Business Council shall reverse the decision, modify the decision or remand the decision to the Resighini Environmental Protection Authority for a decision consistent with the findings of the Business Council.

(n) Within (15) days of its appellate review, the Business Council shall issue its decision, and shall serve the decision on the Appellant and on the Resighini Environmental Protection Authority by Notice of Decision

served personally or by United States Mail, postage paid, return receipt requested.

(o) The decision of the Business Council shall be final.

Section 4 Judicial and Administrative Procedure

401 Procedure for Possession of Property

(a) Any person who is not the owner or owner's agent thereof who wishes to take, possess, seize or impound any property regulated by this Ordinance may do so only pursuant to duly issued order of the Tribal Court or Business Council upon application made as provided herein.

(b) Any person wishing to possess property regulated by this Ordinance who is not the owner or owner's agent thereof wishing to possess such property shall apply to the Tribal Court or to the Business Council stating the reasons and authority for such possession in writing, identifying the property, its location and owner or custodian of the property to the best of the applicant's knowledge. Such application may be *ex parte* and the Tribal Court or Business Council may grant or deny the application or set the matter for hearing as provided herein.

402 Summary Issuance of Order

(a) The Tribal Court or Business Council may summarily grant the application and issue an order allowing possession of the property only when the nature of the claim, the amount thereof, the grounds relied upon for issuance of the order, and the need for immediate possession clearly appear from the specific facts shown by the verified application or separate affidavit of the applicant, his or her counsel or agent. The Tribal Court or Business Council in its discretion may require security for the payment of damages to the owner if the order has been wrongfully obtained.

(b) In the event that an order is issued, notice shall be given by the applicant, his or her counsel or agent to the owner and custodian of the property within two (2) days from the issuance of such order and the owner and custodian shall have five (5) days exclusive of the day of service, holidays and weekends, to petition the Tribal Court or Business Council for dissolution of the order. Upon such a contradictory petition being filed, the Tribal Court or Business Council shall set the matter for hearing in not less than three (3) days nor more than six (6) days.

- 403 Issuance Upon Hearing.** If it appears to the Tribal Court or to the Business Council that an immediate order is not necessary without an opportunity for the owner and custodian of the property to be heard, the Tribal Court or the Business Council shall order a hearing on the matter and the applicant or his or her counsel or agent, shall give at least two (2) days' notice thereof to the owner and custodian of the property, such hearing to be held not less than three (3) days nor more than six (6) days after the presentation of the application. Verified proof of service of the notice shall be filed with the Tribal Court or Business Council at the hearing.
- 404 Summary Denial of Order.** If the application is summarily denied, the applicant may request a hearing at which the facts and reasons for the requested possession may more fully be set forth. Upon such request the Tribal Court or Business Council shall set such a hearing for a time not less than three (3) days nor more than six (6) days after such request. The applicant, his or her counsel or agent, shall give at least two (2) days' notice of such hearing to the owner or custodian of the property in question. Verified proof of service of the notice shall be filed with the Tribal Court or Business Council at the hearing.
- 405 Appeal Limited to Request for Reconsideration.** Appeal of the decision of the Tribal Court or the Business Council is limited to a request for reconsideration. Any party may make a request to the Tribal Court or to the Business Council for reconsideration of its decision. Such request for reconsideration shall clearly state the grounds why the Court or Council should reconsider its decision. The request for reconsideration shall not be based on new evidence that was available at the time of the hearing. Any request for reconsideration shall be filed with the Court or with the Council within five (5) days of receiving the decision. A copy of the request for reconsideration shall be served on the other party and proof of service filed with the Court or with the Council. The other party shall file any opposition to the request within five (5) days of service and serve the opposition papers on the other party, filing proof of service with the Court or with the Council. The Tribal Court or the Business Council shall issue its ruling on the request within thirty (30) days of the date the request for reconsideration was filed.
- 406 Decisions Final.** The decision of the Tribal Court or Business Council as to the request for reconsideration and issuance of the order permitting taking or possession shall be final.
- 407 Production of Possession Order.** Any person attempting to possess any property regulated by this Ordinance as provided herein shall show the owner or custodian of such property, or any authorized Tribal employee or

law enforcement officer, the order of the Tribal Court or Business Council allowing such action before attempting the possession permitted thereby.

- 408 Representation.** In any hearing set by the Tribal Court or Business Council in a matter covered by this Ordinance, any party may be represented by legal counsel or a spokesperson provided such person comply with the applicable provisions of this Ordinance and otherwise conduct themselves in a courteous, professional manner.
- 409 Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.
- 410 Effective Date.** This Ordinance shall be effective the date of its adoption by the Resighini Rancheria Business Council.