

# Cahto Tribe of the Laytonville Rancheria

## Peace and Security Ordinance

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## **CHAPTER 1. PURPOSE, CONSTRUCTION, AND JURISDICTION**

### ***Section 1.01 Purpose and Policy***

The peace and security of all tribal members, residents, guests and visitors to the Cahto Tribe of the Laytonville Rancheria shall be preserved and protected by the Cahto Tribe of the Laytonville Rancheria (“Tribe”). It is the policy of the Cahto Tribe that tribal members, residents, guests and visitors on the Rancheria are entitled to the peaceful and tranquil pursuit of their lifestyles. It is the further policy of the Cahto Tribe that Rancheria residents are entitled to security against harassment, vandalism, disturbing the peace and other antisocial acts, both in public and in private. The peace and security of the Tribe is promoted through our shared respect for each other, and for our land and natural resources. Each generation shares responsibility for protecting our land, water, and air to ensure their continued existence for the benefit of our future generations. Our Tribe, by working together, strives to promote harmony among our residents, tribal members, guests and visitors.

Public Law 280 did not divest the Tribe of its inherent sovereign authority to establish its own laws and enforce them. The adoption and enforcement of a Peace and Security Ordinance is necessary to maintain peace and order on the Rancheria. The adoption of this Ordinance

promotes the health and safety of the members of the Tribe is in the best interest of the members of the Tribe and furthers the Tribe's sovereignty and administration of justice.

***Section 1.02 Liberal Construction***

This Ordinance will be liberally construed to give full effect to the purposes for which it was enacted. Furthermore, this Ordinance shall be interpreted and construed to:

- (A) Preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Rancheria;
- (B) Ensure peace and order on the Rancheria and lands of the Tribe;
- (C) Promote the welfare of the Tribe and its members;
- (D) Safeguard individual rights and community standards;
- (E) Secure rights and powers, which are inherent in the Tribe's sovereign status;
- (F) Exert jurisdiction over all matters essential to the Tribe's self-determination and self-governance;
- (G) Treat all parties fairly and without prejudice, protecting individual rights guaranteed by the Indian Civil Rights Act and by the traditions, customs and laws of the Tribe;
- (H) Resolve disputes fairly and efficiently; and
- (I) Provide an orderly procedure for resolving conflicts which reflects tribal customs and traditions as well as the prevailing community standards, and which affords all affected persons a fair, prompt, and impartial hearing.

***Section 1.03 Jurisdiction***

The Cahto Tribal Court shall have jurisdiction over all violations under this Ordinance. This Ordinance will be applicable to all persons and lands within the exterior boundaries of the Rancheria and is limited only by the Tribe's Articles of Association, and applicable federal law. The Tribe recognizes that federal law currently prohibits exercising criminal jurisdiction over non-Indians. Therefore this Ordinance shall be deemed criminal in its application to tribal members and non-member Indians and civil as applied to non-Indians.

***Section 1.04 Tribe's Regulations***

The Executive Committee of the Tribe shall approve such regulations as it deems proper and necessary to carry out the policies of the Tribe with respect to preserving and maintaining the peace and security of Rancheria residents. Such regulations may supersede or supplement any existing regulations, and include any provisions which the Executive Committee deems necessary to carry out the policies and procedures of this Ordinance.

***Section 1.05 Prior Inconsistent Codes and Ordinances Repealed***

Any and all codes and ordinances adopted prior to or which conflicts in any way with the provisions of this Ordinance, are hereby repealed.

## CHAPTER 2. DEFINITIONS

- (A) “Alter” means to change, modify, or vary in some degree; to change some of the elements, ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected.
- (B) “Banishment” means to ban, forbid, exclude, excommunicate or cut off a person from privileges at the Cahto Rancheria permanently or for a specified period of time.
- (C) “Bodily injury” means: cut, abrasion, bruise, burn, physical pain; or causing illness, impairment of a function of a bodily member, organ, or mental facility; or any other injury to the body, no matter how temporary.
- (D) “Infraction” means a violation of tribal law as set forth in this Ordinance.
- (E) “Controlled substance” means any drug or other substance, except marijuana, under the provisions of Chapter 13, Title 21, Section 802, “Controlled Substance” of the United States Code.
- (F) “Damage” means loss, injury, or deterioration to property causing it to decrease in strength, value, amount or quality.
- (G) “Dangerous drug” means any drug, except marijuana, that is included in Chapter 13, Title 21, Section 802, “Dangerous Drug” schedules I, II, III, IV, or V of the United States Code. This term includes a device or a drug that bears or is required to bear the legend:
- i. Caution: Federal law prohibits dispensing without a prescription; or
  - ii. Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.
- (H) “Dangerous Weapon” means any firearm, or other weapon, device, material or substance, whether animate or inanimate, which in the manner it is used or intended to be used is known to be capable of producing death or serious bodily injury (for example, clubs, brass knuckles).
- (I) “Destroy” means to ruin the structure, organic existence or condition of a thing or property, to demolish to injure or mutilate beyond possibility of use.
- (J) “Deface” means damage to monuments, buildings or other structures by changing the physical appearance.
- (K) “Drug Paraphernalia” means any equipment, products, and materials of any kind that are used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or dangerous or narcotic drug.
- (L) “General Council” means the governing body of the Tribe, comprised of all adult, voting members of the Tribe.
- (M) “Elder” means a person over the age of 55.

- (N) “Executive Committee” is the four (4) member committee established under Article 5 of the Tribe’s Articles of Association. “Executive Committee” shall be synonymous with “Tribal Council.”
- (O) “Financial loss” means a loss of money or of something by which money or of value may be acquired.
- (P) “Marijuana” means all parts of the plant *Cannabis sativa* L. whether growing or not, under the provision of Chapter 13, Title 21, Section 802, “Marijuana” of the United States Code.
- (Q) “Motor Vehicle” or “Vehicle” includes automobiles, motorcycles, ATVs, trucks, and all other forms of motorized transportation.
- (R) “Narcotic drug” means any drug, except Marijuana, under the provision of Chapter 13, Title 21, Section 802, “Narcotic Drug” of the United States Code.
- (S) “Owner” means a person holding title to real or personal property. In the case of real property, Owner shall include a lessee or assignee of property under a valid lease or assignment from the Tribe. In cases of uncertainty, “Owner” shall mean the Tribe.
- (T) “Private Property” means any property owned in fee, individual land where title is held in the name of the United States in trust for the individual (allotments), and for purposes of this Ordinance only Tribal Property leased from the Tribe (housing) and Tribal Property issued to tribal members pursuant the Tribe’s Assignment Ordinance (assignments).
- (U) “Property” means:
- i. Real property such as land or structures and building affixed to land and includes both tribal and private;
  - ii. Personal property which is anything tangible or that can be severed from real property.
- (V) “Rancheria” means all lands within the exterior boundaries of the Laytonville Rancheria, and all lands claimed by the Tribe to which the Tribe may establish title.
- (W) “Recklessly” means a person who acts carelessly, heedlessly, or is inattentive to the circumstances surrounding him or her.
- (X) “Serious Bodily Injury” means: Bodily Injury, which involves: a substantial risk of death; extreme physical pain or disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental facility.
- (Y) “Tribal Court” means the judiciary branch of the Tribe as set forth and provided for under the Tribe’s Articles of Association and Judiciary Ordinance.
- (Z) “Tribal Property” as used in this Ordinance means all property held by the United States government in trust for the Tribe and all land owned by the Tribe in fee, Tribal structures, buildings, facilities, dwellings and all personal property of the Tribe.
- (AA) “Tribal Police Officer” means a person designated by the Tribe to enforce this Ordinance and to act as a law enforcement officer for the Tribe.

## CHAPTER 3. VIOLATIONS

### *Section 3.01      **Infractions Against Property***

#### **(A)      Malicious Mischief**

- (1)            A person commits the Infraction of Malicious Mischief if he or she, without the effective consent of the owner:
  - a.            Damages or destroys the property of the owner;
  - b.            Tamper with property of the owner and causes financial loss or substantial inconvenience to the owner or a third person;
  - c.            Makes markings, including, inscriptions, slogans, drawings, or painting on the property of the owner;
  - d.            Alters, defaces or damages in anyway tribally owned property, which may include a monument, structure or facility, place of worship or burial or any other property respected by the community of the Tribe; or
  - e.            Aids, assists, commands, or counsels another to commit Malicious Mischief.

#### **(A)      Trespass**

- (1)            A person commits the Infraction of Trespass if he or she enters or remains on tribal or private property of another without consent and:
  - a.            Had notice that the entry was forbidden; or
  - b.            Was ordered to depart after entry and failed to do so; or
  - c.            Has been banished, debarred, or excluded from the Rancheria or specific a location(s) on the Rancheria by the Tribe, or the Tribal Court.
- (2)            Notice or an order may be given by:
  - a.            Written or verbal communication given to the intruder by a Tribal Official, Tribal Police Officer, the owner of the property or a person authorized to act on behalf of the owner;
  - b.            Written notice posted on or about the property in a manner reasonably likely to come to the attention of potential intruders; or
  - c.            Fences, barricades or other devices obviously designed to enclose the property and to exclude all potential intruders; or
  - d.            Written notice of exclusion or banishment issued by the Tribe, Tribal Court or Executive Committee; or
  - e.            Written Tribal, State or federal protective order(s) or restraining order(s) preventing a person from entering the Rancheria or buildings within the Rancheria.

#### **(B)      Reckless Damage or Destruction**

- (1)            A person commits the Infraction of Reckless Damage or Destruction if, without the consent of the owner, he or she recklessly damages or destroys property of the owner.

#### **(C)      Arson**

- (1)            A person commits the Infraction of Arson when he or she intentionally sets fire to, burns, causes to be burned, or aids, counsels, or assists in the burning of any

real or personal property, including crops or trees on the Rancheria .

***Section 3.02      Infractions Against the Peace***

**(A)      Disorderly Conduct**

- (1) A person commits the Infraction of Disorderly Conduct if he or she:
  - a. Fights with another person within the boundaries of the Rancheria ;
  - b. Creates a nuisance by any excessive noise, or other behavior, or allows or permits the creation of a nuisance on property owned, leased, occupied or otherwise controlled by such person;
    - i. Traditional cultural activities such as drumming, dancing and singing are excepted from this subsection.
  - c. Not being lawfully authorized to do so, displays a dangerous weapon in a manner calculated to alarm;
  - d. Abuses or threatens a person in an obviously offensive manner;
  - e. Drinks an alcoholic beverage on any tribal street, alley or sidewalk, or on any other Tribal Property, or upon Private Property that he or she has no right to occupy;
  - f. Engages in lewd behavior and is reckless about whether another person is present who will be alarmed by his or her act; or
  - g. Uses abusive, indecent, profane, or vulgar language in a tribal building or on Tribal Property, and the language by its very utterance tends to incite a breach of the peace.
  - h. Discharges a firearm on the Rancheria except by:
    - i. Tribal Police Officers while in the performance of their official duties;
    - ii. Any other state, federal or tribal law enforcement officer, while in the performance of their official duties; and
    - iii. Tribal members who have registered firearms with the state or Tribe and have received written permission from the Tribe to discharge his or her weapon, so long as such discharge does not constitute an Unlawful Discharge of Firearm.

**(B)      Carrying a Prohibited Weapon**

- (1) A person commits the Infraction of Carrying a Prohibited Weapon if he or she carries on or about his or her person a dangerous weapon. For this subsection only a dangerous weapon shall not include a firearm that is registered with the State or the Tribe. This subsection shall not apply to Tribal Police Officers or any other state, federal or tribal law enforcement officer.
- (2) Any Tribal Police Officer or other tribally designated security or law enforcement officer may, upon probable cause, confiscate a dangerous weapon from any person who violates this subsection.

**(C)      Loitering and Curfew**

- (1) A person commits the Infraction of Loitering if:
  - a. He or she remains on Tribal Property after notification by a Tribal Police Officer to leave the area.
- (2) A person commits the Infraction of violation of Curfew if:

- a. He or she is a minor (under the age of 18 years old) who remains on Tribal Property between the hours of 10:00 p.m. and 6:00 a.m.;
- b. He or she is a parent, guardian or custodian of a minor and knowingly permits or by insufficient control allows the minor to remain on Tribal Property between 10:00 p.m. and 6:00 a.m.; or
- c. He or she is a parent of a minor and knowingly fails to respond within two hours of notification by Tribal Police Officer, law enforcement official, or Tribal Official to take custody of a minor taken into protective care for violation of this subsection.

***Section 3.03      Infractions Against the Tribal Government***

**(A)      Interfering with Lawful Detention or Resisting Detention**

- (1) A person commits the Infraction of Interfering with Lawful Detention or Resisting Detention if by force, violence or other means, he or she:
  - a. Interferes, obstructs or resists any tribal official, Tribal Police Officer or other law enforcement officer in the performance of their official duties;
  - b. Flees from any Tribal Police Officer or other law enforcement officer who is attempting to lawfully restrain him or her; or
  - c. Assists another to avoid a lawful detention or harbors a fugitive.

***Section 3.04      Infractions Against the Person and Animals***

**(A)      Assault or Aggravated Assault**

- (1) A person commits the Infraction of Assault if he or she:
  - a. Threatens another with imminent bodily injury;
  - b. Causes physical contact with another when the person knows or should reasonably believe that the person will regard the contact as offensive, threatening or provocative;
  - c. Causes bodily injury to another;
  - d. Causes serious bodily injury to another;
  - e. Uses or exhibits a dangerous weapon during the commission of an assault; or
  - f. Forcibly assaults resists, opposes, prevents, impedes, intimidates, or interferes with any authorized Tribal Police Officer, Tribal Security Officer or other law enforcement officer lawfully discharging an official duty.

**(B)      Harassment**

- (1) A person commits the infraction of Harassment if, with the intent to harass, annoy, alarm, abuse, torment or embarrass another, he or she:
  - a. Initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion or proposal that is obscene or false;
  - b. Threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict serious injury against the person, a member of his or her family or property;
  - c. Conveys, in a manner reasonably likely to alarm the person receiving the

report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

d. Causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

e. Knowingly permits a telephone under his control to be used by a person to commit an Infraction under this subsection;

f. Intentionally subjects another to sexual harassment; or

g. Intentionally stalks another.

**(C) Cruelty to Animals and Animal at Large**

(1) A person commits “Cruelty to Animals” if he or she:

a. Physically mistreats an animal either by abuse or failure to furnish minimum care, including but not limited to failure to seek appropriate medical care. Physical mistreatment of an animal shall include but is not limited to the killing, maiming, mutilating, beating, torturing, wounding, tormenting an animal and/or depriving an animal necessary sustenance, drink, food or shelter, or chaining or tying an animal in a confined area.

b. A person commits “Animal at Large” if he or she permits an animal, other than a domestic cat, to be at large. At Large means not under the physical control of the owner, person in control or keeper or not physically contained on the owner’s, person in control or keeper’s premises or motor vehicle.

***Section 3.05      Infractions Against Minors***

**(A) Contributing to the Delinquency of a Minor**

(1) A person commits the Infraction of Contributing to the Delinquency of a Minor when he or she gives, purchases for, or furnishes:

a. alcoholic beverages or drugs to any person under the age of 21; or

b. cigarettes, marijuana, dangerous drug, narcotic drug or any drugs listed under Section 3.06, to any person under the age of 18.

***Section 3.06      Drug and Alcohol Infractions***

**(A) Chemical Intoxication**

(1) A person commits the Infraction of Chemical Intoxication if he or she:

a. Inhales, ingests, applies, uses, or possesses a substance containing a volatile chemical, abusable glue or aerosol paint with the intent to inhale, ingest, apply, or use the substance in a manner:

b. contrary to directions for use, cautions, or warnings appearing on a label of a container of the substance; and

c. designed to:

i) affect the person’s central nervous system;

ii) create or induce a condition of intoxication, hallucination, or elation; or

iii) change, distort, or disturb the person’s eyesight, thinking process, balance, or coordination.

d. Sells, offers for sale, delivers or gives to any person under the age of 18

years any volatile chemical, abusable glue or aerosol paint.

**(B) Illegal Drugs**

- (1) A person commits the Infraction of Illegal Drugs if he or she possesses or consumes without a medical prescription; or manufactures or distributes a Controlled Substance, Dangerous Drug, Narcotic Drug or Drug Paraphernalia.

**(C) Intoxication on Tribal Property**

- (1) A person commits the Infraction of Intoxication on Tribal Property if he or she appears intoxicated on Tribal Property to the degree that the person may endanger himself, herself or another.
- (2) It is an exception under this subsection if the substance was administered for therapeutic purposes and as part of the person's professional medical treatment by a licensed physician.

**(D) Intoxication While Operating a Motorized Vehicle**

- (1) A person commits the infraction of Intoxication While Operating a Motor Vehicle when he or she drives a vehicle on the Rancheria, including Private Property:
  - a. under the influence of any alcohol, Controlled Substance, Narcotic or Dangerous Drug, or
  - b. with 0.08 percent or more by weight of alcohol in his or her blood; or
  - c. with 0.01 percent or more by weight of alcohol in his or her blood if he or she:
    - i) is a minor; or
    - ii) has been previously cited by any Court for violation of this section.
- (2) For the purpose of this section, the Cahto Tribal Police Department shall have and maintain in proper working order and calibration a United States National Highway Traffic Safety Authority and California Department of Justice approved Portable Breath Testing Device. This Device shall be the sole device used for test administration under the provisions of this Ordinance.
- (3) Any person who refuses to comply with the authorized breath test administration shall be subject to a fine of triple the amount of the approved fine in addition to any other orders of the Tribal Court.

***Section 3.07      Infractions Against Health and Safety***

**(A) Unlawful Discharge of a Firearm or Bow and Arrow**

- (1) A person commits the Infraction of Unlawful Discharge of a Firearm when he or she:
  - a. Discharges a firearm or bow and arrow within 150 yards of any occupied dwelling, house, residence, or other building used in connection therewith if they are not the owner, the person in possession of the property, or the person having the express permission of the owner or person in possession of the property;
  - b. Willfully discharges a firearm or bow and arrow at a dwelling, occupied building or occupied motor vehicle; or
  - c. Discharges any firearm or bow and arrow from or upon roads or highways located within the Rancheria.

**(B) Unlawful Operation of Motor Vehicle**

- (1) A person commits the Infraction of Unlawful Operation of Motor Vehicle when:
- (2) He or she operates a vehicle:
  - a. on any street or road within the Rancheria in willful disregard for the safety of persons or property; or
  - b. in excess of 25 miles per hour on any paved road within the Rancheria; or
  - c. in excess of 15 miles per hour on any unpaved road within the Rancheria; or
  - d. in excess of any other posted speed limit on any road on the Rancheria; or
  - e. in disregard of any posted road or traffic sign on any road on the Rancheria; or
  - f. without wearing a seatbelt; or
  - g. without a valid state driver's license or vehicle registration; or
  - h. vehicle without insurance; or
  - i. with a child who is not restrained in a child safety seat.
- (3) He or she operates a motorcycle or ATV without a helmet or spark arrester; or
- (4) He or she refuses to provide his or her driver's license or proof of insurance at the request of a Tribal Police Officer.

**(C) Unlawful Parking or Unlawful Storage of an Abandoned Motor Vehicle**

- (1) A person commits the Infraction of Unlawful Parking when he or she:
  - a. Parks, stops or leaves standing any motor vehicle within:
  - b. areas designated solely for the passage or parking of emergency vehicles or postal service vehicles;
  - c. a no-parking area as designated by a yellow-painted curb or no parking sign; or
  - d. a parking area designated for physically disabled persons without a valid State of California or Tribal physically disabled parking permit.
- (2) A person commits the Infraction of Unlawful Storage of Abandoned Vehicle when he or she stores more than one nonoperational vehicle on Tribal Property or Private Property.

**CHAPTER 4. ENFORCEMENT**

***Section 4.01 Tribal Police Duties***

It shall be the duty of every Tribal Police Officer to enforce this Ordinance and all supplemental rules and regulations adopted by the Tribe's Executive Committee governing peace and security on the Rancheria.

***Section 4.02 Tribal Police Authority***

- (A) In fulfilling his or her duties and responsibilities under this Ordinance, Tribal Police Officers are vested with the authority to:
  - (1) Investigate possible violations of this Ordinance including but not limited to conducting warrantless searches pursuant to the provisions of the Indian Civil

Rights Act and other applicable federal law, when in hot or fresh pursuit of a suspect, or when exigent circumstances exist. This shall include the right to enter tribally owned or operated buildings or enterprises for the purpose of conducting a search, making an arrest or investigating a violation of tribal and federal law and when applicable state law;

- (2) Obtain search warrants via writing or telephonic affidavit from the Tribal Court or, when applicable, state or federal authorities;
- (3) Issue citations for violations of this Ordinance committed in their presence, where probable cause exists that an offense has been committed and use reasonable force to prevent a violation of this Ordinance or cause such violation to cease;
- (4) Arrest and/or detain persons who commit both violations of this Ordinance, applicable state or federal laws whether on or off the Rancheria as authorized under state or federal law. In cases of non-Indian violators the person may be transported to appropriate state or federal officials or detained until appropriate authorities may take custody;
- (5) Testify and otherwise provide evidence in proceedings arising out of violations of this Ordinance or state or federal criminal laws in tribal, state or federal proceedings;
- (6) The Tribe's Chief of Police may require assistance from federal, state, local and other law enforcement entities with its tribal law enforcement responsibilities under this Ordinance;
- (7) The Tribe's Chief of Police may deputize persons over 18 years of age who meet the hiring and training standards of the Tribal Police Department;
- (8) The Tribe's Chief of Police may adopt policies and procedures necessary to perform Tribal Police Duties.

#### ***Section 4.03 Citations***

A Tribal Police Officer has the authority to issue citations for violations of this Ordinance committed in their presence or the Tribal Police Officer has reasonable cause to believe a violation has been committed. Such citation shall be issued no later than six (6) months from when the violation occurred.

#### ***Section 4.04 Identification***

A person who is reasonably suspected of committing a crime or an infraction and is stopped by a Tribal Police Officer is required to identify himself or herself by providing his or her name, address, and date of birth. If requested by the Tribal Police Officer, the person shall also produce picture identification card, such as a driver's license, military I.D. or Tribal I.D. card. If the person is unable or unwilling to identify himself or herself, or produce a picture identification card, the Tribal Police Officer may detain the person for a reasonable period of time in order to identify the person and issue a citation.

#### ***Section 4.05 Notice Requirement***

- (A) The citation shall include the following:
  - (1) A statement that the crime or civil infraction is an offense for which imprisonment is not an available sanction;

- (2) A statement listing the subsection of the Ordinance that was violated along with a statement briefly describing the conduct of the person which lead to the violation;
- (3) A statement listing the monetary penalty imposed for the Infraction and that the person may be noticed by separate letter that the penalty amount has increased after determination that the person has previous violations;
- (4) A statement on how the person may contest the citation;
- (5) A statement that the person must respond to the citation within thirty (30) days from the date of personal service of the citation or sixty (60) days from the date of service by mail; and
- (6) In the case of a civil citation a statement that failure to respond to the citation or failure to appear at a requested hearing will result in a default judgment against the person in the amount of the citation plus a sanction imposed by the Court for person's failure to appear.
- (7) In the case of a criminal citation a statement that if the person fails to appear a warrant may be issued for his or her arrest and that he or she could be subject to additional fines or punishment under this Ordinance.

***Section 4.06 Second Notice***

A second notice may be served on a person who has been served a citation informing him or her that the amount of the penalty reflected on the citation has been increased due to the fact that the person has previously been cited for one or more times in the past twelve months for the same infraction thereby enhancing the penalty for the recent infraction. This second notice shall inform the person of the revised penalty amount and again inform the person where he or she may pay the fine and the process for contesting the citation.

***Section 4.07 Service of the Citation***

- (A) The citation may be served on the person in the following manner;
  - (1) Personal service; or
  - (2) Mailing the citation by certified or registered mail, return receipt requested, addressed to the person at his or her mailing address if known, or such other place which is believed to give the occupant or owner actual notice of the citation by the Tribal Police Officer.
- (B) Service is deemed effective on the date of the personal service or when the certified mail is either delivered or delivery is attempted. If the certified mail receipt is returned unsigned, then service shall be deemed effective on the date three days following deposit in the mail.
- (C) Where service of any notice required under this Ordinance is effected in compliance with this Section and with due process the asserted failure of any person to receive the notice shall not affect the validity of any proceedings taken under this Ordinance.
- (D) A copy of citation and, if applicable, the proof of service shall be filed with the

Tribal Court within five business days of issuance, excluding weekends and holidays. If the Tribal Court does not receive the citation within this timeframe, the Tribal Court may dismiss the citation without prejudice.

***Section 4.08 Seizure/Forfeiture of Property***

A Tribal Police Officer may, upon probable cause when issuing a citation for an infraction, seize any property used in the commission of a violation of this Ordinance. All property utilized in violation of this Ordinance is also subject to seizure and forfeiture by order of the Tribal Court. The Tribe must return any property confiscated to its rightful owner unless the Tribal Court determines that the possession of the property is unlawful or could be deemed a risk to facilitate further violations of this Ordinance, in which case it will become the property of the Tribe. The Tribe may enter into an agreement with the Mendocino County Sheriff's Office to store property seized by the Cahto Tribal Police Department.

**CHAPTER 5. HEARING PROCEDURES**

***Section 5.01 Response Options***

- (A) A person shall respond to the citation in one of the following ways;
  - (1) Pay the fine by submitting a cashier check or money order in the amount of the civil fine to the Tribe within thirty (30) days from the date the citation is served; or
  - (2) Request a hearing by completing that portion of the citation form and submitting the request to Tribal Court, per the instruction on the citation, within thirty (30) days from the issuance of the citation if served personally or sixty (60) days from the issuance of the citation if served by mail.

***Section 5.02 Civil Citations***

- (A) Failure to Respond and Default Judgment
  - (1) The Tribal Court shall enter a default judgment and impose additional sanctions against a person who is served with a citation; and
    - a. fails to pay the fine amount; or
    - b. fails to request a hearing; or
    - c. fails to appear at a hearing that he or she has requested.
- (B) Burden of Proof

The burden of proof shall be on the Tribe, however, the citation and any additional reports submitted by the Tribal Police Officer shall constitute presumptive evidence of the respective facts contained in those documents. In cases where the defendant contests the citation the standard of proof shall be clear and convincing.

***Section 5.03 Criminal Citations***

- (A) Failure to Respond

- (1) The Tribal Court may issue a warrant for the arrest of a person who fails to respond;
  - (2) May result in additional charges, fines or punishments.
- (B) Burden of Proof

The burden of proof shall be on the Tribe. If a plea of not guilty is made, the standard of proof shall be beyond a reasonable doubt.

***Section 5.04 Hearing***

(A) Upon receipt of a request for hearing the Tribal Court shall schedule a hearing within 90 days from the date the hearing request is filed and provide written Notice of Hearing to the person requesting the hearing (herein “Defendant”) and the Tribal Police Department. The Notice of Hearing shall state the date, time and place of hearing and shall be issued at least 30 days prior to the date of the hearing. The Notice of Hearing to the Tribal Police Department shall include as an attachment a copy of the Defendant’s completed request for hearing form.

(B) If the Tribal Police Officer submits an additional written report concerning the citation to the Tribal Court for consideration at the hearing, then a copy of this report also shall be served on the Defendant at least fifteen (15) days prior to the date of the hearing.

(C) The Defendant or the Tribe may request one (1) continuance for any reason, provided that Tribal Court is given the request for a continuance at least five (5) business days in advance of the scheduled hearing and that the deferred hearing shall not be deferred more than 60 days after the hearing request was filed. A request for continuance made less than five (5) business days before the scheduled hearing may be granted by the Tribal Court Judge based upon exigency only.

(D) All hearings shall be open to the public unless the Tribal Court finds good cause for the hearing to be closed. Examples of good cause include, but are not limited to, a party’s request that the hearing be closed. At the hearing, both the Tribe and the Defendant shall be given the opportunity to testify and to present evidence and cross-examine witnesses concerning the citation. The Tribe and Defendant may appear personally or through an attorney. Pre-hearing discovery is not authorized, but subpoena of witnesses and documents shall be permitted as authorized by tribal law or the Tribal Court’s Rules of Court. The Tribal Court is authorized to conduct the hearing informally, both as to rules of procedure and admission of evidence, in any manner which will provide a fair hearing.

(E) The Tribal Court may continue the hearing and request additional information from the Tribal Police Officer or the Defendant prior to issuing a written decision.

***Section 5.05 Tribal Court Decision***

(A) After considering all the testimony and evidence submitted at the hearing, the Tribal Court Judge shall issue a written decision to uphold or dismiss the citation and the reasons for that decision, including written findings on each violation. The decision of the Tribal Court Judge shall be issued within thirty (30) calendar days following completion of the hearing.

(B) If the Tribal Court Judge determines the citation should be upheld, he or she may apply any of the following remedies:

- (1) Issue an injunction, by ordering the Defendant to temporarily or permanently refrain from conducting the acts or actions that gave rise to the civil citation.
- (2) Impose fines in an amount not to exceed the maximum provided in the Fine Schedule adopted by the Executive Committee in effect on the date the violation occurred. In determining the amount of the fine, the Judge may take into account any or all of the following factors:
  - a. the duration of the violation;
  - b. the frequency, recurrence, and number of violations, related or unrelated, by the same violator;
  - c. the seriousness of the violation;
  - d. the economic impact of the violation on the community; and
  - e. such other factors as justice may require.
- (3) Suspend the fine on the condition the Defendant does not commit any other violations of this Ordinance and complies with all Tribal Court orders relating to the violation during a specified period not to exceed one (1) year.
- (4) Order restitution to be paid to those affected by the violation.
- (5) Order community service in addition to or in lieu of a fine.
  - a. Such community service shall, if possible, be related to the offense.
- (6) Issue such other order as may be deemed fair and just by the Tribal Court including a public or private apology.

(C) If the Tribal Court Judge finds that a request for civil citation hearing is completely without merit, he or she may hold the Defendant liable for, and order Defendant to pay, the Tribe's reasonable fees and costs, including attorney's fees.

(D) If the Tribal Court Judge determines the citation should be upheld, he or she shall set forth in the decision the payment schedule for the fine as well as for payment of any administrative costs assessed under Subparagraph C above. Late payment charges shall accrue and be payable in the amount and by the terms specified in the Fine Schedule.

(E) If the Tribal Court Judge determines the citation should be dismissed, he or she shall issue a decision dismissing the civil citation.

(F) The Defendant and the Tribe shall be served with a copy of the decision within seven (7) calendar days of its issuance.

(G) The decision of the Tribal Court Judge shall be final upon service on the Defendant and not subject to further review.

## **CHAPTER 6. PENALTIES**

### ***Section 6.01 General Penalty Provisions***

(A) A person committing a violation under this Ordinance will be subject to a fine in an amount not to exceed the maximum provided in the fine schedule adopted by the Executive Committee in effect on the date the violation occurred;

(B) In addition to, or in lieu of, the fine, the Tribal Court may grant such other relief as is necessary and proper, including, but not limited to the following: community service, restitution, treatment and/or counseling, banishment, debarment or traditional sanctions;

(C) The Tribal Court has the authority to forfeit property, suspend or cancel a license or permit, or cite for contempt.

***Section 6.02 Fines Deferred***

(A) The Tribal Court may choose not to impose a fine for a period not to exceed one (1) year if justice so requires and the following criteria are met:

- (1) The person has not committed any previous violations of this Ordinance; and
- (2) The person does not commit any other violations of this Ordinance during the time the civil penalty is deferred or suspended; and
- (3) The person does not commit any infractions, violations or offenses in any other jurisdictions during the time the civil penalty is deferred or suspended; and
- (4) The person complies with all Tribal Court orders concerning the Infraction to the best of his or her ability.

***Section 6.03 Community Service***

The Tribe recognizes that a person who violates this Ordinance may be unable to pay his or her fine as imposed by the Tribal Court. For this reason, the Tribal Court, at its discretion, may order community service in addition to or in place of a civil fine. The Tribal Court will determine if the person is a suitable candidate for community service.

(A) A person approved for community service by the Tribal Court shall be referred to as a Community Service Worker.

(B) The Tribal Court will;

- (1) keep a log of both services requested and performed;
- (2) provide a form for verification of the Community Service Worker's hours of service.

(C) Community Service is limited to service

- (1) at Tribal Property; or
- (2) for a Tribal Agency; or
- (3) at the primary residence of a tribal elder.

(D) Tribal Agencies or elders who want the assistance of a Community Service Worker must submit a written request to the Tribal Court and assistance will be provided in the order that requests are received.

(E) The community service worker will obtain written verification supporting the hours of service on the provided form and submit the form to the Tribal Court.

***Section 6.04 Referral for Treatment***

(A) In place of, or in addition to, a fine, the Tribal Court may refer a Defendant to mental health providers including an alcohol/substance abuse program, and/or social services program for counseling and/or treatment.

(B) After completion of an evaluation, the agency conducting the evaluation shall report its findings and recommendations to the Tribal Court or an officer assigned by the Tribal Court.

(C) The Tribal Court may order mental health providers to submit progress reports of treatment. An officer assigned by the Tribal Court will monitor the person's progress in his or her treatment program.

(D) Residential treatment is an option if requested by the person who violated this Ordinance and if recommended by a mental health provider, an alcohol/substance abuse program, or social services program.

### ***Section 6.05 Seizure/Forfeiture of Property***

A Tribal Police Officer may, upon probable cause when issuing a citation for an Infraction, seize any property used in the commission of a violation of this Ordinance. All property utilized in violation of this Ordinance is also subject to seizure and forfeiture by order of the Tribal Court. The Tribe must return any property confiscated to its rightful owner unless the Tribal Court determines that the possession of the property is unlawful or a violation of this Ordinance, in which case it will become the property of the Tribe.

### ***Section 6.06 Enforcement of Civil Fines***

(A) In any case where a person has been found to have committed an Infraction and a civil penalty has been assessed, the person has thirty (30) days to pay the civil fine. For good cause shown, the Tribal Court may extend the time for payment or approve an installment plan. Parent(s), guardians, or any adult responsible for the care of minor (a person under the age of 18) are liable for the civil fine of a minor.

(B) If the person has not paid the civil fine within the time allotted by the Tribal Court, the Court may take any and all actions necessary to collect the civil fine, including but not limited to the following:

- (1) Refer the civil fine to a collection agency or other collection institution;
- (2) Order an on-Rancheria employer to garnish up to twenty five (25%) percent of violator's wages;
- (3) Order the Tribal Administrator, or other appropriate tribal official, garnish up to one-hundred (100%) percent of the violators tribal per capita distribution or revenue sharing distribution; Sell any property confiscated under this Ordinance up to the amount of the civil fine; or
- (4) Upon written request from the Tribe, issue a garnishment order against an off-Rancheria employer or any other entity that issues the violator wages or money; or
- (5) Exclude the person from the Rancheria until such time the fine has been paid.

## **CHAPTER 7. GENERAL PROVISIONS**

### ***Section 7.01 Sovereign Immunity***

The sovereign immunity of the Tribe shall extend to its Tribal Police Officer(s) to the

extent permitted by federal and tribal law. The sovereign immunity of the Tribe is in no manner waived by this Ordinance, by any action by its Tribal Police Officers, or any of the employees of the Tribe or any tribal law enforcement officer acting pursuant to this Ordinance.

***Section 7.02 Severability***

If any provision of this Ordinance or the application of the Ordinance to any person or circumstance is held invalid, such invalidity will not affect the legality of the other provisions or application of this Ordinance, and to this end the provisions of this Ordinance are severable.

***Section 7.03 Amendments***

This Ordinance shall be amended by the Executive Committee as provided for under the Tribe's Articles of Association.

***Section 7.04 Effective Date***

This Ordinance shall take effect 30 days after its adoption by the Executive Committee.

CERTIFICATION