

**ORDINANCE PRESERVING AND  
MAINTAINING PEACE, SECURITY AND  
RESPECT WITHIN THE BOUNDARIES OF THE  
LA JOLLA INDIAN RESERVATION**

**AS AMENDED  
MAY 3, 2014**

**Ordinance Preserving and Maintaining Peace, Security and  
Respect Within the Boundaries of the La Jolla Indian  
Reservation**

**Section 1. Title**

This Ordinance shall be known as the "**La Jolla Peace and Security Ordinance**" and cited throughout as "Ordinance".

**Section 2. Purpose and Policy**

The peace and security of all residents of the La Jolla Indian Reservation, both members and non-members, shall be preserved and protected by the La Jolla Band ("Band"). It is the policy of the La Jolla Band that all residents on the Reservation are entitled to the peaceful and tranquil pursuit of their lifestyles. It is the further policy of the La Jolla Band that La Jolla Indian Reservation residents are entitled to security against harassment, vandalism, disturbing the peace and other antisocial acts, both in public and in private.

This Ordinance will be interpreted and construed to:

- A. Preserve the peace, harmony, safety, health and general welfare of the people of the Band and those permitted to enter or reside on the Reservation;
- B. Ensure peace and order on the Reservation and lands of the La Jolla Band;
- C. Promote the welfare of the Band and its members;
- D. Safeguard individual rights and community standards;
- E. Secure rights and powers, which are inherent in the Band's sovereign status;
- F. Exert jurisdiction over all matters essential to the Band'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 Band;
- 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 3. Jurisdiction

This Ordinance will be applicable to **all** persons and lands within the exterior boundaries of the La Jolla Indian Reservation pursuant to Article 1 of the Constitution of the La Jolla Band.

### Section 4. Band Regulation

The General Council of the La Jolla Band shall approve such regulations as it deems proper and necessary to carry out the policies of the La Jolla Band with respect to preserving and maintaining the peace and security of Reservation residents. Such regulations may supersede or supplement any existing regulations, and include any provisions which the General Council deems necessary to carry out the policies and procedures of this Ordinance.

### Section 5. Definitions

- A. "**Exclusion**" means to ban, forbid, exclude, excommunicate or cut off a non member person from privileges at the La Jolla Indian Reservation permanently or for a specified period of time.
- B. "**Civil Infraction**" means a violation of tribal law as set forth in this Ordinance to Promote the welfare of the Band and its members;
- C. "**Dangerous Weapon**" means any unregistered (either with the state or Tribe) 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 etc.)
- D. "**General Council**" means the governing body of the La Jolla Band, comprised of all adult, voting members of the Band.
- E. "**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 tribal trust land issued to tribal members pursuant to the Band's Land Use Ordinance.
- F. "**Reservation**" means the La Jolla Indian Reservation as established under the laws of the United States and set forth in the Band's Constitution, Article 1, Section A and shall encompass all territory within it's exterior boundaries as now or hereafter prescribed or ascertained including fee patented lands, roads, water, bridges, lands and rights of way owned, used or claimed by any person.
- G. "**Tribal Council**" means the entity established under the Band's Constitution, Article 5, Section A.

- H. **"Tribal Court"** means the judiciary branch of the Band as set forth and provided for under the Band's Constitution, Article 11, Section A.
- I. **"Tribal Property"** as used in this Ordinance means all property held by the United States government in trust for the Band (i.e. tribal camp ground, etc.) "Tribal Property" does not include individual tribal allotments unless specifically included.
- J. **"Tribal Law Enforcement Officer"** means a person designated by the Band to enforce this Ordinance and to act as a law enforcement officer for the Band.
- K. **"Tribal Security Officer"** means a person designated by the Band to provide security at a specific location and/or for a specific purpose.

**Section 6. Civil Penalties**

**A. General Penalty Provisions**

1. A person committing a violation under this Ordinance will be subject to civil fines as set forth in the Schedule of Penalties. Any person who repeatedly commits a civil infraction will be subject to increased fines, as indicated in the Schedule of Penalties.
2. A "Habitual Offender" means an individual who has committed three or more of any combination of civil infractions. The Tribal Court may, in its discretion, require a habitual offender to pay up to twice the maximum penalty provided in the Schedule of Penalties for the most recent infraction committed, up to the maximum established in the Band's Constitution Article 17, Section A.
3. In addition to, or in lieu of, the civil 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, and traditional sanctions; and
4. The Tribal Court has the authority to forfeit property, suspend or cancel a license or permit, or cite for contempt.

**B. Civil Penalties Deferred**

The Tribal Court may choose not to impose civil penalties for a period not to exceed one (1) year if justice so requires and/or the following criteria is met:

1. The person has not committed any previous violations of this Ordinance;

2. The person does not commit any other violations of this Ordinance during the time the civil penalty is deferred or suspended;
3. The person does not commit any infractions, violations or offenses in any other jurisdiction during the time the civil penalty is deferred or suspended; and
4. The person complies with all Tribal Court orders concerning the civil infraction to the best of his or her ability.

C. Community Service

The Tribal Court 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 a suitable Location for community service and will order the individual to carry out the service,

1. Community Service is limited to a location approved by the La Jolla Tribal Council.
2. The Tribal Court will keep a log of both services requested and performed.
3. The Tribal Court will provide a form for verification of community service to the service worker.
4. The community service worker will be responsible for:
  - a. Obtaining written verification from the monitoring supervisor on the provided form; and
  - b. Submitting the form to the Tribal Court as required.

D. Referral for Treatment

1. In place of, or in addition to, a civil penalty, the Tribal Court, at its discretion, may refer a violator to mental health providers including an alcohol/substance abuse program, and/or social services program for an evaluation, counseling and/or treatment.
2. 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.
3. 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.

4. Residential treatment facilities are an option for persons violating this Ordinance if so requested by the person and if recommended by an authorized mental health or other treatment agency.

E. Seizure/Forfeiture of Property

A Tribal Law Enforcement Officer may, upon probable cause when issuing a citation for a civil 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 Band 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 Band.

F. Enforcement of Civil Fines

1. In any case where a person has been found to have committed a civil 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.
2. 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:
  - a. Refer the civil fine to a collection agency or other collection institution;
  - b. Order employer on the Reservation to garnish up to twenty five (25%) percent of violator's net wages;
  - c. Order the Tribal Administrator, or other appropriate tribal official, garnish up to one-hundred (100%) percent of the violators tribal per capita distribution;
  - d. Sell any property confiscated under Section 6.E of this Ordinance up to the amount of the civil fine; or
  - e. Upon written request from the Tribe, issue a garnishment order against an off Reservation employer or any other entity that issues the violator wages or money.

G. Exclusion of Nonmembers

1. Findings

- a. There are situations that arise in which Non-Members must be excluded from the Reservation.

- 2. The burden of proof is on the petitioner to show that the person petitioner wishes to exclude committed an act punishable by exclusion beyond a reasonable doubt.

3. Definitions

- a. "Exclusion" means to ban a Nonmember from entering the exterior boundaries of the Reservation.
- b. "Exclusion Order" means a final order issued by the Tribal Council.
- c. "Temporary Exclusion Order" means a temporary order issued by the Tribal Council.

- 4. Any member may initiate Exclusion proceedings with the Tribal Court. Once initiated, the petitioner must provide notice to the person he or she seeks to exclude, no later than one week prior to the Exclusion hearing. When considering whether or not to recommend Exclusion of a person to the Tribal Council, the Tribal Court shall consider, but is not limited to, whether the person the petitioner seeks to exclude has:

- a. Threatened the petitioner or a member of the petitioner's family with serious bodily injury that is more likely than not to occur;
- b. Inflicted bodily injury on the petitioner or a member of the petitioner's family;
- c. Committed a civil infraction in violation of the Peace & Security Ordinance on the Reservation;
- d. Committed felonies off of the Reservation;
- e. Interfered with the administration, operation and processes of the General Council as authorized by the Constitution of La Jolla Band of Luiseño Indians;
- f. Or otherwise endangered the health, safety and welfare of the Band, its tribal members, community members, employees or

customers;

- g. And as recommended by any other infraction within this Ordinance or any other ordinance adopted by the Band that may result in exclusion.

5. Persons may appeal a recommendation of the Tribal Court for an Exclusion Order as instructed by Appellate Procedure of the Tribal Court.

6. A final determination will be issued by the Tribal Council.

H. Temporary Exclusion of Nonmembers

1. In some circumstances, a Temporary Exclusion Order may be required before an Exclusion Order Hearing. Upon the recommendation of a Tribal Law Enforcement Officer, Tribal Council Member, Tribal Court Judge, Tribal Member or Tribal Employee, the Tribal Council may issue a Temporary Exclusion Order. The Temporary Exclusion Order may be issued based on, but not limited to, a finding of one of the following factors:

- a. The person the petitioner seeks to exclude has threatened the petitioner or a member of the petitioner's family with serious bodily injury. The threat of serious bodily injury must be immediate and more likely than not to occur;
- b. The person the petitioner seeks to exclude has inflicted serious bodily injury on the petitioner or a member of the petitioner's family;
- c. The person the petitioner seeks to exclude has directly caused the death of a member of the Band;
- d. The person the petitioner seeks to exclude has falsely imprisoned—restrained in a bounded area without justification or consent—the petitioner or a member of the petitioner's family;
- e. Committed a civil infraction in violation of the Peace & Security Ordinance on the Reservation;
- f. Committed felonies off of the Reservation;
- g. Interfered with the administration, operation and processes of the Tribal Council as authorized by the Constitution of La Jolla Band of Luiseño Indians;

- h. Or otherwise endangered the health, safety and welfare of the Band, its tribal members, community members, employees or customers;
  - i. And as recommended by any other infraction within this Ordinance or any other ordinance adopted by the Band that may result in exclusion.
2. The Temporary Emergency Exclusion Order will be issued to the excluded person. Upon receipt, the excluded person must vacate the Reservation immediately. Excluded persons may retrieve any personal belongings left within the Reservation in the escort of a Tribal Law Enforcement Officer. Any personal belongings must be retrieved within 10 days from the time of their exclusion.
  3. A person who receives a Temporary Exclusion Order may request an Exclusion Order Hearing with the La Jolla Tribal Court. The request must be made within 10 business days from receipt of the Temporary Order. If no hearing is requested then the temporary exclusion order will become a Final Exclusion Order.

## Section 7. Civil Infractions Against Property

### A. Definitions

For this Section, the following definitions will apply:

1. “**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.
2. “**Damage**” means loss, injury, or deterioration to property causing it to decrease in strength, value, amount or quality.
3. “**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.
4. “**Deface**” means damage to monuments, buildings or other structures by changing the physical appearance.
5. “**Financial loss**” means a loss of money or of something by which money or of value may be acquired.
6. “**Property**” means:
  - a. Real property such as land or structures and building affixed to land and includes both tribal and private;

- b. Personal property which is anything tangible or that can be severed from real property.

B. Malicious Mischief

1. A person commits the civil 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. Tampers 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 Band; or
  - e. Aids, assists, commands, or counsels another to commit Malicious Mischief.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

C. Trespass

1. A person commits the civil 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.
2. Notice or an order may be given by:
  - a. Written or verbal communication given to the intruder by a Tribal Official, Tribal Law Enforcement Officer, Tribal Security Officer, or the owner of the property.
  - 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.
3. An infraction under this subsection is punishable according to the

## Schedule of Penalties.

### D. Reckless Damage or Destruction

1. A person commits the civil infraction of Reckless Damage or Destruction if, without the consent of the owner, he or she recklessly damages or destroys property of the owner.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.
3. “**Recklessly**” means a person who acts carelessly, heedlessly, or is inattentive to the circumstances surrounding him/her.

### E. Arson

1. A person commits the civil infraction of Arson when he or she willingly and maliciously sets fire to, or burns, or causes to be burned, or aids, counsels, or assists in the burning of any trailer, motor vehicle, camper, dwelling, structure, property, barn, stable, crops, forest, land or open area located within the boundaries of the Reservation.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

## Section 8. Civil Infractions Against the Peace

### A. Disorderly Conduct

1. A person commits the civil infraction of Disorderly Conduct if he or she:
  - a. Fights with another person within the boundaries of the Reservation;
  - b. At any location within the La Jolla Indian Reservation creates any excessive noise, or allows or permits the creation of any excessive noise on property owned, leased, occupied or otherwise controlled by such person which causes or creates a nuisance;
  - c. Not being lawfully authorized to do so, displays a dangerous weapon in a 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 Reservation except by:
  - i. Tribal Law Enforcement Officers while in the performance of their official duties;
  - ii. Tribal Security Officers, while in the performance of their official duties;
  - iii. Any other state, federal, or tribal law enforcement officer, while in the performance of their official duties; and
  - iv. Tribal members who have registered firearms with the state or tribe and have received written permission from the Band to hunt on the reservation or to discharge his/her weapon for other reasons and does so in compliance with Section 13.A.

- 2. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### B. Carrying a Prohibited Weapon

- 1. A person commits the civil infraction of Carrying a Prohibited Weapon if he or she carries on or about his or her person a dangerous weapon defined under Section 5. C. This subsection shall not apply to Tribal Law Enforcement Officers, Tribal Security Officers, or any other state, federal or tribal law enforcement officer.
- 2. Any Tribal Law Enforcement Officer, Tribal Security 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.
- 3. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### C. Loitering and Curfew

- 1. A person commits the civil infraction and is in violation of Curfew if:
  - a. He or she is a minor (under the age of 18 years old) who

remains in the streets or on tribal property areas within the Reservation 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 in any streets or tribal property areas within the Reservation 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 Security, law enforcement official, or Tribal Official to take custody of a minor taken into protective care for violation of this subsection.
2. A Person Commits the civil infraction of Loitering if:
- a) He or she is standing around idly or without apparent purpose or invitation on private, public or Tribal property
  - b) He or she is remaining on the property to beg, bother, harass, panhandle etc.
3. An infraction under this subsection is punishable according to the Schedule of Penalties.

D. Unlawful Operation of a Motorcycle and an All Terrain Vehicle (ATV)

1. A person commits the civil infraction of Unlawful Operation of a Motorcycle and an ATV when he or she:
  - a. Operates a motorcycle or ATV anywhere on the Reservation in a manner which disturbs the peace of other Reservation residents; or
  - b. Operates a motorcycle or ATV anywhere on the Reservation without a spark arrester.
  - c. Operates a motorcycle or ATV without a helmet.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

E. Human Trafficking and Prostitution

1. Definitions
  - a. "Public Place" means any place to which the public or a substantial group thereof has access, and includes the La Jolla Indian Reservation Campground.
2. A person commits the civil infraction of human trafficking when he or

she:

- a. Recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person under the age of 18 with the intent of causing the person to engage in prostitution or other forms of sexual exploitation; or,
  - b. Recruits, entices, harbors, transports, provides, obtains, or maintains any person by means of force, threats of force, fraud, abduction, deception, coercion, or the abuse of power or of a position of vulnerability with the intent of causing the person to engage in prostitution or other forms of sexual exploitation.
  - c. The consent of a victim of trafficking is not a defense to an infraction committed under this subsection.
3. A person commits the civil infraction of prostitution when he or she offers or agrees to perform any act of sexual intercourse or sexual contact with another person, not his or her spouse, in exchange for money or any other thing of value, and commits any act in furtherance of the offer or agreement.
  4. A person commits the civil infraction of soliciting a prostitute when he or she offers or agrees to pay money or any other thing of value for the purpose of engaging in sexual intercourse or sexual contact, and commits any act in furtherance of the offer or agreement.
  5. A person commits the civil infraction of facilitating prostitution when he or she:
    - a. Encourages or otherwise purposely causes another to patronize a prostitute;
    - b. Arranges or offers to arrange a meeting of persons for the purposes of prostitution;
    - c. Knowingly permits the use of a place for the purposes of prostitution;
    - d. Shares in the proceeds of a prostitute, unless one is the minor child or legal dependant of the prostitute;
    - e. Encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or
    - f. Knowingly houses a prostitute within the La Jolla Indian Reservation.

6. An infraction under this subsection is punishable according to the schedule of penalties. If a Tribal member is found to have committed the civil infraction of prostitution or soliciting a prostitute, the Tribal Court shall stay the civil penalty and refer the violator to tribally approved counseling and/or treatment. If the violator completes the mandatory counseling and/or training, the fine shall be dismissed.

F. Solicitation to Commit a Civil Infraction

1. A person commits the civil infraction of Solicitation to Commit a Civil Infraction when he or she commands, induces through threats or promises, encourages by words or gestures, or facilitates the commission of any civil infraction defined in this Ordinance with the intent to promote the commission of that civil infraction.
2. An infraction under this subsection is punishable according to the fine provided in the Schedule of Penalties for the infraction that was the subject of the solicitation.

G. Animal Control

1. Definitions

- a. "Owner" means any person who owns, has control of, custody of, or possession of a animal.
- b. "Caretaker" means any person other than the owner who has taken custody and control of a animal.
- c. "Animal" means any animal that has been kept by humans as a work animal, food source or pet, especially a member of those species that have become notably different from their wild ancestors. However, when referring to Animal Abuse, the term animal shall also include any federally or tribally protected, endangered or sacred animal
- d. "At Large" means when a animal is not under the control of an owner or caretaker, is allowed to roam freely about the Reservation, and is not under restraint by leash.

2. An owner or caretaker commits the civil infraction of Animal Control if he or she:

- a. Permits his or her animal to run at large outside the property occupied by that person for residential or business purposes.

- b. Abandons his or her animal within the Reservation or other lands under the jurisdiction of the Band or neglects to furnish adequate food, care, or shelter for the animal.
3. If the owner or caretaker was previously cited for the civil infraction of Animal Control any further violations may result in the Tribe contracting with Animal Control or an appropriate agency or business to remove the animal from the reservation at the owner's expense.
4. All residents who own animals must keep their animals in their own yards. Should any animal be found wandering the La Jolla Indian Reservation unattended, La Jolla Law Enforcement will make an effort to contact the owner to retrieve their animal. Should the animal be determined by Law Enforcement to be aggressive, dangerous, unclaimed or previously found wandering unattended the animal may be captured and turned over to Animal Control, Animal Shelter, Human Society or any other appropriate agency who the tribe has contracted with. All cost associated with the capturing, kenneling, feeding, care, agency fees, tribal fines etc.. will be the responsibility of the owner.
5. A person commits the civil infraction of animal abuse if he or she maliciously, intentionally, or cruelly: kills, maims, mutilates, tortures wounds, injures or provokes a animal.
6. An infraction under this subsection is punishable according to the Schedule of Penalties.

## **Section 9. Civil Infractions Against the Tribal Government**

### **A. Interfering with Lawful Detention or Resisting Detention**

1. A person commits the civil 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 Law Enforcement Officer, Tribal Security Officer, or other law enforcement officer in the performance of their official duties;
  - b. Flees from any Tribal Law Enforcement Officer, Tribal Security 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.
2. An infraction under this subsection is punishable according to the

Schedule of Penalties.

B. Refusing to Aid a Law Enforcement Officer

1. A person commits the civil infraction of Refusing to Aid a law enforcement officer if they neglect or refuse, when called upon by a law enforcement officer, to aid and assist in preventing any breach of the peace or the commission of any violation of this ordinance. No person will be cited under this section if he or she are unable to aid law enforcement due to his or her age, physical or mental limitations, or some other condition that prevents his or her ability to respond to the law enforcement officer's request.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

**Section 10. Civil Infractions Against the Person**

A. Assault or Aggravated Assault

1. As used in this subsection:
  - a. "Bodily injury" means:
    - i. a cut, abrasion, bruise, or burn;
    - ii. physical pain;
    - iii. illness;
    - iv. impairment of a function of a bodily member, organ, or mental faculty; or
    - v. any other injury to the body, no matter how temporary.
  - b. "Serious Bodily Injury" means bodily injury, which involves:
    - i. a substantial risk of death;
    - ii. extreme physical pain or disfigurement; or
    - iii. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
2. A person commits the civil infraction of Assault if he or she:
  - a. Causes bodily injury to another;
  - b. Causes serious bodily injury to another;

- c. Threatens another with imminent bodily injury;
- d. Causes physical contact with another when the person knows or should reasonably believe that the person will regard the contact as offensive or provocative;
- e. Uses or exhibits a weapon during the commission of an assault; or
- f. Forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any authorized Tribal Law Enforcement Officer, Tribal Security Officer or other law enforcement officer lawfully discharging an official duty.

3. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### B. Harassment

1. A person commits the civil infraction of Harassment if, with the intent to harass, annoy, alarm, abuse, torment or embarrass another, he or she:
  - a. Initiates written or verbal communication in any form including, but not limited to, calling, sending letters, sending text messages, using the internet or instant messaging, or engaging in any other electronic means of communication, and in the course of the communication makes a comment, request, suggestion or proposal that is obscene or false;
  - b. Threatens, by any form of communication including, but not limited to, calling, sending letters, sending text messages, using the internet or instant messaging, or engaging in any other electronic means of communication, in a manner reasonably likely to alarm the person receiving the threat, to inflict serious injury against the person, a member of his family, or his 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. Makes repeated communications in any form including, but not limited to, calling, sending text messages, using the internet or instant messaging, or engaging in any other electronic means of communication, anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

- e. Knowingly permits any communication device under his control to be used by a person to commit a civil infraction under this subsection;
  - f. Intentionally subjects another to sexual harassment; or
  - g. Intentionally stalks another.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

C. Violence Against Women, Men, and Children on Tribal Land

1. Findings

A. The General Council finds that:

- i. Domestic violence, stalking, and sexual violence are inconsistent with the traditions and customs of the La Jolla Band, and imperil the subsistence of the tribal community;
- ii. There is a strong desire in the community to address domestic violence, stalking, and sexual violence which threatens the health and welfare of our Band; to restore balance between members of the Band; and to provide firm and effective civil remedies for these issues;
- iii. The Tribal Council has passed three resolutions indicating that violence against women is a serious crime not just against individuals, but also against the Band as a whole;

2. Purpose and Intent

- a. The purposes of the La Jolla General Council in enacting the violence against women, men, and children on tribal land subsection of the Peace and Security Ordinance are to:
  - i. Prevent, reduce, and deter domestic violence, stalking, and sexual violence on the La Jolla Indian Reservation, and to acknowledge that violent behavior is never to be tolerated or excused, whether or not an abuser is intoxicated, stressed, or for any other reason;
  - ii. Emphasize that every member of the La Jolla Indian Reservation community has the absolute right to be

respected and treated with dignity, to be free of violence and to live in peace at all times;

- iii. Promote a strong community and strong traditions by asserting that domestic violence, stalking, and sexual assault are not only crimes against an individual, but also against the Band, and the La Jolla Indian Reservation community as a whole, and by providing victims with a safe and fair way to seek justice, and holding offenders accountable;
- iv. Indicate that acts of domestic violence, stalking, and sexual assault affect the physical, intellectual, sexual, psychological, spiritual, and economic wellbeing of victims.

### 3. Civil Jurisdiction and Statement of Authority

- a. The Band has subject matter jurisdiction, pursuant to Article 1 of the Band's constitution, over any act of domestic violence, stalking, or sexual assault that occurs on tribal land. The Band has personal jurisdiction over any act of such violence that involves a member of the La Jolla Band, and occurs within the external boundaries of the La Jolla Indian Reservation. The Band also has jurisdiction over any valid order of protection issued by another court of competent jurisdiction, when either the protected person or the respondent is domiciled, residing, or found within the external boundaries of the La Jolla Indian Reservation.

### 4. Definitions

- a. For this subsection, the following definitions will apply:
  - i. "Advocate" means any member of the Native Women's Advisory Committee or an employee of, or volunteer for, a program for victims of domestic violence, stalking or sexual assault and who has a primary function in the program of rendering advocacy, counseling, or assistance to victims of domestic violence, stalking or sexual assault; supervising employees or volunteers of the program; or administering the program.
  - ii. "Apprehension of Personal Safety" means fear or anxiety that one is in danger of bodily injury, or nonconsensual sexual activity or contact, either immediately or within the near future.

- iii. “Coerce” means to restrain, compel, or dominate by force or threat of force.
- iv. “Domestic Violence” means
  - 1. Causing bodily injury or serious bodily injury, as defined in section 10, subsection A of this Ordinance;
  - 2. Attempting or threatening to cause physical abuse, bodily injury or serious bodily injury, or through looks, actions, words, or gestures, putting his or her intimate partner in apprehension that he or she will cause physical abuse, bodily injury, or serious bodily injury;
  - 3. Engaging in, attempting to engage in, or threatening to engage in rape, or nonconsensual sexual activity, sexual contact or sexual advances with an intimate partner, household member or family member of an intimate partner, by force, threat of force, coercion, or duress;
  - 4. Threatening or inducing fear or apprehension that he or she will cause physical abuse, bodily injury, will engage in nonconsensual sexual activity or sexual contact with, or will otherwise harm an intimate partner’s family or household members;
  - 5. Causing harm to a family or household member of an intimate partner, or to pets belonging to an intimate partner with the purpose of causing intimidation or mental anguish;
  - 6. Engaging in any act of reproductive coercion against an intimate partner, as evidenced by testimony from the victim, any eyewitnesses, or medical professionals that attended to the victim;
  - 7. Committing any violations of section 7 of this Ordinance, directed at the property of an intimate partner;
  - 8. Engaging in economic abuse against an intimate partner;
  - 9. Violating any valid and current orders for protection issued by any court of competent jurisdiction;

10. Threatening to use, or actually using a dangerous weapon, as defined by section 5B of this Ordinance, against an intimate partner;

11. Violating any state or federal domestic violence laws;

12. Confining or physically restrains an intimate partner against his or her will;

13. Preventing an intimate partner from requesting assistance or services from law enforcement officials, emergency or medical providers, or advocates, by using force, economic abuse, coercion, intimidation, or otherwise restricting or destroying lawful means of communication or transportation to access such assistance or services.

v. “Economic Abuse” means maliciously interfering in any way with an intimate partner’s ability to work; or purposefully, through harassment, coercion, threatening behavior, or physical contact, preventing an intimate partner from using shared or personal financial resources; from seeking employment; or from appearing at his or her place of employment.

vi. “Emotional Distress” means nervousness, grief, fright, alarm, anxiety, worry, humiliation, shame, or indignity or other pain and suffering experienced by a victim and caused by a perpetrator.

vii. “Endangering a Victim of Domestic Violence, Sexual Assault, or Stalking” means:

1. Disclosing the location of any domestic violence shelter without the authorization of the shelter.

2. Knowingly assisting a perpetrator of domestic violence, sexual assault, or stalking in any act of domestic violence, sexual assault or stalking against a victim, unless assistance is given under threat of serious bodily injury, or it was reasonable for the person assisting the perpetrator to believe that his or her behavior was not prohibited by this ordinance.

3. Housing, hiding, or harboring a perpetrator in one’s domicile, property, or home in furtherance of that perpetrator’s evasion of tribal or state law enforcement, unless it is reasonable for the person

assisting the perpetrator to believe that the perpetrator was not attempting to evade the law.

- viii. “Family or Household Member of Victim” means:
1. A biological or adopted relative of the victim;
  2. Victim’s biological or adopted children; any child that the victim has legal custody, or is legal guardian of; any child that the victim receives into his or her home and openly holds out as his or her child;
  3. Any person living in the victim’s home at the time of the abuse;
  4. Any person generally recognized by the La Jolla Indian Reservation community as a member of the victim’s family.
- ix. “Harassing an Advocate” means intimidating or threatening an advocate, or placing an advocate in apprehension of personal safety either in retaliation for that advocate’s representation of a victim; or with the purpose of discouraging the advocate from providing assistance to a victim.
- x. “Intimate Partners” means:
1. Current or former spouses;
  2. Persons who are currently or were previously engaged in an intimate or dating relationship with one another, regardless of whether they currently live together, have lived together in the past, or have ever lived together; and
  3. Persons who are currently engaged or were previously engaged in a sexual relationship;
  4. “Intimate Partners” includes any relationships between people, regardless of gender or sexual orientation that falls within the above categories.
- xi. “Intimate Relationship” means a relationship in which the parties were romantically involved, or involved in a dating relationship. When determining whether or not two parties were involved in an intimate relationship, the court will consider how long the relationship lasted, the nature of the relationship, and the frequency of

interaction between the parties.

- xii. "Mental Anguish" means severe mental pain and suffering, or psychological damage caused by a perpetrator's physical or verbal intimidation, threats, verbal abuse, physical abuse, harassment, or any contact that is detrimental to the psychological and mental well-being of a victim or any of the victim's family or household member, characterized by behavioral changes or physical symptoms of the victim.
- xiii. "Order for Protection" means all of the provisions of any valid and current order issued by any court of competent jurisdiction to protect a victim of domestic violence or stalking, including emergency protection orders, ex parte protection orders, and permanent orders of protection.
- xiv. "Perpetrator" means any person who engages in an act of domestic violence, stalking, or sexual violence.
- xv. "Physical Abuse" means punching, hitting, kicking, biting, shoving, strangulation, suffocation, or causing pain with any physical contact from a perpetrator's body, foreign objects, or weapons.
- xvi. "Predominant Aggressor" means the person who poses the most serious threat to his or her intimate partner, attempts to exert power and control over his or her intimate partner, and has the most ability or inclination to cause physical harm, regardless of which person engaged in violent behavior first.
- xvii. "Prior Offense" means previous commission of any domestic violence or stalking related civil offense under this Ordinance, or previous conviction for violation of any domestic violence or stalking related criminal or civil laws in any other court of competent jurisdiction.
- xviii. "Rape" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- xix. "Repeated" means more than once.
- xx. "Reproductive Coercion" means explicitly attempting to impregnate an intimate partner without her consent; using coercion to have unprotected sex with a partner

without that partner's consent; destroying, sabotaging, or otherwise negatively affecting the function of an intimate partner's method of birth control; or using coercion to control the outcome of an intimate partner's pregnancy.

xxi. "Sexual Activity or Contact" means any nonconsensual sexual activity, including, but not limited to: fondling, forced watching of pornography, exhibitionism, disrespecting of privacy and physical boundaries for sexual purposes, forced prostitution, or demanding sexual favors in exchange for anything.

xxii. "Sexual Assault" means:

1. Engaging in any nonconsensual sexual activity or contact with any person; or

2. Raping any person.

xxiii. "Stalking" means causing a victim or the family and household members of a victim to experience mental anguish, apprehension of personal safety, or emotional distress by engaging in repeated and unwanted contact with the victim partner or their family and household members. Such contact includes, but is not limited to:

1. Sending or making written or verbal communications in any form directed at a victim, including, but not limited to calling, sending letters, sending text messages, using the internet or instant messaging to communicate, or engaging in any other electronic means of communication;

2. Speaking with the person directly, or through any other means;

3. Engaging in monitoring behaviors, such as following a victim; watching and/or waiting outside a victim's home, school, workplace, or other commonly frequented location; or repeatedly and intentionally coming into the presence of a victim;

4. Coercing, or using third parties to engage in contact with or communication with a victim in any of the aforementioned ways;

5. Communicating with a third party who has some form relationship with the victim, including personal

or business related relationships, with the purpose of negatively affecting that relationship;

6. Commits any violations of section 7 of this Ordinance, directed at the property of a victim, an victim's place of work, or an victim's school;

7. Delivers directly, or through a third person, any object to the home, property, place of work, or school of a victim, and directed at the victim;

8. Commits any stalking related offense against a victim under state or federal law;

9. Directing any of the aforementioned behaviors at the family or household members of a victim with the purpose of intimidating a victim.

xxiv. "Sexual Advances" means making a sexually related or obscene comment, gesture, request, suggestion, proposal, or other indication, physical or verbal, that alarms, annoys, torments, embarrasses, shames, or causes mental anguish in a victim.

xxv. "Victim" is any person who experiences domestic violence, stalking, or sexual assault.

## 5. Grounds for Sanctions

a. It shall be a civil offense and a violation of this Ordinance if, within the exterior boundaries of the La Jolla Indian Reservation:

- i. Any person commits an offense of domestic violence against his or her intimate partner.
- ii. Any person commits the offense of stalking against another person.
- iii. Any person commits the offense of sexual assault against another person.
- iv. Any person commits the offense of endangering a victim of domestic violence, sexual assault, or stalking.
- v. Any person commits the offense of harassing an advocate.

## 6. Sanctions for Violations

a. Stalking, Sexual Assault, or Domestic Violence

i. Fines, Court Mandated Treatment, and Community Service

1. Any perpetrator 18 years of age and over found to have committed an offense of sexual assault, stalking, or domestic violence will be assessed a base civil penalty of no less than 5000 dollars for each act in violation of this subsection.

2. Any perpetrator under the age of 18 found to have committed an offense of sexual assault, stalking, or domestic violence will be assessed a base civil penalty of 200 dollars for his or her first offense, 400 dollars for his or her second offense, and 600 dollars for each offense thereafter.

3. In addition to fines, all perpetrators will be required to complete community service, to attend a tribally approved re-education, monitoring, and treatment program, and to provide the tribal court with monthly progress reports.

4. The tribal court may increase the base fine amount, and assess additional monetary penalties from a perpetrator for the following reasons:

a. To pay for stolen, damaged, or lost property belonging to the victim;

b. To pay restitution for any economic losses or mental anguish caused to the victim or the victim's family;

c. To pay for any treatment, including medical care or psychological services needed by a victim as a result of the perpetrator's conduct;

d. To pay for the legal and court fees incurred by the victim;

e. To compensate the Avellaka program for services rendered to the community;

f. If the perpetrator caused serious bodily injury to the victim, strangled the victim, or used a dangerous weapon against the victim.

5. When a perpetrator makes payments to the court, any monetary awards or compensation to victims of domestic violence, stalking, or sexual assault will be paid to the victim before the civil fine amount is reserved by the tribal court.

6. Fees or fines mandated by any other court of competent jurisdiction will not offset fees or fines assessed by the La Jolla Tribal Court for any violation of this subsection.

7. If any other court of competent jurisdiction provides that a perpetrator pay restitution to a victim of domestic violence, stalking, or sexual assault, the La Jolla Tribal Court may take into account that such restitution has already been paid, but is not required to reduce or offset any restitution that it chooses to order paid to the victim.

ii. Exclusion

1. Any person found to have committed an offense of domestic violence, sexual assault, or stalking may be excluded from the La Jolla Indian Reservation according to the procedure set forth in the exclusion section of this ordinance. When considering whether or not to recommend exclusion of a perpetrator, the tribal council will balance the following four factors:

a. The severity of the violence, including the degree to which the perpetrator's behaviors affected the victim's mental, spiritual, economic, and physical health and wellbeing; as well as the degree to which the perpetrator's behavior isolated the victim, limited the victim's autonomy, or prevented the victim from participating in his or her family and community;

b. Whether or not the perpetrator is an enrolled member of the La Jolla Band;

c. Whether or not the perpetrator has family ties to the La Jolla Indian Reservation;

d. Whether or not the perpetrator has committed prior offenses, as defined in this subsection.

b. Endangering a Victim of Domestic Violence, Stalking, or Sexual Assault:

- i. Any person found to have committed the offense of endangering a victim of domestic violence, stalking, or sexual assault will be assessed a base fine amount of no less than 500 dollars.

c. Harassing an Advocate

- i. Any person found to have committed the offense of harassing an advocate will be assessed a base fine amount of no less than 500 dollars.

7. Responsibilities of Tribal Law Enforcement Officers

- a. A tribal law enforcement officer will respond to every reported domestic violence or stalking incident that occurs on the La Jolla Indian Reservation.
- b. Tribal law enforcement officers will work with other local law enforcement officials when responding to incidents of domestic violence, stalking, or sexual assault.
- c. When faced with a situation that potentially involves domestic violence, stalking, or sexual assault, it will be the responsibility of every tribal law enforcement officer that responds to:
  - i. Secure the scene, and ensure the safety of potential victims;
  - ii. Issue citations to potential perpetrators, and forward those citations to the tribal court and the tribal council;
  - iii. Notify the victim of all rights under the “victim’s rights” subheading;
  - iv. Notify the victim that he or she has the right to consult with an advocate, and call an advocate if the victim requests that one be present;
  - v. Provide any victim who does not request an advocate with advocate business cards, and brochures from domestic violence advocacy programs;
  - vi. Take statements from both the potential victim and alleged perpetrator, unless impracticable. The officer may take the statements at a separate location from the scene of the incident. The alleged perpetrator will not be in the same room or physical proximity as the potential victim when the officer takes the victim’s statement. The potential victim will have the opportunity to be

accompanied by an advocate when the officer takes his or her statement;

- vii. Provide the victim with transportation to the hospital if necessary;
- viii. Write an incident report that includes the officer's observations, and statements taken from both the potential victim and perpetrator. The report will be submitted to the tribal court;
- ix. Issue emergency orders of protection to victims in need;
- x. Serve perpetrators with citations, hearing dates, and orders for protection issued by the tribal court;
- xi. Keep all personal information, including address and location, of the victim confidential and out of the public record;
- xii. Assist the tribal council and tribal courts in enforcing all orders of protection and exclusion orders;

#### 8. Determining the Predominant Aggressor

- a. If a tribal law enforcement officer is faced with two conflicting complaints of domestic violence, the officer will evaluate each complaint separately to determine who was the predominant aggressor.
  - i. The officer will interview each party separately and outside the presence of the other party.
  - ii. Each party will have the right to be accompanied by a victim's advocate.
  - iii. In order to make his or her determination, the officer will then consider:
    - 1. Each party's history of domestic violence and stalking as previously defined in this subsection, including prior complaints and violations, and the officer's personal knowledge of each party's history with domestic violence and stalking, drawn from the officer's experience in his or her official capacity;
    - 2. The relative severity of the injuries inflicted on each party, and the relative ability of each party to inflict injuries upon the other, taking into account the physical

strength of each party;

3. Each party's history of seeking help from law enforcement or from victims' advocacy services;

4. The incidents and events leading up to the violent episode;

5. The likelihood of future injury to each party and who is at greater risk of future harm;

6. Whether one of the parties acted in self-defense and/or in defense of others;

7. Whether one of the parties has acted with deliberate intent to control, isolate, intimidate, emotionally demean, or to cause injury, pain, or fear of harm to the other person in the immediate situation, or in the past.

iv. When determining which of two parties is a predominant aggressor, a tribal law enforcement officer shall not consider the use of intoxicants by either party in making a determination as to whether or not domestic violence has been committed.

v. When a law enforcement officer determines that one of two people is a predominant aggressor, the officer will write a report documenting the basis for his or her determination and will submit the report to the tribal court.

vi. If a law enforcement officer determines that one of two people is a predominant aggressor, the officer does not have to issue a citation to the other party.

vii. The tribal court judge will make the final determination about which party is the predominant aggressor.

#### 9. Victim's Rights

a. Every victim and potential victim has the right to be provided with an advocate, and to be accompanied by an advocate to all hearings, court appearances, and interviews with law enforcement officers.

b. All communications between a victim or potential victim and advocate are privileged and confidential, and are permanently protected from disclosure, unless the victim permits them to be released.

- c. All information about a victim's location or address, and the location or address of the victim's family or household members will be kept confidential by tribal law enforcement officers, advocates, tribal court officials, and the tribal council.
- d. Every victim and potential victim has the right to be interviewed by a tribal court judge or law enforcement officer outside the presence of a perpetrator or alleged perpetrator.
- e. Every victim and potential victim has the right to wait in a separate area from a perpetrator or alleged perpetrator during and before all court proceedings.

## 10. Tribal Orders for Protection

### a. Eligibility

- i. Any victim of domestic violence or stalking on the La Jolla Indian Reservation, regardless of age, may request a tribal order for protection.
- ii. A parent, guardian, or other representative may request an order for protection on behalf of a child under the age of 18 who is a victim of domestic violence or stalking on the La Jolla Indian Reservation.

### b. Types of Orders

#### i. Emergency Protective Orders:

1. An **emergency protective order** is a short-term order issued by a tribal police officer or the tribal council, and effective immediately upon signature from the petitioned official, ordering that a perpetrator of domestic violence or stalking be restrained from engaging in any or all of the behaviors listed below under the "prohibited behaviors" subheading.

2. A tribal court judge or tribal police officer will issue an emergency protective order to any person who notifies the officer or tribal court that he or she is a victim of domestic violence or stalking, and is immediately in apprehension of his or her safety, as defined in this subsection.

3. An emergency protective order will expire upon tribal court hearing to determine whether or not a permanent restraining order should be granted. The hearing will occur within five business days, or seven calendar days

from issuance of the order.

4. If the Tribal Court cannot set a hearing within the allotted time limit for any reason, the restraining order will be extended until the Court is able to schedule the hearing.

ii. Ex-parte Restraining Orders:

1. An **ex-parte restraining order** is a temporary order for protection issued by the La Jolla tribal court, and effective upon a tribal court judge's discretionary approval and signature.

2. To request an ex-parte order, a petitioner must submit a written request to the court, and must appear before a tribal court judge to explain why such an order is necessary.

3. After the written and verbal petition, a tribal court judge will decide whether or not to grant the ex-parte order, based on his or her evaluation of the risks posed to the petitioner. When determining the level of risk, a judge will assess the petitioner's need for temporary relief, taking into account:

a. Threats, indications, and potential for physical harm to the petitioner or the petitioner's family or household members.

b. Recent acts of domestic violence or stalking behaviors carried out against the petitioner.

c. The respondent's entire history of domestic violence and stalking behaviors, including documented complaints of abuse and convictions.

d. The respondent's ability to access or come into contact with the petitioner

e. The degree to which the respondent has acted with deliberate intent to control, isolate, intimidate, emotionally demean, or to cause injury, pain, or fear of harm to the petitioner in the immediate situation, and in the past.

4. Whether or not an ex-parte restraining order is granted after the petitioner's original appearance before the judge, the petitioner and respondent will be provided with a

hearing to determine if a permanent restraining order will be issued.

5. An ex-parte order will expire upon hearing in tribal court. The hearing will occur within twenty-one days after issuance of the order. If the tribal court is unable to schedule a hearing within twenty-one days, the ex-parte order will be extended until the next available hearing date.

iii. Permanent Restraining Orders:

1. A **permanent restraining order** is an order for protection issued by the La Jolla tribal court after a hearing, and effective upon a judge's discretionary approval and signature. Such an order will be issued for a period of no less than three years, and may be issued for longer at the discretion of the court, but must specify an expiration date.

2. A judge will issue a permanent restraining order after a hearing in tribal court in which both petitioner and respondent have the opportunity to present their arguments.

3. A judge will issue a permanent restraining order when he or she determines that a respondent has engaged in acts of domestic violence and stalking against the petitioner, and without such order, the petitioner will continue to engage in such acts, and the respondent will be placed in apprehension of his or her personal safety, or will continue to experience mental anguish or emotional distress.

c. Required Hearings and Service; Duties of Court and Tribal Law Enforcement Officers

i. Upon issuance of an emergency protective order or an ex-parte restraining order, the court will set a date for a hearing within the timeframe specified for each type of order. A law enforcement officer will personally serve a copy of the order, the petitioner's allegations, a response form, and the hearing date to the respondent within one business day from issuance. If personal service cannot be completed, the court will notify the respondent by mail addressed to the last known address of the respondent.

ii. If the respondent does not appear at the scheduled hearing, the court will postpone the hearing for 14 days,

and will attempt to personally serve the respondent again, and to serve the respondent's last known address. During the 14-day period, the court will reissue any emergency or ex-parte orders of protection. If the respondent still does not appear at the second hearing date, the tribal court judge will hear testimony from the petitioner, and will decide whether or not to grant the order based on petitioner's testimony alone. If respondent wishes to dispute the issued order of protection, he or she can appear before the tribal court judge to explain why he or she did not appear at the previous hearings. If the judge finds that the petitioner did not receive notice of the hearing, he or she will issue a rehearing. If the respondent does not attend the rehearing, the order will remain in effect, and no further hearings will be issued.

iii. Upon service, respondent should file a response with the tribal court prior to the hearing date. The tribal court will mail a copy to the respondent, or provide a copy to the respondent in person. At the hearing, respondent and petitioner will present arguments before the tribal court judge. Both petitioner and respondent will have the opportunity to present evidence, call witnesses, and be represented by counsel at their own expense.

d. Uniform form for petitions, responses, and orders

i. The tribal court system will:

1. Develop and adopt uniform forms for petitions, responses, and orders for tribal orders for protection.

2. Provide that the title of any form or order developed under this section shall include the words "Order for Protection."

ii. In addition to other required information, the following statements must be printed in bold-faced type or capital letters on all orders for protection:

1. "Consequences for violation of this order for protection include..."

2. "Any person who is subject to a tribal order for protection shall not possess, own, buy, sell, trade, or have immediate access to any firearm or ammunition."

iii. The tribal court and tribal law enforcement officers will provide any person who requests an order for protection

with:

1. All forms and petitions adopted under this subsection;
  2. Clerical assistance filling out all necessary forms and petitions.
- iv. There will be no filing fee for any civil action arising from a situation of domestic violence or stalking.
- e. Prohibited behaviors and restraints
- i. Tribal orders for protection will prohibit a respondent from possessing, owning, buying, or having access to a firearm and any other weapon specified by the court;
  - ii. Tribal orders for protection may also prohibit or enjoin a respondent from:
    1. Threatening to commit or committing acts of domestic violence, as defined in this subsection, against the petitioner, and any designated family or household members;
    2. Coming within the external boundaries of the La Jolla Indian Reservation;
    3. Contacting the petitioner and any designated family or household members in any way;
    4. Engaging in any stalking behaviors, as defined in this subsection, against the petitioner and any designated family or household members;
    5. Destroying, selling, or disposing of any assets specified by the petitioner;
    6. Coming within a court-specified distance of the petitioner or any designated family and household members;
    7. Performing any other act or omission that the court finds will endanger the safety and welfare of the petitioner and any designated family or household members.
  - iii. Exceptions
    1. The court may issue an exception to any order for

protection, allowing the petitioner and respondent to engage in brief and peaceful contact at a safe location for the purpose of exchanging children to comply with child custody orders issued by any court of competent jurisdiction.

2. The court may issue an exception to any order for protection, allowing the respondent to attend general council meetings, funerals, or weddings, as long as the respondent does not have any contact with the petitioner during the event.

f. Procedure After Issuance of Order

i. After a tribal order for protection is issued, the tribal court will:

1. Make reasonable effort to ensure that both petitioner and respondent understand what the order requires;

2. Provide a copy of the order to the petitioner, deliver the order to local state and tribal law enforcement, place a copy in the records of the court, and transmit a copy to the respondent.

11. Recognizing orders from other jurisdictions

a. Any person who violates an order for protection on the La Jolla Indian Reservation has committed an offense of domestic violence under this subsection, and the requisite penalties apply.

b. Any person who has received an order for protection from any other court of competent jurisdiction may file that order with the La Jolla tribal court. A tribal judge will review the order, and if it appears on its face that it meets the requirements for a valid order for protection, the judge will forward the order to tribal and local law enforcement. The La Jolla tribal court will not charge victims of domestic violence process fees for filing an order of protection.

i. An order of protection from another court of competent jurisdiction is valid under this section if:

1. The respondent received notice of the order in compliance with the requirements of the issuing jurisdiction.

2. The order is currently in effect in the issuing jurisdiction.
  3. The issuing court had personal jurisdiction, subject matter jurisdiction, and territorial jurisdiction over the parties involved.
  4. The respondent was afforded reasonable notice and the opportunity to be heard prior to the issuance of a permanent protection order, or in the case of an emergency protective order, or an ex-parte restraining order, it appears from the face of the order that a hearing will be conducted with reasonable time to allow the respondent to raise any defenses he or she may have prior to the issuance of a permanent protection order.
- ii. If the respondent is a La Jolla tribal member, the judge will make every effort to ensure that the order is valid, including contacting the court issuing the order to make sure that the four requirements for validity were met.
- c. If tribal police officers are presented with a valid domestic violence related order for protection, tribal officers will take all necessary measures required to protect the safety of any persons protected by the order, and to ensure that the respondent does not violate any of the provisions specified in the order of protection. Necessary measures include, but are not limited to:
    - i. Bringing the victim to a safe place, such as a domestic violence shelter or tribal police station;
    - ii. Notifying state police that such orders have been violated so that state police can enforce the order;
    - iii. Recommending to the Tribal Council that the perpetrator be subject to emergency exclusion from the La Jolla Indian Reservation.
  - d. When determining which measures are necessary to ensure the safety of the protected person(s), and to guarantee that the respondent does not violate any provisions of the order, an officer will consider the petitioner's assessment of his or her own safety; any assessment from advocates regarding the safety of the protected person(s); and the officer's own assessment of the level of risk posed to the protected person(s).
  - e. If an individual shows a tribal officer an order of protection that has not yet been verified by the tribal court, the officer will

determine whether or not the respondent has the immediate ability to violate any of the provisions specified in the order of protection. If this is the case, the officer will secure the safety of the protected person(s), and then transmit the order to a tribal court judge, who will assess the validity of the order, and file it if appropriate.

- f. The Band will recognize valid orders for protection issued by any court of competent jurisdiction, and will take all measures necessary to ensure the safety of victims protected by such orders.

#### D. Infractions Against Senior Citizen Or Dependant Adult

##### 1. Definition

- a. "Senior" means a person who is 55 years of age or older.
- b. "Dependant Adult means a person between the ages of 18 and 54, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities has diminished because of age.

- 2. Any person who knows or reasonably should know that a person is a senior or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any senior or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any senior or dependent adult, willfully causes or permits the person or health of the senior or dependent adult to be injured or willfully causes or permits the senior or dependent adult to be placed in a situation in which his or her person or health may be endangered, or Any person who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who commits identity theft, with respect to the property or personal identifying information of a senior or a dependent adult, and who knows or reasonably should know that the victim is a senior or a dependent adult. An infraction under this subsection is punishable according to the schedule of penalties, if the offender is a non-member an infraction under this subsection may result in Exclusion as described in Section 6, subsections G and H

#### Section 11. Civil Infractions Against Minors

## A. Child Abuse

This subsection recognizes that Tribal children are one of the Tribe's most valuable resources, and are entitled to an absolute right to be respected and treated with dignity. Child abuse directly threatens the health and welfare of both the children affected and of the entire community.

In order to provide for the welfare, care, and protection of children on the La Jolla Indian Reservation, the Tribe must hold individuals who abuse, neglect, or abandon Tribal children accountable to the Tribal community.

### 1. Definitions

- a. "Adult" means a person who is 18 years of age or older.
- b. "Child" means a person who is less than 18 years old.
- c. "Bodily injury" means:
  - vi. a cut, abrasion, bruise, or burn;
  - vii. physical pain;
  - viii. illness;
  - ix. impairment of a function of a bodily member, organ, or mental faculty; or
  - x. any other injury to the body, no matter how temporary.
- d. "Serious Bodily Injury" means bodily injury, which involves:
  - i. a substantial risk of death;
  - ii. extreme physical pain or disfigurement; or
  - iii. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- e. "Incest" means any sexual contact with a child by an adult where the adult knows that he or she is related to the child by blood or adoption, either legitimately or illegitimately, including as an ancestor, descendant, brother or sister, nephew, niece, stepchild or adopted child.
- f. "Sexual Abuse of a Child" means any sexual contact with a child by an adult, including oral, anal, or vaginal sex; rape; fondling of genital or private areas whether over or under clothing; any act upon any part of the body of a child with the intent to arouse, appeal to, or gratify the lust, passion or sexual

desire of that person or the child.

- g. “Sexual Exploitation of a Child” means the utilization of a child for sexual purposes, including watching; peeping; pornography; and prostitution.
2. A person commits the civil infraction of child abuse when he or she knowingly, intentionally, or negligently:
    - a. Causes any non-accidental bodily injury or serious bodily injury on a child, or puts any child at serious risk of bodily injury or serious bodily injury;
    - b. Sexually abuses a child;
    - c. Sexually exploits a child;
    - d. Commits any act of incest;
    - e. Deprives a child under his or her care or custody of necessary food, clothing, or shelter, such that the child’s health or welfare is or may be harmed;
    - f. Places a child in a situation that may endanger its life or health, whether or not the child is actually harmed;
    - g. Causes any child mental suffering; or
    - h. Commits any act of domestic violence, as defined in Section 10, Subsection C, in the presence of a child, whether or not the child is actually harmed.
  3. The La Jolla Law Enforcement Officers shall issue a citation in their discretion if they reasonably believe that an act of child abuse has occurred. Any Tribal member who receives a citation under this subsection and denies that child abuse has occurred will have the opportunity to contest the citation before the Tribal Court.
  4. Tribal members should view themselves as protectors of children and of the Tribal community. Persons who have reasonable cause to suspect that a child has been a victim of any of the offenses outlined in this section are encouraged to report the abuse or neglect to a responsible member of the child’s immediate or extended family or to Tribal Family Services or appropriate Agency. Any person who reports in good faith under this section shall be immune from civil liability arising from the making of the report.
  5. An infraction under this subsection is punishable according to the schedule of penalties. A habitual offender may be fined up to twice

the maximum fine provided for in the schedule of penalties according to the discretion of the Tribal Court.

6. In addition to civil fines, a person found to have committed the infraction of child abuse shall be required to pay restitution to the victim in an amount to be determined by the Tribal Court. In making its determination, the Tribal Court should consider factors including, but not limited to, medical expenses, counseling expenses, and non-economic losses, including pain, suffering, mental suffering, and emotional distress. No portion of the victim's restitution fine will be offset by restitution paid in any prior proceedings in State or Federal court. In the event that a violator is unable to pay both the civil fine and the restitution fine, the restitution fine shall be paid first.
7. Any person found to have committed an infraction under this subsection shall also be required to undergo counseling and/or treatment at a tribally approved treatment center.
8. Non-members who are found to have committed the civil infraction of child abuse may be subject to expulsion from the La Jolla Indian Reservation according to the process outlined in Section 6, Subsections G and H.

B. Contributing to the Delinquency of a Minor

1. A person commits the civil infraction of Contributing to the Delinquency of a Minor when
  - a. He or she gives, purchases for, or furnishes any person under the age of 21 any alcohol beverages, drugs as listed under Section 12, subsection A, on the La Jolla Indian Reservation or cigarettes to anyone under the age of 18
  - b. He or she by any act or omission, or by threat, commands, persuasion, encourages, induces, permits or endeavors to any person under the age of 18 years, or any ward or dependent child of the juvenile court, to fail or refuse to conform to a lawful order of the juvenile court, or to do or perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or remain a ward of the juvenile court.
  - c. He or she harbors a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:
    - (i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer;  
or

- (ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or
- (iii) Obstructs a law enforcement officer from taking the minor into custody; or
- (iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

2. An infraction under this subsection is punishable according to the Schedule of Penalties.

**Section 12. Drug and Alcohol Civil Infractions**

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A. As used in this subsection:

- a. "Controlled substance" means any drug or other substance under the provisions of Chapter 13, Title 21, Section 802, "Controlled Substance" of the United States Code.
- b. "Dangerous drug" means any drug that is included in Chapter 13, Title 21, Section 802, "Dangerous Drug" schedules I, II, III, IV, or V of the United States Code. The terms include a devise 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.
- c. "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.
- d. "Narcotic drug" means any drug under the provision of Chapter 13, Title 21, Section 802, "Narcotic Drug" of the United States Code.

B. Chemical Intoxication

- 1. A person commits the civil infraction of Chemical Intoxication if he or she:

- a. Inhales, ingests, applies, uses, or possesses a substance containing a volatile chemical, glue or aerosol paint with the intent to inhale, ingest, apply, or use the substance in a manner:
  - i. contrary to directions for use, cautions, or warnings appearing on a label of a container of the substance; and
  - ii. designed to:
    - A) affect the person's central nervous system;
    - B) create or induce a condition of intoxication, hallucination, or elation; or
    - C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.
2. Sells, offers for sale, delivers or gives to any person under the age of 18 years any volatile chemical, abusive glue or aerosol paint.
3. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### C. Illegal Drugs

1. A person commits a civil infraction under this subsection Illegal Drugs if he or she:
  - a. Possesses or consumes; or
  - b. Manufactures or distributes any of the following:
    - i. dangerous drugs;
    - ii. any drug identified as a controlled substance;
    - iii. a narcotic drug;
    - iv. marijuana; or
    - v. any drug paraphernalia.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### D. Intoxication on Tribal Property

1. A person commits the civil 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 alcohol or other substance was administered for therapeutic purposes and as part of the person's professional medical treatment by a licensed physician.
3. An infraction under this subsection is punishable according to the Schedule of Penalties.

### **Section 13. Civil Infractions Against Health and Safety**

#### **A. Unlawful Discharge of a Firearm**

1. A person commits the civil infraction of Unlawful Discharge of a Firearm when he or she:
  - a. Recklessly Discharges a firearm within 150 yards of any dwelling, house, residence, or other building or barn or other outbuilding.
  - b. Willfully discharges a firearm at a dwelling, occupied building or occupied motor vehicle; or
  - c. Discharges any firearm from or upon roads or highways located within the Reservation.
2. An infraction under this subsection is punishable according to the Schedule of Penalties.

#### **B. Unlawful Discharge of Fireworks**

1. "Fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment.

The term "fireworks" includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, daygo bombs, cherry bombs, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

2. A person commits the civil infraction of Unlawful Discharge of fireworks when her or she:
  - a. Without expressed written permission from the Tribal Council and La Jolla Reservation Fire Chief, discharges fireworks

within the exterior boundaries of the La Jolla Indian Reservation

- b. After receiving permission discharges fireworks in a manner that creates or may create a nuisance or that creates or may create an unsafe condition, danger from fire or from risk of accident, injury or damage at or in respect of any place, location or site, or in respect of any person, property or thing.

C. Unlawful Operation of Motor Vehicle

1. "Motor Vehicle" or "Vehicle" as used in this subsection shall include, motorcycle, ATV, trucks, and all other forms of motorized transportation.
2. A person commits the civil infraction of Unlawful Operation of Motor Vehicle when he or she:
  - a. Operates any vehicle on any street or road within the Reservation in willful disregard for the safety of persons or property;
  - b. Operates any vehicle in excess of 25 miles per hour on any paved road within the Reservation, with the exception of State Highway 76;
  - c. Operates any vehicle in excess of 15 miles per hour on any unpaved road within the Reservation; or
  - d. Operates any vehicle in excess of any posted speed limit on any road on the Reservation.
3. An infraction under this subsection is punishable according to the Schedule of Penalties.

**Section 14. Enforcement**

It shall be the duty of every La Jolla Tribal Law Enforcement Officer to enforce this Ordinance and all supplemental rules and regulations adopted by the Band's General Council governing law and order on the La Jolla Indian Reservation. The Tribal Court shall act as the hearing body for violations under this Ordinance. The Tribal Court shall report back to the Tribal Council or their designee on the outcomes of all hearings on violations of this Ordinance.

## **Section 15. Sovereign Immunity**

The sovereign immunity of the Tribe shall extend to its Tribal Law Enforcement Officer(s) to the extent permitted by federal and tribal law.

### **A. Definitions**

1. "Tribal Officers" means all elected officials, tribal law enforcement officers, and tribal security officers serving on behalf of the Band.
2. "Elected Official" means any person elected by the General Council to act on behalf of the Band.
3. "Tribal Law Enforcement Officer" means a person designated by the Band to enforce this Ordinance and to act as a law enforcement officer for the Band.
4. "Tribal Security Officer" means a person designated by the Band to provide security at a specific location and/or for a specific purpose.
5. "Tribal Employee" means a person employed by the La Jolla Band of Luiseño Indians, its agencies, departments, or economic enterprises for the purpose of providing tribal services, programs, or employment.

### **B. Sovereign Immunity for Tribal Officers**

All Tribal Officers, Elected Officials, Tribal Law Enforcement Officers, Tribal Security Officers and Tribal Employees shall enjoy sovereign immunity from suit while performing or carrying out their official duties on behalf of the La Jolla Band of Luiseño Indians and nothing in this Ordinance shall be construed as constituting a waiver of the sovereign immunity of the La Jolla Band of Luiseño Indians, its tribal officials, or its tribal employees.

## **Section 16. Schedule Of Penalties**

A Schedule Of Penalties will be developed, updated and approved by the Tribal Council at a duly called Tribal Council meeting.

## **Section 17. 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 18. Amendments**

This Ordinance shall be amended upon a vote of the General Council as provided for under the Band's Constitution Article 3, Section A.

**Section 19. Effective Date**

This Ordinance shall take effect immediately upon its adoption by the General Council.

**CERTIFICATION**

The La Jolla Band of Luiseño Indians Tribal Council do hereby certify that the foregoing amended La Jolla Peace and Security Ordinance of the La Jolla Band of Luiseño Indians was duly considered and approved by the La Jolla Band of Luiseño Indians General Council by a vote of 21 In Favor, 6 Opposed, and 3 abstained on May 3, 2014.

This La Jolla Peace and Security Ordinance of the La Jolla Band of Luiseño Indians shall have full force and effect from the date of tribal approval (May 3, 2014).

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LaVonne Peck - Tribal Chair

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Fred Nelson Jr. - Vice Chairman

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Adam Geisler - Secretary

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Cody Schlater - Treasurer

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Jack Musick - Council Member