

**HOOPA INDIAN RESERVATION
TITLE 71 ARSON
CHAPTER ONE- GENERAL PROVISIONS**

69.1.01 Legislative Intent

The Hoopa Tribal Council acknowledges that arson fires and negligently set fires within the reservation boundaries are a threat to public health and safety and cause devastating damage to tribal and private resources, including but not limited to clean air, clean water, fish and wildlife habitat, timber resources, forest soils, economic and employment opportunities, range lands, structures, recreational areas and other improvements.

The purpose of this code is to:

- (1) Provide standards by which the court can determine whether a fire that caused damage within the reservation boundaries was either arson or negligently set; and
- (2) Establish a damage formula so that the Tribe or private individuals harmed by arson fires or negligently set fires may be made whole, and
- (3) Establish civil penalties and court ordered consequences to be imposed against individuals who are found by the court to have started an arson fire or negligently set a fire which has caused damage within the reservation boundaries.

69.1.02 Annual Operating Plan

The Tribal Council, Tribal Office of Emergency Services, Hoopa Fire Department, Hoopa Volunteer Fire Department, Tribal Environmental Protection Agency and the Tribal Police Department shall meet annually no later than April with federal and state law enforcement personnel to establish an operating plan for how to address and prosecute arson or negligently set or spread fires within the Hoopa Valley.

Personal Jurisdiction

Arson fires and negligently set fires are such a threat to the health and safety of tribal members, and tribal resources including trust land, that the Tribal court shall have jurisdiction over anyone who violates the provisions of this code while within the boundaries of the Hoopa Valley Reservation.

69.1.03 Definitions

As used in this Chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (a) "Allows" a land owner or assignee allows an individual to commit arson or negligently start or spread a fire on property if the land owner is present on the property and aware of the fire being started at the time the fire is started, and has taken no steps to prevent the starting of the fire.
- (b) "Arson" To willfully and maliciously set fire to, or to aid, encourage or request another set fire to, any structure, vehicle, forested land, or any other real or personal property.
- (c) "Burn Permit" means a formal authorization from, or approval by the Hoopa Fire Department and the Hoopa Valley Tribal Environmental Protection Agency, Air Quality Department to burn approved materials as defined under Title 49 section 49.3 (K); or formal authorization from, or approval by the Hoopa Fire Department for a cultural burn.

- (d) "Defendant" is the person or person(s) who are issued a citation for arson or negligently setting or spreading a fire, or who are named as the defendant(s) in a civil complaint filed for damages allegedly caused by arson or negligently set or spread fire.
- (e) "Maliciously" means acting with, or showing, a desire to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
- (f) "Negligently" means a fire that has been started or spread outside its initial containment as a result of a person's failure to use reasonable care to prevent the start or spread of a fire. A person's failure to use reasonable care because of intoxication or being under the influence of any judgment impairing substance is no defense to a negligently set fire.
- (g) "Offense" shall refer to a single fire. For example, if a person sets three fires in a day, s/he shall be charged with three offenses.
- (h) "Plaintiff" means the Tribe, if the case was started by a citation for arson or a negligently set or spread fire or the Tribe files a civil complaint for money damages based on an alleged arson or negligently spread fire (even if no citation was issued). If the case is started by the filing of a civil complaint by someone other than the Tribe, the plaintiff is the individual or business who filed the complaint for money damages.
- (i) "Suppression" means all activities involved in the containment and control of all fires, including the patrolling thereof until such fires are extinguished or considered by the Hoopa Fire Department to pose no further threat to life or property.
- (j) "Tribe" or "Tribal" refers to the Hoopa Valley Tribe
- (k) "Willful" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

CHAPTER TWO- PROHIBITED ACTS

69.2.01 Prohibited Acts

The following acts are prohibited within the exterior boundaries of the Hoopa Valley Reservation:

- (a) Arson;
- (b) Negligently setting or spreading a fire.

69.2.02 Aggravating Circumstances

The following circumstances shall be aggravating circumstances which result in greater court ordered consequences if proven:

- (a) Loss of life of a person or animal as a result of an arson fire or negligently set fire; or
- (b) Proof that a defendant paid or gave another person something of value in exchange for that person starting an arson fire; or
- (c) Prior criminal convictions or judgments finding the defendant previously committed arson or negligently set or spread a fire under this code.

CHAPTER THREE- ENFORCEMENT MECHANISMS

69.3.01 Citations for Committing Prohibited Acts

Hoopa Tribal Law Enforcement, Hoopa Fire Department Personnel, Hoopa Volunteer Fire Department Personnel, Hoopa Tribal Office of Emergency Service Personnel or any TEPA Enforcement Officer shall have the authority to issue an individual a citation when there is probable cause to believe the individual has committed either arson or has negligently set or spread a fire within the reservation boundaries. The Tribe shall be the plaintiff in any court case in which a citation under this code is the initial filing.

69.3.02 Civil Complaints

Any person or entity who has had property damaged by arson or a negligently set fire may file a civil complaint seeking damages under this code. A civil complaint may be filed even when a citation has not been issued.

CHAPTER FOUR- COURT PROCESS

69.3.01 Procedure to be Applied

Title 2 of Tribal code contains the court procedure applied in cases filed under this code, except that the specific provisions contained in this chapter shall also apply. The court may set pretrial conference hearings or motion hearings to resolve issues before trial, pursuant to the procedural rules contained in Title 2 of Tribal Code.

69.3.02 Burden of Proof

(a) Citation Cases

In citation case the Tribe shall have the burden of proving beyond a reasonable doubt that the defendant(s) committed arson, or negligently started or spread a fire.

(b) Civil Complaints

In civil complaint cases the plaintiff must prove the defendant(s) committed arson or negligently set a fire by a preponderance of the evidence.

(c) Arson

In order to prove that arson occurred, the plaintiff must prove the following:

(1) Starting an Arson Fire

- (i) The fire was started by human actions; and
- (ii) The defendant's actions started the fire; and
- (iii) The defendant's acted willfully and maliciously when starting the fire; or

(2) Encouraging, Aiding, or requesting Another Start an Arson Fire

- (i) The defendant encouraged, aided, or requested another person to start a fire; and
- (ii) The person who was encouraged, aided, or requested to start a fire started an arson fire.

(d) Negligently Set or Spread Fire

In order to prove that a fire was negligently set or spread the plaintiff must prove the following:

- (1) The defendant did not use reasonable care; and
- (2) As a result of the defendant's oversight, a fire started or spread

69.3.03 Protective Orders for Witnesses

(a) Issuance of Protective Order

On the court's own motion, or at the request of a party or a witness, the court may issue a protective order that limits the other party's contact with the witness and prohibits threats, harm or harassment of the witness. The purpose of such an order is to prevent witness intimidation in these cases.

(b) Effect of Protective Order on Discovery Process

The protective order will not prevent a deposition or other formal discovery process, unless the person requesting the protective order can show that the deposition or other discovery process will result in threats being made to the witness, harm being done to the witness, or harassment of the witness. The court may issue a protective order setting parameters on the discovery to protect the witness, and shall only issue an order denying formal discovery when it appears no lesser restrictions will protect a witness from threats, harm or harassment.

69.3.04 Initial Hearing- Citation Cases

At the initial hearing in a citation case, the court shall do the following:

- (1) Explain the defendant's rights, including the right to go to trial if she or he denies the allegations. The complete list of rights which must be explained is found in section 69.3.05 of this code; and
- (2) Explain the reason for the citation, as listed in the citation; and
- (3) Explain the consequences if the individual is found to have committed the act for which she or he was cited; and
- (4) Ask the person who has been issued a citation whether or they admit or deny having committed the act for which they were cited; and
- (5) Explain what will happen at the next hearing

69.3.05 Rights of the Cited Individual

A person who has been cited under this code for arson or negligently setting or spreading a fire has the following rights during his or her court hearings:

- (a) The right to not say anything incriminating; and
- (b) The right to hire an attorney or spokesperson to represent him or her. The court must explain that the Tribe will not provide an attorney or spokesperson and
- (c) The right to see and hear any evidence which supports the citation. This includes the right to:
 - (i) a free copy of any report written by law enforcement or TEPA to support the citation; and
 - (ii) the right to a pretrial examination of any physical evidence, though the examination must be supervised by law enforcement, and
- (d) The right to cross examine any witnesses who testify against him or her; and

- (e) The right to present evidence in support of his or her defense. This right includes the opportunity to have witnesses or records subpoenaed; and
- (f) The right to ask questions about court procedures if she or he does not understand what is happening.

CHAPTER FIVE- CONSEQUENCES FOR VIOLATION OF THIS CODE

69.5.01 Consequences Available Under this Code

(a) Citation Cases

A person who is found to have violated this code in a citation case may be ordered to comply with any of the consequences available under this code.

(b) Civil Complaints

A person who is found to have violated this code based on a civil complaint shall only be ordered to pay money damages and shall be subject to the employment prohibitions in section 69.5.09 as a result of the complaint. The Tribe may file a separate exclusion action after a person has been found to have committed arson or negligently set or spread a fire.

69.5.02 Criminal Penalties Not Prohibited

The civil penalties imposed under this code do not prevent the state or federal government from imposing criminal penalties for the same actions which have violated this code.

69.5.03 Right to Criminalize Violations of this Code

The Tribe reserves the right to pass a criminal code which addresses the same actions prohibited by this code.

69.5.04 Damages

The plaintiff is responsible for proving by a preponderance of the evidence the amount of damages owed by the defendant.

(a) Property Damage

A person who has been found to have violated this code is shall pay the plaintiff a sum at least equal to twice the value of the property destroyed, damaged, or injured by the fire.

(b) Repayment of Tribal Costs to Respond to Fire

In addition to the property damages listed under subsection (a), a person who has been found to have violated this code shall pay the Tribe an amount equal to all the costs incurred by the tribe to respond to the fire. This includes personnel costs, equipment costs, costs of water (if any), costs associated with evacuation and/or relocation of community members including gas, food and temporary housing expenses; costs associated with providing air purifiers; and any other costs that the Tribe proves were directly related to fire response.

(c) Injuries or Death - Persons

In addition to the property damages listed in subsection (a) and (b), any person who has been found to have violated this code shall pay the following:

- (1) Medical expenses for anyone injured or killed by the fire;
- (2) Estimated future medical expenses for anyone injured by the fire;
- (3) Lost wages for anyone injured or killed by the fire;

- (4) Estimated future lost wages for anyone injured or killed by the fire; and
- (5) Pain and suffering for anyone injured or killed by the fire (calculated by multiplying all other amounts under this subsection by three)

(e) Injuries or Death- Animals & Livestock

In addition to the damages listed in subsections (a)-(c), any person who has been found to have violated this code shall pay the following to the Plaintiff:

- (1) Veterinary bills for any animal or livestock injured or killed in the fire; and
- (2) Estimated future veterinary bills for any animals or livestock injured in the fire; and
- (3) An amount of at least \$500 per family pet or livestock injured or at least \$1000 for each family pet killed.

69.5.06 Fines

In addition to any damages ordered under section 69.5.04, a person who has been found to have violated this code shall be ordered to pay the following fines:

(a) First Offense

(1) Land, no Buildings

- (i) 1st Offense: less than 1 acre burned, no buildings: \$500
- (ii) 1st Offense, more than 1 acre but less than 5 acres burned: \$1000
- (iii) 1st Offense, more than 5 acres burned: \$2000

(2) Building partially or completely burned (per building) \$5000

(b) Additional offenses

The fine amounts under subsection (a) shall be multiplied by the offense number. For example, fines shall be twice as much for a second offense, three times as much for a third offense, etc.

69.5.07 Enhancement for Cultural Site or Building Damaged or Destroyed

In addition to any other damages under this chapter, a person who is responsible for a fire that damages or destroys a cultural site or building shall make amends to the community. A cultural or dance leader who is the caretaker of the damaged site must consult with any families impacted by damage to cultural or spiritual sites and, based on the families' input, may make a recommendation of consequences to the court. The court is not bound by the recommendation.

The court may, if it believes doing so will assist the community in healing, set a hearing at which it allows the impacted families to address the court directly with their concerns and recommendations for consequences of the arson.

69.5.08 Lien on Land

(a) Entry of Lien

If an individual owns fee land within the reservation boundaries, and has been found to have committed arson or negligently started or spread a fire, the Tribe or an individual who is owed restitution may place a lien against the judgment debtor's property in the amount of the money owed to the Tribe or individual 30 days after the date of the entry of judgment.

(b) Delay of Entry of Lien

The lien process may be delayed, at the request of the judgment debtor, if that individual enters into, and remains current on, a payment plan that will pay the judgment off in a reasonable time. If the judgment debtor misses a payment, 30 days after the missed payment the tribe or individual who is owed money may place a lien against the judgement debtor's property.

69.5.09 Cancellation or Relinquishment of Land Assignment

(a) Cancellation

If an individual who has a land assignment through the Tribe is found to have violated this ordinance, or allowed others to do so on their assignment, the court shall order the individual's land assignment cancelled if the restitution and fine amounts remain unpaid for more than 30 days after the entry of judgment unless the individual enters into, and remains current on, a payment plan that will pay the judgment off in a reasonable time. If the judgment debtor misses a payment, 30 days after the missed payment the court may order the cancellation of the individual's land assignment.

(b) Innocent Land Owner Exception

If a landowner was not aware of the presence of the individuals who violated this code, or was in the process of removing those individuals from the land, or otherwise could not have reasonably known of the risk of arson or a negligently set fire, the Court shall not cancel the innocent landowner's assignment.

(c) Voluntary Relinquishment of Land Assignment

(1) Option of Relinquishment to Offset Judgement

If an individual who has a land assignment through the Tribe is found to have violated this ordinance, or allowed others to do so on their assignment, the individual may voluntarily relinquish their assignment and receive an offset in restitution and fines based on the fair market value of their relinquished interest in the land.

(2) Prohibition on Profiting from Land Relinquished Because of a Violation of this Code

No one convicted under this code, or any landowner who knowingly allowed someone to violate this code while residing or visiting the assignment, may profit from the relinquishment. If the value of the landowner's interest is greater than the fines and restitution owed, the land owner shall not be paid the difference.

69.5.10 Mandatory Exclusion

(a) Length of Exclusion

Any person who is found by the court to have committed arson shall be excluded from the reservation for a period of:

- (1) not less than 1 year if less than 1 acre burned, no buildings were damaged, and no people or animals were injured or killed; or
- (2) not less than 3 years if a building was damaged but no people or animals were killed; or
- (3) not less than 5 years if any people or animals were injured or killed.

(b) Calculation of Excluded Period

The exclusion period shall not start to run until the defendant leaves the reservation, and shall start over if the defendant re-enters the reservation without the permission of the court before the exclusion period ends.

(c) Issuance of Exclusion Order

The exclusion order shall issue at the same time as the order finding that the person committed arson.

69.5.11 Prohibition on Employment

Any person who is found by the court to have committed arson shall be prohibited for life from working for the Tribe (including contractual work) in any of the following positions:

- (1) in any capacity as a responder to fire, or
- (2) in any law enforcement capacity, or
- (3) in any position where job duties include enforcement of tribal codes; or
- (4) as a member of any board, paid or not, that has oversight authority over any tribal department or entity; or
- (5) Chairperson of the Tribe; or
- (6) Member of the Tribal Council.

6.5.12 Referral to District Attorney or United States Attorney for Prosecution

The court may refer any violation of this code to either the Humboldt County District Attorney's office or the United States Attorney for the Northern District of California for criminal prosecution. As part of this referral process, the court may order any Tribal office or Department including but not limited to, Law Enforcement, the Environmental Protection Agency, the Office of Emergency Services, the Fire or Volunteer Fire Departments, to forward all law enforcement records related to the investigation to either prosecutor's office.

CERTIFICATION

I the undersigned as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members; of which () were present constituting a quorum at a Regular meeting thereof; duly and regularly called, noticed, and convened and held this ___ day of July 2016; and that this Ordinance was adopted by a vote of () for, () against, and () abstaining, and that said Ordinance has not been rescinded or amended in any way. DATED THIS _____ DAY OF JULY 2016. Hoopa California

Ryan Jackson
Chairman Hoopa Valley Tribe

ATTEST: _____

Judy Surber
Executive Secretary