

**ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA
Title 49**

ORDINANCE NO.: 03-03

DATE APPROVED: April 3, 2003

DATE REVISED: October 17th, 2019

**SUBJECT: AN ORDINANCE REGULATING SOLID WASTE REQUIREMENTS AND THE
CONTROL OF ILLEGAL DUMPING, BURNING, AND DISPOSAL OF SOLID
WASTE.**

CHAPTER 1: GENERAL PROVISIONS

49.1.01 Authority

This title is enacted pursuant to Article IX, sections (e), (k) and (l) of the Hoopa Valley Tribal Constitution.

49.1.02 Findings

From time immemorial the Hoopa Valley Tribe has practiced conservation to protect the land, wildlife and natural resources from waste. The people of the Hoopa Valley Tribe have a primary interest in the protection and control of the land and other natural resources affected by the improper disposal of solid waste within the reservation. The quality of land and other natural resources within the reservation boundaries must be protected to insure the health, economic, aesthetic and cultural well-being of the Hoopa People. Solid waste violations are particularly harmful to health: they may contaminate drinking water from underground and surface supplies or otherwise pollute the land, air and water of the reservation.

The limited garbage disposal service within the reservation has led both to household waste building up in yards and open dump sites within reservation boundaries. Solid waste issues are compounded by mobile or manufactured homes, recreational vehicles or travel trailers being either abandoned or used as residences without any garbage disposal plan or sewage containment system. These and other solid waste issues create public nuisances, harm the environment, threaten the health and welfare of community members, and impact the cultural practices of the Tribe.

49.1.03 Purpose

This Ordinance is enacted to protect the public health and welfare through environmental protections from solid waste contamination, pollution or nuisance conditions. This Ordinance prohibits the illegal dumping and burning of solid waste and establishes regulations regarding acceptable and legal methods of disposal of solid waste generated within the exterior boundaries of the Hoopa Valley Indian Reservation.

Where people's practices are not in alignment with traditional land stewardship values and are creating solid waste nuisances, contamination or pollution, this code authorizes the creation of a cleanup plan to resolve the health risks and to restore the land. If people are unable or unwilling to correct their behavior, this code provides for judicial oversight and enforcement mechanisms to protect the land, water, and the health and welfare of the Hupa people.

49.1.04 Subject Matter Jurisdiction

The Hoopa Valley Tribal court has the authority to enforce the provisions of this ordinance.

49 1.05 Personal Jurisdiction

This Ordinance applies to all individuals whether members or non-members of the Hoopa Valley Tribe, households, clubs, associations, businesses, and organizations entering; residing within or otherwise situated within the exterior boundaries of the Hoopa Valley Indian Reservation.

49.1.06 Definitions

For the purposes of this Ordinance the following definitions apply. Any terms not defined have their ordinary meanings:

(a) "Abandoned" means, in specific reference to automobiles, manufactured or mobile homes, recreational vehicles, travel trailers or other such property:

(i) That ownership cannot be determined by available means within a reasonable period of time or;

(ii) Which are clearly uninhabited or;

(iii) Inhabited by squatters who have no legal claim to the property and are not maintaining the property to prevent dilapidation.

(b) "Administrative Costs" are an hourly rate set annually by each department whose personnel have done any investigation or case preparation. The time that is included in administrative costs includes any time spent investigating; researching; writing any documents, including correspondence with respondents, Notices to Correct, court documents, or compliance agreements; serving papers; or any other work reasonably necessary to move an investigation, property clean up, or court case forward.

(c) "Allottee" means any member of a federally recognized tribe for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

(d) "Approved site" means a site permitted and approved by the Tribal Environmental Protection Agency of the Hoopa Valley Tribe, as a site for disposal of solid waste.

(e) "Assignee: means one to whom an assignment of tribal lands is made in accordance with Title 10

(f) "Collect" means to gather solid waste generated by another person or persons.

(g) "Compliance agreement" is an agreement between TEPA and a person who has violated this code that the person in violation will correct the violation according to a plan created by TEPA to clean up any solid waste that is being produced and/or stored on property in a manner that violates this ordinance. In exchange for compliance with the agreement, no citation will be issued for a violation of this code.

(h) "Compliant/ in compliance" means a person who has entered into a compliance agreement with TEPA is completing the cleanup and remediation tasks according to the timeline in the plan, including keeping in contact with TEPA personnel, attending appointments with TEPA personnel, being available for scheduled inspections of the property, and is voluntarily communicating essential information to TEPA personnel such as any barriers to compliance which arise.

(i) "Dispose" means to dump, deposit, discharge, or unload solid waste either at the location it was generated or at another location, not including temporary storage at the place it was generated.

(j) Ex parte: a request made to the court without prior notice to the other side.

(k) "Hazardous waste" is a waste with properties that make it dangerous or capable of having a harmful effect on human health or the environment.

(l) "Inoperable motorized vehicle" means any car, truck, van, recreational vehicle, motorcycle, snowmobile or other vehicle typically powered by an engine, excepting watercraft, that has been in a stationary position for more than 90 calendar days, is apparently inoperable or requires repairs in order to be operable, or is unable to move a distance of 20 feet under its own power on a flat surface. "Inoperable motorized vehicle" may include vehicles that do not meet the definition of "junk vehicle."

(m) "Junk manufactured home, junk mobile home, junk RV or junk travel trailer" is a manufactured home, mobile home, RV or travel trailer, or portion thereof, which meets one or more of the following criteria:

(i) Is being used as a storage bin for solid waste;

(ii) Is uninhabitable, as defined by this code;

(iii) Equal in value only to the fair market value of the scrap/parts;

(iv) RVs and Travel trailers which meet the definition in this code of "junk vehicle"

(n) "Junk vehicle" is a vehicle, or portion thereof, that meets three or more of the following criteria:

(i) Extensively damaged, such damage including but not limited to any of the following: broken window or windshield; or missing wheels, tires, motor, or transmission;

(ii) Apparently inoperable;

(iii) Without a valid current registration or license;

(iv) Equal in value only to the fair market value of the scrap/parts in it.

(o) "Junk yard" A property or place of business which is maintained, operated, or used for storing, keeping, buying, or selling old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap metal.

(p) "Life tenant" a person who holds a life estate in property held in trust by the United States of America.

(q) "Open dump" means any facility or site at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is susceptible to open burning or is exposed to the elements, vectors and scavengers, and includes any facility that fails to satisfy standards found in this Code, Tribal regulations and/or 40 CFR Part 258.

(r) "Person" means any and all natural persons whether members or non-members of the Hoopa Valley Tribe enterprises, public or private corporation, company, partnership, firm, association or society of persons, other entities, including tribal governmental entities, successors and assigns; states, counties, local governments and other agencies; and the United States where not prohibited by applicable Laws.

(s) "Pollute" means to allow solid waste, its fumes, particulate matter, or run off, to enter the air, soil, or water sources within the Hoopa Valley in a manner that is likely to result in harm to humans, domestic pets, or wildlife.

(t) "Nuisance" means the unreasonable, unwarranted or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another's property. Nuisance does not require actual trespass or physical invasion of the other person's land.

(u) "Reservation" means the entire area within the exterior boundaries of the Hoopa Valley Indian Reservation, Humboldt County California.

(v) "RV" means a recreational vehicle: a motor vehicle or towable trailer equipped with living space and amenities found in a home.

(w) "Solid waste" means all putrid and non-recyclable solid and semisolid wastes, including any garbage, trash, rubbish, sludge, ashes, dead animals or parts thereof, abandoned vehicles, infectious wastes, household wastes, hazardous wastes, manure, street and parking lot cleaning residues, industrial waste(s), and other waste material, including domestic sewage that is discharged or stored in a manner that pollutes or causes a nuisance. Solid waste also includes any vehicles, mobile homes, manufactured homes, or RVs that meet the definition of junk or abandoned under this code or a collection of 3 or more inoperable vehicles.

(x) "Tenant" means the lessee, sublessee, or person entitled under a rental agreement to occupy a property for residential or business purposes.

(y) "TEPA" means the Hoopa Valley Tribal Environmental Protection Agency.

(z) "Transport" means to move a quantity of solid waste from one location to another.

(aa) "Tribe" or "tribal" means the Hoopa Valley Tribe and governing body of the Hoopa Valley Tribe, the Hoopa Valley Tribal Council.

(bb) "Uninhabitable" refers to any mobile or manufactured home or travel trailer that is in such a state of disrepair it is unsuitable for living in. Examples of uninhabitable conditions include, but are not limited to, broken windows, holes in the roof, holes in the floor or any other damage that allows wildlife or weather to enter the home, vehicle or trailer; damage to the frame which results in a shifting or bending of the walls, roof, or floor; seriously damaged or missing wiring or other electrical components; seriously damaged or missing water pipes, sinks, or toilets; no supply of clean water, no means to safely dispose of domestic sewage, or the presence of an amount of junk and/or solid waste stored in the vehicle that there is not adequate space remaining for safe and healthy living.

49.1.07 Procedural Rules

The procedural rules contained in this code apply to any investigation, cleanup agreement, citation, or court case stemming from a solid waste violation. The procedural rules found in Title 2, where not in conflict with this code, also apply.

49.1.08 Severability

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances is not affected, and to this end, the provisions of this Ordinance are severable.

49.1.09 Sovereign Immunity Preserved

Nothing in this Ordinance is intended to be or shall be interpreted to be a waiver of the sovereign immunity of the Hoopa Valley Tribe from un-consented suit in tribal, federal or state court.

CHAPTER 2: RULES ADDRESSING SOLID WASTE WITHIN THE RESERVATION BOUNDARIES

49.2.01 General Responsibility

Any person generating, producing, storing, transporting, disposing, or receiving any solid waste is responsible for the proper storage, removal, transport and disposal of solid waste so that the waste does not pollute or create a nuisance within the Hoopa Valley. Any solid waste clean-up, restitution costs, or other costs resulting from solid waste contamination is the responsibility of the person who is responsible for the solid waste.

49.2.02 Allottee, Assignee, Land Owner or Life Tenant's Responsibility

Any allottees, assignees, land owners, or life tenants of the real property on which solid waste is located must comply with the terms of this Ordinance even if the solid waste was placed on their property without their knowledge or consent. If the land has been leased or rented to another, the allottee, assignee or land owner is responsible for compliance with this ordinance regardless of the terms of the tenancy.

49.2.03 Failure to Serve a Responsible Party

The failure of TEPA or law enforcement to serve, or attempt to serve, any notice, citation, or order on any landowner, allottee, assignee, life tenant, lessee, occupier of the property or other responsible party does not invalidate any proceedings under this code as to any other person duly served. A party's refusal to accept papers does not invalidate the personal service.

49.2.04 Generation of Solid Waste

It is prohibited to generate or create solid waste or hazardous waste in a manner that leads to pollution or a public nuisance within the boundaries of the Hoopa Valley reservation. It is prohibited for a person to defecate or urinate outside in a manner that leaves the waste exposed in a public area, causes an offensive odor noticeable by neighbors, or is likely to pollute water sources within the Hoopa Valley

49.2.05 Prohibition on Junk Manufactured Homes, Mobile Homes, Travel Trailers and RVS

It is unlawful for any person to do any of the following with any junk manufactured home, junk mobile, home, junk travel trailer or junk RV within the exterior boundaries of the Hoopa Valley Reservation:

- (1) Bring into the Hoopa Valley except for travelling on the state highway;
- (2) Sell or offer for sale;
- (3) Purchase;
- (4) Rent or offer for rent;
- (5) Lease or offer for lease;
- (6) Inhabit or occupy.

49.2.06 Storage of Solid Waste

Solid waste stored within the Hoopa Valley must be safely contained while stored so that it does not pollute or cause a nuisance. Anyone storing solid waste must comply with the following storage rules:

- (1) Garbage must be secured in bins or garbage bags;
- (2) Sewage must be contained within a sewer, septic system or waste storage tank;
- (3) Solid waste must not be stored in a way that attracts vermin or other wildlife or which causes a foul odor noticeable by neighbors or passersby;
- (4) Solid waste must not be stored in a way that allows solid waste or solid waste run off to pollute any river, creek, ground water, or other water supply used by humans or animals and any solid waste storage must comply with a minimum riparian set-back of at least one-hundred (100) feet from any intermittent stream;

(5) It is prohibited for any person to store 2 or more inoperable vehicles;

(6) It is prohibited for any person to store a junk vehicle junk mobile manufactured home, RV or travel trailer;

(7) Animal carcasses or parts must not be left to decay in a yard, whether or not the animal remains are from an animal that belonged to the landowner or occupier of the land.

49.2.07 Prohibition on Junk Yards

Junkyards are prohibited within the Hoopa Valley. Any existing junkyards must be dismantled and the contents disposed of, including any vehicles being repaired and associated parts, according to a TEPA approved clean-up plan within one (1) year of the date of the passage of this amended ordinance at the expense of the junkyard owner and/or operator.

49.2.08 Transportation of Solid Waste

(a) Requirement that Waste is Secured During Transportation

Solid waste, while being transported, shall be covered, tied or otherwise secured so waste will not be blown or dropped from the transport vehicle. If items fall out of the vehicle during transport, the person transporting is responsible for picking up the solid waste and properly disposing of items.

(b) Who May Transport Solid Waste Within the Reservation Boundaries

It is unlawful to collect and transport solid waste except for the following instances:

(i) By the person who is responsible for the waste under sections 49.1.02 (person who generated waste) or 49.2.02 (allottee, assignee, landowner, or holder of Life Estate);

(ii) By an individual who is complying with all other provision of this code and transporting household garbage to a legally permitted dump or transfer station on behalf of others based on either an agreement or a verbal or written contract;

(iii) By a commercial hauler.

49.2.09 Disposal

Open dump sites are prohibited within the Hoopa Valley any person disposing of waste within the Hoopa Valley must do so in a safe manner that ensures the waste does not pollute or create a nuisance. Any person disposing of solid waste within the Hoopa Valley must comply with the following rules:

(1) It is prohibited to intentionally or unintentionally burn any of the following items: plastic, rubber, tires, asphalt shingles, cloth or upholstery, motor oil, pressure treated wood, tarpaper, linoleum, disposable diapers, vehicle parts, or any other hazardous material;

(2) It is prohibited to dump solid waste anywhere within the reservation other than a tribally approved waste disposal site. The only currently approved waste disposal site is: the Hoopa Transfer Station. If the tribe approves any additional waste disposal sites in the future, it will not

be a violation of this ordinance to use those sites even if the approved sites are not listed in this section;

- (3) The disposal must comply with any compliance agreement or remediation order.

49.2.10 Rebuttable Presumption of Illegal Dumping of Solid Waste

When solid waste is found in an open dump site and two or more items in the solid waste identify a person as the owner or recipient of that item, there is a rebuttable presumption that the person is responsible for the unlawful dumping of the solid waste. This rebuttable presumption may be overcome if the presumed person proves by a preponderance of the evidence that:

- (1) Someone other than the presumed person is responsible for the illegal dumping of solid waste;
- (2) That the illegal dumping was done without the presumed person's knowledge or consent.

49.2.11 Aggravated Circumstances

It is a more serious offense, subject to greater consequences, when any of the following circumstances are present in a violation of this code:

- (1) Any of the following items are burned: plastic, rubber, tires, asphalt shingles, cloth or upholstery, motor oil, pressure treated wood, tarpaper, linoleum, disposable diapers, vehicle parts, or any other hazardous material; or
- (2) Solid waste is dumped in a location that results in contamination of a water source; or
- (3) The amount of waste or extent of contamination from waste will result in cleanup costs in excess of \$5000; or
- (4) The solid waste has created a significant nuisance or hazard for neighbors or community members in any of the following ways: the waste creates an immediate health risk, an ongoing offensive odor, the waste spills onto neighboring property, the waste attracts vermin, the waste blocks roadways or other public right of ways, the waste contains raw sewage, or the waste negatively impacts the property value of surrounding properties; or
- (5) The person cited has previously been cited two or more times for violations of this ordinance or has failed to comply with a remediation plan.

49.2.12 Defense of Sacred Custom and Belief

The membership of the Hoopa Valley Tribe has always maintained and practiced certain sacred tribal customs and traditional beliefs which are recognized by the Hoopa Valley Tribal Council. These customs and beliefs are exempt from this Ordinance.

CHAPTER 3: INVESTIGATION OF SOLID WASTE VIOLATION

49.3.01 Agencies Authorized to Investigate Solid Waste Violations

TEPA, the tribal police department or any other law enforcement agency with jurisdiction to enforce tribal ordinances, are authorized to investigate allegations of violations of this ordinance. TEPA may refer a property to Humboldt County and assist with a county nuisance investigation if TEPA determines that would be the most likely route to achieve correction of the condition that is a violation of this code.

49.3.02 Investigation Procedure

A person investigating a violation of this code must, at a minimum, do the following:

- (1) Observe first hand conditions that she or he believes violate this code,
- (2) Contact the person(s) who appear to be responsible for the conditions which violate this code and attempt to verify if they are responsible for the violations and whether there is any additional information that changes the assessment of whether there is a violation of this code. At least three attempts to contact on at least three different days and at different times, or the documentation of behavior on at least one occasion that clearly shows the responsible person is willfully avoiding the contact, will satisfy this requirement; and
- (3) Document the conditions that are believed to violate this code through photos, video, or any other digital means that will preserve an accurate image of the conditions.

49.3.03 Inspection Warrant

(a) Request

If an investigator is denied access to property on which she or he believes conditions exist that violate this code, the investigator may file an ex parte written request with the court for an inspection warrant. The warrant request must include the following:

- (1) The inspection warrant request appears to be made in good faith; and
- (2) The warrant request contains enough information that a judge can find that there is a reasonable basis for believing that evidence of a violation of this code will be found on the property;

(b) Warrant

In order to be valid, the warrant must be:

- (1) Issued by a neutral and detached judge; and
- (2) The warrant must state specifically the place to be searched and any items to be seized.

49.3.04 Cause to Believe a Violation Exists

If, after completing the investigation, the investigator reasonably believes, based on the known facts, that a violation of this code has occurred, she or he may issue a citation to any persons believed to be responsible for the violation; or, if required under Chapter 4, forward the information to TEPA for the issuance of a Notice to Correct the Violation.

49.3.05 Seizure and Disposal of Hazardous Materials and Equipment

(a) Hazardous Materials

Tribal police, other law enforcement, or TEPA personnel are authorized to seize and dispose of any hazardous materials which represent an immediate danger to the health of residents of the Hoopa Valley upon the discovery of such materials. Examples include, but are not limited to, hazardous chemicals which are not properly stored to avoid ground, water, or air pollution; hazardous materials stored in a manner that creates a fire hazard, waste that is stacked in an unstable or dangerous manner and which is not securely stored to prevent public access.

(b) Equipment or Material Seizure, Forfeiture and Sale

Tribal police, other law enforcement, or TEPA personnel are authorized to seize any equipment or material used to violate this code. After a noticed hearing to the owner, the court may order either the forfeiture and sale or disposal of the equipment or material. Any equipment or material that has a value of \$200 or more shall be sold at sale by the tribal property and procurement department. If the equipment or material is worth less than \$200, it may be disposed of.

(c) Proceeds from Sale

Any proceeds from a sale of forfeited equipment shall go first to cover cost of the sale, then to cover clean-up costs and any other restitution amounts. If funds remain after clean-up costs are paid, the funds shall be applied towards any outstanding fine imposed under this code.

49.3.06 Notice to Immediately Vacate

If TEPA determines that the condition or conditions causing the violation is imminently dangerous to human life or limb or an immediate and serious threat to the public health or safety, TEPA may order that the affected building or property be vacated pending the correction of the condition or conditions causing the violation. TEPA's written Notice to Immediately Vacate must state what actions must be taken to make the property or building safe enough for habitation. The Notice to Immediately Vacate shall be enforced by the Tribal Police Department. The person(s) prohibited from entering the building or property may appeal the order to the court at any time while the Notice to Vacate is in effect.

CHAPTER 4: NOTICE TO CORRECT VIOLATION

49.4.01 Written Notice to Correct Violation

(a) Notice

When a person violates this code by generating or storing solid waste on a property, TEPA must demand in writing that the violation be corrected. The written notice must include the following:

- (1) The name or names of the persons responsible for correcting the violations;
- (2) A description of the property where the violation has occurred sufficient to identify the property;
- (3) notice of what violation is alleged;
- (4) an explanation of what must be done to correct the violation;
- (5) the timeframe in which the corrective action must be taken;
- (6) a statement that if the corrective action is not taken within the timeframe stated in the notice, a citation will be issued to the person(s) identified in the Notice to Correct;
- (7) a statement of the potential consequences if the case goes to court;
- (8) the name and contact information for a TEPA representative who can answer any questions about the notice of violation.

(b) Service

This Notice must be personally served on an adult occupying, residing on, or conducting business on the property where the violation occurs. Notice must also be provided to Allottees, Assignees, or property owners not residing on the property, but may be mailed certified mail, return receipt requested, to the allottee's, assignee's or property owner's last known address with the land Department or the County Assessor's Officer if the individual resides outside the reservation boundaries.

49.4.02 Compliance Agreement

(a) Compliance Agreement

TEPA may enter into a compliance agreement with the person(s) responsible for correcting the violation within 15 days of serving the Notice to Correct. Any compliance agreement must:

- (1) Be in writing;
- (2) Include both specific clean up tasks and a timeline for completing each task;
- (3) Include the estimated cleanup costs;

- (4) Be reviewed verbally with the person(s) entering into the plan;
- (5) Explain that failure to meet the timelines within the plan is a violation of the plan, and will result in a citation being issued;
- (6) Explain possible consequences if the court finds that a violation of this ordinance has occurred;
- (7) Be signed by TEPA personnel and the person(s) responsible for correcting the violation;
- (8) Be written in language that a lay person could reasonably be expected to understand.

(b) Proof of Trash service

TEPA may require, as part of compliance, that a person provide receipts showing they are paying for trash service for up to six months.

(c) Responsibilities of Parties to Agreement

(1) TEPA

TEPA is responsible for:

- (i) Providing a cleanup plan which details the cleanup tasks to be completed in order to cure the solid waste violation and
- (ii) For providing information on resources that may be available to assist with clean up, including tribal programs that may be available to help with labor for or funding of the cleanup; and
- (iii) Meeting with the person who has entered into the plan according to the schedule contained within the plan;
- (iv) Completing inspections of the property to verify the agreement is being complied with.

(2) Person Responsible for Clean Up of Property

The person responsible for the solid waste is responsible for:

- (i) Contacting any needed and available clean up resources;
- (ii) Completing any necessary applications or requests for assistance;
- (iii) Coordinating with any offered assistance;
- (iv) Meeting with TEPA personnel according to the schedule contained in the agreement;
- (v) Being available for property inspections as required by the cleanup plan;

(vi) Contacting TEPA personnel if any barriers to clean up arise within 5 working days of the discovery of the barriers, and working with TEPA personnel or other resources to resolve those barriers;

(vii) Completing the cleanup tasks within the timelines in the plan.

(d) Effect of Compliance with Agreement

So long as the person who was issued the Notice to Correct enters into and remains compliant with the agreement no citation shall be issued for the conditions that violate this code.

49.4.03 Open Dumping

TEPA has the discretion to not issue a citation and to instead enter into a compliance agreement that contains the following terms, with anyone who is presumed responsible for open dumping under subsection 49.2.07(b), if the person has not previously been cited for Open Dumping:

- (1) To clean up the illegally dumped solid waste that TEPA identifies as the individual's waste within 3 calendar days of the remediation plan being signed; and
- (2) To provide proof of trash service for 6 months.

CHAPTER 5: CITATION FOR VIOLATION OF THIS CODE

49.5.01 Agencies Authorized to Issue Citations

TEPA, the tribal police department or any other law enforcement agency with jurisdiction to enforce tribal ordinances, are authorized to issue civil citations for violations of this ordinance.

49.5.02 Requirement that Notice of Violation Was Previously Issued

If a Notice to Correct the Violation is required under 49.4.01, a citation cannot issue unless a Notice to Correct the Violation was issued to the cited person(s), and the 15 day time to correct the violation has passed without either the violation being corrected or the person being in compliance with a compliance agreement. The court must dismiss the case if no prior Notice to Correct Violation was issued to the cited individual, or the time period allowed to the correct the violation has not yet passed.

49.5.03 Content of Citation

Any citation issued under this code must include all of the following:

- (1) The name, address and phone number of the person cited;
- (2) The code section allegedly violated;

(3) The person at the citing agency who can be contacted for a copy of all reports related to the citation;

(4) The date, time, and location of the court hearing.

49.5.04 Service of Citation

(a) Type of Service

Any citation issued under this code must be personally served, unless the citing agency can show good cause as to why an alternate form of service should be accepted by the court. Good cause includes, but is not limited to:

- (1) Evidence the respondent is actively avoiding personal service; or
- (2) The respondent lives far enough from the reservation (i.e. an absentee landowner) that personal service is not possible by TEPA staff or tribal law enforcement and no reasonable alternate process server is available in that jurisdiction.

(b) Requirement that Allottee, Assignee, Landowner or Life Tenant be Cited

In addition to citing the tenant or other person occupying or doing business on property on which a violation of this code has occurred, the citing agency shall also cite the assignee, allottee, landowner, or life tenant of the property except in the following circumstances:

- (1) A Notice to Correct is required, but the assignee, allottee, landowner, or life tenant has not previously been served with a Notice to Correct; or
- (2) The following circumstances apply:
 - (i) S/He does not reside on the property or, if s/he resides on the property, is unable to inspect the property or control what occurs on it because of health reasons; and
 - (ii) S/He was not aware of the violation and once made aware of the violation voluntarily took reasonable steps to correct the violation and prevent future violations. Examples of reasonable steps include but are not limited to: putting up barriers to access to the property, cleaning up prior violations to discourage future dumping activity, requiring tenants to maintain trash service as part of the lease agreement, eviction proceedings against tenants who have seriously or repeatedly violated this ordinance, cooperation with TEPA or law enforcement investigations of violations of this code, and posting "No Dumping" signs. Posting "No Dumping" signs alone is not enough to prove reasonable steps to prevent violations of this ordinance.

(c) Notice to Tribe when Land is Tribally Held Trust Property

If the land on which the violation occurs is tribal trust property, the citing officer must also send notice of the citation to either the Tribal Attorney's office or, if no tribal attorney is currently employed by the Tribe, to the Manager of the Tribal Department responsible for the management of that trust property. Proof of that notice must be filed with the court clerk. The tribal attorney or other legal representative of

the Department may appear as an interested party at any court hearing and offer input as to how to resolve the violation.

(d) Citation Must Be Filed with Court Within One Year of the Alleged Violation

Any citation issued to an individual must be filed with the court within one year of the alleged violation. If a person entered into a compliance agreement and later became noncompliant, the date of the non-compliance with the agreement constitutes the date of the alleged violation.

49.5.05 Copy of Investigation Reports

(a) Requirement Reports Be Provided to Respondent

Within 14 days of the issuance of a citation, the Respondent must be either mailed first class or personally served with written notice of the following:

- (1) The names of all investigative agencies that have created investigative reports about the alleged violation of this code;
- (2) The contact information for requesting a copy of all reports from each agency;
- (3) Notice that all reports must be provided once, free of charge. The investigating agency may charge copy and/or administrative fees for any additional copies of the reports;
- (4) Notice that the investigating agency may request a protective order from the court authorizing the release of redacted reports in which identifying information of witnesses may be obscured or removed from the report.

(b) Redaction of Reports

If there is a reasonable, articulable fear of retaliation against a person named in the report, the citing agency may request a court order allowing release of redacted reports to the respondent.. In order to prevail, the agency must show that there is danger to the individual or individual's whose information the agency is seeking to redact if their name, contact information or other identifying information is included in the report.

49.5.06 Witness Lists

Unless the court sets a different timeline, TEPA shall provide its list of trial witnesses to the respondent at least 19 days prior to any trial if mailed, or at least 14 days prior to hearing if personally served.

49.5.07 Request for Relief

(a) Contents of Request

At least 19 days prior to a scheduled court hearing if mailed, or at least 14 days prior to hearing if personally served, TEPA shall provide the respondent(s) with a written Request for Relief which includes the following:

(1) The amount of any judgment requested, itemized by any of the following, if they are requested: administrative costs, fines, cleanup costs or other restitution amounts, and attorney's fees; and

(2) The factual basis for any requested money judgment amount as follows:

(i) The name of the position, the hourly wage reimbursement sought, the number of hours reimbursement sought and the type of work performed by hour for administrative costs;

(ii) The basis for the fine amount, as required in subsection (b) of this section;

(iii) Receipts for any cleanup costs paid or written estimates of cleanup costs;

(iv) Receipts or estimates for any other restitution costs;

(v) The hourly attorney fees billing statement for any fees sought

(3) Whether a wage garnishment or per capita garnishment is being requested;

(4) If the forfeiture of any equipment or material is sought the following must be included in the relief request:

(i) A description of the equipment or material suitable to identify the item, and

(ii) An estimated value of the equipment or material, and

(iii) A request for an order authorizing either the sale or disposal of the equipment or material.

(b) Fine Amount

The fine for failing to correct a violation of this code shall not exceed \$5000 for each day the violation continued after TEPA issued the Notice to Correct. TEPA shall recommend a fine amount to the court, based on the following factors:

(1) The severity of the violation based on the amount and type of waste, the actual or estimated cleanup costs and the administrative costs for investigation and any compliance agreement monitoring;

(2) The seriousness of the threat based on the impact or threat to human health or the environment;

(3) Whether the violation was negligently, recklessly or intentionally created;

(4) Whether the respondent has been previously cited for a violation of this code;

(5) Whether the respondent was cooperative and took responsibility for the violation or uncooperative, threatening or violent towards enforcement personnel;

(6) Did the respondent at least partially comply with any compliance agreement;

(7) If the respondent is a business, whether an environmental compliance program was in place at the time of the violation.

(c) Filing with the Court

The Request for relief, and a proof of service, must be filed with the court at least 5 days prior to the hearing.

CHAPTER 6: COURT PROCESS

49.6.01 Initial Hearing

(a) Duties of the Judge

Prior to asking whether the cited individual admits or denies the violation, the judge must verify that the person understands what s/he was cited for, explain the potential consequences of admitting the violation, and explain the following rights to the cited individual:

- (1) S/He has a right to request a trial if they dispute the allegation that they violated this code;
- (2) S/He has the right to hear the evidence against them, and to cross examine any witnesses who testify against them;
- (3) S/He has the right to present evidence in their own defense, including requesting subpoenas to require a witness come to court and testify;
- (4) S/He has the right to hire an attorney or spokesperson at their own defense.

(b) Failure of Respondent to Appear

If the Respondent fails to appear at hearing and has not filed any documents or otherwise appeared in the case, and the court finds that the respondent was provided the legally required notice of the court case, the court shall enter a default judgment against the respondent and grant the relief requested by TEPA.

49.6.02 Burden of Proof at Trial

(a) Proof of Violation

TEPA must prove the violation by a preponderance of the evidence that this code has been violated.

(b) Defenses

Anyone claiming a full or partial defense must prove the defense by a preponderance of the evidence.

(c) Mitigating Circumstances

It is a mitigating circumstance when a cited individual cleaned up the violation prior to the court hearing. The cited individual has the burden of proving by a preponderance of the evidence that mitigating circumstances exist. Testimony of the cited person(s) alone is not be enough to establish the mitigating circumstances: any testimony must be supported by photographic evidence or a TEPA inspection.

45.6.03 Outcomes at Trial

(a) Violation Proven

If a violation of this code is proven at trial, the court will issue a Finding of Violation and Order to Remediate.

(b) Violation Not Proven

If a violation of this code is not proven at trial, the case will be dismissed.

CHAPTER 7: CONSEQUENCES FOR VIOLATION OF THIS CODE

49.7.01 Criminal Penalties Not Prohibited

The civil penalties imposed under this code do not prevent the criminal prosecution of anyone whose actions in violation of this code also constitute a criminal offense.

49.7.02 Contents of Order to Remediate

The Order to Remediate shall contain the following:

- (1) A finding as to which code section(s) have been violated;
- (2) A finding that the violation(s) create any of the following, if the facts support the finding:
 - (a) A public nuisance;
 - (b) Conditions which endanger the life or property of another person;
 - (c) Unauthorized destruction to land or resources;
 - (d) A continuing threat to health or safety
- (3) Language requiring the respondent to correct the violation(s);
- (4) A deadline by which the correction(s) must be completed;
- (5) If the respondent is an assignee or holds a life estate in a tribal assignment, and the court makes any of the findings under subsection (2) of this section, a warning that if the correction is

not made by the deadline, the court may order that the land assignment cancellation process be initiated under section 10.3.7.1 of Title 10;

(6) An explanation of the relief TEPA has been granted, including an itemized money judgment, if any money judgment is awarded. If the order differs from the relief requested, the trial record must include a factual basis for the deviation from the relief requested;

(7) A statement that any future cleanup costs incurred by the Tribe may be added to the judgment amount provided the Tribe provides proof of the cleanup costs and the respondent has an opportunity to respond to the amount of cleanup costs requested;

(8) If the respondent is a landowner, a warning that a lien may be placed against the property for any unpaid administrative cost or cleanup costs;

(9) Whether a per capita and/or wage garnishment is ordered or the date on which garnishments can be requested if the respondent has not made a good faith effort has not been made to pay the judgment; and

(10) Any future court dates

49.7.03 Money Judgment

The court may enter a money judgment against the respondent for any of the following: administrative costs, fines, and reimbursement for cleanup costs, restitution amounts, and reasonable attorney's fees.

(a) Itemization

The money judgment must be itemized with a specific dollar amount stated by category of award.

(b) Deviation from Requested Amount

If the court awards an amount that differs that from the amount requested by TEPA for any item, the order must state the factual basis for awarding a different amount.

(c) Fines

The judgment may include a daily fine amount, not to exceed \$5000 a day. The fine period shall begin on the 16th day from the date a Notice to Correct was served on the respondent if a Notice to Correct was required, or from the date of entry of the court judgment if no Notice to Correct was required. The fine amount may be ongoing on a daily basis until the violation(s) are corrected.

(d) Liability if Multiple Respondents

If multiple respondents have been cited for the same violation, the court may either order them to be jointly and severally liable for money judgment amounts, or if the facts clearly show that one or more parties was more culpable than others, the court may allocate the money judgment, or specific categories of the judgment, according to the following equitable factors:

- (1) The respondents' ability to demonstrate that their contribution to the solid waste violation can be distinguished;
- (2) The degree of involvement of the parties in generation, transportation, treatment, storage, or disposal of solid waste;
- (3) The degree of each respondent's cooperation with tribal officials to prevent harm to the public health or the environment;
- (4) Community Service.

The court may allow a respondent to perform community service instead of a fine if requested, or order community service hours in addition to any fine or other consequence. Community service ordered for a violation of this ordinance shall consist of work that cleans up and/or beautifies the Hoopa Valley Reservation, unless health issues preclude such work.

(f) Tribe Exempt from Money Judgments

The tribe is exempt from money judgment.

49.7.04 Order Authorizing Sale or Disposal of Forfeited Equipment

The court shall issue an order authorizing the forfeiture, sale or disposal of any equipment or material used to violate this code that had been previously seized by the investigating agency.

49.7.05 Lien on Fee Property

When a respondent is the landowner of the property on which the violation has occurred, and the judgment remains unpaid for more than 6 months, TEPA may register tribal court money judgment as a foreign judgment with the state of California, and place a lien against fee property for the amount of the judgment recognized under California law. Any lien shall be filed with the Humboldt County Recorder's office.

49.7.06 Cancellation of Land Assignment

If the person fails to comply with a clean-up plan for a tribally assigned parcel, or is cited three or more times under this ordinance, the court may order the land department to begin the process for cancellation of the land assignment if all of the following occur:

- (1) The court finds that the assignee is personally responsible for part or all of the violations; and
- (2) The court finds that the violation(s) of this ordinance constitute a ground for cancellation of the assignment under section 10.3.7.1 of Title 10; and
- (3) The record includes the factual basis to support a finding that the violations constitute a ground for cancellation of the assignment under section 10.3.7.1 of Title 10.

49.7.07 Prohibit Anyone from Living on Property until it Has Been Cleaned

If the solid waste violation is serious enough to create a significant human health risk, the court can prohibit anyone from living on the property until the property is cleaned. The court may also limit the amount of time people can be on the property to clean, if it is proven that there is a danger to human health from exposure to the solid waste.

49.7.08 Proof of Trash Service

The court may order a respondent to sign up with a trash service, and provide monthly receipts proving payment for trash service for up to one year.

49.7.09 Exclusion

Any person, who has violated this code in a manner that constitutes any grounds for exclusion under Title 5, may be excluded by court order from the Hoopa Valley Reservation.

49.7.10 Modification of Judgment


A person may request a modification of any judgment entered against them; however no modification can be granted unless the violation(s) which were the basis for the judgment have been corrected. The person requesting the modification must prove the correction by clear and convincing evidence. The court must additionally find good cause to modify the judgment, and the modification is subject to the following limitations:


- (1) The court cannot modify the cancellation of a land assignment;
- (2) If the court orders the cancellation of a lien the administrative costs and/or attorney's fees incurred by TEPA to put the lien in place and to cancel the lien shall be ordered payable by the person requesting the lien cancellation prior to the cancellation;
- (3) Restitution amounts cannot be reduced unless the person or entity entitled to the restitution agrees to the reduction.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which seven (7) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 17th day of October 2019; and that this Ordinance was duly adopted on April 3rd, 2003 with revisions approved on this day October 17th, 2019 by a vote of six (6) in favor with zero (0) opposed and zero (0) abstaining; and that said action has not been rescinded or amended in any way.

DATED THIS SEVENTEENTH DAY OF OCTOBER 2019

By: 
Byron Nelson, Jr., Chairman
Hoopa Valley Tribal Council

Attest: 
Amber Turner, Executive Secretary
Hoopa Valley Tribal Council