



HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe

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Chairman Joe Davis

Guidelines for Drug-Related Exclusion Cases

Background. The purpose of this document is to provide guidelines for the Tribal Council, Tribal Chairman, Office of Tribal Attorney, and Tribal Police in initiating, conducting, and enforcing drug-related exclusions under Title 5 (Exclusion Ordinance) of the Hoopa Valley Tribal Code.

Pursuant to the Exclusion Ordinance, when there is reason to believe that excluding a person from the Hoopa Valley Indian Reservation is warranted, an exclusion action may be initiated in one of two ways:

- (1) by majority vote of the Tribal Council at a meeting in which a quorum exists; or
- (2) by directive of the Tribal Chairman.

To start an exclusion action, the Tribe must then file an Exclusion Request with the Tribal Court. The Exclusion Request will typically be drafted and filed by the Office of Tribal Attorney according to the directives of the Tribal Council or Tribal Chairman. The Tribal Court ultimately decides whether, and under what terms, the Exclusion Request will be granted.

Under the Exclusion Ordinance, both tribal members and non-members may be excluded.

Objectives. By implementing these guidelines and sharing them with the tribal membership, two main objectives may be achieved: (1) Provide notice to the community regarding how the Tribal Council and Tribal Chairman intend to prioritize and carry out certain exclusion cases; and (2) Provide an appropriate level of uniformity with respect to the exclusion of similarly situated individuals.

Priorities. Drug-related activity is too commonly a source of crime, social deterioration, and personal tragedy in Hoopa. Given this situation, the Tribal Council passed a “Resolution Declaring the Hoopa Valley Indian Reservation in a State of Emergency for Public Health Threat Due to Drug Epidemic” on September 20, 2021. The Resolution noted the following:

[C]onditions of extreme peril to the safety of persons, business, property, and natural resources have arisen within the Hoopa Valley Indian Reservation, caused by drug abuse within the HVT Reservation....[O]ngoing response to crime, vandalism, theft, health issues, [and] death have diverted local resources from day to day operations, and has continued to be a threat to our community safety and wellness. This places the HVT at peril and significant risk, beyond the control of personnel, services, equipment and budget of the Hoopa Valley Tribe and the local resources available presently....

As a result, the Tribe will be prioritizing individuals with drug-related infractions and those engaged in unlawful drug activity for exclusion from the Reservation. Within the general category of drug-related activity, unlawful conduct involving Fentanyl, Fentanyl-laced drugs, and other Synthetic Opioids will receive the highest priority and will be the subject of Exclusion Requests with the longest exclusion periods.

Grounds for Exclusion. Section 1.06 of the Exclusion Ordinance identifies multiple bases for exclusion. The grounds for exclusion most relevant to drug-related activity are Sections 1.06(1) and 1.06(5):

- 1.06(1) – “Repeated commission of a crime or breach of peace as defined by Tribal, State and Federal laws.”
- 1.06(5) – “Any other misconduct or objectionable condition found by the Court to be sufficient cause for expulsion, provided that the person is first advised of the objection and given notice to desist but nevertheless continues the misconduct or condition.”

The Tribal Court has confirmed that the acquisition, possession, and/or sale of dangerous, illegal drugs is a type of misconduct that can constitute sufficient cause for expulsion under Section 1.06(5). See, e.g., 9/17/2021 Exclusion Order (*Hoopa Valley Tribe v. Warren Herman Sloan IV*, C-21-017); 12/21/2021 Exclusion Order (*Hoopa Valley Tribe v. Dale Mabry*, C-21-021).

However, a person cannot be excluded under Section 1.06(5) unless the person is first advised of the objectionable behavior and given notice to desist. This guidelines document, in combination with the Tribe’s prior Resolution Declaring a State of Emergency, the prior exclusion orders issued by the Tribal Court, and the well-known criminal prohibition of illicit drugs, all provide notice to those residing on the Reservation to desist unlawful drug activity.

It is therefore the policy of the Tribe that a single arrest or conviction by State, Federal, or Tribal authorities for the unlawful possession, sale, or distribution of drugs/controlled substances is sufficient misconduct for the Tribal Chairman or Tribal Council to initiate an exclusion case.

Length of Exclusion. Unless exceptional circumstances exist, the following guidelines shall be followed for determining the length of exclusion requested for drug-related exclusion cases:

- 1-4 years: First-time offenders with drug activity not involving Fentanyl, violence or the threat of violence, or the use of weapons.
- 5-19 years: Repeat offenders with drug activity not involving Fentanyl, violence or the threat of violence, or the use of weapons.
- 20 or more years: Offenders with drug activity that does involve Fentanyl; or repeat offenders with drug activity involving violence (or the threat of violence) or the use of weapons.

Aggravating Factors. The Tribe may seek exclusion periods at the higher end of the above ranges when one or more of the following factors are present:

- Quantity of drugs suggests intent to sell/distribute
- Witness testimony indicating sales/distribution
- Injuries or overdoses have been linked to individual's drug activity
- Lethality/harm of the particular drug involved
- Existence of prior arrests or convictions
- Evidence of assault or other violent conduct in conjunction with the drug activity
- Evidence of use of firearms or other weapons in conjunction with the drug activity

Amendment of Exclusion Orders. The Exclusion Ordinance contains provisions for later amending or even revoking exclusion orders that have already issued. Specifically, Section V states that "Any person to whom an [exclusion] order has been issued under this Ordinance may apply to the Tribal Court in writing for revocation or amendment of such order."

The Tribe will consider supporting, on a case-by-case basis, an individual's properly filed application to amend or revoke an existing exclusion order upon the individual showing significant efforts to address the offending behavior. Depending on the circumstances, completion of a significant rehabilitation program and/or significant community service may be sufficient for the Tribe to determine that it will support the request.

Role of the Hoopa Valley Tribal Court. It should be emphasized that this guidelines document does not impose any obligations or control any procedures of the Tribal Court. Nor does this document amend the Exclusion Ordinance. The determinations of whether to grant an exclusion order, the length of the exclusion, and whether to amend or revoke an exclusion order, are all determinations left exclusively to the judicial branch of government. Rather, these guidelines are meant to provide guidance to the Tribal Chairman, Tribal Council, Office of Tribal Attorney, and Tribal Police in deciding which exclusion cases to initiate and prioritize and in determining the terms of the exclusion orders requested of the Tribal Court.

Violations of Exclusion Orders. The Exclusion Ordinance specifically provides the Tribe with multiple enforcement options in the event an individual violates an exclusion order. These enforcement options include:

- (1) Seeking an order of contempt in Tribal Court that may include a \$500 fine;
- (2) Confiscating any property used in any manner to violate or facilitate the violation of an exclusion order through a forfeiture process. (Property to be forfeited may include real property, tangible personal property such as vehicles, or intangible personal property such as privileges and interests); and
- (3) Physical removal from the Reservation by the Tribal Police or County Sheriff.

To be clear, this guidelines document is meant to provide additional notice to the community that property used to facilitate the violation of an exclusion order is potentially subject to forfeiture and the Tribe is prepared to utilize this forfeiture remedy as needed. Property subject to forfeiture

includes the property belonging to the excluded individual as well as property belonging to any other individual if used to facilitate the violation of the exclusion order.

In addition to the above enforcement options, the Tribal Police, in consultation with Office of Tribal Attorney, should work with the Humboldt County Sheriff to pursue criminal trespass charges against individuals who repeatedly violate their exclusion orders by unlawfully entering the Reservation.

To assist in the enforcement process, it is critical that Tribal Police work with Office of Tribal Attorney to promptly serve exclusion orders on the excluded individual and file proof of service with the Tribal Court.

Emergency Removal. Nothing in this guidelines document shall be construed to limit the Tribe's ability to pursue the immediate exclusion of an individual in an emergency, in accordance with Section 2.04(5) of the Exclusion Ordinance.

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 19th day of May 2022; and that these guidelines were duly adopted by a vote of six (6) in favor with zero (0) opposed and zero (0) abstaining, and that said guidelines have not been rescinded or amended in any way.

Dated this nineteenth day of May 2022.



Joe Davis, Chairman
Hoopa Valley Tribal Council

ATTEST:



Amber Turner, Executive Secretary
Hoopa Valley Tribal Council