

U tu Utu Gwaitu Paiute Tribe

Benton Paiute Reservation

(760) 933-2321

Title 7 – Exclusion Ordinance

WHEREAS: The U-tu Utu Gwaitu Paiute of the Benton Paiute Reservation did on November 22, 1975, adopt a Constitution and By-laws which was approved by the Commissioner of Indian Affairs on January 20, 1976, establishing a Tribal government to promote the welfare of the U-tu Utu Gwaitu Paiute Tribe and citizens of the Tribe; and

WHEREAS: It is the desire of the Tribal Council of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation to enact an Ordinance governing the exclusion of persons from the Benton Paiute Reservation and other lands subject to the legal jurisdiction of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, for the purpose of enforcing laws to protect the territory and people within the jurisdiction of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation;

NOW THEREFORE BE IT RESOLVED: That the Tribal Council of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation does hereby adopt this Ordinance governing exclusion of persons from the Benton Paiute Reservation and other lands subject to the legal jurisdiction of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation.

CHAPTER 1: EXCLUSION FROM THE BENTON PAIUTE RESERVATION

7-10-010 Grounds for Exclusion

Any person may be excluded from the Benton Paiute Reservation and all areas under the jurisdiction of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, collectively referred to hereafter in this Ordinance as the Benton Paiute Reservation, if:

a) Persons Required to Register as Sexual Offenders

Pursuant to the laws of the United States, of any state, or of any other jurisdiction, that person is required to register with any agency or in any registry, list or compilation of data as a sexual offender, as a consequence of conviction of a criminal offense.

b) Persons Not Lawfully Present within the United States

That person is not a citizen of the United States, and the presence of that person in the United States is in violation of any law of the United States.

c) Habitual Offenders

On three (3) occasions within the preceding thirty-six (36) months, that person has been convicted of a criminal offense involving physical harm to any other person or damage to property; provided, that each of the three (3) offenses must be based upon a different set of facts. If the person to be excluded is a minor child, the parents or guardians of the minor child with whom the minor child resides shall also be excluded; provided, that the parents or guardians have been notified in writing by the Tribal Council of all convictions of the child upon which the exclusion is based, within fifteen (15) days of entry of each conviction.

CHAPTER 2: EXCLUSION PROCEDURE

7-20-010 Commencement of Exclusion Proceeding

The Tribal Council shall commence an Exclusion Proceeding by enacting a resolution stating the identity of the person proposed to be excluded and the basis for the proposed exclusion, and directing the Tribal Chairman to cause a Notice of Hearing upon the proposed Order of Exclusion to be served.

7-20-020 Notice of Hearing

The Chairman of the Tribal Council, or his or her authorized representative, shall cause notice to be served, either personally or by an officer of the Council or by registered mail, upon any person who the Tribal Council has reason to believe may be subject to exclusion under this Ordinance. The notice shall state the reason for the proposed Order of Exclusion and shall specify a time not less than five (5) days from the date of service or actual receipt of the notice, when the person may appear before the Arbitration Council of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation to show cause why he/she should not be excluded from the Benton Paiute Reservation.

7-20-030 Hearing

No sooner than five (5) days after service to notice to the person proposed to be excluded, the Arbitration Council of the U-tu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation shall hold a hearing to decide whether or not that person shall be excluded from the Benton Paiute Reservation. At the hearing, the Tribal Council and the person proposed to be excluded each shall be entitled to:

- a) Appear in person and be represented by a representative, at their own expense;
- b) Call witnesses and present evidence;
- c) Have the Arbitration Council issue subpoenas to compel witnesses to appear and testify;
- d) Present argument to the Arbitration Council.

7-20-040 Members of the Arbitration Council

Members of the Arbitration Council for a hearing shall be appointed as provided in the Mediation-Arbitration Ordinance; except that the parties shall nominate Arbitration Council members within three (3) days of receiving notice of the hearing, and at least one (1) day before the hearing. If a party has not nominated a member at least one (1) day before the hearing, the already designated or nominated members shall nominate additional members sufficient to constitute the Arbitration Council.

7-20-050 Failure to Appear

If the person proposed to be excluded does not appear at the hearing at the time and place scheduled, having received at least five (5) days notice of the hearing, the Arbitration Council shall enter an Exclusion Order excluding the person from the Benton Paiute Reservation. The Exclusion Order shall be effective when specified by the Arbitration Council, shall be served upon that person to be excluded either personally as provided in Section 7-20-020 or by registered mail, and may be appealed as provided in Chapter 3 of this Ordinance.

7-20-060 Hearing Procedure

If the person proposed to be excluded appears at the hearing, the Arbitration Council shall allow both the Tribal Council and the person proposed to be excluded an opportunity to fully present testimony and evidence. After the presentation of evidence, testimony and argument by the Tribal Council and person proposed to be excluded, the Arbitration Council shall determine whether the preponderance of the evidence shows that the person proposed to be excluded is subject to exclusion under any of the grounds for exclusion specified in Section 7-10-010 of this Ordinance. If the evidence establishes this fact, the Arbitration Council shall enter an Order excluding the person from the Benton Paiute Reservation, and specifying when the Exclusion Order shall take effect.

7-20-070 Enforcement of Exclusion Order

The Arbitration Council shall cause the Exclusion Order to be delivered to any person specified by the Tribal Council, or to an appropriate law enforcement officer, who shall then order the person to be excluded to obey the Exclusion Order. If, after the time specified in the Exclusion Order, the person to be

excluded has not complied with the Order, the person may be excluded bodily from the Benton Paiute Reservation by the law enforcement official as stated in the Exclusion Order.

7-20-080 Emergency Exclusion Orders

Notwithstanding any other provisions of this Exclusion Ordinance, in situations subject to this Ordinance which involve immediate danger to the life, health, or morals of residents of the Benton Paiute Reservation or of any Tribal citizens and where delay would result in irreparable damage, the Chairperson of the Tribal Council, or his or her authorized representative, may request the Chief Arbitrator to enter an Emergency Exclusion Order directing any Law Enforcement official to remove a person from the Benton Paiute Reservation immediately, using only as much force as is reasonable and necessary to accomplish the removal. If the situation justifies an Emergency Exclusion Order, the Chief Arbitrator shall issue an Emergency Exclusion Order and shall cause the law enforcement officer to serve and enforce the Order. Service shall be made upon the person excluded at the time of removal, or soon thereafter as possible. Emergency Exclusion Orders shall be requested and issued only in extraordinary circumstances. Emergency Exclusion Orders shall be effective for the time period specified in the Order, but no longer than fifteen (15) days.

7-20-090 Hearing After Entry of Emergency Exclusion Orders

In any case in which an Emergency Exclusion Order is entered, the Emergency Exclusion Order also shall be the Notice of Hearing specified in Section 7-20-010. The Emergency Exclusion Order shall specify a date for a hearing before the Arbitration Council, at which the Arbitration Council shall decide whether an Exclusion Order shall be entered, or whether the Emergency Exclusion Order shall be dissolved. The hearing shall be held during the effective period of the Emergency Exclusion Order. If requested by the person excluded, the hearing shall be rescheduled to be held less than five (5) days after service of the Emergency Exclusion Order. The procedures and standards specified in this Chapter 2 apply at the hearing.

CHAPTER 3: APPEAL

7-30-010 Appeal

A decision of the Arbitration Council concerning Exclusion Orders may be appealed to a new three (3) member panel of the Arbitration Council, if a written request for an appeal is filed with the Arbitration Council within five (5) business days of the entry of an Exclusion Order. The new Arbitration Council panel shall consider and decide the appeal upon the basis of the record of proceedings before the Appeals Council panel which entered or denied the Exclusion Order, and such additional evidence and argument which the parties choose to present and which

the Appeal Council panel agrees to consider. The Appeals Council panel shall allow the parties a fair opportunity to present additional evidence and argument in the appeal. The decision on an appeal is final.

There is no appeal from an Emergency Exclusion Order. However, an appeal may be taken from any decision of the Arbitration Council made at the hearing held after entry of an Emergency Exclusion Order.

CHAPTER 4: VIOLATION OF EXCLUSION ORDER A CRIMINAL OFFENSE

7-40-010 Violation

Any person who violates any Exclusion Order or Emergency Exclusion Order shall be reported to appropriate law enforcement officials as being in criminal trespass upon the Benton Paiute Reservation, and the Tribe shall pursue criminal charges in the appropriate jurisdiction.

{If the Tribe establishes or has access to a Tribal Court system and law enforcement agency, and exercises criminal jurisdiction over the Benton Paiute Reservation, this provision shall be effective:

Any person subject to criminal jurisdiction of the Tribe who violates any Exclusion Order or Emergency Exclusion Order is guilty of an offense, and shall be sentenced to confinement for a period not to exceed six (6) months, to pay a fine or no more than \$500.00, or both, with costs, and shall be ordered to comply with the Exclusion Order or Emergency Exclusion Order.

Any person not subject to the criminal jurisdiction of the Tribe who violates any Exclusion Order or Emergency Exclusion Order shall be reported to appropriate law enforcement officials as being in criminal trespass upon the Benton Paiute Reservation, and the Tribe shall pursue criminal charges in the appropriate jurisdiction.}

CHAPTER 5: APPLICATION FOR RELIEF FROM AN EXCLUSION ORDER

7-50-010 Basis for Application for Relief

A citizen of the Tribe who is subject to an Exclusion Order may apply to the Tribal Council for relief from the Exclusion Order, if the member is the spouse, parent or adult child of any person whose family permanently resides on the Benton Paiute Reservation. The Tribal Council may grant relief from an Exclusion Order, and allow the excluded person to be present on the Benton Paiute Reservation, only if the Tribal Council finds by a preponderance of the evidence that the person's ongoing presence on the Benton Paiute Reservation will not adversely affect the life, health, or morals of any resident of the Benton Paiute Reservation or any Tribal citizen.

7-50-020

Procedure

Any citizen of the Tribe who has been excluded from the Benton Paiute Reservation and meets the qualifications for relief from an Exclusion Order may file a written request for relief with the Tribal Council. The request shall state all reasons why the excluded member feels that relief should be granted. The Tribal Council shall review the written request, and shall vote upon whether to grant a hearing before the Tribal Council. A public hearing upon the request for relief shall be held if at least two (2) members of the Tribal Council vote to grant a hearing. If a hearing is granted, the hearing shall be held at a special meeting of the Tribal Council, for which at least two (2) weeks public notice is given. At the hearing, the excluded citizen may present any evidence or testimony in support of the request for relief. Any other person may present testimony or evidence in support of or opposing the request for relief. The tribal Council may vote to hear medical, psychological or sensitive testimony in executive session, during which the member seeking relief shall be present, and other persons, as determined by the Tribal Council, may be present. After the hearing, the Tribal Council may by majority vote grant a citizen relief from an Exclusion Order, subject to whatever conditions it determines are appropriate. The decision of the Tribal Council is final and is not subject to review.

CHAPTER 6: AVAILABILITY OF DISPUTE RESOLUTION OFFICE

7-60-010 Availability of Dispute Resolution Office

Notwithstanding any enactment of the General Council or the Tribal Council, any other Tribal Resolution, or any provision of Tribal law, the Arbitration Council operated by the Tribal Dispute Resolution Office shall hear and decide questions brought before it as specified in this Exclusion Ordinance.

CHAPTER 7: EXCLUSION BY THE GENERAL COUNCIL

7-70-010 Inherent Power of Exclusion not Impaired

Nothing in this Exclusion Ordinance limits or impairs the inherent power of the U-tu Utu Gwaitu Paiute Tribe to exclude any person from the Benton Paiute Reservation, as defined in Section 7-10-010, by an appropriate action or enactment of the General Council.

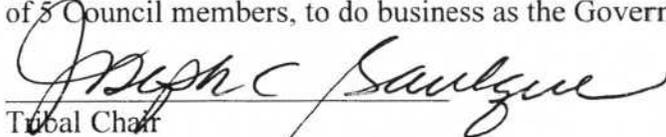
7-70-020 Exclusion by the General Council

Notwithstanding any other provisions of this Exclusion Ordinance, the General Council may exercise the inherent sovereignty of the Tribe to exclude any person from the Benton Paiute Reservation. The procedure in this Section 7-70-020 shall be followed:

- a) If a petition signed by two-thirds (2/3) of the persons who voted in the preceding Tribal election, requesting that a particular person named in the petition be excluded from the Benton Paiute Reservation, is presented to the Tribal Council at a regular meeting, the Tribal Council immediately shall verify the validity and number of signatures.
- b) If the petition contains the required number of valid signatures, the Tribal Council shall schedule a special election at which the question of the exclusion of the person named in the petition shall be presented to the General Council for a vote by secret ballot. The special election shall be held within forty-five (45) days of the presentation of the petition.
- c) If three quarters (3/4) of the eligible voters of the Tribe vote in favor of exclusion of the person named in the petition, the Tribal Council shall enter an Exclusion Order, excluding the named person from the Benton Paiute Reservation. The Exclusion Order shall be enforced in the same manner as all other exclusion orders entered by the Tribal Council.
- d) The Tribal Council shall not grant relief from an Exclusion Order entered upon the basis of an affirmative vote by the General Council in a special election.

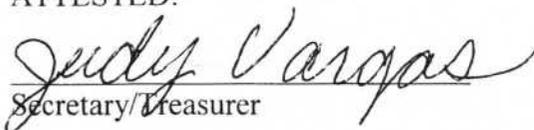
CERTIFICATION

We, the undersigned Tribal Council officials of the U-tu Utu Gwaitu Paiute Tribal Council, the Governing Body of the Benton Paiute Reservation, at a special called meeting, held 12, June, 2007, in which a quorum was present, enacted this Resolution by a vote of 4 FOR 0 AGAINST, and 0 ABSTAINING, and this Resolution has not been rescinded or amended in any manner. The Tribal Chairperson, pursuant to the Tribal Constitution votes in case of a tie. However, the Tribal Chairperson counts as a member of the Tribal Council in establishing a quorum, which 3 of 5 Council members, to do business as the Governing Body of the Tribe.


Tribal Chair

JUL 11 2007

ATTESTED:


Secretary/Treasurer