

**KASHIA BAND OF POMO INDIANS
OF THE STEWARTS POINT RANCHERIA**

AMENDED AND RESTATED SOLID WASTE ORDINANCE #6

(For Presentation to General Council at 11-9-19 Meeting)

I. GENERAL PROVISIONS

A. Purpose

The purpose of this Ordinance is to preserve and secure the health, comfort, cultural integrity, welfare and safety of the Tribal community and protect the environment within all Tribal Lands by regulating solid waste disposal practices.

B. Authority

This Ordinance is enacted under the inherent sovereign authority of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria and in accordance with Article 5, Section 1 (f), (j) and (k) and Article 6, Section 1 of the Tribe's Constitution.

C. Applicability:

This Ordinance is intended to protect the human health and the environment within all Tribal Lands to the fullest extent allowed by law. The provisions of this Ordinance are intended to and shall apply to all persons that enter or remain on Tribal Lands, all activities taking place on Tribal Lands, and all solid waste disposal activities that otherwise adversely impact the Tribal environment.

D. Effect

This Ordinance is intended to supercede and replace Ordinance No. 6, An Ordinance Relating to Solid Waste, approved April 9, 2000.

E. Definitions

- (1) "Approved Site" means a site designated and approved by the Tribal Department of Environmental Planning as a site for collection and/or disposal of solid waste.
- (2) "Burn Permit" means formal authorization from, or approval by, the Tribal Department of Environmental Planning or its designee to burn approved waste materials.
- (3) "Tribal Council" means the elected officials of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria.

- (4) "General Council" means the primary governing body of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, composed of all voting members of the Tribe.
- (5) "Department" means the Tribal Department of Environmental Planning, a government agency of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria.
- (6) "Disposal" means the placing, discharge, deposit, injection, dumping, spilling, leaking or burning of any solid waste into or on any land or water so that solid waste or any part of it may enter the environment or be emitted into the air or discharged into Tribal waters (including waterway beds) as defined in the Water Resources Ordinance.
- (7) "Hazardous Waste" means any waste generated from normal activities or otherwise that is harmful to human health, living organisms, or the environment, and includes paint, paint thinners, turpentine, stains, solvents, aerosol cans, plastics, cleaning products, pesticides, insecticides, fungicides, herbicides, adhesives, glues, flammable products and batteries.
- (8) "Household Waste" means any refuse generated by households, made up of such things as food scraps, newspapers, mail, scrap paper, bottles, cans, packaging and other discarded domestic items, not including wastes otherwise described in Section IV.E below.
- (9) "Open Burning" means the burning of solid waste outdoors.
- (10) "Open Dump" means any facility or site where solid waste is disposed that is not a Tribally-approved site and that does not meet the requirements of federal law.
- (11) "Permitted Contractor" is a Person who has a valid contract with the Tribe, or with a resident and approved by the Tribe, to recover, collect and transport solid waste from Tribal Lands to a lawful waste disposal facility.
- (12) "Person" means an individual, corporation, partnership, association, joint venture, trust, firm, joint stock company, federal, state, local or tribal governmental agency, or interstate body.
- (13) "Recycling" means the process of sorting, cleansing, treating and reusing solid waste or other discarded materials in order to prepare the altered form for use.
- (14) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.
- (15) "Solid Waste" means any solid or semi-solid wastes including
 - a. garbage, trash, rubbish or refuse;
 - b. yard waste;
 - c. sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility,

- d. other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from household, industrial, commercial, mining, or agricultural operations, or from community activities, such as
 - i. ashes,
 - ii. dead animals,
 - iii. abandoned vehicles,
 - iv. infectious wastes,
 - v. hazardous wastes, or
 - vi. street or parking lot cleanings.

(16) "Tribal Lands" means the Stewarts Point Rancheria as it now exists or may be supplemented in the future, along with all other lands owned by the Tribe in fee and/or held in trust by the United States for the benefit of the Tribe.

II. RECYCLING AND REUSE

- A. It is the policy of the Tribe that solid wastes that are reusable should be reused and that recyclable wastes should be recycled whenever reasonably possible.
- B. Recyclable materials shall be separated from other waste materials by any of the following means:
 - a. Personal Recycle Bins
 - b. Tribal Recycle Bins
 - c. Recycle Bins provided by a Permitted Contractor.

III. RESPONSIBILITY FOR STORAGE, TRANSPORTATION AND DISPOSAL OF SOLID WASTE

- A. Any Person generating solid waste is responsible for lawfully storing the waste and for disposing of it in an Approved Site or arranging for its collection by a Permitted Contractor.
- B. Any Person storing solid waste generated by that Person, or generated by another Person and received for storage, shall be responsible for its proper storage and disposal.
- C. Any Person transporting solid waste in a vehicle through or across Tribal Lands is responsible for ensuring the transported waste is covered, tied or otherwise secured so that such waste will not be blown, dropped or leak from the transport vehicle.
- D. When solid waste is dumped or deposited in violation of this Ordinance and two or more items in the solid waste identify the same Person as the owner or recipient of that waste, that Person shall be presumed responsible for the unlawful dumping.
- E. Any Person who by contract, agreement or otherwise arranges for the recovery, collection, transport, disposal or dumping of solid waste is responsible for complying with all provisions

of this Ordinance and all other applicable law.

IV. PROHIBITED ACTS: UNLAWFUL STORAGE AND DISPOSAL OF SOLID WASTE

- A. No Person shall store or accumulate solid waste in a manner that is a hazard to the public health and safety or the environment, as determined by the Tribal Department of Environmental Planning; nor shall any Person continue to store or accumulate solid waste in such a manner for more than fifteen (15) days after receipt of written notice of the hazardous condition from the Department.
- B. No Person shall collect or transport solid waste within Tribal Lands for profit or under contract unless the Person is a Permitted Contractor.
- C. No Person shall dump, deposit or dispose of solid waste at any location within Tribal Lands other than at an Approved Site.
- D. No Person shall conduct open burning of green waste without first obtaining a permit from the Tribal Department of Environmental Planning or its designee and paying any required permit fee. No Person shall conduct burning of any other waste material, either indoors or outside, under any circumstance.
- E. Except as provided in section F below, the following items may not be dumped, deposited, or disposed of at any Tribal waste collection site, but must instead be delivered to a certified landfill or removed by a Permitted Contractor:
 - (1) Medical waste;
 - (2) Household Waste (as defined in section I.E(8));
 - (3) Hazardous Waste (as defined in section I.E.(7));
 - (4) Flammable products (including propane tanks, kerosene, home heating oil, diesel fuel, gas, oil, lighter fluid, lighters);
 - (5) Discarded vehicles, automotive parts and products (including motor oil, fuel additives, carburetor and fuel injection cleaners, air conditioning refrigerants, starter fluids, automotive batteries, transmission and brake fluid, antifreeze, and tires);
 - (6) Cleaning products (including oven cleaners, drain cleaners, wood and metal cleaners and polishes, toilet cleaners, tub, tile, and shower cleaners, bleach, pool chemicals, and associated cleaning items);
 - (7) Indoor pesticides (including ant sprays and baits, cockroach sprays and baits, flea repellants and shampoos, bug sprays, houseplant insecticides, moth repellents, mouse and rat poison and baits);
 - (8) Workshop/painting supplies (including adhesives and glues, furniture strippers, oil or enamel based paint, stains and finishes, paint thinners and turpentine, paint strippers and removers, photographic chemicals, fixatives and other solvents);
 - (9) Lawn and garden products (including herbicides, insecticides, fungicides, wood preservatives);
 - (10) Infectious waste (such as sharp waste, including lancets, hypodermic needles, syringes, scalpel blades, and non household glass articles that have been broken), infectious biomedical waste (including human tissue and human

- anatomical remains), and bulk quantities of infectious-type waste (blood, blood products and body fluids);
- (11) Furniture (including mattresses) and appliances (refrigerators, stoves, washers, dryers);
- (12) Printer ink toner and cartridges;
- (13) Radioactive wastes;
- (14) Animals or bedding exposed to infective agents;
- (15) Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under severe compact conditions;
- (16) Any materials from building demolition or cleaning containing asbestos waste that reduces to powder or crumbles easily;
- (17) Sewage or sewage sludge wastes;
- (18) Bulk liquids of any kind;
- (19) Polychlorinated biphenyls (PCBs);
- (20) 55 gallon drums;
- (21) Explosives, including bullets;
- (22) Waste from oil or gas exploration; and
- (23) Electronic Waste (such as electrical and electronic devices, computers, entertainment device electronics, mobile phones, television sets, refrigerators, DVD/VCR players, stereo equipment, handheld devices and computer components.

F. The following items may be disposed at special collection events:

- (1) Printer ink toner and cartridges;
- (2) Radioactive wastes;
- (3) Infectious biomedical wastes, including human tissue or anatomical remains;
- (4) Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as cartons or metal cans taped closed or tightly lidded to prevent loss of contents under severe compact conditions;
- (5) Unwanted vehicles, motor parts and household appliances.

V. COMPLIANCE AND ENFORCEMENT

A. Compliance Assistance and Civil Penalties

- (1) If a Person is found to have committed any act or omission in violation of this Ordinance, the Person may be subject to one or more of the following civil penalties:
 - (a) Civil fine of up to \$5,000 per violation;
 - (b) Cease and desist order, which may include temporary exclusion from the Rancheria or other Tribal Lands;
 - (c) Community service;
 - (d) Forfeiture of personal property;
 - (e) Clean-up order and/or reimbursement for Tribal clean-up and related costs;

- (f) Civil suit in any court with jurisdiction over the matter to pursue any remedy authorized by law to recover damages suffered and/or prevent further harm resulting from the violation(s);
- (g) Withholding from, or suspension of, revenue sharing distributions;
- (h) Suspension or loss of other Tribal benefits/services;
- (i) Cancellation of contract or lease;
- (j) Cancellation of land assignment;
- (k) Permanent removal / exclusion from the Rancheria and/or other Tribal Lands.

(2) Penalties for violation of this Ordinance shall be reasonable given the nature and extent of the violation and should increase with the severity and/or number of violations committed.

(4) Compliance assistance may take the form of education, training, grant funding or other assistance that aids a Person to achieve and maintain compliance with Tribal law, and may be an appropriate alternative to civil penalties in the case of a Person that desires to comply but is not reasonably able to do so without such assistance.

(3) If a Person is found to be a minor, penalties may be charged against the parent or legal guardian of the minor.

(4) The Tribal Council and/or General Council shall invite and consider input from the Tribal community to assist in determining what penalties to impose with respect to any violations of this Ordinance.

(5) The Tribal Council is hereby granted the authority to determine whether any Person has violated this Ordinance and, if so, to assess any of the penalties listed in sections V.A(1)(a) – (e). A person against whom such determination has been made or such penalties have been charged by the Tribal Council may appeal the finding of a violation and/or the penalties to the General Council as provided in Sections V.B(3) and (4) below.

(6) The penalties identified in sections V.A(1)(f) – (k) must be approved by the General Council upon recommendation of the Tribal Council to be effective.

B. Civil Enforcement Procedures

(1) *Investigations*

(a) Upon receipt of a report of violation(s) of this Ordinance, or if the Tribal Department of Environmental Planning independently learns of a potential violation, the Department shall immediately undertake an investigation of the matter.

(b) The investigation may include the examination of relevant documents, if any; the interview of witnesses and other persons possessing information relevant to the alleged

violation(s); and inspection of any potentially affected lands and natural resources within Tribal Lands.

(c) The Department shall make its best effort to conclude the investigation within fourteen (14) days, or as soon thereafter as possible.

(2) *Reports, Notices and Interim Orders*

(a) Once the investigation has been completed, the Tribal Department of Environmental Planning shall prepare a report that includes a preliminary determination and recommendations regarding whether a violation has occurred and what penalties should be charged.

(b) The Department shall then provide written notice to the Tribal Council and to the Person(s) believed to have violated this Ordinance, summarizing the Department's determinations and recommendations. If the Department believes a violation has occurred and penalties should be charged, the notice shall inform the Person(s) of the right to request a hearing before the Tribal Council. The hearing request must be made in writing to the Tribal Department of Environmental Planning and must be received by the Department within ten (10) days of the date the violation notice is sent.

(c) Pending the outcome of any investigation and hearing(s), for purposes of minimizing potential environmental damage or threats to human health, the Tribal Department of Environmental Planning may issue a Clean-up Order and/or Cease and Desist Order, which may include temporary exclusion from Tribal Lands if deemed necessary to prevent further harm, to any Person the Department believes is committing one or more ongoing violation(s). The Clean-up Order or Cease and Desist Order shall include a notice of the Person's right to appeal any exclusion provisions to the Tribal Council following the procedures described below

(3) *Hearings*

(a) The Tribal Council shall conduct a hearing if the Tribal Department of Environmental Planning receives a hearing request from a Person alleged to have violated this Ordinance, or if the Tribal Council independently determines a hearing would be appropriate.

(b) The following procedures shall apply to hearings conducted by the Tribal Council, as well as to recommendations and appeals to be heard by the General Council:

(1) Written notice of the Tribal Council hearing date, time and location shall be provided to the Tribal Department of Environmental Planning, the Person(s) alleged to have violated this Ordinance, and any witnesses, at least fourteen (14) days in advance of the hearing.

- (2) Written notice of any General Council hearing date, time and location shall be provided in accordance with provisions of the Tribe's Constitution and other Tribal law governing notification regarding General Council meetings.
- (3) At the hearing, the Tribal Department of Environmental Planning, or its designee, shall first present its report of the matter, including its determinations and recommendations regarding the nature of the alleged violation(s) and appropriate penalties. In the case of an appeal to the General Council, the Tribal Council shall also present the reasons for its decision.
- (4) The Person(s) alleged to have violated this Ordinance shall then have an opportunity to respond to the Department's report and, if applicable, the Tribal Council's decision.
- (5) Any witnesses with relevant knowledge or information of the matter may be called to give testimony. To this end, the Tribal Council and the General Council shall have the power to issue Orders to Appear, which shall constitute lawful orders of the Tribal Government.

(4) *Decisions and Appeals*

- (a) The Tribal Council shall issue a decision in writing, explaining the reasons for the decision and describing the penalties charged, within fourteen (14) days after hearing the matter. The written decision shall be sent to the Person(s) alleged to have violated this Ordinance, and to the Tribal Department of Environmental Planning.
- (b) If the Tribal Council believes that imposing any of the penalties listed in section V.A(1)(f) - (k) above would be appropriate, the decision shall be in the nature of a recommendation subject to further consideration and approval by the General Council.
- (c) Any Person the Tribal Council has found to have violated this Ordinance may appeal the decision to the General Council.
- (d) To appeal the decision to the General Council, the Person must submit to the Tribal Chairperson, within fourteen (14) days of receipt of the Tribal Council's decision, a written request for appeal that explains the reasons for the appeal.
- (e) Any timely requested appeal, or a Tribal Council recommendation described in section V.C.(4)(b) above, shall be heard and decided at the next scheduled General Council meeting at which there is a quorum, following the procedures described in section V.C(3)(b) above. The General Council's decision shall be made by secret written ballot and announced at the meeting.
- (f) Every decision of the General Council shall be final and not subject to further appeal.

D. Environmental Protection Fund

(1) All monetary civil penalties collected pursuant to this Ordinance shall be deposited into the Tribal Environmental Protection Fund.

(2) The Fund shall be used to cover expenses related to protecting human health and the environment within Tribal Lands (including reimbursing any other Tribal account initially used to pay for clean-up or other appropriate expenses), enforcing the provisions of the various environmental protection ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for Tribal Members and residents.

VI. SOVEREIGN IMMUNITY

Nothing in this Ordinance is intended to, nor shall it be deemed to, waive or limit the sovereign immunity of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria.

VII. EFFECTIVE DATE

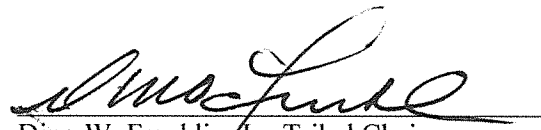
This Ordinance will take effect upon its approval by the General Council. No provision of this Ordinance shall be construed to be retroactive.

VIII. AMENDMENT

This Ordinance may be amended by the General Council as provided in the Constitution and any procedures approved by the General Council.

CERTIFICATION

We, the undersigned members of the Tribal Council of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, hereby certify that the foregoing AMENDED AND RESTATED SOLID WASTE ORDINANCE was approved by the General Council at a duly called regular meeting at which a quorum was present on November 9, 2019 by a vote of 40 for, 0 against, and 1 abstaining.


Dino W. Franklin, Jr., Tribal Chairman

ATTEST:


Tara Antone, Tribal Secretary