Yurok Tribal Code, Public Health and Safety

YUROK TRIBE TOBACCO RESPONSIBILITY ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance regulating the harmful use of commercial tobacco within the Yurok Tribe’s jurisdiction.

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GENERAL PROVISIONS

SECTION 4001. Short Title
This ordinance shall be referred to as the “Yurok Tobacco Responsibility Ordinance.”

SECTION 4002. Findings
The Yurok Tribal Council hereby finds and declares that commercial tobacco causes death and disease and continues to be an urgent public health threat, as evidenced by the following:
(a) The Health Consequences of Smoking — 50 Years of Progress: A Report of the Surgeon General (2014) found commercial tobacco use causes disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 32 percent of coronary heart disease deaths, and 79 percent of all chronic obstructive pulmonary disease cases in the United States;

(b) The Centers for Disease Control and Prevention’s report on Tobacco Use—California (2015) revealed commercial tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the fact that significant disparities in commercial tobacco use exist in California, which create barriers to health equity (National Cancer Institute Tobacco Control Monograph 2017), as evidenced by the following:

(1) The California Tobacco Control Program’s California Tobacco Facts and Figures Report (2016) showed that American Indian/Alaska Native (36.2 percent), African American (20 percent), Asian (15.6 percent), and Hispanic (15 percent), males all report a higher smoking prevalence than white, non-Hispanic males (14.8 percent); and

(2) More than half of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations (California Tobacco Control Programs 2016). In northern California, American Indian/Alaska Native youth commercial tobacco use rate is 24.2% compared to 13.6% of youth statewide.

(c) There are no safe levels of exposure to secondhand smoke, and there is no available adequate ventilation technology based upon scientific studies that can ensure the protection and prevention of secondhand commercial tobacco smoke health-related illnesses; and

(d) Exposure to secondhand smoke places non-smoking adults at significantly increased risk for heart disease, hypertension, stroke, and respiratory diseases, all of which lead to disproportionately higher death rates among American Indians as compared to the general population; and children who breathe secondhand smoke are more likely to suffer from ear infections, decreased lung function, decreased cognitive function, experience more frequent trips to the hospital, and are at a significantly increased risk for sudden infant death syndrome (SIDS).

SECTION 4003. Purpose

The purpose of this ordinance is to safeguard and provide for the health, safety, and welfare of the members of the Yurok Tribe and to reduce the inappropriate and harmful use of commercial tobacco products within the Tribe’s jurisdiction. This ordinance does not prohibit an individual from offering a prayer at any time of need in any place. Smoke from many plant sources is believed to carry power, and tobacco is one of them. This ordinance is not intended to infringe on the use of traditional tobacco in any way.

SECTION 4004. Scope

This ordinance shall apply to individuals and to the personal use of commercial tobacco products in public. This ordinance does not overlap with, or replace, the Yurok Tribe Tobacco Control Ordinance. This ordinance does not apply to the private use of commercial tobacco products, such as within one’s home.
SECTION 4005. Sovereign Immunity
Except as judicial review is authorized in this ordinance, and in accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 4006. 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 shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 4007. Jurisdiction
The Tribal Court is the court of primary jurisdiction for violations occurring under this ordinance.

SECTION 4008. Effective Date
This ordinance shall take effect immediately after its adoption by the Yurok Tribal Council.

SECTION 4009. Definitions
This ordinance will be governed by the following definitions, and all other terms shall be taken at their plain meaning:

(a) “Commercial tobacco” means:
   (1) any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether inhaled, smoked, heated, chewed, absorbed, dissolved, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus; and
   (2) any electronic smoking device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah; and
   (3) any component, part, or accessory of (1) or (2), whether any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes intended or reasonably expected to be used with a Commercial tobacco product, whether or not sold separately. “Commercial tobacco” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(b) “Commercial tobacco product waste” means any component, part, or remnant of any commercial tobacco product. Commercial tobacco product waste includes any waste that is produced from the use of a commercial tobacco product, including all product packaging and incidental waste, such as lighters or matches, whether or not
it contains tobacco or nicotine.

(c) “Commercial tobacco use” means the act of smoking or the consumption of any other tobacco product in any form, including, but not limited to, tobacco chew products. This does not include traditional tobacco use.

(d) “Council” means the Yurok Tribal Council.

(e) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. This includes devices that may be developed after the date of enactment of this ordinance.

(f) “Indoor area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

(g) “Place of employment” means an indoor area under the control of a public or private employer including, but not limited to auditoriums, cafeterias, classrooms, conference and meeting rooms, elevators, employee lounges, hallways, medical facilities, private offices, restrooms, stairways, and work areas. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A private residence is not a “place of employment” unless it is used as a childcare, adult day care, or health care facility. Yurok Tribe owned vehicles are places of employment, and personal vehicles are also places of employment while those vehicles are being used for work purposes.

(h) “Public place” means an indoor area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, hotels and motels, laundromats, parking structures, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, tribal casinos, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

(i) “Person” means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(j) “Reasonable distance” means a distance of thirty (30) feet in any direction from an area in which smoking is prohibited.

(k) “Reservation” or “Yurok Reservation” means all lands within the exterior boundaries of the Yurok Tribe Indian Reservation.

(l) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation, whether the item is natural or synthetic and whether it contains nicotine or not.

(m) “Traditional tobacco” or “Ho-kuem” or “Nicotiana bigelovii” or “Indian tobacco” means any product made or derived from the tobacco plant that has been cultivated
for at least three (3) seasons.

(n) “Traditional tobacco use” means:

(1) Using traditional tobacco as defined above;

(2) Using any tobacco plant with genuine intentions for purposes such as prayer, meditation, blessing, offering, or ceremony, including tobacco use at cultural sites; and

(3) Using any plant mix of tobacco and other traditional medicinal plants for healing the mind, body, and spirit. Smoke from many plant sources are believed to carry prayer. Tobacco is one of them.

(o) “Tribal Casino” means a place where class III gaming is conducted pursuant to a Tribal-state compact between the state of California and the Tribe. A “related facility” is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(p) “Tribe” means the Yurok Tribe.

CHAPTER 1. COMMERCIAL TOBACCO PRODUCT AND USE

SECTION 4101. Commercial Tobacco Use in Specified Indoor Area

Smoking and commercial tobacco product use is prohibited in the indoor areas of the following places within the Yurok Reservation:

(a) Yurok Tribe government buildings;

(b) Hotels;

(c) Tribal casino;

(d) Bars;

(e) Stores; and

(f) Other indoor public places.

This section does not apply to traditional tobacco use.

SECTION 4102. Commercial Tobacco Use in Specified Outdoor Areas

Smoking and commercial tobacco product use is prohibited in the outdoor areas of the following places within the Yurok Reservation:

(a) Outdoor Dining/Bar Areas;

(b) Outdoor Amphitheater;

(c) Outdoor Tribal Worksites;

(d) Outdoor Tribal Events;

(e) Parks and Playgrounds;
(f) Stick Game Fields and Other Athletic Fields; and

(g) Outdoor beaches, rivers, and campsites, unless the person using the commercial tobacco product(s) is thirty (30) feet away (the reasonable distance) from others not in their party.

This section does not apply to traditional tobacco use.

SECTION 4103. Commercial Tobacco Use—Reasonable Distance Required

Smoking or using commercial tobacco in all outdoor areas is prohibited within thirty (30) feet from any doorway, window, opening, crack, or vent into an indoor area in which smoking is prohibited. Further, smoking or using commercial tobacco in all outdoor areas is prohibited within fifty (50) feet from any school site, education site, and any doorway, window, opening, crack, or vent into an indoor school or education site building. This section does not apply to traditional tobacco use.

SECTION 4104. Other Requirements and Prohibitions

(a) No person, employer, or entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as ashtrays or ash cans, within an area under the legal or de facto control of that person, employer, or entity and in which smoking is prohibited, including, without limitation, within a thirty (30) feet reasonable distance from any area in which smoking is prohibited. The presence of ash receptacles in violation of this subsection shall not be a defense to a citation for smoking in violation of any provision of this ordinance.

(b) No person, employer, or entity shall knowingly permit smoking in an area which is under the legal or de facto control of that person, employer, or entity and in which smoking and commercial tobacco use is prohibited by law.

(c) No person shall dispose of used smoking or commercial tobacco product waste within the boundaries of an area in which smoking is prohibited, including within the thirty (30) feet reasonable distance required by this ordinance.

(d) A person, employer, or entity that has legal or de facto control of an area in which smoking is prohibited shall post a clear, conspicuous, and unambiguous “No Smoking” or “Smoke-free” or “Commercial Tobacco-free” sign in English and in Yurok language at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall include the international “No Smoking and No Vaping” symbol (consisting of a pictorial representation of a burning cigarette and electronic smoking device enclosed in a red circle with a red bar across it.) Signs posted on the exterior of buildings to comply with this section shall include a description of the thirty (30) feet reasonable distance requirement.

(e) No person, employer, or entity shall intimidate, threaten any reprisal, or effect any reprisal, in retaliation against another person who seeks to attain compliance with this ordinance.
SECTION 4201.  Violations and Reasonable Efforts

(a) Each instance of commercial tobacco use in violation of this Ordinance shall constitute a separate violation. For violations other than the use of commercial tobacco, each day of a continuing violation shall constitute a separate violation.

(b) The proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place or place of employment shall make reasonable efforts to prevent smoking in the public place, public transportation, place of employment, public meeting, and any other location where commercial tobacco use is prohibited by this Ordinance.

SECTION 4202.  Penalties and Enforcement

(a) Each incident of smoking or commercial tobacco use in violation of this Chapter is a civil penalty and subject to a fifty dollar ($50) fine for the first violation, one hundred dollar ($100) fine for the second violation, and a two-hundred dollar ($200) fine for the third violation. Enforcement of this Ordinance shall be the responsibility of the Yurok Tribal Police and any other department or individual that the Yurok Tribal Council designates. In addition, any peace officer or code enforcement official may enforce this Ordinance.

(b) Any violation of this Ordinance may be considered a nuisance and a civil offense under the Yurok Tribal Code of Civil Offenses.
C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE ______ ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON ________________, 2023, AT WHICH QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF ___ FOR, ___ OPPOSED AND ___ ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS ___ DAY OF _______________ 2023

_____________________________________
Joseph L. James, Chairperson
Yurok Tribal Council

ATTEST:

_____________________________________
Sherri K. Provolt, Secretary
Yurok Tribal Council