

VIEJAS BAND OF KUMEYAAY INDIANS
TRIBAL CODE

TITLE 5
CHAPTER 7

DOG CONTROL ORDINANCE

Amended 10-31-11

I. General Provisions

1. This Ordinance is intended to promote the safety, health, and welfare of the Viejas Band of Kumeyaay Indians and Viejas tribal lands by prohibiting the ownership or possession of dangerous dogs, and by requiring proper control of dogs by anyone residing on or visiting tribal lands.
2. This civil ordinance shall apply to any person residing on or visiting Viejas Tribal Lands.

II. Definitions

A. *Dangerous Dog or Dog* means any dog:

1. Which, unprovoked, bites a human or a domestic animal;
2. Which, unprovoked, chases or approaches a person or domestic animal on the street, sidewalks, or any area of the reservation in a menacing fashion, with an apparent attitude of attack, or in any other matter that causes a person to be fearful of the dog;
3. Has a propensity, tendency or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of humans or domestic animals;
4. About whom the Owner or Tribal Council has received prior complaints.

B. *General Council* means the general membership of the Viejas Band of Kumeyaay Indians.

C. *Injured Party* means the Tribe or any person who who is the owner of damaged property, property that is removed, or livestock injured or killed, or who is personally injured or otherwise harmed by a violation of this Ordinance. .

D. *Nonmember* means an individual who is not eligible to enroll in the Viejas Band.

E. The words "own" and "possess" for the purposes of this Ordinance means any of the following: having legal title to a dog, permanent or temporary possession and control of a dog, being responsible for the daily care and welfare of the dog.

F. *Owner* means any person Visiting or Residing on Tribal Lands who keeps, owns, or possesses a dog or a Dangerous Dog.

G. *Reside* means to habitually live or locate one's home.

H. *Residence* means one or more addresses at which a person regularly lives, regardless of the number of days or nights spent there such as a shelter or structure that can be located by a street address, including but not limited to a house, whether permanent or mobile, and recreational or other vehicles.

I. *Tribal Council* means the governing body duly elected by the Viejas Band of Kumeyaay Indians General Council.

J. *Tribal Lands* means any and all land within the exterior boundaries of the Viejas Indian Reservation and any land owned by the Viejas Band of Kumeyaay Indians, in whole or in part, whether or not currently held in trust status.

K. *Tribal Member* means any individual who has been determined by the Viejas Enrollment Committee to be eligible for enrollment in the Viejas Band, or is enrolled in the Viejas Band, or any minor child who is eligible to become an enrolled member.

L. *Tribe or Band* means the Viejas Band of Kumeyaay Indians.

M. *Visiting* means accessing Tribal Lands for any purpose on a temporary basis.

III. Policy

A. All dogs must be secured by its Owner either by tethering the dog in its yard or by keeping the dog in a fenced yard.

1. If tethered, the dog must be secured by a chain or tether of sufficient strength that the dog cannot chew or pull away or otherwise become free. Tethered dogs must be provided access to adequate shelter in hot or cold weather, and must have access to fresh food and water.

2. If a dog is secured in a fenced yard, the fence must be of sufficient height as to prevent the dog from escaping over the fence. Appropriate measures must be taken to ensure that the dog cannot escape from underneath the fence, nor through any unlocked gates or holes in the fence. Fenced dogs must be provided access to adequate shelter in hot or cold weather, and must have access to fresh food and water.

B. No person Visiting or Residing on Tribal Lands shall own or possess any Dangerous Dog.

C. Tribal Council and/or its authorized designee may impound any dog that is reasonably believed to be a Dangerous Dog. The impounded Dog shall be released at the direction of the Tribal Council based upon its determination that the dog is not a Dangerous Dog.

D. Tribal Council and/or its authorized designee may impound any dog, Dangerous or otherwise, that is reasonably believed to have bitten any person or any other animal. The dog may be impounded for a period of time determined by the Tribal Council and released based upon its determination, the recommendation of an animal control agency or veterinarian that has custody of the dog, or by order of a court of competent jurisdiction that determines no danger to persons or property will result from the return of the dog to the Owner.

E. The Tribal Council, or its authorized designee, may order the immediate extermination of the dog based upon the determination or recommendation from any public health officer, physician, or veterinarian who reasonably believes that a dog, Dangerous or otherwise, has rabies or some other disease that may threaten the health of humans or other animals,. Any extermination ordered under this provision shall be carried out immediately in a humane manner by an animal control officer or some other designated person.

F. The Tribal Council and/or its designee shall have the authority to immediately order the extermination of any dog, Dangerous or otherwise, that poses an immediate threat of injuring or harassing livestock or other domestic or game animals, or that poses an immediate threat of harm to any person on Tribal Lands.

G. If any injury has been caused by two or more dogs (Dangerous or otherwise) acting together, and the dogs have different Owners, all Owners of the dogs acting together shall be jointly and severally responsible for the resulting damages and injuries.

H. Tribal Members shall be responsible for any liabilities and/or penalties that are not paid by their guests or tenants who are determined to be Owners in violation of this Ordinance.

IV. Enforcement

A. This Ordinance shall be enforced by the Tribal Council through the following procedure:

1. Upon receipt of information that a a violation of Section 3(A) or Section 3(B) has occurred, the Tribal Council shall conduct or cause to be conducted an investigation to determine whether Sections 3(A) or 3(B) have been violated. The Tribal Council shall notify in writing within ten (10) business days of the beginning of an investigation, all parties who may be the subject of an investigation that: 1) they are the subject of an investigation and 2) they have the right to appear before Tribal Council during the course of the investigation. Tribal Council shall notify any person who brought an alleged violation to their attention of the status of the investigation within ten (10) business days of the Tribal Council being notified, and must complete their investigation within thirty (30) business days of the beginning of the investigation.

2. Following the investigation, the Tribal Council shall consider the findings and determine if a violation of Section 3(A) or 3(B) has occurred. Tribal Council shall document in writing the basis of their findings of the investigation. If the Tribal Council determines by a preponderance of the evidence that a violation has occurred, Tribal Council shall issue a Notice of Violation to the Owner.

3. The Notice of Violation shall be personally delivered to the Owner, and to the last known residence, place of employment, and/or school. The Notice of Violation shall state the following:

a. The Tribal Member or Nonmember has been determined to be in violation of this Ordinance;

b. Statement of intent to remove the Dog, if applicable, or a statement that the Dog has been removed and/or destroyed and the circumstances that required immediate removal, if applicable;

c. A sanction has been imposed on the Owner and what the sanction is;

d. The Owner's right to appeal the finding of violation, the sanction, and the procedure for appeal, including the contact information for the Tribal Court.

B. If injury or death to a person or other animals, and/or property damage are believed to be caused by a Dangerous Dog, this Ordinance shall be enforced by the Tribal Council through the following procedure:

1. Upon receipt of information that a person or animal was injured or killed by a Dangerous Dog, or property damage occurred as a result of a Dangerous Dog, the Tribal Council shall conduct or cause to be conducted an investigation to determine whether the injury, death, or property damage was caused by a Dangerous Dog. The Tribal Council shall notify in writing within ten (10) business days of the beginning of an investigation, all parties who may be the subject of an investigation that: 1) they are the subject of an investigation and 2) they have the right to appear before Tribal Council during the course of the investigation. Tribal Council shall notify any person who brought an alleged violation to their attention of the status of the investigation within ten (10) business days of the Tribal Council being notified, and must complete their investigation within thirty (30) business days of the beginning of the investigation.

2. Following the investigation, the Tribal Council shall consider the findings and determine if the injury, death, or property damage was caused by a Dangerous Dog. Tribal Council shall document in writing the basis of their findings of the investigation. If the Tribal Council determines by a preponderance of the evidence that the injury, death, or property damage was caused by a Dangerous Dog, Tribal Council shall issue a Notice of Violation to the Owner.

3. In accordance with Section IV(A), above, the Tribal Council shall determine whether a Tribal Member or Nonmember is the Owner of the Dangerous Dog that caused the injury, death, or property damage. If the Tribal Council determines by a preponderance of the evidence that a Tribal Member or Nonmember owns or possesses a Dangerous Dog that causes personal injury, death, or property damage, Tribal Council shall issue a Notice of Violation to the Owner.

4. The Notice of Violation shall be personally delivered to the Owner, and to the last known residence, place of employment, and/or school. The Notice of Violation shall state the following:

- a. The Tribal Member or Nonmember has been determined to be the Owner of a Dangerous Dog;
- b. The Dangerous Dog caused personal injury or death to a person or other animal, or caused property damage;
- c. Statement of intent to remove the Dog, if applicable, or a statement that the Dog has been removed and/or destroyed and the circumstances that required immediate removal, if applicable;
- d. A sanction has been imposed on the Owner and what the sanction is;
- e. The Owner's right to appeal the finding of violation, the sanction, and the procedure for appeal, including the contact information for the Tribal Court.

V. Sanctions

A. The following civil sanctions shall be imposed on any person determined to be in violation of this Ordinance in accordance with the following:

First Violation	\$ 1000 sanction
Second Violation	\$ 2500 sanction
Third and each violation thereafter	\$ 5000 sanction
Any Violation	Permanent removal of the Dog; Costs and fees relating to the impound, removal and/or destruction of the Dog; costs and fees related to personal injury, death, or property damage caused by the Dog.

B. Any person determined to be in violation of this Ordinance may be subject to temporary or permanent exclusion from Tribal Lands. Such exclusion may be in addition to any other penalty resulting from a violation of this Ordinance, and any civil or criminal penalties that may lawfully be imposed by another jurisdiction. Only the General Council may exclude a Tribal Member from Tribal Lands.

C. Any person who has been sanctioned pursuant to this Ordinance may 1) pay the monetary sanction and comply with any other decision or order, if any; or 2) may appeal

the sanction or decision as set forth in this Ordinance. If an appeal has been requested in accordance with this Section, no sanction shall be withheld pending the outcome of the appeal. If an individual fails to pay the fine and schedule an appeal, or requests an appeal and fails to appear, the original sanction shall be binding with no right to appeal.

D. If a Tribal Member fails to pay a monetary sanction and/or money damages imposed within thirty (30) business days of it being imposed or upheld by the Tribal Court, the Tribal Council reserves the right to order the sanction and/or money damages withheld from any per capita distribution for which the Tribal Member may be eligible.

E. If a Nonmember sanctioned under this Ordinance resides with a Tribal Member, resides in the home of a Tribal Member, or is a guest of a Tribal Member and fails or refuses to pay any sanction and/or money damages imposed or ordered pursuant to this Ordinance, the Tribal Member may be ordered to pay the unpaid sanctions or money damages. Tribal Council may order any unpaid sanction or money damages to be deducted from the next per capita distribution the Tribal Member may be entitled to receive.

F. An Injured Party may seek an award of money damages or the performance of some other act for the benefit of the Injured Party for violations of this Ordinance from the Tribal Court, and the Tribal Court may award such damages or order such performance. Money damages means: 1) the actual costs of treatment of injuries resulting from the dog, including any expenses related to the care or treatment of injured animals; and/or 2) the actual costs of replacing injured or killed animals. Money damages may be awarded in addition to any sanctions imposed by the Tribal Council and/or the Tribal Court. If a Tribal Member is ordered to pay money damages, such damages shall be paid from per capita payments for which the sanctioned Tribal Member may be eligible. If a Nonmember is ordered to pay money damages and the damages are not paid, the Injured Party may seek collection from the Tribe or from a private collection agency.

G. In extenuating circumstances, the General Council may authorize withholding per capita payments and/or bonuses in their entirety from Tribal Members as a sanction for violating this Ordinance..

H. Anyone sanctioned under this Ordinance shall have the following rights:

1. The right to a speedy and public hearing or appeal;
2. The right to be informed of the nature and cause of the accusation;
3. The right to question any witnesses who provided information as part of any investigation;
4. The right to call witnesses on his or her behalf; and
5. The right to assistance from legal counsel (or other representative) at his or her own expense.

I. The penalties in this Ordinance are in addition to any and all other penalties resulting from the ownership or possession of a Dangerous Dog, including civil or criminal sanctions that may lawfully be imposed by another jurisdiction.

VI. Appeals

A. Any person who was determined to have violated this Ordinance may appeal any sanction imposed by Tribal Council under this Ordinance by requesting a hearing before the Tribal Court through the following procedure:

1. The person requesting the appeal must submit to the Tribal Court within thirty (30) business days of receiving notice of the Tribal Council's decision, a written request for an appeal hearing before the Tribal Court. The written request must be made by registered mail and include a current, valid mailing address for the person submitting the request.
2. The Tribal Court will schedule a hearing and will give the person written notice of the date, time, and place of the hearing.
3. At the appeal hearing, the person will be provided an opportunity to present his or her arguments as to why the decision of the Tribal Council should not stand.
4. If no request to appeal the Tribal Council sanction is filed within thirty (30) business days, the sanction shall be final, without right of further appeal.

VIII. Sovereign Immunity

The Viejas Band of Kumeyaay Indians is a federally recognized Indian tribe that retains its sovereign immunity from unconsented suit. Nothing herein is intended nor shall be construed as a waiver of its sovereign immunity.

Legislative History:

Adopted January 19, 2011.

Amended October 31, 2011 Sectopm IV(A)(1) and (2) to reflect enforcement of more sections than just those dealing with Dangerous Dogs.