

VIEJAS BAND OF KUMEYAAY INDIANS
TRIBAL CODE

Title 6
Chapter 1

Peace and Order Ordinance

Amended: 3-18-2009

I. Purpose

The purpose of this ordinance is to maintain a safe, secure reservation community by prohibiting conduct by any person on the Viejas Reservation that is a threat to the peace, safety, order, health or welfare of the Viejas Band or the Viejas Reservation.

II. Definitions

A. *Exclude* means the removal of a person from Tribal Lands (including any specific area, location, or Tribal business) and the prohibition of the person from entering that area, location, or business for a specified duration of time.

B. *Injured Party* means any person who is physically injured, who is the owner of damaged property, or who is otherwise victimized by a person violating this Ordinance.

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

C. *Reservation* means the Viejas Indian Reservation.

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

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

III. Policy

A. No person shall disturb the peace and order of the Viejas Reservation by:

1. Injuring or endangering another person;
2. Recklessly damaging or destroying property;

3. Operating a motor vehicle in a reckless manner;
4. Engaging in disorderly conduct;
5. Creating loud or excessive noise;
6. Disturbing the conduct of any Tribal event or business; or
7. Otherwise engaging in conduct that is a threat to the peace, safety, order, health or welfare of the Viejas Band.

B. Any person whose conduct disturbs or threatens the peace, safety, order, health or welfare of the Viejas Band may be subject to warnings, fines and other enforcement measures under this ordinance.

IV. Enforcement

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

1. Upon receipt of information that a person has failed to comply with the provisions of this Ordinance, the Tribal Council shall conduct or cause to be conducted an investigation to determine whether that person engaged in conduct that disturbed the peace and order of the Reservation.

2. Following the investigation, the Tribal Council shall consider the findings and determine whether the person did engage in conduct that disturbed the peace and order of the Reservation. If the Tribal Council determines by a preponderance of evidence that the person did violate provisions of this Ordinance, the Tribal Council shall issue a Notice of Violation to the person.

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

- a. That the person engaged in conduct that disturbed the peace and order of the Reservation, and a description of the conduct;

- b. That a civil sanction has been imposed on the person; and

- c. A statement of the right to appeal the finding of violation and the procedure for such appeal.

B. If a Tribal Member is alleged to have violated this Ordinance by committing the prohibited acts set forth in Section III(A)(1) or Section III (A)(2) against another Tribal Member, the Tribal Council may refer the matter to the General Council to determine the following:

1. Whether a Tribal Member violated this Ordinance by engaging in conduct prohibited in Section III (A)1) or Section III (A)(2), and if so, what

sanction(s) should be imposed pursuant to the provisions of Section V of this Ordinance; or

2. Whether the Tribal Member who is alleging a violation should refer the matter to the Tribal Court. The Tribal Court shall determine 1) whether the alleged perpetrator has violated this Ordinance by engaging in conduct prohibited in Section III (A)1) or Section III (A)2), and if so, what sanction(s) should be imposed pursuant to the provisions of Section V of this Ordinance.

V. Sanctions

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

First Violation	\$ 1000.00 sanction
Second Violation	\$ 2500.00 sanction
Third and each violation thereafter	\$ 5000.00 sanction

B. Any person determined to be in violation of this ordinance may be subject to temporary or permanent exclusion from the Viejas Reservation, and/or all businesses located on the Reservation. 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. The Tribal Council reserves the right to exclude a Tribal Member from the Tribe's businesses for violations of this Ordinance; however, only the General Council may exclude a Tribal Member from the entire Reservation.

C. In addition to the sanctions set forth in Section V(A) and V(B), per capita payments and/or bonuses may be withheld from Tribal Members who are in violation of this Ordinance. If per capita payments are withheld, they will revert to the Tribe unless money damages are also awarded to an Injured Party. In such event, the money damages shall be paid from withheld per capita payments. In no circumstance will a sanctioned Tribal Member be entitled to any retroactive per capita payments or bonuses once the per capita payments and/or bonuses are reinstated.

D. Sanctions may also include an award of money damages to be paid to the Injured Party, or the performance of some other act for the benefit of Injured Party. Where the injury was the result of carelessness, the sanction shall fairly compensate the Injured Party for the loss suffered. Where the injury was deliberately inflicted, the sanction may include an additional monetary award, which additional penalty may be awarded either in favor of the Injured Party or in favor of the Tribe. If sanctions against a Tribal Member include money damages, such damages shall be paid from per capita payments for which the sanctioned Tribal Member may be eligible.

C. A warning may be issued, or civil sanctions may be suspended or deferred to for a period not to exceed six (6) months if fairness so requires and/or the following conditions are met:

1. The person determined to have violated this Ordinance has not committed any previous violations of this ordinance;
2. The person determined to have violated this Ordinance does not commit any other violations of this ordinance;
3. The person determined to have violated this Ordinance does not commit any offenses in or violates any law of another jurisdiction; and
4. The person complies with all Tribal Council or General Council decisions and orders concerning the violation of this or any other tribal law to the best of his or her ability.

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

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

4. 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 individual fails to pay the fine and schedule an appeal, or fails to request a hearing and fails to appear, the original sanction shall be binding with no right to appeal.

5. If a Tribal Member fails to pay a monetary sanction imposed, the Tribal Council reserves the right to order the sanction withheld from any per capita distribution for which the Tribal Member may be eligible. If a Nonmember fails to pay any monetary sanction imposed, the Tribal Member responsible for the Nonmember (under the Tribe's custom and tradition) shall have the sanction withheld from any per capita distribution for which the responsible Tribal Member may be eligible.

VI. Appeals

A. Any person who was determined to have violated this Ordinance may appeal any sanction imposed by Tribal Council (or the General Council pursuant to Section IV (B)(1)) under this Ordinance by requesting a hearing before the Tribal Court through the following procedure:

1. The person must submit to the Tribal Court within ten calendar 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 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 timely filed, the sanction shall be final, without right of further appeal.

B. Any person determined to have violated this Ordinance by the Tribal Court, or who brought and had decided an appeal before the Tribal Court may appeal the Tribal Court's decision by requesting a hearing before the General Council through the following procedure:

1. The person must submit to the Tribal Secretary within ten calendar days of receiving notice of the Tribal Court's decision, a written request for an appeal hearing before the General Council. The written request must include a current, valid mailing address for the person.
2. The Tribal Secretary shall 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 Court should not stand.
4. If no request to appeal the Tribal Court decision is timely filed, the Court's decision shall be final, without right of further appeal.

Legislative History:

- Adopted March 15, 2006 (copy on file in the Office of Legal Affairs)
- Amended and adopted by Viejas General Council March 18, 2009