



ORDINANCE 11-03

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA TO AUTHORIZE THE TRIBAL COURT TO ISSUE INJUNCTIONS TO PREVENT HARASSMENT AND TO ISSUE SEARCH WARRANTS TO ENTER THE HOME OF ANY PERSON THAT IS RESIDING ON TRUST LAND SUBJECT TO A PROTECTIVE ORDER, AND AUTHORIZING TRIBAL POLICE TO SEIZE FIREARMS FOUND DURING A SEARCH PURSUANT TO SUCH A WARRANT.

The Business Council ("Council) of the Blue Lake Rancheria does hereby ordain as follows:

Section 1. Findings and Declarations. The Business Council of the Blue Lake Rancheria ("Tribe") finds and declares that:

1. Public Law 280, 28 U.S.C. § 1360 did not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system.
2. The courts of the State of California lack jurisdiction over many civil disputes and criminal acts that occur on the Tribe's Blue Lake Rancheria ("Reservation").
3. Pursuant to the Tribe's inherent authority, the Business Council has adopted an Ordinance establishing a Tribal Court and vesting in that Tribal Court the authority to hear a variety of cases including, but not limited to, the issuing of injunctions.
4. Incidents of harassment may occur against residents of the Reservation. Such incidents may result in physical harm or death. It is necessary to grant to the Blue Lake Rancheria Tribal Court jurisdiction to enjoin civil harassment committed against residents of the Reservation. In addition, it is necessary that the Tribal Court have authority to order persons subject to a protective order to surrender any firearms in their control. Should such persons refuse to comply with an order, it will be necessary for the Tribal Court to have jurisdiction to issue search warrants to the Tribal Police to enter homes located on trust lands on the Reservation in order to search for and to seize any weapons in the possession or

control of said persons against whom a protective order has been issued.

5. The adoption of this Ordinance (“Ordinance”) is necessary to ensure the safety of the members of the Tribe and all persons who live, work, or visit the Reservation.

Section 2. Prior Inconsistent Codes, Laws, and Ordinances Repealed. Any and all codes, laws, and ordinances of the Blue Lake Rancheria adopted prior to or which conflicts in any way with the provisions of this Ordinance are hereby repealed.

Section 3. Adoption of a New Ordinance Adding a New Chapter 4 to Title 11 of the Blue Lake Tribal Code Entitled “Injunctions To Prevent Civil Harassment.” A new Chapter 14 is hereby added to Title 11 of the Blue Lake Tribal Code entitled “Injunctions To Prevent Civil Harassment” and shall provide as follows:

Chapter 4

INJUNCTIONS TO PREVENT HARASSMENT.

Sections:

- 11.04.010 **Grant of Jurisdiction to Tribal Court.**
- 11.04.020 **Definitions.**
- 11.04.030 **Issuance of Temporary Restraining Order.**
- 11.04.040 **Hearing on Issuance of Injunction.**
- 11.04.050 **Representation by an Attorney.**
- 11.04.060 **Support Person.**
- 11.04.070 **Service of Pleadings on Defendant.**
- 11.04.080 **Service of Injunction on Defendant.**
- 11.04.090 **Enforcement of Injunction.**
- 11.04.100 **Court Costs and Attorney’s Fees.**
- 11.04.110 **Violation of Protective Order.**
- 11.04.120 **Filing Fees.**
- 11.04.130 **Modification or Dissolution of Injunction or Temporary Restraining Order.**
- 11.04.140 **Possession of Firearms by a Person Subject to a Protective Order.**
- 11.04.150 **Issuance of Search Warrants for Weapons in Possession or Control of Persons Subject to a Protective Order.**

11.04.010 Grant of Jurisdiction to Tribal Court. Any person who has suffered harassment as defined in Section 11.04.020(3) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this Chapter. A temporary restraining order and injunction may be granted by Tribal Court, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the Tribal Court.

11.04.020 Definitions. For the purpose of this Chapter, the following words and phrases shall have the following meaning:

1. “Course of conduct” shall mean a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, computer e-mail, or cell telephone text messages. Activity protected by the Blue Lake Constitution shall not be included within the meaning of “course of conduct.”

2. “Credible threat of violence” shall mean a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. A “credible threat” may be a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal,

written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, including a threat of suicide or threat to harm to oneself made to the person seeking an injunction under this Chapter, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family or of the person who made the threat. It is not necessary to prove that the defendant had the intent to actually carry out the threat.

3. "Harassment" shall mean an unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

4. "Injunction" shall mean a writ or order requiring a person to do or refrain from doing a particular act.

5. "Stalking" shall mean any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person, and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

6. "Temporary restraining order" shall mean a Blue Lake Rancheria Tribal Court order of limited duration that commands the plaintiff and defendant to maintain a certain status until the court can hear further evidence and decide whether to issue an injunction.

7. "Unlawful violence" shall mean any assault or battery, or stalking but shall not include lawful acts of self-defense or defense of others.

11.04.030 Issuance of Temporary Restraining Order. Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the Tribal Court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the Tribal Court, and on a showing of good cause, a temporary restraining order or injunction, issued under this Chapter may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the Tribal Court's discretion, for a period not to exceed 15 days, or, if the Tribal Court extends the time for hearing under Section 11.04.040, not to exceed 22 days, unless otherwise modified or terminated by the Tribal Court. In order for a temporary restraining order to be granted without notice to the opposing party, both of the following requirements must be satisfied:

1. It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.

2. The applicant or the applicant's attorney, in a declaration under penalty of perjury, certifies one of the following to the court under oath:

(a) That within a reasonable time prior to the application, the applicant informed the opposing party or the opposing party's attorney at

what time and where the application would be made.

(b) That the applicant in good faith attempted but was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them.

(c) That for reasons specified in the declaration, the applicant should not be required to so inform the opposing party or the opposing party's attorney.

11.04.040 Hearing on Issuance of Injunction. Within 15 days, or, if good cause appears to the Tribal Court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

11.04.050 Representation by an Attorney. Nothing in this Chapter shall preclude either party from being represented by private legal counsel or from appearing on the party's own behalf.

11.04.060 Support Person. In a proceeding under this Chapter, if there are allegations or threats of domestic violence, a support person may accompany a party in Tribal Court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of domestic violence and the other party are required to be present in close proximity. This Section does not preclude the Tribal Court from exercising its discretion to remove the support person from the courtroom if the Tribal Court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

11.04.070 Service of Pleadings on Defendant. Upon the filing of a petition for an injunction under this Chapter, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The Tribal Court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

11.04.080 Service of Injunction on Defendant. The Tribal Court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this Chapter, by the close of the business day on which the order was granted, to the Tribal Police. The Tribal Police shall make available information as to the existence and current status of these orders to federal, state, and tribal law

enforcement officers responding to the scene of reported harassment. An order issued under this Chapter shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any Tribal Police officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing Tribal Court.

11.04.090 Enforcement of Injunction. Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this Chapter, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order. If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section.

11.04.100 Court Costs and Attorney's Fees. The prevailing party in any action brought under this Chapter may be awarded court costs and attorney's fees, if any.

11.04.110 Violation of Protective Order.

1. Any willful disobedience of any temporary restraining order or injunction granted under this Chapter is punishable by a fine of not more than one thousand dollars (\$1,000) and temporary exclusion from the Reservation.

2. Should any willful disobedience of any temporary restraining order or injunction granted under this Chapter result in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000) and permanent or temporary exclusion from the Reservation.

11.04.120 Filing Fees.

1. There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this Chapter. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

2. There shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

(a) The protective order, restraining order, or injunction issued pursuant to this Chapter is based upon Stalking.

(b) The protective order, restraining order, or injunction issued pursuant to this Chapter is based upon a credible threat of violence.

11.04.130 Modification or Dissolution of Injunction of Temporary Restraining Order.

In any action, the Tribal Court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order.

11.04.140 Possession of Firearms by a Person Subject to a Protective Order.

1. A person subject to a protective order issued under this Chapter shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or other weapon while the protective order is in effect.

2. The Tribal Court shall order a person subject to a protective order issued under this Chapter to relinquish any firearms or weapons he or she owns or possesses, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm or weapon to the control of the Tribal Police, or by selling the firearm to a licensed gun dealer.

3. A person ordered to relinquish any firearm or weapon, pursuant to this Section, shall file with the Tribal Court, within 48 hours after receiving the order, a receipt showing the firearm or weapon was surrendered to the Tribal Police or sold to a licensed gun dealer.

4. The restraining order requiring a person to relinquish a firearm or weapon pursuant to this Section shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm or weapon while the protective order is in effect and that the firearm or weapon shall be relinquished to the Tribal Police or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the Tribal Court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

5. The restraining order requiring a person to relinquish a firearm or weapon pursuant to this Section shall prohibit the person from possessing or controlling any firearm or weapon for the duration of the order. At the expiration of the order, the Tribal Police shall return possession of any surrendered firearm or weapon to the respondent, within five days after the expiration of the relinquishment order, unless the Tribal Police determines that: (a) the firearm or weapon has been stolen, or (b) another successive restraining order has been used against the respondent under this Section. If the Tribal Court determines that the respondent is not the legal owner of any firearm or weapon, or that the firearm or weapon has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

6. During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms or weapons that are the subject of a Tribal Court injunction pursuant to this Section. A licensed gun dealer, who presents the Tribal Court with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the Tribal Court have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the Tribal Court with a bill of sale.

11.04.150 Issuance of Search Warrants for Weapons in Possession or Control of Persons Subject to a Protective Order.

1. A search warrant may be granted by Tribal Court, or by a judge thereof.
2. A search warrant is an order in writing, in the name of the people of the Blue Lake Rancheria, signed by a Tribal Court judge, directed to a federal or tribal law enforcement officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the Tribal Court.
3. For the purposes of this Chapter, a search warrant may be issued for firearms or other weapons. A search warrant will allow Tribal Police to enter homes located on trust lands on the Blue Lake Rancheria to search for and to seize any firearms or other weapons in possession of any person against whom an injunction has been issued if the person has refused to relinquish said firearms or weapons or the Tribal Court finds that a respondent has not surrendered weapons or firearms as ordered by the Tribal Court.
4. To apply for and obtain a search warrant, a federal or tribal law enforcement officer must submit an affidavit to the Tribal Court. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing that a person subject to a protective order has firearms or other weapons in their possession or control.
5. If the Tribal Court judge is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe that a person subject to a protective order has firearms or other weapons in their possession or control, he or she must issue a search warrant, signed by him or her with his or her name of office, to a federal or tribal law enforcement officer commanding him or her forthwith to search the person or place named for the property or things or person or persons specified, and to retain the property or things in his or her custody subject to order of the Tribal Court as provided in this Section.
6. All property or things taken on a warrant must be retained by the federal or tribal law enforcement officer in the officer's custody, subject to the order of the Tribal Court, to which he or she is required to return the proceedings before him/her.
7. The Tribal Court judge may orally authorize a federal or tribal law enforcement officer to sign the judge's name on a duplicate original warrant. A duplicate original warrant shall be deemed to be a search warrant for the purposes of this Chapter, and it shall be returned to the Tribal Court judge as provided for in this Section. The judge shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the duplicate original warrant with the clerk of the Tribal Court as provided for in this Section.
8. The federal or tribal law enforcement officer must forthwith return the warrant to the Tribal Court judge, and deliver to him or her a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the federal or tribal law enforcement officer at the foot of the inventory, and taken before the judge at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Section 4. Severability. In the event that any section or provision of this Ordinance is held or determined to be invalid by any court of competent jurisdiction, it is the intent of the Business Council that the remaining sections or provisions of this Ordinance, and any amendments of this Ordinance shall continue in full force and effect.

Section 5. Amendments. This Ordinance may be amended at any time by the Business Council, when such amendment is necessary to promote the general health, safety, and welfare of the Tribe or its members.

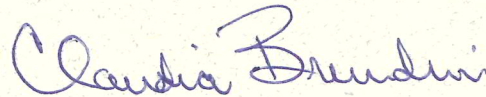
Section 6. Repeal of Prior Ordinances. All prior Ordinances previously enacted by the Business Council, which are inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other Ordinance, the provisions of this Ordinance shall control.

Section 7. Effective Date. This Ordinance shall take effect immediately after its adoption by the Business Council.

CERTIFICATION

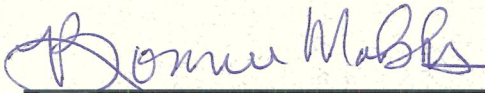
The foregoing Ordinance was adopted at a regular meeting of the Blue Lake Business Council, with a quorum present, held on July 18, 2011, by the following vote:

AYES: 5
NOES: 0
ABSENT: 0
ABSTAIN: 0



Claudia Brundin, Chairperson

ATTESTED:



Bonnie Mobbs, Tribal Executive Secretary

July 19, 2011