



## ORDINANCE NO. 18-03

### AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ADOPTING A CHILD CUSTODY ORDINANCE.

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

**Section 1. Findings and Declarations.** The Business Council of the Blue Lake Rancheria finds and declares that:

A. Section 11.1.1.030(A)(1) of Ordinance No. 07-01, entitled “An Ordinance of the Business Council of the Blue Lake Rancheria Establishing a Tribal Court” (“Tribal Court Ordinance”) grants the Tribal Court for the Blue Lake Rancheria subject matter jurisdiction over all matters in law or equity, which the Business Council expressly authorizes by ordinance.

B. Section 11.1.1.030(A)(3) of the Tribal Court Ordinance grants the Tribal Court personal jurisdiction over tribal members, among others, and includes anyone the Tribe formally recognizes as Indian, other Indians, and anyone who consents to the jurisdiction of the Tribal Court.

C. The Tribe desires to promote its stability and security by establishing tribal standards for the conduct of child custody proceedings, which are in accord with the traditions, laws, and cultural values of the Tribe.

D. The Business Council wishes to grant jurisdiction to the Tribal Court to hear child custody cases and, in so doing, harmonize, to the extent practicable, its child custody jurisdiction and practices with the California Family Code.

E. It is the policy of the Tribe to assure that the health, safety, welfare, and cultural wellbeing of children shall be the primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children. The Business Council further finds and declares that the commission of abuse or domestic violence in a household where a child resides is detrimental to the child.

F. It is also the policy of the Tribe to assure that children have frequent and continuing contact with both parents and the Tribe’s traditions and cultural values after the parents have separated, dissolved their marriage, or ended their relationship, and to encourage

parents to share the rights and responsibilities of childrearing in order to effect this policy, except where the contact would not be in the best interest of the child.

G. Where the policies set forth in subsections (E) and (F) above are in conflict, any order of the Tribal Court regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, welfare, and cultural wellbeing of the child and the safety of all family members.

H. The Business Council believes it is in the best interests of the Tribe to grant jurisdiction to the Tribal Court to hear child custody cases.

**Section 2. Adoption of a New Child Custody Ordinance.** A new ordinance, entitled “Child Custody Ordinance” is hereby added to Title \_\_\_\_\_, Article 1, Chapter 1 of the Blue Lake Rancheria Tribal Code and shall provide as follows:

## **ARTICLE 1. CUSTODY OF CHILDREN**

### **CHAPTER 1. GENERAL PROVISIONS**

\_\_\_\_\_.**1.1.010 Definitions.** For purposes of this Ordinance, the following terms shall have the following meanings:

- A. “Best interests of the child” shall mean the preservation of the connection, or the creation of such a connection if one does not currently exist, between a child of the Tribe and his/her family, culture, and Tribe in a setting that is stable, secure, safe, healthy, and emotionally, spiritually, socially, and intellectually enriching, and in which the special needs of that child may be met.
- B. “Child” shall mean any person under eighteen (18) years of age who has not been emancipated from his/her natural parents and who is subject to the jurisdiction of the Tribal Court.
- C. “Joint custody” means joint physical and joint legal custody.
- D. “Joint legal custody” means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, religion, and welfare of a child.
- E. “Joint physical custody” means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents

in such a way so as to assure a child of frequent and continuing contact with both parents, subject to applicable provisions of this Ordinance to the contrary.

- F. “Sole legal custody” means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.
- G. “Sole physical custody” means that a child shall reside with and be under the supervision of one parent, subject to the power of the Tribal Court to order visitation with the other parent.
- H. “Tribal Court” or “Court” shall mean the Tribal Court of the Blue Lake Rancheria.

**\_\_\_\_\_1.1.020 Liberal Construction.** The terms of this Ordinance shall be liberally construed to give full effect to the purposes for which it was enacted. The terms of this Ordinance shall be interpreted to encourage jurisdiction over children who are subject to the jurisdiction of the Tribal Court under this Ordinance and to facilitate the authority of the Tribal Court to act to protect the interests of the Tribe’s children and families. The terms of this Ordinance shall be interpreted in light of the Tribe’s laws, customs, and traditional child-rearing practices. Terms not specifically defined in this Ordinance shall be defined according to their normal dictionary definition usage or as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901, *et seq.* (“ICWA”), as appropriate.

**\_\_\_\_\_1.1.030 Jurisdiction.** The Tribal Court shall have jurisdiction over all child custody matters that arise under this Ordinance and subsection 11.1.1.030 of Ordinance No. 07-01, entitled: “An Ordinance of the Business Council of the Blue Lake Rancheria Establishing a Tribal Court.” The Tribal Court shall have subject matter jurisdiction over children under eighteen (18) years of age who have not been emancipated from their natural parents and who are under the jurisdiction of the Court, including, but not limited to, a child who is a member of the Tribe, a child who is eligible for membership in the Tribe, a child of a member of the Tribe or of his/her spouse, a child by the consent of the parties with custody of such child, or an Indian child who resides within the Tribe’s trust lands.

**\_\_\_\_\_1.1.040 Commencement of Action.** Any person seeking an order from the Tribal Court granting him or her legal and/or physical custody of a child shall file a petition and intake form with the Tribal Court on forms approved by the Chief Judge for that purpose. The petition and a summons issued by the Clerk of the Tribal Court shall be served upon any person having legal and/or physical custody of the child or a right of visitation with the child in accordance with the Rules of Pleading Practice and Procedure.

\_\_\_\_\_.**1.1.050 Answer.** Any party served with a petition under Section \_\_.1.1.040 above shall have thirty (30) days from the date of service of the petition to file a written answer on a form approved by the Chief Judge for that purpose.

\_\_\_\_\_.**1.1.060 Mediation.** Prior to setting a hearing on any petition filed with the Tribal Court under this Ordinance, the Chief Judge shall order all parties to the action to participate in non-binding mediation before an Associate Judge of the Tribal Court who shall be appointed by the Chief Judge. The intake form shall screen for domestic violence and, if a party alleges domestic violence in the intake form, the Associate Judge shall meet with the parties separately and at separate times. The purpose of the mediation shall be to assist the parties to the disputed action to resolve the dispute pursuant to an agreement negotiated by the disputing parties. Any agreement reached by the parties in mediation shall be incorporated into a court order. The mediation shall be scheduled by the Tribal Court within sixty (60) days of the filing of the petition. No Clerk's default shall be entered in the case until after the mediation session has been conducted. The failure of any party to participate in the court ordered mediation shall be subject to the imposition of sanctions, including, but not limited to, the entry of a judgment granting all the relief requested by the participating party against the non-participating party.

\_\_\_\_\_.**1.1.070 Hearing.** If the mediation fails, the Tribal Court shall set the matter for a contested hearing within ninety (90) days from the date that the Chief Judge is notified in writing by the Associate Judge assigned to mediate the dispute that the mediation has failed.

## **CHAPTER 2. CUSTODY ORDERS**

### \_\_\_\_\_.**1.2.010 Custody Orders; Order of Preference.**

A. At any hearing on any petition filed under this Ordinance, custody shall be granted by the Tribal Court in the following order of preference according to the best interests of the child:

1. To both parents jointly or to either parent.
  - a. In making an order granting sole physical custody to either parent, the Tribal Court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the non-custodial parent, unless it is shown that the visitation would be detrimental to the best interests of the child. The Tribal Court shall not prefer a parent as custodian because of that parent's sex.

b. The Tribal Court, in its discretion, may require the parents to submit to the Tribal Court a plan for the implementation of the Court's custody order.

2. If to neither parent, to the child's grandfather, grandmother, uncle, aunt, or to the person or persons in whose home the child has been living in a wholesome and stable environment.

3. To any other person or persons deemed by the Tribal Court to be suitable and able to provide adequate and proper care and guidance for the child in accordance with the best interests of the child.

C. This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the Tribal Court and the family the widest discretion to choose a parenting plan that is in the best interests of the child.

D. In cases where a child has more than two parents, the Tribal Court shall allocate custody and visitation among the parents based on the best interests of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established care and emotional bonds. The Tribal Court may order that not all parents share legal or physical custody of the child if the Tribal Court finds that it would not be in the best interests of the child.

E. The Tribal Court shall retain jurisdiction to modify or enforce any child custody order entered by the Tribal Court, pursuant to this Ordinance, until the child reaches eighteen (18) years of age.

**Section 3. Full Faith and Credit.** The Tribal Court shall give full faith and credit to state and tribal custody orders where the state and tribe reciprocate in giving full faith and credit to orders of the Court, and where such orders are consistent with the public policy of the Tribe, the intent of the Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.*, and the laws and customs of the Tribe.

**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. The Business Council expressly reserves the right to amend this Ordinance.

**Section 6. Repeal of Prior Inconsistent Ordinances and Codes.** All prior ordinances previously enacted by the Business Council that 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**

As the Chairperson of the Blue Lake Rancheria Business Council of the Blue Lake Rancheria Tribe of California, I hereby certify that the Blue Lake Rancheria Business Council adopted this Ordinance by a vote of 4 for, with 0 against, with 0 abstaining, with 1 absent on this 2 day of May of 2018.

Claudia Brundin  
Claudia Brundin, Chairperson

5-2-18  
Date of Approval

**ATTEST:**

Leslie Albright  
Leslie Albright, Tribal Executive Secretary

5-2-18  
Date of Approval