

BISHOP PAIUTE TRIBE
TITLE 6 – ENVIRONMENT
CHAPTER 6.4– SOLID AND HAZARDOUS WASTE CODE
ENACTED BY TRIBAL COUNCIL: [enter passage date]

(Effective Date: [enter date if different than passage date/otherwise remove effective date])

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Section 1. Findings and Purpose

A. The Tribal Council finds as follows:

1. There is an intimate relationship between the natural environment and the quality of life of human beings;
2. The Bishop Paiute Tribe has enhanced its capabilities to protect the environment and has increased its awareness of, and expertise regarding, environmental contaminants in all media (air, water, soils, etc.) since the creation of the Tribal Environmental Protection Agency (“TEPA”);
3. It is imperative to preserve and secure the health, welfare and safety of the general public including tribal members, non-member Indians, and non-Indians by regulating the uncontrolled and illegal disposal of solid waste within the Bishop Paiute Reservation;

4. Protection of all persons and the environment are necessary to maintain, improve, and promote the economic viability of the Bishop Paiute Tribe;
5. There is a need for tribal law in the areas dealing with solid and hazardous waste on Tribal property, individual assignments, and off-reservation if necessary if the impact is great enough on the Reservation, to safeguard and promote the health, safety, and welfare of the individuals and community of the Bishop Paiute Reservation, both residents and visitors; and
6. There is a need to promulgate this Code in order to protect members, residents and visitors of the Bishop Paiute Tribe, and the environment and lands of the Bishop Paiute Reservation;

B. This Code is intended to prohibit the illegal dumping, transportation, storage, and burning of solid waste and establish tribal law regarding acceptable, efficient, cost-effective and legal methods of disposal of solid waste generated within the exterior boundaries of the Bishop Paiute Reservation, or being dumped on the Reservation or affecting the Reservation from an outside source.

C. It is the purpose of this Code to address the above findings for the benefit and protection of the public health, safety, and general welfare of the Bishop Paiute Reservation, its residents, visitors, its animals and plants, and environment.

D. It is not the intent of this Code to impose unnecessary restrictions on the cultural and customary practices of the people of the Bishop Paiute Tribe.

Section 2. Authority and Jurisdiction

The Bishop Paiute Tribe shall exercise its sovereign authority and jurisdiction under this Code to regulate solid and hazardous waste on all lands within the Bishop Paiute Reservation as a matter of tribal law. Once this Code is adopted by the Bishop Paiute Tribal Council, it shall be known as the "Solid and Hazardous Waste Code".

This Code is applicable to all individuals whether members or nonmembers of the Bishop Paiute Tribe, households, clubs, associations, businesses, and organizations entering, residing within or otherwise situated within the exterior boundaries of the Bishop Paiute Reservation of conducting business in such a manner as to detrimentally affect the Reservation residents, visitors, animals, plants, or environment.

The Tribe also recognizes actions of persons and/or entities not located on Tribal lands have the potential to harm the natural environment of the Reservation and the health, safety and welfare of the Tribe, its members and territory. Due to this concern and interest in, and duty to protect the environmental quality and integrity of its lands and the health and safety of its members, the Tribe finds it necessary to have the ability to call persons who cause harm within Tribal jurisdiction to account for their acts or omissions before the tribal administrative and tribal judicial system. The Tribe and its members also have a substantial interest in providing a forum where a resident may seek whatever redress is due him or her. The Tribe also has an interest from the point of view of the orderly administration of the laws in assuming jurisdiction where the alleged violation or injury occurred within its borders. The Tribe therefore intends for this Code to provide the means by which the Tribe may exercise tribal administrative, regulatory and judicial jurisdiction over such persons and entities.

The Tribe gives TEPA, EMO, the Environmental Director or their designee, and the Bishop Paiute Tribal Police Department the authority to enforce this Code and carry out any of their duties stated within this Code and any duties necessary to carry out those duties and enforce this Code.

Once this Code is adopted by the Bishop Paiute Tribal Council, it shall be within the jurisdiction of the Bishop Paiute Tribal Court in accordance with the Tribal Environmental Protection Ordinance and all of its provisions and any subsequent amendments to that Ordinance. The Bishop Paiute Tribal Court shall have personal and subject matter jurisdiction over all persons and corporations Indian or Non-Indian referenced above to adjudicate appeals of TEPA's actions, make decisions regarding alleged violations of this Code and non-compliance, and any other matters referred to the Court under this Code and the attenuating Tribal Environmental Protection Ordinance and any amendments.

Section 3. Effect on Tribal Customs and Traditions

The enrolled members of the Tribe have always maintained and practiced certain sacred tribal customs and traditional beliefs which are recognized by the Bishop Paiute Tribal Council. Therefore, with all due respect said current customs and beliefs are exempt from this Code, including but not limited to the Cry Dance Ceremony.

Section 4. Definitions

The following terms, when used in this Code shall have the meanings ascribed to them in this Section, except where context clearly indicates a different meaning:

- A. "Approved site" means a site permitted and approved by the Environmental Director or their designee as a site for disposal of solid waste, or such a site permitted and approved by the federal government or a state government.
- B. "Burn Permit" means formal authorization from, or approval by the Environmental Director or their designee to burn approved materials, the absence of which would preclude activities regulated by this Code.
- C. "Collect" means to gather solid waste generated by another person or persons.
- D. "Derelict Trailer" means any mobile home or trailer, including but not limited to any recreational vehicle and/or motor home, that is:
 - 1. Occupied but not connected to electricity, safe source of potable water sufficient for normal residential needs, or a legal wastewater disposal system; or is
 - 2. Junked, scrapped, dismantled, disassembled, in a state of general disrepair such that it is unsafe to occupy, or is otherwise in a condition harmful to the public health, safety, or welfare.

A derelict trailer is solid waste under this Code.

- E. "Derelict Vehicle" means any motor vehicle that was originally designed or manufactured to transport people or property and is junked, scrapped, dismantled, disassembled, in a state of disrepair such that it has been incapable of operation for more than 90 days, or is in a condition otherwise harmful to the public health, safety, or welfare. A derelict vehicle is solid waste under this Code.
- F. "Dispose" means to dump, deposit, discharge, or unload solid waste either at the location it was generated or at another location, not including temporary storage at the place it was generated.

- G. "EMO" means the Bishop Paiute Tribe Environmental Management Office.
- H. "Environmental Director" is the Director of the EMO.
- I. "Hazardous Waste" is a solid waste with properties that make it potentially dangerous or harmful to human health or the environment. It can be a liquid, solid, or contained gases. It generally will exhibit one of the four characteristics of a hazardous waste – ignitability, corrosivity, reactivity, or toxicity, but does not necessarily have to exhibit one of those characteristics. The standard for hazardous waste includes but is not limited to used oil, and contaminated soil generated from a clean up, spill or dumping.
- J. "Household Appliances" means large appliances including but not limited to washers, driers, freezers, dishwashers, and refrigerators.
- K. "Permit" means formal authorization from, or approval by the Environmental Director or their designee depending the language of the particular section where its used, the absence of which would preclude activities regulated by this Code.
- L. "Permitted Contractor" means any person or organization contracting with any other person or organization to collect, transport, and/or dispose of solid waste for profit.
- M. "Person" means any and all natural persons including all Indians whether members or nonmembers of the Bishop Paiute Tribe, and all non-Indians; and any and all legal persons and/or entities including but not limited to enterprises, public or private corporations, companies, partnerships, firms, associations or societies of persons, and any other entities, including tribal governmental entities, states, county, local governments and other governmental agencies and the United States; and any and all successors and assigns.
- N. "Reservation" means all Indian Country and entire area within the exterior boundaries of the Bishop Paiute Reservation, Inyo County California.
- O. "Solid waste" means all solid and semisolid wastes, including but not limited to any garbage, trash, rubbish, glass, metals, plastics, papers, asbestos, construction waste materials, demolition debris, cardboard, batteries, tires, sludge, ashes, dead animals or parts thereof, derelict vehicles, infectious wastes, household wastes, hazardous waste, chemicals, manure, street and parking lot cleaning residues, industrial waste(s), derelict trailers, Household Appliances, furniture, and any other waste material, but not including domestic sewage.
- P. "TEPA" means the Bishop Paiute Tribal Environmental Protection Agency, established in the Tribal Environmental Protection Ordinance with a governing body of five (5) Commissioners under Section 302 of the Tribal Environmental Protection Ordinance.
- Q. "Transport" means to move a quantity of solid waste from one location to another.
- R. "Tribe" means the Bishop Paiute Tribe.
- S. "Tribal Council" means the Bishop Paiute Tribal Council.

Section 5. Persons Responsible for Storage and Disposal of Solid and Hazardous Waste Provisions

Any of the following may be given a Statement of Violation and be held responsible for violations of this Code:

- A. Any person generating, storing, transporting, disposing, or receiving solid waste shall be responsible for the lawful storage, removal, transport and disposal of solid waste until it is legally disposed in an approved site.
- B. When solid waste is generated, stored, or received upon leased or rented premises; any and all owners, assignment holders or lessors, and any and all lessees, tenants or sub-tenant(s) or assigns are responsible for compliance with the provisions of this Code regardless of the provisions of the lease or tenancy.
- C. When solid waste is disposed of in violation of this Code, and two or more items in the solid waste identify a person as the owner or recipient of that item, there shall be a rebuttable presumption that the person so identified is responsible for the unlawful disposing of solid waste.
- D. The owner or assignment holder of the real property or assignment on which solid waste is located is responsible for complying with the provisions of this Code even if the solid waste was placed on their property without their knowledge or consent.
- E. Any person who by contract, agreement or otherwise arranges for the recovery, transport, disposal, or burning of solid waste shall comply with this Code.

Section 6. Cleanup Plans

The Environmental Director or their designee may mandate a cleanup plan for any violation of this Code. The cleanup plan shall impose liability for disposal on the party responsible for the solid waste. The cleanup plan shall set out a timeline with milestones for the responsible party to lawfully dispose of the solid waste. The responsible party shall, in cooperation with and under the supervision of the Environmental Director or their designee, clean up the solid waste. Cleanup is complete only when the Environmental Director or their designee has reviewed the site and determines cleanup is complete. The cleanup plan is enforceable as a provision of this Code and failure to complete the cleanup plan is a violation of this Code.

Section 7. Storage and Disposal of Solid and Hazardous Waste Prohibited Acts

- A. It is unlawful to dispose of, inject, store or accumulate solid waste on Tribal lands and within the exterior boundaries of the Reservation in a manner that is hazardous to the public health and safety, as determined by the Environmental Director or their designee, and continues to be stored or accumulated in such a manner for more than fifteen (15) days after receipt of written notice from the Environmental Director or their designee of the hazardous condition.
- B. It is unlawful to collect or transport solid waste unless the person is responsible for that waste pursuant to the provisions of this Code or the person is a permitted contractor.
- C. It is unlawful to transport solid waste unless it is tied or otherwise secured so waste will not be blown or dropped from the transport vehicle.

- D. It is unlawful for a person to dispose of solid waste any place within the exterior boundaries of the Reservation other than at an approved site.
- E. It is unlawful to store containers that contain hazardous waste with no lids.
- F. It is unlawful to store chemicals in containers that are not the original containers.

Section 8. Derelict Trailers

Derelict trailers shall be subject to a cleanup plan under Section 6.

Section 9. Derelict Vehicles

- A. Derelict vehicles shall be subject to a cleanup plan under Section 6 unless granted an exception under subsection (B) below.
- B. TEPA may, in its discretion, grant an exception for derelict vehicles when the owner is actively repairing or is awaiting repair or restoration. TEPA shall impose conditions on excepted vehicles, which may include any of the following:
 - 1. A limit on the number of vehicles held on the property not to exceed two (2) vehicles per quarter acre;
 - 2. Requirements that vehicles shall not hold hazardous waste, debris, or other materials that may pose a risk to public health or welfare;
 - 3. Requirements that vehicles have components removed to prevent leakage, including but not limited to batteries, fuel, engine oil, and transmission fluid;
 - 4. Requirements to keep vehicles in certain areas on property such as high ground or away from public view;
 - 5. Any other condition designed to protect the public health or welfare.
- C. TEPA may rescind an exception under subsection (B) at its discretion.
- D. Failure to abide by the conditions for an exception is a violation of this Code.

Section 10. Household Appliances

- A. Household Appliances stored outside a structure are solid waste under this Code and subject to a cleanup plan under Section 6, unless stored under a valid Business Permit issued by the Tribe with an exception issued by TEPA, or under an individual exception issued by TEPA.
 - 1. TEPA may, in its discretion, grant exceptions for Household Appliances stored outside a structure. TEPA shall impose conditions on such exceptions.

2. Household Appliances stored outside of a structure under an exception as described in section (A), shall have doors, access points and openings either locked and secured shut so as to prevent danger to children or completely removed to prevent the same.

Section 11. Mixed Debris Piles and Debris Management Plans

A. Mixed Debris Piles

1. It is unlawful to have any mixed debris piles on the Reservation without a debris management plan approved by the Environmental Director or their designee.
2. For the purposes of this Code a mixed debris pile is a pile consisting of more than one of the following substances:
 - i. Soil or other organic material;
 - ii. Hazardous waste;
 - iii. Solid waste;
 - iv. Construction debris;
 - v. Metal; or
 - vi. Any of the individual items listed in the definition of solid waste above.

B. Ground Disturbing Activities

1. Persons engaged in ground disturbing activities, including but not limited to construction or demolition, resulting in a mixed debris pile must have a debris management plan prior to creating a mixed debris pile.
2. Persons engaged in such ground disturbing activities must upon completion of the activities remove all remnants of the mixed debris pile(s) and must level out the ground onsite.

C. Failure to abide by or complete a debris management plan is in violation of this Code.

Section 12. Burn Permits and Conditions

- A. It is unlawful for a person to burn any item(s) without a burn permit issued by EMO. Any traditional ceremonies, including but not limited to cry dances, are exempt from this subsection's requirements.
- B. It is unlawful under any circumstances, even with a burn permit, for a person to burn any:
 1. Solid or hazardous waste except for paper products and cardboard;
 2. Rubber;
 3. Tires;

4. Asphalt shingles;
5. Cloth or upholstery;
6. Motor oil;
7. Pressure treated wood;
8. Tarpaper;
9. Linoleum;
10. Diapers;
11. Vehicle parts;
12. Any material that results in severely offensive odors; or
13. Any other hazardous material.

Section 13. Solid Waste Collection Services

- A. Any person who intends to engage in commercial waste hauling activities as a permitted contractor may be required to obtain a valid permit from the TEPA. The permit shall require that the permitted contractor be subject to the provisions of this Code.
- B. TEPA may impose conditions on the permit including but not limited to reporting requirements and authorization for TEPA to monitor waste collection activities. TEPA may impose a reasonable fee to cover the costs of processing, administering the permit and/or monitoring the activities of the permitted contractor.
- C. If a permitted contractor violates any provision of its permit, provides false information in relation to its permit or activities, or violates this Code, TEPA may impose any of the following penalties:
 1. Alteration, suspension, or termination of the permit;
 2. Any of the penalties provided under the Tribal Environmental Protection Ordinance or any other tribal remedy provided to the Tribal Court.

Section 14. Enforcement

Any violations or instances of non-compliance with this Code and its requirements shall be enforced through the mechanisms, procedure and remedies of the Tribal Environment Protection Ordinance and any subsequent amendments. That Ordinance allows for an entire system of thorough due process, including appeals and judicial review by the Tribal Court. It is understood there is no right to appeal after a Tribal Court decision.

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Section 15. General Provisions

A. Severability

If any provision of this Code or the application thereof to any person, entity or circumstance is held to be invalid, the remainder of the Code shall remain in effect.

B. Rules, Regulations, Policies and Procedures

The Tribal Council may establish such other rules, regulations, policy and procedures as are consistent with this Code and necessary for effective administration and enforcement of this Code. Tribal Council shall have final approval of all policies and procedures and any amendments.

C. Amendments

This Code and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special meeting.

D. Effective Date

This Code shall be effective from the date of its approval by the Tribal Council.

Section 16. Sovereign Immunity

Nothing in this Code shall be construed as a waiver of immunity from suit for monetary damages, injunctive or declaratory relief and specifically does not waive the sovereign immunity of the Bishop Paiute Tribe, Bishop Tribal Council, or any officer, employee or agent thereof as it relates to any subject matter contained in this Code except to the extent necessary to implement this Code, in particularly to implement and enforce this Code in accordance with the provisions of the Tribal Environmental Protection Ordinance.

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CERTIFICATION

The foregoing Code was passed at a duly called meeting of the Bishop Paiute Tribal Council held on the _____ day of _____, 2021 with a quorum present and voting ____AYES, ____ NAYS, ____ ABSTAINING, and ____ ABSENT and the Tribal Council Chairman not voting/voting.

BISHOP TRIBAL COUNCIL:

ATTEST:

Tilford P. Denver,
Tribal Council Chairman

Steven Orihuela,
Tribal Secretary/Secretary

Date: _____

Date: _____

Legislative History:

Xx/xx/21	Code reviewed for Public Hearing by Zoom 12:00 p.m.
Xx/xx /21	Code reviewed for Public Hearing by Zoom 5:30 p.m.
Xx/xx /21	Code reviewed for Public Hearing by Zoom 12:00 p.m.
XXXXX	Enacted as the
XXXXX	Enforcement date.

DRAFT