

**RINCON BAND OF LUISEÑO MISSION INDIANS  
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON FIRE HAZARD ABATEMENT ORDINANCE  
RINCON TRIBAL CODE § 15.3000**

Adopted on February 27, 2013

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**§ 15.3000 AUTHORITY**

This Ordinance is adopted pursuant to authority granted to the Tribal Council by Section 6 of the Articles of Association.

**§ 15.3001 FINDINGS**

(a) The Tribal Council finds that the Rincon Band provides governmental services which promote peace, health, safety, welfare and economic security for residents of and visitors to the Rincon Reservation;

(b) The Tribal Council also finds that a majority of all native vegetation within the Rincon Reservation constitutes a seasonal and recurrent fire hazard and that vegetation management is the single most effective tool available to mitigate fires;

(c) The Tribal Council finds further that Prohibited Materials as defined in this Ordinance are a public nuisance; and

(d) The Tribal Council declares that the purpose of this Ordinance is to establish uniform policies and procedures for abatement of fire hazards applicable to all lands within the Rincon Reservation.

**§ 15.3002 DEFINITIONS**

(a) “**Abatement**” means the removal of Prohibited Materials, as defined by this Ordinance, which constitute a fire hazard or public nuisance by any of the following methods: mowing, hand clearing, cutting, grazing, trimming, bulldozing, crushing, chaining and use of large brush crushers or other specialized devices that leave the plant root structure intact to stabilize the soil and prevent erosion.

(b) “**Burn Notice**” means written permission to burn pursuant to Section 15.3004(d) of this Ordinance.

(c) “**Burn Notice Application**” means the form of Burn Notice Application described in Section 15.3004(d) of this Ordinance, marked and attached to this Ordinance.

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(d) **“Disabled Person:** means a Person with a temporary or permanent physical, developmental, cognitive or mental impairment that prevents them from performing the act of Abatement of or on their property.

(e) **“Fire Chief”** means the Fire Chief appointed by the Rincon Business Committee to manage the day-to-day affairs of the Rincon Fire Department and execute fire safety and prevention functions and operations on and off the Rincon Reservation.

(f) **“HCP”** means that certain Habitat Conservation Plan for the Issuance of an Incidental Take Permit Under Section 10(a)(1)(B) of the Endangered Species Act to the Rincon Band of Luiseno Mission Indians, San Diego County, California.

(g) **“Notice to Abate”** means written notice from the Fire Chief issued pursuant to Section 15.3004(a) of this Ordinance.

(h) **“Occupant”** means the person(s), of the age eighteen (18) or older, in physical occupation, in-charge or control of Property on the Rincon Reservation.

(i) **“Ordinance”** means this Fire Hazard Abatement Ordinance.

(j) **“Owner”** means the person(s) listed on the records of the Rincon Band or the Bureau of Indian Affairs Land Titles and Records Department as Owner(s) or Occupant(s) of Property within the Rincon Reservation.

(k) **“Person”** means any Person or entity, natural or artificial, including, but not limited to, any tribal member, assignee, individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America and all agencies thereof, the State of California and all political subdivisions, municipal corporations, organizations, and public agencies thereof, and the Rincon Band and all political subdivisions, organizations, and public agencies thereof.

(l) **“Prohibited Materials”** means the uncontrolled or uncultivated growth of weeds, brush, grasses or other combustible vegetation, dead, dying or diseased trees, wood, trash, rubbish and other combustible materials which by reason of its location, size, type, character or manner of growth, proximity to any building or improvements which, when dry, will within reasonable probability constitute a fire hazard, or produce toxins that are harmful to humans, pets, livestock or wildlife, or present safety hazards to the public or adjacent property owners, or

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present obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles. Prohibited Materials may also include any matter not enumerated in this Section 15.3002(k) and which, in the Fire Chief's opinion, by reason of its location, size, type, character or manner may hamper or interfere with the prevention or suppression of fire and be declared a nuisance. For purposes of this Section 15.3002(k), cultivated and useful grasses, vegetation or pasture are not declared a public nuisance, however, the Fire Chief may determine a hazard exists adjacent to improved property from fire exposure and require an adequate firebreak.

**(m) "Property"** means private or public real or personal property, tribal or trust property, fee or allotted property, property subject to an assignment or property that is situated within or otherwise constitutes Rincon Reservation land.

**(n) "Rincon Business Committee"** means the elected Business Committee of the Band, which exercises the executive powers of the Band pursuant to Section 6 of the Articles of Association.

**(o) "Rincon Fire Department"** means that certain department established by the Tribal Council to execute fire safety and prevention operations and functions on behalf of the Tribal Government.

**(p) "Rincon Reservation"** means all land within the exterior boundaries of the Rincon Reservation, Valley Center, California, and any lands that may be added to the Rincon Reservation from time to time after the date of enactment of this Ordinance.

**(q) "Tribal Council"** means the Rincon Business Committee.

**(r) "Tribal Elder"** means an enrolled tribal member age sixty-five (65) or older.

**(s) "Tribal Government"** means the Rincon Tribal Government, its arms, agencies, departments, instrumentalities, entities and enterprises.

**(t) "Tribal Laws"** means laws, ordinances, codes, policies and procedures enacted by the Business Committee.

**(u) "Tribal Member"** means any enrolled member of the Band and shall have the same meaning as Band member.

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**§ 15.3003 APPLICABILITY**

(a) This Ordinance applies to all Persons who own or occupy Property or undertake activities or desiring to undertake activities that affect land or Property within the exterior boundaries of the Rincon Reservation.

(b) Applicability of Ordinance to non-Indian activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation is as follows:

(1) In *Montana v. United States*, the Supreme Court held that tribes generally do not have jurisdiction over non-Indian activities occurring on Rincon Reservation fee lands, subject to two important exceptions:

(A) A tribe may regulate the activities of non-members who enter consensual relationships with the Rincon Band or its members, through commercial dealings, contracts, leases, or other arrangements; and

(B) A tribe may also retain inherent power to exercise civil authority over conduct that threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Rincon Band.

(2) Prior to applying Ordinance to non-Indian activities occurring on fee lands located within the Rincon Reservation, the Fire Chief must first determine that the non-Indian activities seeking to be regulated fall within one of the exceptions set forth in Section 15.3003(b)(1).

(A) The Fire Chief shall include a written determination under Section 15.3004(a) within any Notice to Abate in which non-Indian activities occurring on fee lands located within the Rincon Reservation are the basis for the Notice to Abate.

(B) The recipient of any such Notice to Abate shall be entitled to a preliminary jurisdictional hearing before the Tribal Court.

(C) If the recipient objects to tribal jurisdiction and requests a jurisdictional hearing, the burden shall be on the Rincon Band to

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establish tribal jurisdiction pursuant to federal common law.

**§ 15.3004 ABATEMENT OF PROHIBITED MATERIALS**

**(a) Notice to Abate.** If the Fire Chief determines that a fire hazard or public nuisance exists on any Property, the Fire Chief shall cause a notice to be issued to abate the public nuisance or fire hazard. Such notice shall be titled “NOTICE TO ABATE PUBLIC NUISANCE OR FIRE HAZARD” and shall be in legible characters, describe with reasonable sufficiency the nuisance or hazard, the location of the same, direct the abatement of the nuisance or hazard and refer to this Ordinance. Unless otherwise stated in the Notice to Abate, the Owner or Occupant of the Property shall have sixty (60) days to comply.

**(b) Service of Notice to Abate.** The notice to abate a public nuisance or fire hazard required by Section 15.3004(a) of this Ordinance may be served by one of the following methods:

- (1)** personal service on the Owner or Occupant of the Property,
- (2)** by regular United States mail addressed to the Owner or Occupant of the Property, or
- (3)** by posting in a conspicuous place on the Property or adjacent public right-of-way.

**(c) Abatement Requirements:**

- (1)** Improved Property of five (5) acres or less shall be entirely abated, no apportionment of the Property shall be permitted.
- (2)** Landscape Property within one-hundred feet (100’) of structures or improvements, using low fire resistive plants such as ground covers that do not transmit fire rapidly as approved by the Fire Chief.
- (3)** Remove combustible vegetation and other flammable materials one-hundred feet (100’) from structures or improvements.
- (4)** Remove tree limbs to six feet (6’) above the ground.

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- (5) Remove dead leaves and pine needles from roofs and rain gutters.
- (6) Remove all combustibles within ten feet (10') of propane tanks.
- (7) Clear thirty feet (30') from property line.
- (8) Remove combustible vegetation within ten feet (10') along roads and driveways.
- (9) Maintain a thirteen-foot, six-inch (13' 6") vertical clearance over roads and driveways for emergency vehicles ingress and egress to Property.
- (10) The height of weeds and annual grasses shall not exceed a height of six (6) inches.
- (11) Before burning any piles of combustible vegetation a Burn Notice must be obtained from the Rincon Fire Department as provided in Section 15.3004(d) of this Ordinance.

**(d) Burn Notice Requirement.** No Person may engage in any use or activity that is a fire hazard on the Rincon Reservation without obtaining a Burn Notice from the Fire Chief pursuant to this Ordinance. A form of Burn Notice Application is set forth as an attachment to this Ordinance.

**(e) Abatement by Fire Chief.** The Fire Chief shall cause a written inventory to track the status of each Notice to Abate to be maintained by the Fire Department each fiscal year on an on-going basis. If the Owner or Occupant fails or neglects to abate the public nuisance or fire hazard within the time specified in the Notice to Abate, pursuant to Section 15.3004(a), the Owner or Occupant shall be in violation of this Ordinance. The Fire Chief may cause such public nuisance or fire hazard to be abated by the Tribal Government or private contractors. A written report of the Abatement activities and an accounting of the cost of Abatement of Prohibited Materials for each Property shall be maintained by the Rincon Fire Department. Subject to the exemption in Section 15.3004(f), the cost of Abatement shall be subject to RTC § 6.309(b), Ordinance Prescribing Allocation and the Net Distributable Cash from Tribal Gaming Activities, RTC § 6.300 et seq.



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**(f) Exemption for Tribal Elders and Disabled Persons.** Any Abatement of Prohibited Materials on Property owned or occupied by a Tribal Elder or Disabled Person shall be completed by the Tribal Government without any cost obligation to the Tribal Elder or Disabled Person.

**(g) Compliance with Federal Laws.** Any Abatement of Prohibited Materials shall be carried out in conformance with all applicable Tribal Laws and federal laws and regulations. No Abatement of Prohibited Materials is required on Rincon Band lands or Property subject to the Endangered Species Act, the Clean Water Act, the Habitat Conservation Plan, or other mitigation, protection or conservation approved by the Tribal Council. All Rincon Reservation land areas subject to federal mitigation are depicted in “Map 1”, marked and set forth as an attachment of this Ordinance.

**§ 15.3005 NO WAIVER OF SOVEREIGN IMMUNITY**

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Rincon Band’s sovereign immunity from unconsented suit.

**§ 15.3006 SEVERABILITY**

If any provision of this Ordinance or the application thereof to any Person or circumstance shall be held unconstitutional or invalid by the Tribal Council, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.

**[ATTACHMENTS ON NEXT PAGES]**

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**[ATTACHMENTS]**

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**[FORM OF BURN NOTICE]**

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# Rincon Band of Luiseño Indians Burn Notice Application

[illegible]

Original Enactment Date: February 27, 2013  
 Subject: Fire Hazard Abatement

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Burn  
Notification  
No. \_\_\_\_\_



**RINCON FIRE  
DEPARTMENT**  
 33485 Valley Center Road  
 Valley Center CA, 92082  
 Main (760) 297-2300

THIS BURN NOTIFICATION IS VALID FROM ____/____/____ TO ____/____/____		*TIME OF BURN: _____
ISSUED BY: _____		DATE: _____
PROPERTY OWNER'S FULL NAME: _____		PHONE: _____
ADDRESS (INCLUDING CITY, STATE, ZIP): _____		
NAME OF PERSON DESIGNATED TO ATTEND FIRE (IF DIFFERENT FROM PERSON OBTAINING BURN NOTIFICATION): _____		PHONE: _____
Type of debris to be burned (describe): _____		
Township: _____	Range: _____	Section: _____ Lat: _____ Long: _____
Location: _____		
Means of suppression provided: _____		
Signature of Responsible Party: _____		Date: _____
<b>I accept this Burn Notification and agree to comply with the foregoing conditions.</b>		

### BURNING REGULATIONS

1. Firebreaks 10 feet wide shall be provided along adjoining property and around all exposures (i.e. fences telephone poles, power poles, etc.).
2. Adequate means for suppressing the fire shall be provided by the responsible party.
3. Burning shall be done only during the time specified in the Burn Notification.
4. Do not burn when weather conditions (particularly wind) are such that burning is not safe.
5. Adequate adult supervision shall be provided at all times during the burning operation.
6. Total extinguishment of the fire shall be the responsibility of the Responsible Party and/or Property Owner. Burning must be terminated at 1500 hrs. (3pm) and any smoldering areas extinguished prior to 1700 hrs. (5pm) for all debris fires.

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7. The Property Owner or Occupant shall be liable for any damages caused by or which are the result of the burning operation.
8. A copy of the Burn Notification (signed/approved) shall be available at burn site during burning operation.
9. This Burn Notification is subject to CANCELLATION at any time by Tribal Council or designated representative.

### **BURN NOTICE REQUIREMENTS**

#### **This Burn Notification allows you to conduct the following types of residential debris burns:**

- a) Debris burning: small heaps and piles (not to exceed 4 feet in diameter).
  - means the burning of paper, cardboard, brush, tree trimmings, leaves or vegetation materials.

Prohibited materials include: medications, tires, asphalt shingles, tar paper, cloth, upholstery, plastics, linoleum, diapers, carpeting, demolition debris, construction debris, business trash, or other smoke producing materials.

**A water supply must be available for immediate, emergency use** by the person conducting the burn. The water supply must be of SUFFICIENT CAPACITY and VOLUME to extinguish the fire AT ANY TIME. This usually means the use of a garden hose or backpack pump, and a shovel.

***The Rincon Fire Department may refuse, revoke, or postpone the use of notifications to burn when necessary for the safety of adjacent property or when necessary in their judgment, to prevent air pollution as provided in the rules set forth by the Rincon Tribal Government.***

**Shown is burning in a small pile, illustrating a minimum fire safe requirements. These minimum requirements apply to all piles you burn.**

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1. Maximum pile size is 4 feet in diameter.
2. Area within 10 feet of the outer edge of pile shall be maintained clear of all flammable material and vegetation.
3. Adult in attendance with shovel until fire is dead out.
4. Water supply at burning site.
5. No burning shall be undertaken unless weather conditions (particularly wind) are such that burning can be considered safe.



#### **PRIOR TO BURNING**

Call **CalFire Dispatch** at (619) 590-3100 and ask “Is today a Burn Day?”

- If **YES**, tell them **where** you will be burning, and the **time** you are burning. Notify Rincon Fire Department when this has been done.
- If **NO**, you cannot burn this day. Notify Rincon Fire Department for a re-issuance of this Burn Notification.

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**[MAP 1]**



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