



# *Rincon Indian Reservation*

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## **ORDINANCE NO. 94-06**

### **AN ORDINANCE OF THE BUSINESS COMMITTEE OF THE RINCON SAN LUISEÑO BAND OF MISSION INDIANS ENACTING REGULATIONS FOR OPEN GRAZING, HERDING AND RAISING OF BOVINE AND OTHER SIMILAR LIVESTOCK WITHIN RINCON RESERVATION BOUNDARIES.**

#### **SECTION 40.01 TITLE:**

This title is adopted to enact and implement regulations governing the open grazing, herding and raising of livestock within the boundaries of Rincon Reservation. This title shall be known as the "Rincon Bovine and Livestock Ordinance."

#### **SECTION 40.02 AUTHORITY:**

Pursuant to the authority vested in the Rincon Business Committee by the Articles of Association, this Ordinance is hereby enacted and adopted regulation governing the herding, open grazing and raising of bovine and other similar livestock within the boundaries of Rincon Reservation.

#### **SECTION 40.03 PURPOSE AND FINDINGS:**

The purpose of this Ordinance is:

- a) To protect the order of the Reservation, and safeguard the health, welfare and safety of all persons on Rincon Reservation;
- b) To enact and establish uniform regulations governing bovine and other similar livestock within the boundaries of Rincon Reservation and to facilitate enforcement of said rules and regulations by a designated agent;
- c) To regulate the raising, open grazing and herding of bovine and other similar livestock within the boundaries of the Reservation.

The Rincon San Luiseño Business Committee finds that the practice of permitting tribal members' livestock to run at-large on the rangelands of Rincon Reservation is no longer compatible with existing developments and land uses. The policy and practice of at-large grazing and ranging of tribal members' livestock was permitted on all Indian trust lands of the Reservation. This practice has placed the responsibility of excluding at-large or free ranging animals from their property on those holding individual interests in fee or trust lands.

In recent months, the Business Committee has received a growing number of complaints from tribal members and others that it is difficult for individual property owners, occupants, or assignment holders to construct fences and other protective enclosures to exclude at-large or free ranging livestock, and to protect their individual parcels, leased or assigned trust property. There have been increasing instances

of damage to water lines, fences, gardens, and other real property. In addition, at-large or free ranging livestock pose a serious safety and health hazards to vehicles, pedestrians, horseback riders, and water quality.

The Business Committee, therefore, finds that its rangelands be closed to at-large or free ranging livestock in order to protect the safety, health and welfare of the community as well as preventing unnecessary injury to persons, and damage to individual and tribal property.

**SECTION 40.04 DEFINITIONS:**

**SECTION 40.04.1 "TRIBE":** shall mean the Rincon San Luiseño Band of Mission Indians.

**SECTION 40.04.2 "BUSINESS COMMITTEE":** shall mean the elected governing officials of the Rincon San Luiseño Band of Mission Indians.

**SECTION 40.04.3 "RANGELANDS":** shall mean all Indian trust lands. Indian trust lands comprise all tribal trust lands, including individual assignment lands, and individual Indian allotment lands within the boundaries of the Rincon Indian Reservation.

**SECTION 40.04.4 "PRIVATE LANDS":** shall mean any and all lands not identified in Section 40.04.3 whether held by tribal members, non-member Indians, or non-Indians.

**SECTION 40.04.5 "PUBLIC LANDS":** shall mean any and all public rights-of-way within the boundaries of Rincon Reservation.

**SECTION 40.04.6 "LIVESTOCK":** shall mean any animal of the bovine, caprine, equine, ovine, or swine families, or any mule, jack, jenny or burro, or any domestic ruminant mammal.

**SECTION 40.04.7 "STANDARD OF PROOF; EVIDENCE:** shall be subject to the "greater weight of the evidence (preponderance) standard".

**SECTION 40.04.8 "BAIL":** shall mean any incurred expenses in enforcing this Ordinance including, but not limited to, all costs for seizure and impoundment of the animals, and any civil penalties imposed for violation of the Ordinance.

**SECTION 40.04.9 FEED LOTS:** shall mean any fenced enclosure of ten (10) or more animals utilized for the purpose of holding and fattening livestock for commercial purposes, and which is not utilized for grazing purposes.

**SECTION 40.05 "OPEN GRAZING, FREE ROAMING OF LIVESTOCK AND FEEDLOTS PROHIBITED":** It shall be the policy of the Rincon Tribe that open grazing and free roaming of livestock across all Reservation rangelands, public lands, and private lands is prohibited. It shall be unlawful for any livestock owner, or agent of such owner, to permit livestock to roam, graze, stray or wander upon any Reservation rangelands, public lands, or any other individual's private lands except as provided herein.

Feedlots are prohibited on all lands within the boundaries of the Reservation, including all Reservation lands, public and private lands, and shall constitute a public nuisance. All livestock within the Reservation boundaries must be enclosed by the owner(s) of said livestock within the confines of his or her (their) individual trust allotment, assignment or private lands. Nothing in this Ordinance shall prevent livestock owner(s) from entering into an arrangement with the owner(s) of a trust allotment or private lands to lease the property for grazing purposes, provided the livestock is properly enclosed on said lands.

**SECTION 40.06 ESTABLISHMENT OF ANIMAL CONTROL FUND:** The Rincon Business Committee shall establish an Animal Control Fund from bail funds received for the purposes of enforcement of this Ordinance. The Tribal Finance Department shall keep records of such funds in accordance with written guidelines.

**SECTION 40.07 ENFORCEMENT:**

**SECTION 40.07.1 Seizure:** The Rincon Business Committee or its designated agent is authorized and directed to investigate complaints of livestock in violation of this Ordinance, and to seize and impound any and all livestock found on the closed rangelands, or on public or private lands in violation of this Ordinance.

**SECTION 40.07.2 Notice of Seizure; Citation:** If any animal is seized, by an agent of the Rincon Business Committee, under the provisions of this Ordinance, a public notice of such seizure shall be posted in, at least, three (3) public locations on the Reservation, including the Rincon Tribal Hall. Citations shall be issued for violations of this Ordinance, provided the owner can be identified. Such citations shall state the nature of the violation, and shall be accompanied by a written explanation of bail and right to appeal.

**SECTION 40.07.3 IMPOUNDMENT:** Livestock seized pursuant to this Ordinance shall be boarded at an appropriate location to be determined by the Business Committee.

**SECTION 40.07.4 Authority to Enter Into Contracts:** The Rincon Business Committee is, hereby, authorized to enter into written agreements with appropriate public law enforcement agencies, or private parties for performance of work necessary to enforce this Ordinance. Such contracts shall be subject to competitive bidding procedures. By resolution, the Business Committee shall establish appropriate fees to be used in such contracts.

**SECTION 40.08 EMERGENCY DESTRUCTION OF LIVESTOCK:** If any animal has incurred severe (life threatening) injuries or is incurably sick or crippled, the Rincon Business Committee or its designated agent is authorized to destroy said animal. Said destroyed livestock shall be disposed of in a timely manner, and the Rincon Business Committee, or its designated agent is authorized to act, on behalf of the Band to dispose of said livestock.

**SECTION 40.09 BAIL SCHEDULE; CIVIL PENALTIES:** The Business Committee shall, by appropriate resolution, establish a standard bail schedule for all impounded animal(s) which may be amended from time to time as needed. Such bail schedule shall include, but not be limited to, incurred

expenses for seizure and impoundment of the animal(s), and civil penalties for violations of the provisions of this Ordinance.

**SECTION 40.11 RETRIEVAL OF IMPOUNDED LIVESTOCK:**

**SECTION 40.11.01 Claim by Owner; Proof of Ownership:** Not later than five (5) working days after seizure of any animal, the owner of impounded livestock shall appear at Tribal Governmental offices to claim said livestock. Satisfactory proof of ownership, such as, but not limited to, a state registered brand or a notarized bill of sale must be presented at said appearance.

**SECTION 40.11.02 Posting Bail; Transportation:** An owner may recover said livestock by posting bail with the Tribal Governmental offices upon satisfactory proof of ownership of an impounded animal. All livestock owners shall be required to have each animal properly tagged and/or branded, which will serve as proof of ownership for the purposes of identifying stray animals pursuant to Section 40.11.01. The owner of said impounded animal is responsible for the transportation and any associated costs of transporting all livestock retrieved from impoundment.

**SECTION 40.12 Hearing; Review Board:** Any livestock owner who is cited or against whom penalties are imposed under the provisions of this Ordinance shall have the right to submit a written request, within five (5) days after seizure of any animal, for a hearing before an independent panel of reviewers. If, at the time a hearing is requested, the animal(s) are still impounded, and the owner fails to post bail, the animal(s) shall remain in the custody of the Tribe. All impoundment costs shall continue to be incurred.

The Review Board shall be comprised of three (3) panelists with backgrounds and/or expertise in animal husbandry, law enforcement, and/or animal control. These Review Board panelist shall be appointed by the Rincon Business Committee, and may be made up of tribal members who qualify based upon these stated criteria. The Business Committee may, by appropriate resolution, set forth guidelines and procedures governing the actions of the Review Board.

**SECTION 40.13 AUTHORITY OF BOARD; IMPOSITION OF BAIL AMOUNT; REDUCTION OF CIVIL PENALTIES:** The Review Board is hereby authorized to review any action taken to enforce this Ordinance and to impose appropriate bail amounts for violations of this Ordinance based upon the standard bail schedule established by the Rincon Business Committee. If the Review Board determines that it is appropriate, bail amount may be reduced, except for actual costs incurred by the Tribe for seizure and impoundment of the animal(s). If appropriate community service work is available, such work may be imposed in lieu of part of any civil penalty amount at a maximum hourly rate equal to the Federal minimum hourly rate in effect at the time of penalty imposition. Any reduction in civil penalties already paid by a livestock owner as part of bail duly posted, shall be reimbursed to said owner from the Animal Control Fund established by this Ordinance.

**SECTION 40.14 SEPARATE OFFENSE/CUMULATIVE REMEDY:** Every day during any portion of which any violation of this Ordinance is committed, continued or permitted to exist by violator shall constitute a separate offense. The remedies provided by this Ordinance shall be cumulative, and not exclusive.

**SECTION 40.15 FORFEITURE AND SALE:**

**SECTION 40.15.01 Unclaimed Livestock and Ineligible Persons:** If no owner appears and posts bail within five (5) working days after seizure, or if the owner is unable to pay the bail amount, and does not request a hearing within five (5) working days after seizure, the impounded animal(s) shall be deemed forfeited to the Rincon Tribe. Any employee of the Rincon Tribal Government, or Review Board panelist, or any immediate family member of an employee or Review Board panelist, or any person directly responsible for enforcing this Ordinance, including private party contractors, shall be declared ineligible to bid or purchase forfeited livestock.

**SECTION 40.15.02 FUNDS FROM SALES:** In the case of forfeited animal(s), all funds received from the sale of the livestock shall be deposited in the Animal Control Fund.

**SECTION 40.15.03 AUTHORITY TO ABATE NUISANCE:** In addition to the penalties provided in this Ordinance, any condition caused or permitted to exist in violation of any section herein shall be deemed a public nuisance and may be abated as such by the Business Committee, including but not limited to, banning a named violator or livestock owner determined to be a violator by the Review Board from Reservation lands.

**SECTION 40.16 PRIVATE AND TRIBAL CAUSE OF ACTION:** Any person (including the Rincon Business Committee or its officers and agents acting in an official capacity) who suffers bodily injury, or whose property is damaged, as a result of livestock straying upon Reservation rangelands or upon public or private property in violation of this Ordinance, shall have a cause of action for compensatory damages in a court of competent jurisdiction against the owner of such livestock. Such an action must be filed within six (6) months of either the date when said injuries or damages occurred, or when the person entitled to bring the action learns of or, in the exercise of reasonable diligence, shall have learned of the injuries. Nothing in this provision shall be construed as a waiver of sovereign immunity in the event of any counterclaim or action against the Tribe.

**SECTION 40.17 PRINCIPLES OF CONSTRUCTION:**

**SECTION 40.17.01 Limitations of Application:** This Ordinance shall not be construed to apply to riders on horseback; nor shall it be construed as waiving claims for damage to Reservation rangelands caused by riders on horseback or by free-ranging livestock.

**SECTION 40.17.02 Movement of Livestock:** When livestock owners need to move livestock from one lawful enclosure to another, their livestock may be moved across Reservation rangelands and public lands closed by this Ordinance, provided that said livestock is properly attended, their presence on the rangelands is brief, and their movements reasonably continuous until they are within a lawful enclosure.

**SECTION 40.18 AMENDMENT AND RESCISSION:** This ordinance may be amended no more than once a year. Amendments, as allowed, herein, shall be initiated by General Membership and/or Business Committee. Such amendments or rescissions shall be in writing, and include specific language for the proposed amendment or rescission action requested. Any proposed amendment or rescission proposal shall be submitted for General Membership review, at least thirty (30) days prior to any vote by the General Membership. A majority vote of the General Membership is required to approve an

amendment of this ordinance. A two-thirds (2/3rds) vote of the General Membership is required in order to approve any rescission of this ordinance. The Rincon Business Committee shall be authorized to correct errors or omissions inadvertently made in the preparation and adoption of this Ordinance unless such errors or omissions cause or would cause a substantial new section to be added or deleted then such a new or deleted section(s) shall be considered an amendment pursuant to this section. Public notice of intent to amend, modify or rescind this Ordinance shall be given a minimum of thirty (30) calendar days prior to General Membership meeting and voting on said amendment, modification and/or rescission of, in part or wholly, this Ordinance.

**SECTION 40.19 SEVERABILITY:** If any provision or clause of this Ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To this end, the provisions and clauses of this Ordinance are declared to be severable.

**SECTION 40.20 EFFECTIVE DATE:** This Ordinance shall take effect when adopted by a majority vote of the Rincon Business Committee and shall rescind, supersede and replace in its entirety any previously adopted Tribal Ordinances or Resolutions governing the regulation of livestock as defined herein.

INTRODUCED, PASSED AND ADOPTED by the Business Committee of the Rincon San Luiseño Band of Mission Indians at its regular meeting held on the 6th day of September, 1994 by the following call vote:

Ayes: 3	Richard Garcia, Acting Chairman Patricia Duro, Council Member Gilbert Parada, Council Member
Noes: 0	Council Members: NONE
Absent: 2	Ruth Calac (away on personal family business) Robert G. Calac, Tribal Chairman (hospitalized).

ATTEST:

Darrell W. Gentry  
Darrell W Gentry  
Acting Recording Secretary

Date: October 13, 1994