

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



**RINCON ENVIRONMENTAL ENFORCEMENT  
ORDINANCE  
RINCON TRIBAL CODE § 8.300**

**Adopted on March 27, 2007**

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

**Table of Contents**

§ <u>8.300</u>	Authority And Purpose .....	3
§ <u>8.301</u>	Applicability To Non-Indian Activities On Non-Indian Owned Fee Lands Within The Reservation .....	3
§ <u>8.302</u>	Findings And Declarations .....	4
§ <u>8.303</u>	Short Title .....	5
§ <u>8.304</u>	Definitions .....	5
§ <u>8.305</u>	Rincon Environmental Department (RED) .....	6
§ <u>8.306</u>	Duties And Responsibilities .....	6
§ <u>8.307</u>	Enforcement Department .....	7
§ <u>8.308</u>	Enforcement Actions .....	7
§ <u>8.309</u>	Hearings And Hearing Process .....	9
§ <u>8.310</u>	Remedial Action .....	10
§ <u>8.311</u>	Civil Penalties .....	11
§ <u>8.312</u>	Enforcement Of Tribal Court Order .....	12
§ <u>8.313</u>	Conduct on Non-Indian Lands Within The External Boundaries of The Rincon Reservation .....	12
§ <u>8.314</u>	Sovereign Immunity .....	15
§ <u>8.315</u>	Effective Date .....	15
§ <u>8.316</u>	Severability .....	15
§ <u>8.317</u>	Amendments .....	15

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

**§ 8.300     AUTHORITY AND PURPOSE**

The Rincon Band of Luiseño Indians is a sovereign Indian Band with jurisdiction over the Rincon Indian Reservation. The Rincon Band of Luiseño Indians, in order to protect the health, safety, and general welfare of its members, residents, and guests, exercises regulatory authority over all lands within the exterior boundaries of the Rincon Indian Reservation. It is important to protect the tribe from conduct of non-Indians on non-Indian land that has an actual direct significant impact upon, or potential catastrophic consequences upon the political integrity, the economic security, or the health and welfare of the tribe. The Rincon Business Committee, pursuant to the Articles of Association Section 6, (b) and (c) is vested with the authority to enact ordinances protecting the health, safety, and general welfare of Band Members and non-Indians who are guests or reside on the Rincon Indian Reservation, as well as, to protect the natural resources of the Rincon Indian Reservation.

**§ 8.301     APPLICABILITY TO NON-INDIAN ACTIVITIES AND NON-INDIAN OWNED FEE LANDS WITHIN THE RESERVATION**

(a) This Ordinance shall not apply to activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation unless the activity falls within one or more of the exceptions set forth in subsection (b).

(b) This Ordinance shall apply to activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation if either:

- (1) The activities are conducted by a Tribal Member or an enrolled member of another federally recognized Indian Tribe, or
- (2) The activities are conducted by a Person which has entered into a consensual relationship(s) with the Tribe or its members, through commercial dealings, contracts, leases, permits or other arrangements, or
- (3) The activities are conducted on lands in which the non-Indian owner or lessee of the subject lands has entered into a consensual relationship(s) with the Tribe or its members, through commercial dealings, contracts, leases, permits or other arrangements, or

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

(4) The activities include conduct that threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe. For an activity to qualify under this subsection (b)(4), it must be conduct that either:

(A) in fact, significantly impacts the political integrity, the economic security, or the health and welfare of the Tribe, or

(B) has the potential to impose catastrophic consequences upon the political integrity, the economic security, or the health and welfare of the Tribe.

(c) Notwithstanding any provision of this Ordinance to the contrary, if an activity is subject to this Ordinance pursuant to Section 8.301(b)(4), the Ordinance shall only apply to the extent necessary to protect the Tribe from actual direct significant impacts, or potential catastrophic consequences, upon the political integrity, the economic security, or the health and welfare of the Tribe. Any activity that is subject to this Ordinance pursuant to subsection (b)(4) shall be governed by Section 8.313.

**§ 8.302 FINDINGS AND DECLARATIONS**

The Rincon Business Committee, through its vested authority under the Rincon Articles of Association, finds and declares as follows:

(a) Important to protect natural resources on the Rincon Reservation;

(b) Important to protect health, safety and welfare of members, non-members and guests;

(c) Important to comply with Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301 et seq.;

(d) Important to have tribal environmental enforcement procedures consolidated under one Code;

(e) Important to identify what tribal department is responsible for implementing tribal environmental laws;

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

(f) Important to provide procedures for environmental enforcement.

§ 8.303     **SHORT TITLE**

This Ordinance shall be known as the Rincon Band of Luiseno Indians "Environmental Enforcement Ordinance."

§ 8.304     **DEFINITIONS**

Unless otherwise provided herein, the following definitions shall apply throughout this Ordinance and to all the ordinances attached and subject to this Ordinance:

(a) "**BIA**" means the Bureau of Indian Affairs, an agency under the Department of the Interior of the United States of America.

(b) "**Civil Infraction**" means a violation of tribal law as set forth in a tribal ordinance.

(c) "**Ex Parte**" means for the benefit of one party only, with *reasonable efforts to provide* notice to or contestation by any person adversely interested as provided in Section 8.313(b)(2)(B).

(d) "**Person**" means any Band Member, non-member Indian or non- Indian individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(e) "**Rincon Band**" means the Rincon Band of Luiseno Indians, a sovereign Indian Band which is recognized as such by the federal government of the United States of America. Reference to "Tribe" in any existing or future environmental ordinance shall mean the "Rincon Band".

(f) "**Rincon Environmental Department**" or "**RED**", is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances unless otherwise specified.

(g) "**Rincon Environmental Ordinance**" means any tribal ordinance that is or was enacted by the Rincon Band for the protection and preservation of tribal resources

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE

Rincon Tribal Code § 8.300

---

and the tribal environment.

(h) "**Rincon Security Department**", aka Service, means the department/service within the Rincon Band which is charged with the enforcement of tribal ordinances and to provide protection and safety on the Rincon Reservation.

(i) "**Rincon Business Committee**" or "**Business Committee**" is the five-member committee established under Section 3 (a) of the Rincon Band's Articles of Association. "Rincon Business Committee" shall be synonyms with "Tribal Council" as used in any existing or future tribal environmental ordinance.

(j) "**Tribal Court**" shall be the Intertribal Court of Southern California or other tribal forum designated by the Business Committee to hear and decide violations of tribal environmental ordinances.

**§ 8.305     RINCON ENVIRONMENTAL DEPARTMENT (RED)**

The Business Committee hereby establishes the Rincon Environmental Department ("RED"). The RED shall be administered by an Environmental Manager/Director, who will be selected and hired by the Director of Tribal Administration/Tribal Administrator or other Business Committee representative. The Environmental Manager/Director shall report to the Tribal Administrator and directly to the Business Committee upon request.

**§ 8.306     DUTIES AND RESPONSIBILITIES**

The duties and responsibilities of the RED are as follows:

(a) **Enforcement of Ordinance.** Enforce all provisions of this Ordinance and Tribal Environmental Ordinances in conjunction with the Rincon Security Department and/or other local law enforcement agency, unless otherwise specified.

(b) **Coordinate with Other Agencies.** Coordinate and work with appropriate Rincon Tribal Departments, and the environmental enforcement agencies of the federal government when appropriate and where there is concurrent enforcement jurisdiction.

(c) **Development of Programs.** Develop, implement, and conduct environmental inspection, enforcement and training programs.

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

**(d) Record Keeping.** Keep and maintain records of its inspection, enforcement, and training programs.

**(e) Consultation with Health Agencies.** Consult with appropriate health agencies concerning environmental matters that may affect the health, safety and welfare of the persons on the Rincon Reservation.

**§ 8.307    ENFORCEMENT DEPARTMENT**

**(a) Applicability.** This Ordinance applies to all Environmental Ordinances, Zoning Ordinances, Land Use Ordinances, and other ordinances adopted by the Rincon Band from time to time, whether permanent or temporary, which regulate or control land use and activities on all lands located within the Rincon Indian Reservation. Such ordinances shall be considered "Environmental Ordinances" as that term is used in this Ordinance.

**(b) Enforcement Department.** The Rincon Environmental Department ("RED"), in cooperation with the Rincon Security Department and/or other local law enforcement agency, is hereby designated as the Enforcement Department entrusted with the duty and responsibility of ensuring this Ordinance, as well as existing and future Environmental Ordinances, are complied with.

**§ 8.308    ENFORCEMENT ACTIONS**

**(a) Complaints.** Any person, including a Rincon Security Officer or other law enforcement officer, may file a signed, written complaint with the RED alleging a violation of a Rincon Environmental Ordinance. Given the nature of the alleged complaint, RED may investigate and prepare a written report setting forth the findings of the investigation. All complaints will be held in confidence by the RED.

A complaint may also be initiated by the RED upon its own independent observation and investigation.

**(b) Notice of Violation.** After completing its investigation and determining that there has been a violation of a Rincon Band Environmental Ordinance, the RED shall file a Notice of Violation with the Tribal Administrator and serve the person responsible for the violation a copy of the RED investigative report and the Notice of Violation.

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

- (1) The "Notice of Violation shall set forth:
  - (A) The specific environmental violation;
  - (B) What actions the person must take to correct the violation;
  - (C) The time frame for the corrective action;
  - (D) The complaint will be filed with the Tribal Court should the person fail to take corrective action;
  - (E) The penalty that the person will be subject to should she or he fail to take corrective action; and
  - (F) The person has five (5) working days from the date she or he receives the "Notice of Violation" to file a written "Request for Hearing," pursuant to Section 8.309(a) of this Ordinance, if she/he contests the findings of the RED.
- (2) The "Notice of Violation" may be personally served on the person (on or off the reservation), posted at his or her property, or sent certified mail by the RED. If the person responsible for the violation cannot be located or is intentionally avoiding service of the "Notice of Violation", the RED shall serve the property owner, assignment holder, assignee, lessee, grantee, operator, allottee, or other person in possession and/or control of the property upon which the violation is occurring and said person shall become responsible for correcting the violation. After service has been completed, a "Proof of Service" shall be prepared by the serving officer/person setting forth the time, date, manner of service and signed by serving officer/person.

**(c) Emergency Orders.** In all cases where the RED determines, based on available evidence, that a condition exists that is or will cause immediate harm or injury to persons on the Rincon Reservation or cause immediate damage or destruction of tribal natural resources (i.e. land, air, water), the RED shall immediately file a Motion for an Emergency Order with the Tribal Court. The Tribal Court shall, within 24 hours but in no case more than 72 hours of the filing of the RED's Motion, either grant or deny the



RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

Motion. If the Motion is granted, the Emergency Order will authorize the RED to take immediate remedial action to prevent harm, injury or impact to persons on the Rincon Reservation or tribal natural resources. Upon the issuance of such an Emergency Order, the RED shall act pursuant to the Order and also serve the Order, if possible, on the person responsible for causing the threatening condition and/or the property owner, assignment holder, assignee, lessee, grantee, operator, allottee, or other person in possession and control of the property where the threatening condition is located. The Emergency Order shall provide that the person being served may file a "Request for Hearing" pursuant to Section 8.309(a). The filing of a "Request for Hearing" shall not stay the enforcement of the Emergency Order.

**§ 8.309    HEARINGS AND HEARING PROCESS**

**(a) Request for a Hearing.** Any person served with a "Notice of Violation" may contest the findings of the RED by filing a "Request for Hearing" with the Tribal Court within five (5) working days from receipt of the "Notice of Violation". The "Request for Hearing" shall set forth the grounds upon which the person (herein "Respondent") contests the "Notice of Violation". Upon receipt of the "Request for Hearing," the Tribal Court shall schedule the matter for hearing as soon as possible but no more than 20 calendar days from when the Request is received by the Tribal Court. The Tribal Court shall issue and serve a "Notice of Hearing" to the Respondent and the RED setting forth the hearing date, time, location and that the Respondent may bring witnesses, have legal counsel and/or a representative at his/her own expense and submit any documents relative to his/her case. The "Notice of Hearing" may be served in the same manner as provided for under Section 8.308(b).

- (1)** Either the RED or the Respondent may request that the hearing date be changed by filing a request with the Tribal Court. The Tribal Court may grant one (1) request to change the hearing date upon a showing of good cause. Any subsequent requests for a continuance of the hearing will be granted by the Tribal Court only upon a stipulation of the parties.

**(b) Hearing Before the Tribal Court.** At the hearing, the RED may be represented by legal counsel. The RED shall present the Tribal Court with its investigation report and other documents relied upon in finding that there has been a violation of a Rincon Band Environmental Ordinance. The RED may also call witnesses to testify in support of its finding that a violation has occurred. The Respondent shall be

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

permitted to question the RED representatives and witnesses.

- (1) After the RED has completed its presentation, the Respondent shall present his/her oral and/or written evidence. All evidence must be relevant to the violation set forth in the "Notice of Violation". The RED representatives shall be permitted to question the Respondent and his/her witnesses.
- (2) All hearings before the Tribal Court shall be conducted in a fair and orderly manner. Hearings before the Tribal Court shall be civil in nature, informal and may be subject to rules and procedures as may from time to time be prescribed by the Tribal Court or the Business Committee.
- (3) At the close of Respondent's presentation, the Tribal Court may either issue a decision at that time or take the case under advisement. In all cases, the Tribal Court shall evaluate all of the evidence and testimony and render a decision on whether the Respondent has violated a Rincon Band Environmental Ordinance. The Tribal Court shall issue its written decision setting forth its findings within ten (10) days from the date of the hearing and the decision will be served on the Respondent and the RED. If the Tribal Court finds that the Respondent has violated a Rincon Band Environmental Ordinance, the decision shall order the penalty for such violation and/or other such relief requested by the RED and set forth under Section 8.311. All decisions of the Tribal Court shall be final.

**§ 8.310 REMEDIAL ACTION**

If a Band Member is served with a "Notice of Violation" and fails to take the corrective action as set forth in the "Notice of Violation" and fails to file a timely "Request for Hearing", the RED shall submit a written "Request for Garnishment" to the appropriate Tribal Department requesting that the amount of the fine for the violation be withheld from the Band Member's per capita payment.

**(a) Request for Court Order.** If the RED seeks relief other than or in addition to a fine, the RED may file a "Request for Court Order" as provided for below. If the violator is not a Band Member (non- member Indian or non-Indian) and has not

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

taken corrective action after being properly served with a "Notice of Violation" or filed a "Request for Hearing", the RED shall file with the Tribal Court, a "Request for Court Order."

**(b) Evidence.** With the "Request for Court Order" the RED will also file it's investigation report and other relevant documents or evidence related to the violation, a copy of the "Notice of Violation", "Proof of Service" that the violator was served with "Notice of Violation" or that the owner of the land or person who is in possession or control of the land where the violation occurred was served.

**(c) Order.** If the Tribal Court finds that the person named in the "Request for Court Order" was properly served, failed to take corrective action as ordered, and failed to timely "Request a Hearing", the Tribal Court shall issue an Order granting some or all of the relief requested by the RED.

**(d) Action Report.** In all cases under this subsection, the RED will prepare and file with the Tribal Administrator an "Action Report" informing him/her of the outcome of the case and final disposition.

**§ 8.311     CIVIL PENALTIES**

If the Tribal Court finds a person has violated a Rincon Band Environmental Ordinance, the Tribal Court shall determine what penalty shall be imposed on the person. The Tribal Court may apply the following penalties:

**(a)** A fine of no less than \$100 and no more than \$5,000;

**(b)** A cease and desist order; and/or

**(c)** An order directing the person to take remedial action in a specified period of time; and/or

**(d)** An order directing the person to pay the costs of any and all remedial actions taken by the Rincon Band to correct the violation; and/or

**(e)** Costs and legal fees to the prevailing party; and/or

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

(f) Any and all other relief the Tribal Court determines is necessary and appropriate.

**§ 8.312    ENFORCEMENT OF TRIBAL COURT ORDER**

(a) **Failure to Comply with Court Order.** Should a person, who has been found to have violated a Rincon Band Environmental Ordinance Section 8.310 or 8.311, fail or refuse to comply with an Order issued by the Tribal Court, the RED shall seek enforcement of said Order through any and all legal means available to the RED. All persons having violated a Rincon Band Environmental Ordinance shall be responsible for all costs and legal fees incurred in the enforcement of a Tribal Court Order. If the person who has violated a Rincon Band Environmental Ordinance is a Band Member of the Rincon Band, his/her gaming per capita distribution payment may be garnished to satisfy any penalty assessed by Tribal Court, said garnishment being authorized under Article V, Section 2, B of the "Ordinance Prescribing Allocation and Distribution of Net Revenue from the Tribal Gaming Activities of the Rincon Band of Luiseño Indians."

(b) **Liability of Third Parties for Violation of Tribal Court Order.** Any person with actual knowledge of a Tribal Court Order issued pursuant to this Ordinance who engages in activities in violation thereof is subject to the full range of penalties and relief, both regulatory and judicial, set forth in this Ordinance.

**§ 8.313    CONDUCT ON NON-INDIAN LANDS WITHIN THE EXTERNAL BOUNDARIES OF THE RINCON INDIAN RESERVATION.**

(a) **Process for Prior Tribal Approval/Determination of Activity.**

- (1) A Person may seek prior approval/determination of conduct under Section 8.301(b)(4) of this Ordinance by obtaining a determination by the RED that the proposed conduct falls outside of the exception set forth in Section 8.301(b)(4). In seeking such a determination, the Person shall provide any and all information the RED deems necessary to evaluate the request, including at a minimum:

(A) a detailed description of the activity, and

(B) an independent analysis of possible impacts upon the political

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE

Rincon Tribal Code § 8.300

---

integrity, the economic security, and the health and welfare of the Tribe, and

(C) a proposed plan to adequately protect the Tribe from actual direct significant impacts upon, or potential catastrophic consequences upon, the political integrity, the economic security, and the health and welfare of the Tribe.

- (2) No enforcement action shall be taken pursuant to this Ordinance against any Person which has secured prior approval/determination pursuant to subsection (a) above by the RED so long as the subject activity is limited to that stated in the application to the RED consistent with the proposed plan.

(A) The RED shall only approve such request if, based upon the information submitted by the applicant, and any and all other information the RED knows to be relevant to the request, including additional information acquired on his or her own accord, that the described conduct, performed in compliance with the proposed plan, the RED expressly determines that such conduct performed in compliance with the proposed plan does not have an actual direct significant impact upon, or potential catastrophic consequences upon the political integrity, the economic security, or the health and welfare of the Tribe.

(B) An applicant which has been denied a request for prior approval/determination pursuant to Section 8.313(a) may appeal such determination to the Tribal Court.

**(b) Enforcement Action for Non-Consensual Activities on Non-Indian Lands.**

- (1) The RED may take enforcement action against conduct on non-Indian land within the external boundaries of the Rincon Reservation against any Person that:

(A) engages in such conduct in a manner inconsistent with the terms of any prior approval/determination obtained pursuant to Section 8.313, or

(B) does not have prior approval and engages in conduct that falls

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE

Rincon Tribal Code § 8.300

---

within the exceptions set forth in Section 8.301(b)(4).

- (2) Prior to taking enforcement action pursuant to this subsection (b), the RED must make a specific written determination that the conduct qualifies under the scope of the RED's enforcement authority as set forth in Section 8.301, including the facts relied upon and the rationale for such determination.

(A) The Department shall include such written determination under Section 8.313(a)(2)(A) within any Notice of Violation issued pursuant to this Ordinance for conduct occurring on non-Indian lands located within the Rincon Reservation.

- (i) The Notice of Violation shall include a specific description of the remedial action that must be taken.
- (ii) In the event prior approval action on the subject has been granted pursuant to Section 8.313(a), such remedial action shall be limited to only that action necessary to prevent an actual direct significant impact upon, or potential catastrophic consequences upon, the political integrity, the economic security, or the health and welfare of the Tribe.
- (iii) In the event prior approval action on the subject has not been granted pursuant to Section 8.313(a), such remedial action may include a cease and desist order regarding all activity on the land until such time that prior approval is obtained for future action, and in such event, further remedial action shall be limited to only that action necessary to prevent an actual direct significant impact upon, or potential catastrophic consequences upon, the political integrity, the economic security, or the health and welfare of the Tribe.

RINCON ENVIRONMENTAL ENFORCEMENT ORDINANCE  
Rincon Tribal Code § 8.300

---

(B) If the recipient of a Notice of Violation fails to take the directed remedial action within the time frame stated in the Notice of Violation, and the recipient has not otherwise filed a request for hearing to the Rincon Tribal Court, the RED may seek an Ex Parte Order of the Rincon Tribal Court, consistent with 8.313(b)(2)(A), to take any and all such actions necessary to protect the Tribe from any actual direct significant impact upon, or potential catastrophic consequences upon, the political integrity, the economic security, or the health and welfare of the Tribe.

(C) The recipient of the Notice of Violation may challenge the Notice of Violation pursuant to the provisions of this Ordinance.

**§ 8.314 SOVEREIGN IMMUNITY**

Nothing in this Ordinance shall be deemed to have waived the Rincon Band's, its department's, employees, officers, agents or other tribal entities' sovereign immunity.

**§ 8.315 EFFECTIVE DATE**

The provisions of this Ordinance shall become effective upon adoption by the Rincon Business Committee and shall be applicable to all existing and future tribal environmental ordinances. Enactment of this Ordinance shall supersede all due process provisions (notice and hearing) and fine provisions of all existing tribal environmental ordinances.

**§ 8.316 SEVERABILITY**

If any provision of this Ordinance, or its application to any person or circumstances, is determined invalid, such determination shall not invalidate any other provisions or applications of this Ordinance and to this end, the provisions of this Ordinance are severable.

**§ 8.317 AMENDMENTS**

This Ordinance may be amended from time to time by the Business Committee.