

# Rincon Band of Luiseño Indians

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## RESOLUTION NO. 2009-12

### RINCON BAND OF LUISEÑO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA

#### A RESOLUTION ENACTING AMENDMENTS TO THE ELECTRICAL SERVICE ORDINANCE

**WHEREAS**, the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California (“Band”) is a federally recognized Indian tribe organized pursuant to the Articles of Association adopted February 14, 1960 and approved by the Commissioner of Indian Affairs on March 15, 1960; and

**WHEREAS**, the Band possesses inherent powers of self-government and sovereignty over the lands of the Rincon Indian Reservation (“Reservation”), including the power to regulate for the health, safety and welfare of Reservation residents and including the power to regulate for the economic security, political integrity and the health, safety and welfare of the Band as a whole; and

**WHEREAS**, the Rincon Business Committee (“Tribal Council”) is the duly elected governing body of the Band and is empowered pursuant to Section 6 of the Articles of Association to enact ordinances to effectuate the inherent sovereign powers of the Band; and

**WHEREAS**, the Tribal Council determines that unsafe electrical services pose substantial fire hazards, thereby posing a direct threat to the economic security, political integrity and the health safety and welfare of the Band as a whole; and

**WHEREAS**, the Tribal Council determines that the Band has a substantial interest in ensuring that safe electrical services within the exterior boundaries of the Reservation; and

**WHEREAS**, effective regulation of electrical service on the Reservation requires a unitary regulatory approach.

**NOW, THEREFORE, BE IT RESOLVED** that the Council hereby enacts the following Electrical Service Ordinance, and hereby repeals the Band’s prior Electric Service Ordinance, formerly codified at Chapter 03 of the Rincon Tribal Code:

### CHAPTER 3 ELECTRICAL SERVICE ORDINANCE OF THE RINCON BAND OF LUISEÑO INDIANS

#### Section 1 Definitions and Rules of Construction

Bo Mazzetti  
Tribal Chairman

Stephanie Spencer  
Vice Chairwoman

Gilbert Parada  
Council Member

Charlie Kolb  
Council Member

Steve Stallings  
Council Member

**3.1.01 Definitions.** The following terms, when used in this Ordinance, shall have the following meanings:

- (a) Rincon Business Committee is the five-member governing body of the Rincon Band of Luiseño Indians.
- (b) Person refers to any natural individual, firm, partnership, association, corporation, company, business or governmental entity.
- (c) Rincon Band refers to the Rincon Band of Luiseño Indians.
- (d) Rincon Indian Reservation refers to the reservation of the Rincon Band of Luiseño Indians in San Diego County, California, as established, existing, and geographically defined under the laws of the United States, encompassing all territory within its exterior boundaries including fee lands, allotted lands, assigned lands, tribal lands, roads, bridges, and rights-of-way.
- (e) Rincon Fire Department shall mean the Rincon Fire Department of the Rincon Indian Reservation.
- (f) Rincon Fire Chief shall mean the Chief of the Rincon Fire Department.
- (g) Area Director means the Area Director, Sacramento Area Office, Bureau of Indian Affairs, Department of the Interior, Sacramento, California.
- (h) San Diego Gas and Electric or "SDG&E" means the utility company San Diego Gas and Electric which provides electrical services to the Rincon Indian Reservation.
- (i) Trust Land refers to land held in trust for the Rincon Band of Luiseño Indians by the United States.
- (j) Tribal Land refers to land held in trust for the Rincon Band of Luiseño Indians by the United States that is neither allotted nor assigned.
- (k) Fee Land refers to land within the exterior boundaries of the Rincon Indian Reservation that is owned in fee simple.
- (l) Member of the Rincon Band refers to any individual who is duly enrolled in the Rincon Band of Luiseño Indians.
- (m) Non-Member of the Rincon Band refers to any individual who is not duly enrolled in the Rincon Band of Luiseño Indians.

- (n) International Electric Code or ("IEC") shall mean the International Electric Code, 2006 Edition, published by the International Code Council.

**3.1.02 Rules of Construction**

- (a) This Ordinance shall be liberally construed to affect its purposes.
- (b) Words in the present tense include the future and past tenses.
- (c) Words in the singular number include the plural and words in the plural number include the singular.

**Section 2  
Violations of Ordinance**

**3.2.01 Violations.** Any of the following acts or omissions are violations of this Ordinance:

- (a) Failure by any person to comply with any term or provision of this Ordinance; or
- (b) Failure by any person to comply with rules or regulations promulgated pursuant to this Ordinance; or
- (c) Obtaining electrical service to any property, including structures located thereon, in such a manner as to constitute a safety hazard that threatens the health, safety or welfare of the occupants of the property, surrounding properties, the Reservation Community or the Rincon Indian Reservation; or
- (d) Failure of any person to comply with the provisions of the International Electric Code, regarding activities that occur, or conditions that exist, from the date of the enactment of this Ordinance; or
- (e) Failure of any person to comply with the provisions of the National Electric Code, 1987 ed., published by the National Fire Protection Association, for activities that have occurred, or conditions that did exist, prior to April 2, 2009.

**Section 3  
Enforcement**

**3.3.01 Environmental Enforcement Ordinance: Applicability**

- (a) This Ordinance shall be considered an "Environmental Ordinance" under Subsection 301(a) of the Environmental Enforcement Ordinance, and violations of this

Ordinance shall be enforced and adjudicated pursuant to the Environmental Enforcement Ordinance.

- (b) Pursuant to Section 202(a) of the Environmental Enforcement Ordinance, the Rincon Fire Department shall be responsible for enforcing this Electrical Ordinance.
  - (1) For purposes of enforcement of this Electrical Ordinance, the Rincon Fire Department shall be considered the Rincon Environmental Department (“RED”) under Title 3 of the Environmental Enforcement Ordinance.

**3.3.02 Emergency Powers.**

- (a) Notwithstanding any other provision of this Ordinance or of the Environmental Enforcement Ordinance, the RED is empowered to take immediate action, including termination of electric service to any property located within the exterior boundaries of the Reservation, if the RED determines that such action is necessary to correct, remedy or prevent an immediate, clear, and present danger which threatens the health, safety or welfare of the occupants of the property, surrounding properties, the Reservation Community or the Rincon Indian Reservation.
- (b) If the RED invokes emergency powers pursuant to this Subsection, the RED shall immediately file a Motion for an Emergency Order under Subsection 302(c) of the Environmental Enforcement Ordinance to determine whether the action taken by RED pursuant to this Subsection should remain in effect or be modified.

**Section 4  
Penalties**

**3.4.01 Additional Penalties and Remedies for Violation of the Electrical Ordinance.** In addition to the penalties set forth in Title 3 of the Environmental Enforcement Ordinance, the following penalties may be imposed for violation of this Electrical Ordinance:

- (a) If a person in violation of this Ordinance has not performed the remedial action required, the RED may suspend electric service until outstanding fines and any other fees due and owing are paid and compliance with this Ordinance is obtained.
  - (1) If the RED determines to suspend electric service, the RED shall send by certified mail a Notice of Suspension of electrical service to the person determined to have violated this Ordinance.
  - (2) The Notice of Suspension shall advise the person in violation of this Ordinance of the outstanding fines and any other fees and the remedial action that must be taken to become compliant

- (3) If the RED determines to issue a Notice of Suspension, the RED shall concurrently provide notice to San Diego Gas & Electric to terminate electric services until such time as there is Compliance with this Ordinance.


**Section 5**  
**Miscellaneous**

- 3.5.01 Severability.** In the event that any provision of this Ordinance or implementing regulations is determined to be invalid or unenforceable, the remaining provisions of the this Code and regulations shall continue in full force and effect and their validity shall be unimpaired.
- 3.5.02 Sovereign Immunity.** In enacting this Ordinance, the Rincon Business Committee does not waive the Band's Sovereign Immunity.

**CERTIFICATION**

We, the undersigned, as the governing body of the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, do hereby certify that the Rincon Business Committee is composed of five (5) members of whom 5 constituting a quorum were present at a meeting duly held on April 2, 2009, by a vote of 5 in favor, 0 against, 0 absent, and 0 abstaining.

  
Bo Mazzetti, Chairman

  
Stephanie Spencer, Vice Chairwoman

  
Gilbert Parada, Council Member

  
Charlie Kolb, Council Member

  
Steve Stallings, Council Member

# **ELECTRICAL SERVICE ORDINANCE OF THE RINCON, SAN LUISEÑO BAND OF MISSION INDIANS**

## **ARTICLE I - DEFINITIONS**

The following terms, wherever used or referred to in this Ordinance, shall have the following meanings:

- Section 1. **RINCON BUSINESS COMMITTEE:** The term "Rincon Business Committee" refers to the five-member governing body of the Rincon, San Luiseño Band of Mission Indians, existing and functioning pursuant to the Articles of Association of the Rincon Band ratified on February 21, 1959, amended on February 14, 1960, and approved March 15, 1960, by the Commissioner of the Bureau of Indian Affairs.
- Section 2. **PERSON:** The term "person" refers to any natural individual, firm, partnership, association, corporation, company, business or governmental entity.
- Section 3. **RINCON BAND:** The term "Rincon Band" refers to the Rincon, San Luiseño Band of Mission Indians.
- Section 4. **RINCON INDIAN RESERVATION:** The term "Rincon Indian Reservation" refers to the reservation of the Rincon, San Luiseño Band of Mission Indians in San Diego County, California as established, existing, and geographically defined under the laws of the United States, encompassing all territory within its exterior boundaries including fee lands, allotted lands, assigned lands, tribal lands, roads, bridges, and rights-of-way, used or claimed by any person.
- Section 5. **AREA DIRECTOR:** The term "Area Director" refers to the Area Director, Sacramento Area Office, Bureau of Indian Affairs, Department of the Interior, Sacramento, California.
- Section 6. **SAN DIEGO GAS & ELECTRIC:** The term "San Diego Gas & Electric" or "SDG&E" refers to the utility company San Diego Gas & Electric which provides electrical services to the Rincon Indian Reservation.
- Section 7. **TRUST LAND:** The term "trust land" refers to land held in trust for the Rincon, San Luiseño Band of Mission Indians by the United States.

- Section 8. **TRIBAL LAND:** The term “tribal land” refers to land held in trust for the Rincon, San Luiseño Band of Mission Indians by the United States of America that is neither allotted nor assigned.
- Section 9. **FEE LAND:** The term “fee land” refers to land within the exterior boundaries of the Rincon Indian Reservation that is owned in fee simple.
- Section 10. **MEMBER OF THE RINCON BAND:** The term “member of the Rincon Band” refers to any individual who is duly enrolled in the Rincon, San Luiseño Band of Mission Indians.
- Section 11. **NON-MEMBER OF THE RINCON BAND:** The term “non-member of the Rincon Band” refers to any individual who is not duly enrolled in the Rincon, San Luiseño Band of Mission Indians.
- Section 12. **NATIONAL ELECTRIC CODE:** The term “National Electric Code” refers to the National Electric Code, 1987 ed., published by the National Fire Protection Association.
- Section 13. **DETERMINATION HEARING:** The term “Determination Hearing” refers to the initial hearing conducted by the Rincon Business Committee to determine if a violation of this Ordinance is or has occurred and, if so, which person is or has violated this Ordinance.
- Section 14. **NOTICE OF DETERMINATION HEARING:** The term “Notice of Determination Hearing” refers to the document giving notice of the time, date, and place of the Determination Hearing to the person believed to be in violation of this Ordinance.
- Section 15. **DETERMINATION NOTICE:** The term “Determination Notice” refers to the document issued within a reasonable time after completion of the Determination of Article V of this Ordinance. It also states the action required by the Rincon Business Committee in order for said person to bring himself into Compliance with this Ordinance.
- Section 16. **COMPLIANCE HEARING:** The term “Compliance Hearing” refers to the second hearing conducted by the Rincon Business Committee to determine if a person has performed the action required of him at the Determination Hearing as stated in the Determination Notice in order for said person to bring himself into Compliance with this Ordinance. The Rincon Business Committee may impose a fine of \$500.00 per violation as well as suspend electric services to said person at this hearing for non-compliance with the Determination Notice.

- Section 17. **NOTICE OF COMPLIANCE HEARING:** The term “Notice of Compliance Hearing” refers to the document giving notice of the time, date, and place of the Compliance Hearing to the person in violation of this Ordinance.
- Section 18. **FINE AND SUSPENSION NOTICE:** The term “Fine and Temporary Suspension Notice” refers to the document issued at or within a reasonable time after the completion of the Compliance Hearing which states that a person has not performed the action required by the Rincon Business Committee and therefore a civil fine of \$500.00 per violation and suspension of electric service has been imposed on said person for his failure to comply with this Ordinance.
- Section 19. **NOTICE OF GENERAL MEMBERSHIP MEETING:** The term “Notice of General Membership Meeting” refers to the document giving Notice of the time, date, and place of the Rincon Band’s General Membership meeting to the person in violation of this Ordinance.
- Section 20. **DETERMINATION NOTICE -- NO VIOLATIONS:** The term “Determination Notice -- No Violations” refers to the document issued within a reasonable time after the completion of the Determination Hearing which states that the Rincon Business Committee has determined that no provision of this Ordinance has been violated.
- Section 21. **MAY:** The term “may” refers to a discretionary or permissive action.
- Section 22. **SHALL:** The term “shall” refers to a mandatory command of action, not discretionary in nature.
- Section 23. **COMMERCIAL OR BUSINESS ENTERPRISES:** The term “commercial or business enterprise” refers to an endeavor or undertaking that has as its object economic gain provided however that single-family dwellings used for residential purposes shall be excluded from this category.

## **ARTICLE II - RULES OF CONSTRUCTION**

- Section 1. This Ordinance shall be liberally construed to effect its purposes.
- Section 2. Words in the present tense include the future and past tenses.
- Section 3. Words in the singular number include the plural and words in the plural number include the singular.

### **ARTICLE III - RINCON BUSINESS COMMITTEE**

- Section 1. The Rincon Business Committee has full and complete authority to insure the health, safety, and welfare of members of the Rincon Band and of other residents of and businesses located on the Rincon Indian Reservation. Such authority extends to regulating the manner in which electrical service is provided to residential and commercial structures located on the Rincon Indian Reservation and insuring that electrical services are provided in a safe manner to all structures located on the Rincon Indian Reservation.
- Section 2. The Rincon Business Committee is empowered to enact those policies, procedures, rules and regulations as are needed to implement this Ordinance.
- Section 3. Any and all matters not specifically addressed by this Ordinance shall be handled at the discretion of the Rincon Business Committee.

### **ARTICLE IV - VIOLATIONS OF ORDINANCE**

- Section 1. Any of the following acts or omissions are violations of this Ordinance:
- A. Failure by any person to comply with any term or provision of this Ordinance; or
  - B. Failure by any person to comply with the rules and regulations of the Rincon Business Committee; or
  - C. Obtaining electrical service to any structure on the Rincon Indian Reservation in such a manner as to constitute a safety hazard or which threatens the health, safety or welfare of the occupants of such structure or surrounding structures; or
  - D. Failure of any person to comply with the provisions of the National Electric Code.

### **ARTICLE V - PROCEDURE FOR FINE AND SUSPENSION OF ELECTRIC SERVICES**

- Section 1. If the Rincon Business Committee has reason to believe any person is in violation of any provision of Article IV of this Ordinance, the Rincon Business Committee shall conduct a hearing to determine (Determination Hearing) if a violation of Article IV of this Ordinance is occurring or has occurred.
- Section 2. The Rincon Business Committee shall send a Notice of Determination

Hearing to the person alleged to be in violation of Article IV of this Ordinance in writing by certified mail at least five (5) days prior to the Determination Hearing which shall state the following:

- A. That said person is believed to be in violation of this Ordinance; and
- B. The nature of the alleged violation; and
- C. The date, time, and place that the Rincon Business Committee shall conduct the Determination Hearing; and
- D. That said person is requested to appear at the Determination Hearing to present any information, testimony or argument in his behalf; and
- E. That failure to appear could result in fine and/or disconnection from the domestic electric system; and
- F. That said person may have other individuals appear at said Determination Hearing to present any information, testimony or argument in said person's behalf; and
- G. That if the Rincon Business Committee determines that a violation of Article IV of this Ordinance is occurring or has occurred by said person and said person fails to comply with the actions ordered by the Rincon Business Committee, a civil fine of \$500.00 per violation may be imposed and electric service may be suspended until said person brings himself into Compliance with Article IV of this Ordinance and the fine and any other fees due and owing to the Rincon Business Committee have been paid.

Section 3. The Rincon Business Committee shall request that any person having knowledge of said alleged violation of Article IV of this Ordinance appear at said Determination Hearing to give information, testimony or argument concerning said alleged violation.

Section 4. The Rincon Business Committee shall, upon completion of said Determination Hearing, determine the following:

- A. What person, if any, is violating or has violated a provision of Article IV of this Ordinance; and
- B. Which provision of Article IV of this Ordinance, if any, is being violated or has been violated.

Section 5. If the Rincon Business Committee determines that no violation of Article IV of this Ordinance is occurring or has occurred, the Rincon Business Committee shall send, as soon as is reasonably possible, to said person a Determination Notice--No Violations in writing by certified mail.

Section 6. If the Rincon Business Committee determines that a violation of Article IV of this Ordinance is occurring or has occurred, the Rincon Business Committee shall send, as soon as is reasonably possible, to said person a Determination Notice in writing by certified mail which shall include the following:

- A. The specific provision of Article IV of this Ordinance that the Rincon Business Committee has determined said person is violating or has violated; and
- B. The action required by the Rincon Business Committee in order for said person to bring himself into Compliance with this Ordinance; and
- C. That said person has seven (7) days in which to take said action; and
- D. If said person fails to take the action required within the specified seven (7) days, a civil fine of \$500.00 per violation may be imposed as well as suspension of electric service; and
- E. The Rincon Business Committee shall conduct a Compliance Hearing to establish if said person has performed the action required by the Rincon Business Committee no sooner than seven (7) days or more than thirty (30) days from the date of the mailing of the Determination Notice.

Section 7. The Rincon Business Committee shall conduct a Compliance Hearing to establish if said person has performed the action required by the Rincon Business Committee no sooner than seven (7) days or more than thirty (30) days from the date of the mailing of the Determination Notice.

Section 8. The Rincon Business Committee shall send a Notice of the Compliance Hearing to said person by certified mail which shall state the date, time, and place of said hearing.

Section 9. If at the Compliance Hearing it is established that said person has not performed the action required and therefore remains in violation of this Ordinance, the Rincon Business Committee may impose a civil fine of \$500.00 per violation and may suspend electric service until said fine and any other fees due and owing the Rincon Business Committee are paid and Compliance with this Ordinance is obtained.

Section 10. If the Rincon Business Committee establishes at the Compliance Hearing that said person has not performed the action required and imposes a fine and suspends electric service, the Rincon Business Committee shall send a Fine and Suspension Notice to said person by certified mail which states the following:

- A. That at the Compliance Hearing it was determined that said person had not taken the action required by the Rincon Business Committee in order for said person to bring himself into Compliance with this Ordinance; and
- B. That the Rincon Business Committee imposed a civil fine of \$500.00 per violation on said person and has suspended electric service to said person until the fine and any other fees due and owing to the Rincon Business Committee are paid and the action required of said person is

performed; and

- C. If said person fails to perform the action required by the Rincon Business Committee and fails to pay the fine and other charges to the Rincon Business Committee within fourteen (14) days from the date of mailing the Notice of Fine and Suspension, the Rincon Business Committee may give notice to San Diego Gas & Electric to terminate said person's electric services until such time as said person comes into compliance.

Section 11. After electric service is terminated by the Rincon Business Committee, said person may within thirty (30) days appeal said termination of electric service to the Rincon Band. Said appeal shall state in writing the reasons why said person's electric service should not be terminated. Notice of the General Membership meeting stating the time, date, and place of the General Membership meeting when said appeal is to be discussed shall be sent to said person at least five (5) days prior to said General Membership meeting. In order to have said appeal brought before the Rincon Band at the General Membership meeting, said person **MUST BE PRESENT**.

Section 12. The Rincon Band shall announce its decision concerning said appeal at the General Membership meeting.

Section 13. The decision of the Rincon Band concerning termination of electric service is final and not appealable.

#### **ARTICLE VI - EMERGENCY POWERS**

Section 1. Notwithstanding any other terms or provisions of this Ordinance, the Rincon Business Committee is empowered to take immediate action to terminate electric service to any structure on the Rincon Indian Reservation if the Rincon Business Committee finds that such action is necessary to correct, remedy or prevent an immediate, clear, and present danger which threatens the health, safety, and welfare of the residents of the Rincon Indian Reservation.

#### **ARTICLE VII - ENFORCEMENT**

Section 1. Notwithstanding any other terms or provisions of this Ordinance, the Rincon Business Committee is empowered, on behalf of the Rincon Band, alone or in conjunction with the Secretary of the Interior, to take any and all legal steps necessary in the appropriate judicial setting to enforce any term or provision of this Ordinance.