

# SHINGLE SPRINGS BAND OF MIWOK INDIANS FAMILY CODE





## **SHINGLE SPRINGS BAND OF MIWOK INDIANS**

SHINGLE SPRINGS BAND OF MIWOK INDIANS  
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# **TITLE I. GENERAL PROVISIONS**

## **ARTICLE 1 – DEFINITIONS**

### **Section 1. Terms.**

For purposes of this Ordinance, the following terms shall have the meanings ascribed below:

- (A) **“Abuse”** - means a situation in which a Child/Elder suffers from any one or more of the following:
  - (1) Serious physical injury inflicted upon the Child/Elder by other than accidental means.
  - (2) Harm by reason of intentional neglect, malnutrition or sexual abuse.
  - (3) Going without necessary and basic physical care.
  - (4) Willful mental injury, financial harm, negligent treatment, or maltreatment of a Child/Elder by a person who is responsible for the Child’s/Elder’s welfare under circumstances that indicate that the Child’s/Elder’s health or welfare is harmed or threatened thereby;
- (B) **“Adult”** – means a person who is 18 years or older;
- (C) **“Caretaker”** - A person who, either voluntarily or by law, provides care, services or resources to an Elder;
- (D) **“Child”** - means a person under 18 years of age;
- (E) **“Elder”** – means a person who is 55 years or older;
- (F) **“Emergency Situation”** – means a serious, unexpected, and often dangerous situation requiring immediate action;
- (G) **“Legally Incompetent Member”** – means a Tribal member at least eighteen (18) years old who has been declared incompetent by the Tribal Court, because he or she is temporarily or permanently impaired to the extent that he/she lacks sufficient understanding to make or communicate responsible personal decisions;
- (H) **“Local Child Protective Services Agency”** means the County Child Protective Services Department;
- (I) **“Local Law Enforcement Agency”** means the Tribal Police Department if the victim is a Tribal member or lives on the Rancheria, and means the applicable County Sheriff’s Office if the victim is a non-Tribal member who lives off of the Rancheria;
- (J) **“Ordinance”** – means this Abuse Ordinance;
- (K) **“Parent”** - means any person who exercises care, custody, and control of the Child as established by law;

- (L) **“Per Capita Distribution”** – means any payment from net gaming revenues made to a qualified Tribal member and/or minor member as part of the Revenue Allocation Plan, including payments made through an intermediary, such as an escrow account, trust fund, federally administered fund, or the like;
- (M) **“Rancheria”** - means the Shingle Springs Rancheria located in El Dorado County, California;
- (N) **“Tribal Council”** - means the Shingle Springs Tribal Council, the Tribe’s governing body as established by the Tribe’s Articles of Association;
- (O) **“Tribal Court”** - means the Shingle Springs Tribal Court established pursuant to Tribal ordinance;
- (P) **“Tribal Member”** – means enrolled member of the Shingle Springs Band of Miwok Indians;
- (Q) **“Tribe”** - refers to the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe, or an authorized official or agency thereof;

#### **ARTICLE 2 – SOVEREIGN IMMUNITY**

Nothing in the provisions of this Ordinance constitutes consent by the Shingle Springs Band of Miwok Indians or its sub-organizations to be sued in any court. This Ordinance does not represent a waiver of the Tribe’s sovereign immunity for any purpose.

#### **ARTICLE 3 – AMENDMENTS**

This Ordinance, or any section herein, may be amended by a majority vote of the Tribal Council.

#### **ARTICLE 4 – SEVERABILITY**

If any part of this Ordinance is found void and without legal effect, the remainder of the Ordinance shall continue to remain in full force and effect, as though such part had not been contained therein.

#### **ARTICLE 5 – EFFECTIVE DATE**

This Ordinance shall take effect on the date it is approved by the Tribal Council.

## **TITLE II. GUARDIANSHIP**

### **ARTICLE 1 – AUTHORITY**

#### **Section 1. Tribal Court**

The Shingle Springs Tribal Court shall have authority to appoint a guardian for a tribal member minor or non-tribal member minor living on and off the reservation whenever it is in the best interests of the minor.

#### **Section 2. Best Interest of Minor**

It shall be in the best interest of the minor to have a guardian appointed when, but not limited to;

- (A) The minor has suffered serious physical or emotional harm inflicted non-accidentally upon the minor by his/her parent;
- (B) There is substantial risk that the minor will suffer serious physical or emotional harm if left in the care of the parent;
- (C) The parent has failed to adequately supervise, care for, protect the minor, or the parent wants to voluntarily relinquish guardianship and a suitable guardian is available;
- (D) The minor's parent is incarcerated, institutionalized or otherwise unable to provide adequate care of the child;
- (E) The parents predecease the minor.

### **ARTICLE 2 – PETITION FOR GUARDIANSHIP**

#### **Section 1. Initiating a Guardianship Case**

A guardianship case under this Title shall be initiated by an individual filing a petition with the Tribal Court, or by the Court's own motion.

#### **Section 2. Who May File a Guardianship Petition**

A guardianship petition may be filed by the following individuals;

- (A) Family members of the minor;
- (B) The minor himself or herself if he or she is fourteen (14) years of age or older;
- (C) The Tribe;
- (D) Any person possessing a legitimate interest in the matter.

### **Section 3. Contents of Guardianship Petition**

The petition for guardianship shall include the following information, if available:

- (A) The name, date of birth, residence, and Indian status of the minor;
- (B) The name, date of birth, residence, and Indian status of potential guardians;
- (C) The names, dates of birth, residence, and Indian status of the minor's parent(s);
- (D) A statement of the specific facts that form the basis for the petition and the Court's jurisdiction; and
- (E) A description of any previous Court hearings concerning the youth, if known.
- (F) Whether or not the Petitioner is requesting an order for temporary guardianship pending a trial on the Petition which will not occur for at least sixty (60) days.
- (G) If one or both biological parents receives per capita distributions from the Tribe, whether or not the Petitioner is requesting withholding of a portion of one or both biological parent's per capita distribution for support of the minor(s) subject to the petition.

### **Section 4. Notice to the Tribe**

The Court shall serve the Tribe's Legal Department with a copy of the petition the next business day after the Petition is filed.

### **Section 5. Notice to Biological Parents**

The Petitioner shall personally serve a copy of the Petition on the biological parents of the minor and may request service assistance from the Tribal Police for service on the Reservation.

## **ARTICLE 3 – HOME SAFETY CHECK**

### **Section 1. Home Safety Check Process**

- (A) After receipt of the petition, the Clerk of the Tribal Court shall serve the Petition on the Tribal Services Department with a request to prepare and file a Home Safety Check Report with the Tribal Court.
- (B) The Home Safety Check shall be completed and filed with the Court within five (days) of receiving the Petition from the Court. An extension can be granted by the Court for multiple or out of town residences.
- (C) The Tribal Court will serve the Home Safety Check on the Tribe's Legal Department.

## **Section 2. Contents of Home Safety Check**

A home safety check is completed to determine if it is safe for the child to stay temporarily in the Petitioner's home and shall consist of a report after a home visit to the Petitioner's home regarding the general conditions of the home including the following factors:

- (A) Names and ages of all people living in the home,
- (B) Safety concerns for minor to stay in the home;
- (C) Recommendations to cure safety concerns if any.

## **ARTICLE 4 – CRIMINAL HISTORY REPORT**

### **Section 1. Criminal History Report Procedure**

After receipt of the petition and Home Safety Check the Legal Department shall secure and review the criminal history information of the potential guardian and any individuals residing in the potential guardian's home in order to determine whether they have ever been convicted of a crime other than a minor traffic violation. The following procedures shall be followed:

### **Section 2. Ineligible Placements**

A child will not be placed with a guardian, or in a home where an individual resides, who has been found guilty of any of the following crimes:

- (A) Assaulting another with intent to commit mayhem, rape, sodomy, oral copulation;
- (B) Touching an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse;
- (C) Rape;
- (D) Receiving money or anything of value for the placement, the adoption or for the consent to an adoption of a child;
- (E) Lewd or lascivious acts against a child;
- (F) Sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- (G) Sex Offender fails to register;
- (H) Abuse against an Elder.

### **Section 3. Reporting Criminal History of Placements**

The Legal Department shall provide the criminal history information to the Tribal Court.

## **ARTICLE 5 – GUARDIANSHIP INVESTIGATION**

### **Section 1. Requesting Guardianship Investigation Report**

After the initial hearing, the Court shall serve the Petition with the Home Safety Check report, and the Criminal History Report on the Tribal Health and Wellness Center Clinic Manager with a request to prepare and file a Guardianship Investigation Report with the Tribal Court.

### **Section 2. Timing of Guardianship Investigation Report**

The Guardianship Investigation Report shall be completed by Tribal Health and Wellness Center’s Licensed Social Worker or contracted Licensed Social Worker and filed with the Tribal Court within thirty (30) to sixty (60) days of service of the Petition. The Licensed Social Worker shall notify Tribal Services of dates for home visits and interviews so that Tribal Services may be present for these visits and interviews.

### **Section 3. Information contained in the Guardianship Investigation Report**

The Guardianship Investigation Report shall contain information, based on home visits, on the minor’s living conditions with the parents, the qualifications of potential guardians, and the recommendations on placement. Specifically, the report must address the following factors:

- (A) Wishes of the parents, relatives, and the minor if fourteen (14) years of age or older.
- (B) The placement of siblings.
- (C) The moral character of potential guardians, including criminal history.
- (D) The relationship between the child and potential guardians.
- (E) The ability of potential guardians to; provide a home, provide necessities of life, provide a stable environment, assist with schooling, exercise proper care and control of child, comply with court orders, facilitate visitations with parents or relatives.

## **ARTICLE 6 –GUARDIANSHIP HEARINGS**

### **Section 1. Closed Hearings**

The Court shall take into consideration all reports and testimonies presented before and during the hearings. Guardianship hearings are closed hearings except to those individuals listed in Article 2, Section 2.



## **Section 2. Initial Hearing**

Temporary Guardianship Order: Within seven (7) days after receiving the Petition, the initial home assessment, and the criminal history report, the Court shall schedule an initial hearing on the matter. Based on the Petition, the Home Safety Check and the Criminal History Report the Court may make an order for Temporary Guardianship lasting not more than thirty (30) to sixty (60) days. The Court may also deny the Petition or continue the hearing to consider alternate guardians.

## **Section 3. Trial on the Petition**

Guardianship Order: After receiving the Guardianship Investigation Report the Court shall schedule a trial on the petition. The Court shall, with the assistance of the Tribal Police as needed, serve notice of the hearing, a copy of the Petition, the Home Safety Check, the Criminal History Report and the Guardianship Investigation Report at least five (5) days before the date of the hearing to the following people; the minor's parents, current guardian, prospective guardians, the Tribe's Legal Department, and to such other persons as the Court deems appropriate.

## **ARTICLE 7 – ISSUANCE OF EMERGENCY GUARDIANSHIP**

If it is demonstrated in the petition that an immediate need exists for the appointment of a guardian, the Court may order an emergency guardianship. Emergency guardianships are ordered without holding a hearing. An emergency guardianship shall last for as short as time as possible but not to exceed fourteen (14) days. Immediate need exists if the child has been abandoned or is in imminent danger as a result of abuse or neglect.

## **ARTICLE 8 – APPOINTMENT OF A GUARDIAN**

### **Section 1. Guardian's Responsibilities**

Whenever the Court finds that a guardian should be appointed, the Court shall appoint either a temporary or permanent guardian over the minor. An appointment of a guardianship shall not terminate the parental rights of the parents, however, the guardian shall have the responsibility for the care, custody and education of the child until he/she attains the age of eighteen (18) years or is discharged by the Court.

### **Section 2. Eligibility to Serve as a Guardian**

Any adult person eighteen (18) years of age or older and subject to the Jurisdiction of the Shingle Springs Band of Miwok Indians may serve as a guardian.

### **Section 3. Determining Guardian**

In determining who shall be appointed guardian of the minor, the Court shall consider the best interest of the child, based on the following factors;

- (A) Wishes of the parents, relatives, and the minor if fourteen (14) years of age or older.
- (B) The placement of siblings.
- (C) The moral character of potential guardians, including criminal history.
- (D) The relationship between the child and potential guardians.
- (E) The ability of potential guardians to; provide a home, provide necessities of life, provide a stable environment, assist with schooling, exercise proper care and control of child, comply with court orders, facilitate visitations with parents or relatives.

**Section 4. Preference for Appointment**

The prevailing determination in appointing a guardian is the best interest of the child. When there are equally qualified potential guardians, the preference for appointment shall be:

- (A) Extended family member;
- (B) Tribally Approved Foster Home;
- (C) A member or person eligible for membership in the Shingle Springs Band of Miwok Indians;
- (D) A member of another Indian Tribe; and
- (E) Any person who has knowledge of and a desire to foster the minor’s tribal affiliation and special needs.

**ARTICLE 9 – ORDERS**

The Court shall state the following in all orders appointing guardians: the powers and duties of the guardian(s), the duration of the guardianship, the frequency of review hearings, if any, any accounting requirements that may be imposed on the guardian regarding the youth’s funds or property, any requirements for family visitation, any per capita distribution support orders, and a requirement that the guardian(s) shall advise the Court of any change in his or her address.

**ARTICLE 10 – MODIFICATION OR CHANGE OF GUARDIANSHIP**

**Section 1. Petition to Modify**

No sooner than, thirty (30) days after the Court enters an order appointing a guardian for the minor, any of the individuals listed in Article 2(B) above may petition the Court to modify the decision. All modifications shall be initiated by filing a petition with the Tribal Court. The notice, reports and hearing for modifications shall be conducted in accordance with Articles 4, 5 and 6 above. The burden shall be on the petitioner to establish that, since the appointment of a

guardian, there has been a sufficient change in circumstances such that it would be in the best interest of the minor to modify or terminate the guardianship. The Judge may order updated Home Safety Checks and Guardianship Investigation Reports to verify the changed circumstances.

The Judge shall have the power to inform the parties that none of the proposed guardians are suitable to care for the child. If so, the Tribal Services Department may assist in proposing alternative guardianship options for consideration.

## **Section 2. Emergency Modifications.**

If at any time an emergency situation arises that makes the placement of the child(ren) with the guardian unsafe or not in the best interest of the child, Tribal Police or Tribal Services shall immediately call the County Sheriff's Office and/or County CPS to investigate and handle the emergency situation. Tribal Police may temporarily remove the child from the situation for his/her safety until the Sheriff's Office or CPS arrive on scene.

If CPS determines that an emergency situation exists and temporary removal of the child from the home is necessary, County CPS shall have the authority to remove the child and place the child in an appropriate temporary home in coordination with the Tribal Services Department.

If the child(ren) are removed from the home, the Tribe's Legal Department, Tribal Police and/or Tribal Service's Department shall file documentation with the Tribal Court of the removal from the home and/or CPS's involvement in the case and the Tribal Court will automatically refer the case to the Family Wellness Court.

## **ARTICLE 11 – CONSERVATORSHIP FOR MANAGEMENT OF PER CAPITA/ELDER'S STIPEND**

The Shingle Springs Tribal Court shall have authority to appoint a conservator for an adult who the Court has declared legally incompetent or is incarcerated for purposes of receiving per capita/Elder's stipend payments. This process shall follow the Per Capita Policy's section on conservators.

## **ARTICLE 12 – CONSERVATORSHIP FOR TRIBAL ELDERS**

The Shingle Springs Tribal Court shall have authority to appoint a conservator for Tribal Elders who have been victims of physical, emotional or financial abuse or otherwise in need of care. The procedure for appointing a conservator of a Tribal Elder shall be the same as the procedure described in this Title.

## **TITLE III. ABUSE ORDINANCE**

### **ARTICLE 1 - PURPOSE**

The purpose of this Title to protect Children and Elders from Abuse on the Rancheria, by establishing laws prohibiting Abuse and a process to bring charges against those committing Abuse.

### **ARTICLE 2 – JURISDICTION**

The Shingle Springs Tribal Court shall have authority to adjudicate cases of Child or Elder Abuse on the Rancheria when the health, safety, or welfare of a Tribal Member, or other resident of the Rancheria is affected. The Tribal Court shall also have authority restrict access to the Rancheria and to levy fines against any person found to be committing, or complicit to, Abuse against a Child or Elder on the Rancheria.

### **ARTICLE 3 – PROHIBITIONS**

#### **Section 1. Abuse**

No person shall, on any land within the exterior boundaries of the Shingle Springs Rancheria, or on land held in trust by the United States for the benefit of the Tribe be permitted to commit Abuse towards a Child or an Elder.

#### **Section 2. Complicit in Abuse**

- (A) No person shall, on any land within the exterior boundaries of the Shingle Springs Rancheria, or on land held in trust by the United States for the benefit of the Tribe be permitted to be complicit in the Abuse of a Child or an Elder.
- (B) To be found complicit in the Abuse, the person must have been aware that Abuse was occurring and failed to report the Abuse to the Court or law enforcement.

### **ARTICLE 4 – FILING A COMPLAINT OF ABUSE**

#### **Section 1. Who May File**

Any person, including the Tribe if an individual is cited by Tribal Police, may file a complaint of Abuse with the Tribal Court.

#### **Section 2. Complaint**

The complaint shall set forth the following, if known, with specificity;

- (A) The name, birth date, gender, address, and tribal affiliation of the Child/Elder;

- (B) The basis for the Court’s jurisdiction;
- (C) The allegations/facts that cause the Child/Elder to be a victim of Abuse;
- (D) The names, addresses and tribal affiliation of the Child’s/Elder’s Parent or Caretaker;
- (E) The names and addresses of all known members of the Child’s/Elder’s extended family and all former Caregivers.
- (F) The name and addresses of the person alleged to have committed the Abuse.

**ARTICLE 5 – EMERGENCY REMOVAL/PLACEMENT**

**Section 1. Emergency Situations**

After the complaint is filed, if at any time an emergency situation arises that makes the placement of the child(ren) or Elder unsafe living in the home or living in the home not in the best interest of the child(ren) or Elder, Tribal Police or Tribal Services shall immediately call the County Sheriff’s Office and/or County CPS or Adult Protective Services (APS) to investigate and handle the emergency situation. Tribal Police may temporarily remove the child(ren) or Elder from the situation for his/her safety until the Sheriff’s Office or CPS/APS arrive on scene.

If CPS/APS determines that an emergency situation exists and temporary removal of the child(ren) or Elder from the home is necessary, County CPS/APS shall have the authority to remove the child(ren) or Elder and place the child(ren) or Elder in an appropriate temporary home in coordination with the Tribal Services Department.

If the child(ren) or Elder are removed from the home, the Tribe’s Legal Department, Tribal Police and/or Tribal Service’s Department shall file documentation of the removal from the home and/or CPS/APS’s involvement in the case and the Tribal Court will automatically refer the case to the Family Wellness Court.

**Section 2. Placement of Child/Elder**

At the hearing, the Court may place the removed Child/Elder in the temporary custody of extended family, an Indian family on the Rancheria, or Tribally approved foster home.

**ARTICLE 6 – ADJUDICATION HEARING**

**Section 1. Timing of Hearing**

The Court shall conduct an Adjudication Hearing within fifteen (15) business days after the filing of the complaint to determine whether the preponderance of the evidence shows that the Child/Elder is a victim of Abuse.

## **Section 2. Issuing of Summons**

The Child's/Elder's Parent or Caretaker, and all persons alleged to have committed the Abuse shall be issued summons, in accordance with Tribal Court rules, to appear at the Adjudication Hearing;

## **Section 3. Notice to Family**

The Child's/Elder's family shall be given notice of the hearing. Family includes parents, spouse, siblings and children.

## **ARTICLE 7 – REFERRAL TO WELLNESS BOARD**

If the Tribal Court Judge finds that the Child/Elder is a victim of Abuse, then the Child/Elder may be referred to the Tribe's Wellness Board for creation of a wellness plan.

## **ARTICLE 8 – MANDATED REPORTERS**

### **Section 1. Mandated Reporters on the Rancheria**

(A) In accordance with 18. U.S.C 1169, any person who;

- (1) is a physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any Tribal, Federal, public or private school, administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school, child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker, psychiatrist, psychologist, or psychological assistant, licensed or unlicensed marriage, family, or child counselor, person employed in the mental health profession, or law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;
- (2) Knows or has reasonable suspicion that a child or Elder was abused while on the Rancheria, or that actions are being taken, or are going to be taken that would reasonably be expected to result in abuse of a child or Elder on the Rancheria.

(B) Must immediately report such abuse or actions to the Tribal Services Department. Tribal Services Department will immediately make the appropriate referral to the County Sheriff's Office and/or County CPS.

## **Section 2. Reporting Procedure**

In accordance with 25 U.S.C 3201, when a Local Law Enforcement Agency or Local Child Protective Services Agency receives an initial report from any person of abuse of a child or Elder on the Rancheria, or actions which would reasonably be expected to result in abuse of a child or Elder on the Rancheria. The receiving agency shall;

- (A) Immediately notify appropriate officials of the other agency of such report;
- (B) Within 36 hours after receiving initial report, prepare a written report that includes the names, address, age, and sex of the child/Elder that is the subject of the report, the grade and the school in which the child is currently enrolled; the name and address of the child's parents or other person responsible for the child's/Elder's care; the name and address of the alleged offender; the name and address of the person who made the report to the agency; a brief narrative as to the nature and extent of the child's/Elder's injuries, including any previously known or suspected abuse of the child/Elder or the child's siblings and the suspected date of the abuse; and any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse;
- (C) submit, when prepared, a copy of the written report required in subsection (B) above to the other agency;
- (D) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the Local Law Enforcement Agency, if other than the Federal Bureau of Investigation ("FBI"), shall immediately report such occurrence to the FBI;
- (E) Immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or Elder involved;
- (F) Upon completion of the investigation of any report of alleged abuse that is made to a Local Law Enforcement Agency or Local Child Protective Services Agency, such agency shall prepare a final written report on such allegation;
- (G) Shall not disclose the identity of the individual making the report, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of the Tribe, State or Federal Government who needs to know the information in the performance of such employee's duties.

## **Section 3. Mandated Reporters in Federally Contracted Facilities**

- (A) In accordance with 42 U.S.C 13031, a person who;
  - (1) while engaged in a professional capacity or activity as a; physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers,

coroners, medical examiners, alcohol or drug treatment personnel, persons performing a healing role or practicing the healing arts, psychologists, psychiatrists, mental health professionals, social workers, licensed or unlicensed marriage, family, and individual counselors, teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, school administrators, child care workers, administrators, law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees, foster parents, commercial film and photo processors;

(2) on Federal land or in a federally operated (or contracted) facility;

(3) learns of facts that give reason to suspect that a child has suffered an incident of child abuse,

(B) Shall as soon as possible make a report of the suspected abuse to the agency designated by the United States Attorney General.

## **ARTICLE 10 – PENALTIES**

### **Section 1. Fines**

(A) Any person found to have committed Abuse, or was complicit in the Abuse, against a Child/Elder on the Rancheria shall be fined up to \$5,000 for each violation.

(B) Any mandated reporter who failed to report Abuse, as required under this Code, against a Child/Elder on the Rancheria shall be fined up to \$5,000 for each violation.

### **Section 2. Other Remedies**

The Court may also order the individual; to perform community service, to receive counseling or behavioral health services, to participate with the Wellness Board, to have restricted access to the Rancheria, any and all other penalties the Court deems just and necessary.

## **ARTICLE 11 – STATUTE OF LIMITATIONS**

### **Section 1. Physical Abuse**

The commencement of an action for physical Abuse of a Child/Elder, as prohibited under this Code, shall be within two (2) years after the commission of the offense.

### **Section 2. Sexual Abuse**

The commencement of an action for sexual Abuse of a Child/Elder, as prohibited under this Code, shall be within thirty (30) years after the commission of the offense.



### **Section 3. Failing to Report**

The commencement of an action against a mandated reporter for failure to report Abuse, as required under this code, shall be within one (1) year after the commission of the offense. If the mandated reporter intentionally concealed his/her failure to report then the failure to report is a continuing offense until Tribal Police discover the offense.

## **TITLE IV. DOMESTIC PARTNERSHIPS**

### **ARTICLE 1 - PURPOSE**

The purpose of this Title is to set forth the rules and regulations by which persons may establish a domestic partnership within the boundaries of the Shingle Springs Rancheria.

### **ARTICLE 2 – DOMESTIC PARTNERSHIP**

The Shingle Springs Band of Miwok Indians (“Tribe”) recognizes a domestic partnership as being two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.

### **ARTICLE 3 – RIGHTS AND DUTIES OF DOMESTIC PARTNERS**

Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses.

### **ARTICLE 4 – DECLARATION OF DOMESTIC PARTNERSHIP**

Two persons may register as domestic partners within the boundaries of the Shingle Springs Rancheria by filing a Declaration of Domestic Partnership with the Shingle Springs Tribal Court.

### **ARTICLE 5 – ELIGIBILITY**

Two persons are eligible to register as domestic partners if at the time of filing the Declaration of Domestic Partnership under penalty of perjury they attest to the following:

- (A) One of the persons is an enrolled member of the Shingle Springs Band of Miwok Indians.
- (B) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
- (C) The two persons are not related by blood in any of the following ways;
  - (1) parent and child,
  - (2) ancestor and descendant,
  - (3) siblings of the half as well as the whole blood,
  - (4) uncle/aunt and niece/nephew.
- (D) Both persons are at least 18 years of age.
- (E) Both persons are capable of consenting to the domestic partnership.

(F) Neither person has terminated a domestic partnership within the prior six (6) months.

#### **ARTICLE 6 – MASTER SETTLEMENT AGREEMENT**

Before a Domestic Partnership is certified, the parties to be married must submit a signed and notarized master settlement agreement to the Tribal Court Clerk. The master settlement agreement is a binding contract that will be adopted by the Tribal Court in the event that the partnership is terminated. The master settlement agreement should spell out the terms of the termination and the relationship between the two partners after termination. To be valid, the master settlement agreement must include a detailed plan for:

- (A) Property division;
- (B) Child Support;
- (C) Child custody and visitation;
- (D) Debt division;
- (E) Partner Support.

#### **ARTICLE 7 – CERTIFYING THE DOMESTIC PARTNERSHIP**

If the partners meet the eligibility requirements and submit a master settlement agreement, the Tribal Court Clerk shall certify the Declaration of Domestic Partnership. The partners shall then be in a registered Domestic Partnership. The Tribal Court shall maintain a copy of all certified Declaration of Domestic Partnerships.

#### **ARTICLE 8 – TERMINATION OF DOMESTIC PARTNERSHIP**

A registered domestic partnership may be terminated by either of the partners filing a Notice of Termination of Domestic Partnership and a master settlement agreement with the Tribal Court. Upon receipt of the Notice of Termination, the Tribal Court shall certify the Termination and adopt the terms of the Master Settlement Agreement. The partners will no longer be in a registered Domestic Partnership.

## **TITLE V. CONSERVATORSHIP ORDINANCE**

### **ARTICLE 1 - PURPOSE**

The purpose of this Title is to set forth the rules and regulations by which the Shingle Springs Tribal Court may appoint Conservators for Incompetent Adults.

### **ARTICLE 2 - DEFINITIONS**

For purposes of this Ordinance, the following terms shall have the meanings ascribed below:

- (A) **“Child”** - means a person under 18 years of age;
- (B) **“Elder”** – means a person who is 55 years or older;
- (C) **“Family Members”** – in this policy means; parents, grandparents, children and siblings over the age of eighteen (18).
- (D) **“Incompetent Adult”** – means a person over the age of eighteen (18) who is unable, without assistance, to properly manage or take care of himself or herself or their personal affairs as determined by an evaluation by a psychiatrist or physician, licensed in any state of the United States and who has observed the person for the purposes of determining their ability to manage themselves. The term “Incompetent Adult” includes “Vulnerable Adults,” which means adults who are unable to resist fraud or undue influence that has resulted, or will likely result, in demonstrable harm or, because he or she is temporarily or permanently impaired to the extent that he/she lacks sufficient understanding to make or communicate responsible personal decisions. However, the imposition of a Conservatorship for a Vulnerable Adult does not require a finding of a lack of capacity by the tribal court.
- (E) **“Interested Party”** may have different meanings from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding. Subject to the foregoing, the term includes any of the following: (1) spouse, domestic partner, heir, devisee or beneficiary, who may be affected by the proceeding; (2) any person having priority for appointment as personal representative; (3) a fiduciary representing an Interested Party. Notwithstanding the foregoing, the Tribe shall always be considered by the Court as an Interested Party for the purpose of Conservatorship proceedings. An Extended Family member shall always be considered an Interested Party upon providing notice and proof to the Court of their relationship to the Proposed Ward and interest in the case.
- (F) **“Ordinance”** – means this Conservatorship Ordinance;
- (G) **“Parent”** – means any person who exercises care, custody, and control of the Child as established by law;
- (H) **“Per Capita Distribution”** – means any payment from net gaming revenues made to a qualified Tribal member and/or minor member as part of the Revenue Allocation Plan, including payments made through an intermediary, such as an escrow account, trust fund, federally administered fund, or the like;

- (I) **“Proposed Ward”** means an Incompetent Adult over whom a guardianship is sought.
- (J) **“Rancheria”** – means the Shingle Springs Rancheria located in El Dorado County, California;
- (K) **“Tribal Council”** – means the Shingle Springs Tribal Council, the Tribe’s governing body as established by the Tribe’s Articles of Association;
- (L) **“Tribal Court”** – means the Shingle Springs Tribal Court established pursuant to Tribal ordinance;
- (M) **“Tribal Member”** – means enrolled member of the Shingle Springs Band of Miwok Indians;
- (N) **“Tribe”** – refers to the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe, or an authorized official or agency thereof;

**ARTICLE 3 – WHO MAY BE SUBJECT TO A CONSERVATORSHIP**

The Court shall have authority to appoint a Conservator when the person for whom the conservatorship is sought is a member of the Tribe who voluntarily submits to the jurisdiction of the Tribal Court whether or not that Member resides on the Rancheria.

**ARTICLE 4 – PURPOSE FOR DECLARING A TRIBAL MEMBER LEGALLY INCOMPETENT**

The Tribal Court may declare a Tribal member Legally Incompetent for purposes of either:

- (A) Receiving Per Capita Distributions/Elders Stipend; or
- (B) Providing for his or her own care and protection.

**ARTICLE 5 – PROCEDURE FOR DECLARING A TRIBAL MEMBER LEGALLY INCOMPETENT AND IN NEED OF CONSERVATORSHIP**

- (A) Upon petition by a person authorized by this Ordinance, the Court may appoint a Conservator for an Incompetent Adult who, by showing evidence that the person is unable, without assistance, to properly manage or take care of himself or herself or his or her personal affairs.
- (B) In any Conservatorship proceeding, the Court may, but shall not be required to, consider as persuasive evidence an evaluation by a qualified psychiatrist, clinical psychologist or physician, licensed in California, who has evaluated the person for the purposes of determining his or her ability to manage his or her personal affairs and/or whether the Conservatorship is in the Proposed Ward’s best interests. A petitioner or the Proposed Ward may choose and hire a qualified licensed psychiatrist, clinical psychologist, or physician to conduct such an evaluation. Upon request by a party to a Conservatorship proceeding, the Tribal Court shall also provide a list of licensed public and private physicians who are qualified to conduct such evaluations.

- (C) The decision to allow a person to petition for the appointment of a Conservator shall be in the Court's discretion. The Court may impose any restriction or limitation on the powers of a Conservator, or condition its appointment on the Conservator's performance of specified duties, not inconsistent with this Title, if the Court finds it will help protect the Proposed Ward's best interests.
- (D) A person may be a General Conservator, or the Court may appoint separate Conservators of the person, and their estate in its discretion.
- (E) All known family members of the Proposed Ward shall be given notice that a hearing is being held on the individual's competency. It shall be the duty of the Tribal Services Coordinator to ascertain the names and contact information of each family member prior to the hearing.
- (F) Waiver of Notice – A request to waive the family notice requirement may be made, in writing, to the Tribal Court Judge. If the Tribal Court Judge finds good cause not to notify any/all family members then this requirement shall be waived.

#### **ARTICLE 6 – CONSERVATORSHIP**

Upon declaring an individual Legally Incompetent, the Tribal Court shall appoint a Conservator for the Incompetent Adult. The Tribal Court shall be guided by the best interests of the Incompetent Adult in selecting a Conservator. A Conservator must be over the age of eighteen (18) years old and, in the opinion of the Tribal Court, qualified to serve as the type of Conservator needed.

#### **ARTICLE 7 – TYPES OF CONSERVATOR**

The Tribal Court may appoint one, or both, of the following types of Conservators:

- (A) Conservator of Estate – The Tribal Court may appoint a Conservator of Estate for the sole purpose of managing the Incompetent Adult's Per Capita Distributions/Elders Stipend. The Judge's order shall specifically state that all of the Incompetent Adult's Per Capita Distributions/Elders Stipend will be made to the Conservator. The order shall also contain a directive to the Finance Department to process the payments directly to the Conservator for the benefit of the Incompetent Adult.
- (B) Conservator of Person – The Tribal Court may appoint a Conservator of Person for the sole purpose of arranging for the Incompetent Adult's care and protection. The Judge's order shall specifically state what arrangements the Conservator has responsibility over; physical health, food, clothing, or shelter.

#### **ARTICLE 8 – DISCLOSURES/BACKGROUND CHECKS**

Any individuals desiring to be a Conservator for an Incompetent Adult must disclose their; age, occupation, relationship to the Proposed Ward, and criminal history of fraud, theft or embezzlement. The Tribal Court may order individuals desiring to serve as a Conservator to undergo a background check.

## **ARTICLE 9 – REMOVAL/REPLACEMENT OF CONSERVATOR**

The Tribal Court may remove/replace a Conservator when it is deemed necessary. It shall be necessary to remove/replace a Conservator if the Conservator has resigned or is not acting in the best interest of the Incompetent Adult. Prior to the removal of any Conservator, the Tribal Court shall hold a Conservator Review Hearing.

## **ARTICLE 10 – RESTORATION OF COMPETENCY**

A person who has been declared incompetent, the guardian, or any Interested Person, may apply by petition to the Court in which they were declared incompetent, to have the fact of their restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then competent. The Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the Court as to whether the petition should be granted and the Incompetent Adult be declared of sound mind and capable of taking care of himself or herself and his or her property, his or her restoration to capacity shall be adjudged, and the Conservatorship of such person, shall cease.

## **ARTICLE 11 – CONSERVATOR REVIEW HEARING**

Any individual having reason to believe a Conservator is not acting in the best interest of the Incompetent Adult may petition the Tribal Court for a Conservator Review Hearing. The process of a Conservator Review Hearing shall be;

- (A) Upon the filing of the petition, the Court shall schedule a hearing and send notice to the Tribe, Tribal Services Coordinator, and all known family members of the Incompetent Adult.
- (B) Prior to the hearing, the Tribal Services Coordinator shall conduct an investigation into the allegations.
- (C) At the Conservator Review Hearing the Tribal Court Judge shall review the case and make a determination of the fitness of the Conservator. The Judge shall hear evidence from the petitioner, Conservator, Tribal Services Coordinator, family members of the Incompetent Adult, and any other individual with relevant information.
- (D) If the Judge finds that the Conservator is not acting in the best interest of the Incompetent Adult, then the Judge may remove the Conservator and appoint a new Conservator.

## **ARTICLE 12 – SOVEREIGN IMMUNITY**

Nothing in the provisions of this Ordinance constitutes consent by the Shingle Springs Band of Miwok Indians or its sub-organizations to be sued in any court. This Ordinance does not represent a waiver of the Tribe's sovereign immunity for any purpose.

**ARTICLE 13 – AMENDMENTS**

This Ordinance, or any section herein, may be amended by a majority vote of the Tribal Council.

**ARTICLE 14 – SEVERABILITY**

If any part of this Ordinance is found void and without legal effect, the remainder of the Ordinance shall continue to remain in full force and effect, as though such part had not been contained therein.

**ARTICLE 15 – EFFECTIVE DATE**

This Ordinance shall take effect on the date it is approved by the Tribal Council.



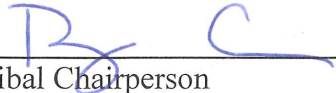
## **TITLE VI. CUSTOMARY ADOPTIONS**

### **ARTICLE 1 – AUTHORITY**

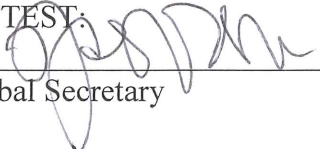
- (A) The Tribal Council shall have sole authority to approve customary adoptions for Tribal children, in accordance with the customs, traditions, and laws of the Tribe.
- (B) Customary adoptions may be approved on a case-by-case basis at the discretion of the Tribal Council. There is no right to a customary adoption, nor an ability to appeal the Tribal Council's decision to deny a customary adoption.
- (C) When approving a customary adoption, the Tribal Council shall issue and file a tribal customary adoption order in accordance with the requirements of California's Welfare and Institutions Code 366.24.

**CERTIFICATION**

*As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 22nd day of August, 2019 at which time a quorum of 7 was present, this Family Code was duly adopted by a vote of 7 For, 0 AGAINST, 0 ABSTAINED, and said Code has not been rescinded or amended in any form.*

  
\_\_\_\_\_  
Tribal Chairperson

August 22, 2019  
\_\_\_\_\_  
Date

ATTEST:  
  
\_\_\_\_\_  
Tribal Secretary

August 22, 2019  
\_\_\_\_\_  
Date



## **SHINGLE SPRINGS BAND OF MIWOK INDIANS**

Shingle Springs Rancheria, (Verona) Tract, California  
5281 Honpie Road, Placerville CA 95667  
P.O. Box 1340, Shingle Springs CA 95682  
(530) 676-8010 Office; (530) 676-8033 Fax

### **RESOLUTION 2019-51**

#### **SUBJECT: APPROVAL OF AMENDMENTS TO THE FAMILY CODE, TITLE VI. CUSTOMARY ADOPTIONS.**

**WHEREAS**, the Shingle Springs Band of Miwok Indians (the “Tribe”) is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and

**WHEREAS**, the Shingle Springs Tribal Council is the duly-elected governing body of the Tribe and is authorized to act on behalf of the Tribe; and

**WHEREAS**, the Tribe, as a sovereign government with a functioning Tribal Court system retains the inherent ability to hear civil cases and assess penalties as they relate to the domestic relationships of its members; and

**WHEREAS**, the Tribe adopted a Family Code in order to provide for the health and safety of Tribal families by establishing a procedure for appointment of a guardian, prosecution of abuse and procedures for establishing domestic partnerships; and

**WHEREAS**, the Tribal Council desires to amend the Family Code in order to include Title VI. Customary Adoptions, in order to set forth the procedure whereby the Tribal Council shall have the sole authority to approve customary adoptions for Tribal Children, in accordance with the customs, traditions, and laws of the Tribe. In addition, the customary adoptions may be approved on a case-by-case basis at the discretion of the Tribal Council. There is no right to a customary adoption, nor an ability to appeal the Tribal Council’s decision to deny a customary adoption. When approving a customary adoption, the Tribal Council shall issue and file a tribal customary adoption order in accordance with the requirements of California’s Welfare and Institutions Code Section 366.24; and

**WHEREAS**, the Tribal Council has reviewed the proposed amendments to the “Shingle Springs Band of Miwok Indians Family Code,” a copy of which is attached, and has found it to be consistent with the Tribe’s goals.

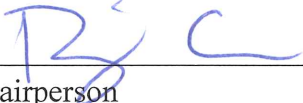
**NOW THEREFORE, BE IT RESOLVED** that the Tribal Council hereby approves amendments to the attached “Shingle Springs Band of Miwok Indians Family Code,” and authorizes the Chairwoman or her designee to execute any and all documents and agreements necessary as may be required to give effect to the transactions, herein contemplated, and to take such other actions as may hereby be necessary and appropriate to carry out the obligations there under.

**BE IT FURTHER RESOLVED** that this Family Code supersedes and replaces all previous codes, ordinances or resolutions in conflict with this one.

**BE IT FURTHER RESOLVED** that this resolution shall take effect immediately.

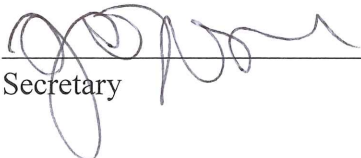
**CERTIFICATION**

*As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 22nd day of August, 2019 at which time a quorum of 7 was present, this resolution was duly adopted by a vote of 7 FOR, 0 AGAINST, 0 ABSTAINED, and said resolution has not been rescinded or amended in any form.*

  
\_\_\_\_\_  
Chairperson

August 22, 2019  
\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Secretary

August 22, 2019  
\_\_\_\_\_  
Date