HABEMATOLEL POMO OF UPPER LAKE
TRIBAL CEMETERY ORDINANCE

Adopted: 10-26-2018, Resolution No. 10-18-04
MONTH-DAY OF MONTH-YEAR MONTH YEAR # SEQUENCE

Ordinance Number
2018-10-01
YEAR - MONTH - # SEQUENCE

The Executive Council of the Habematolel, Pomo of Upper Lake, as the governing body empowered to enact codes and ordinances to regulate the use of all Tribal Land pursuant to Article X, Section 1(J) of the Tribe's Constitution, and further empowered to manage, develop, protect, and regulate all Tribal Lands pursuant to Article X, Section 1(F) and other powers articulated in Articles X and XI, hereby enacts the following:

Section 1. Findings

The Executive Council finds and declares as follows:

A. The Habematolel, Pomo of Upper Lake, aboriginal lands located in Lake County and centered in Upper Lake, California ("Habematolel Territory" as further defined below), is the homeland of the Tribe.

B. The Tribe has inherent authority, as a sovereign, to protect and preserve the homeland of the Tribe, including the ability to regulate, by this Cemetery Ordinance, the designation, development, use and maintenance of Tribal lands for the purposes of burying human remains.

C. Uncontrolled and unregulated land use and development poses a threat to the health, safety and welfare of the Tribal Members (defined below). .

Therefore, the Executive Council adopts this Ordinance to protect and promote the health, safety, welfare, culture, history, and political autonomy of the Tribe and its members, by establishing procedures for the designation, development, control, use, maintenance and regulation of the land within the Territory for cemetery-related purposes specifically, so as to protect and preserve the environment, lands, culture, religion, natural resources and aesthetic of the Territory in accordance with the Tribe's custom and tradition.

Section 2. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings:

A. "Child" or "Children" means the biological, step, and adopted

children of a Tribal Member or children of a common law marriage where that marriage took place in a jurisdiction which recognizes common law marriages where at least one spouse is an enrolled Tribal Member.

B. "Cemetery" means the parcel(s) of land designated by the Tribe, through the Executive Council, for use of burial of those persons specified in this Ordinance and in accordance with this Ordinance.

C. "Cemetery Director or designee" means the person designated by delegation of authority, job description and scope of work by the Executive Council to carry out specific duties outlined in this Ordinance or others as need by the EC in relation to this Ordinance.

D. "Demonstrable Connection" means a connection to the Tribe, its history and its culture over a substantial period of time, typically at least 10 or more years, as evidenced by specific selfless contributions to the Tribe's self-determination efforts, whether through cultural, historic or economic-focused measures, as determined by the EC in its sole discretion.

E. "Executive Council" refers to the Tribe's governing body empowered to enact ordinances under the Tribe's Constitution.

F. "Family" means a Tribal Member's parents, spouse (at the time of death), sibling, and children, even if such persons are not Tribal Members.

G. "Good Standing" means a person who is a Native American (i.e. a currently-recognized member of a federally recognized Indian Tribe) and whose association with the Tribe, in the sole discretion of the Executive Council, is desirable.

H. "Habematolel Pomo of Upper Lake Territory" or "Territory" means all interests in real property of the Tribe, whether title to which is held in trust by the United States on behalf of the Tribe, or in fee presently or at any point in the future, including but not limited to the 11.24 acre parcel that was taken into trust for the Tribe in 2008 as well as the lands that were recently reacquired by the Tribe (former Tribal lands that include our Tribal Cemetery and other lands of historical, cultural and sentimental value to the Tribe) and are in the process of being placed into trust for the Tribe. This definition specifically excludes any lands identified in the Plan for the Distribution of the Assets of the Upper Lake Rancheria, as approved by the Secretary of the Interior on January 14, 1960, when persons or entities other than the Tribe hold such lands.

I. "Native American" refers to a person who is a currently-recognized member of a federally recognized Indian tribe, other than the Habematolel Pomo of Upper Lake.

J. "Parent" means the biological, step and adopting parent of a Tribal Member.

K. "Sibling" means the biological or adopted brother or sister of a Tribal Member.

L. "Spouse" means the husband, wife, or domestic partner of a Tribal Member. For purposes of this Ordinance, this definition shall include a common law husband or wife of a Tribal Member where that marriage took place in a jurisdiction which recognizes common law marriages, as well as a domestic partner, regardless of whether it is a "registered" domestic partnership, and also regardless of whether the domestic partner is of the same or opposite sex.

M. "Tribe" or "Tribal" refers to the Habematolel, Pomo of Upper Lake, a federally recognized tribe.

N. "Tribal Member" refers to a currently enrolled recognized member of the Habematolel Pomo of Upper Lake.

O. "Vandalism" means the willful and unauthorized destruction or defacing of any land, monument, marker, tree, shrub, plant, building or other natural or artificial structure on Cemetery grounds.

Section 3. <u>Purpose</u>

The purpose of this Ordinance is to: (1) formally designate land that is to be used for the burial of Tribal Members and other eligible persons within the Territory; (2) establish a process for future designation of Territory land for such purposes; and (3) ensure that such designated land is used, maintained, and developed in a manner that preserves the health and safety of persons on the Habematolel Territory, as well as the historical and cultural values of the Tribe.

Section 4. <u>Jurisdiction</u>

The provisions of this Ordinance shall apply to the entire territory of the Habematolel Territory as it currently exists, and to such future annexations of property as are approved in accordance with the Tribe's Constitution.

Section 5. <u>Administration</u>

A. The Executive Council shall ultimately administer the provisions of

this Ordinance, with assistance from other designee(s) as needed (such as a Cemetery Director) at the Executive Council's discretion, and shall propose future amendments to this Ordinance, as it deems necessary and prudent and as are consistent with the Tribe's Constitution, including but not limited to Article XI - Land.

B. Duties of the Executive Council or its designee(s) in relation to this Ordinance shall be as follows:

1) Carry out the duties and responsibilities specifically identified in this Ordinance in conformity with the Tribe's Constitution and all other applicable law, including through the establishment of regulations;

2) Meet with the kin or other interested party of a person permitted to be buried pursuant to this Ordinance whenever a plot or burial is requested;

3) Verify eligibility for burial in the Cemetery by conferring with the Tribe's Enrollment Committee and reviewing other related documents related for eligibility. Maintain vital statistics of the deceased and report such information as may be required by the Tribe, to the Enrollment Committee for Tribal record;

4) Ensure that there is a death certificate, disposition permit or other official record of death certified by physician or pathologist for the deceased individual before allowing his or her remains to be interred at the Cemetery;

5) Survey the land designed to be used for the Cemetery to be surveyed and mapped into burial plots, drives, and walks. The recorded map shall be maintained by the Executive Council, or Cemetery Director/ Designee(s) if any, and no such plot or map shall be recorded unless laid out and plotted to the satisfaction of the Executive Council;

6) Sell and convey the right to use plotted plots, including the determination of where persons will be buried in accordance with any applicable Tribal regulation and the wishes of the person(s) involved, expressly restricting the use to burials and upon other such terms, conditions, and restrictions as defined in the Cemetery guidelines, which are established by the Executive Council.

7) Administer all payment fee's related to this Ordinance;

8) Determine how to utilize gifts given to the Cemetery.

C. The Executive Council may delegate the above-stated duties, as needed.

Section 6. <u>Tribal Cemetery Designation</u>

The Executive Council hereby designates that land recently re-acquired by the Tribe, designated as APN 003-062-070-000 as the Tribe's Cemetery (address: 10315 Dewell Rd. Ext., Upper Lake, CA).

In the future, the Executive Council may designate parcel(s) of land to be used as a Tribal Cemetery.

Section 7. <u>Tribal Cemetery Use and Burial Requirements</u>

A. <u>Eligibility for Burial in Cemetery:</u> Tribal Members and their Families, as well as other Native Americans and persons who have a demonstrable connection to the Tribe (in the sole discretion of the Executive Council) may be buried in the Cemetery. In addition, human remains that fall within the following two categories may be interred in the Cemetery: (i) Human remains returned to the Tribe; or (ii) Human remains discovered on the existing or historical Tribal lands and the Tribe determines that the Cemetery is the most suitable place for interment of the remains.

B. <u>Repatriated Remains:</u> Human remains shall be returned to the Tribe in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA). All human remains returned to the Tribe shall be the responsibility of the Executive Council or it's designee(s) to re-bury in an appropriate location within the Cemetery.

C. <u>Eligibility for Plot Use Purchase:</u> Subject to the priority order stated below, anyone may purchase the right to use a Cemetery Plot for individuals eligible to be interred in the Cemetery as specified above in Section 7(A). The owner of the plot shall be the individual for whom the plot usage right was purchased.

While anyone may purchase the right to use a Cemetery Plot as specified in this Ordinance, priority is given to individuals who are purchasing plots for interment of the following persons, in the following order:

1. Tribal Members;

2. Family of Tribal Members (in no particular order of preference within this second tier, i.e., Parents, Grandparents, Children, Siblings and Spouses all have equal standing within this second tier such that, for example, Spouses do not have

priority over Children or others listed in this second tier);

3. All other documented Native Americans who have a Demonstrable Connection to the Tribe and are in Good Standing (in the sole discretion of the Executive Council) ; and

4. All other persons who have a demonstrable connection to the Tribe (in the sole discretion of the Executive Council).

D. Timing of Burial Plot Purchase: Any person eligible to purchase a burial plot, as set forth above, may only do so for themselves or another who is eligible to be interred in the Cemetery as specified above in Section 7(A) if the person to be interred is either: (1) terminally ill as certified by a medical doctor; or (2) over the age of 70.

E. No Ownership of Purchased Burial Plots: Purchase of a plot does not result in the transfer of any ownership rights in the plot itself, but grants an individual the right to be interred in the plot, or determine who will be interred in the plot, subject to the eligibility requirements of this Ordinance. There is no ownership interest or title to the plot conveyed in purchasing a burial plot.

i. The right to use burial plots that have been purchased may only be willed to Family members of the purchaser who are eligible for burial under this Ordinance, and may not otherwise be transferred.

ii. In the event the owner of a plot becomes ineligible to be interred in the Cemetery, he or she shall resell the plot to the Tribe in accordance with Section 7(F) below.

iii. A plot is not inheritable, and may only be transferred from one owner to an individual eligible to be interred in the Cemetery as defined above.

F. Plot-Related Fees: The proceeds of sales of plots shall be used solely for the care and improvement of the Cemetery and avenues leading thereto, and operating expense. All fees shall be paid prior to burial. The price of plots and services are as follows, and may be revised from time to time at the discretion of the Executive Council:

1) Plot Use-Rights Purchase for Casket: $500

2) Plot Use-Rights for Urn: $250

3) Plot Opening and Preparation for Burial: $300

4) Plot Closing: $200

5) Plot Marking: $100

The Executive Council may waive or modify these fees for Tribal Members and/or their non-Tribal spouses, family, and children who wish to be buried in the Cemetery and who, in the sole discretion of the Executive Council, are indigent or otherwise worthy of receiving a fee waiver or modification.

In addition, the Tribe may provide financial assistance to Tribal Members and other qualified persons pursuant to Tribal General Welfare Programs established under the Tribal General Welfare Ordinance. Interested persons should consult the Tribal Administrator for direction regarding the availability of such assistance, the procedures for applying for the same and related matters. Such assistance may cover, or assist in coverage, costs related to funeral, burial expenses (including Plot-Related Fees), and other bereavement events.

Finally, the Tribe recognizes that some people may wish to open a plot, prepare it for burial, close it, and/or mark it themselves. We respect that such actions may be how some of our Tribal Members and related persons honor the passing of the person to be buried. Accordingly, the Executive Council shall permit such persons to engage in any or all of these activities, provided there is minimal supervision in order to ensure the activities do not disrupt other plots, grave sites, or parts of the Cemetery. In the event that individuals open a plot, prepare it for burial, close it, and/or mark it themselves as set forth in this paragraph, the Executive Council will waive the related costs stated above.

G. Resale of Plots: Plots may only be resold to the Tribe through the Executive Council. Plots resold to the Tribe shall be purchased at the original selling price.

H. Burial

1) All burial orders must be presented to the Executive Council and its designee(s) at least 72 hours before burial, unless there are unique circumstances justifying a shorter period, including but not limited to those set forth in sub-sections 3 and 4, below.

2) All non-cremated human remains must be buried in the ground at least six (6) feet deep and in a location within the Cemetery as designated by the Executive Council. All cremated human

remains must be buried in the ground at least three (3) feet deep and in a location within the Cemetery as designated by the Executive Council.

3) Any body dying of a deadly contagious disease must be immediately placed in a coffin, the coffin sealed and not reopened, and buried in a cement vault within 24 hours after death.

4) Any un-embalmed and non-cremated remains must either remain refrigerated until burial or be buried within 48 hours after death.

5) A cement liner or vault, while recommended, is not required for the burial site except as specified above. However, if a cemetery liner or vault is purchased by the Family of the deceased, the vault company is required to deliver and install it in the designated burial site. The Tribe does not provide pall bearers.

6) A casket/urn, while recommended, is not necessary for burial or cremation except as specified above.

7) Due to weather conditions, it may be necessary to temporarily postpone burial side services and/or burial of the deceased. The final decision to postpone burial side services shall be made by the Executive Council or its designee in consultation with the family.

8) A combination of four (4) burials may take place in each plot as follows: one (1) full burial and three (3) remains; two (2) full burials and two (2) remains; or four (4) remains. Double full burials in one grave shall be one above the other. Each additional opening of the plot will require a plot opening and closing fee, as well as a marking fee.

9) Funeral Processions: The Executive Council or its designee(s) shall be responsible for providing funeral directors with the necessary information so that funeral processions on Cemetery grounds are carried out in a respectful manner.

10) Discovery of human remains, culturally significant artifact or funerary objects; cease digging and contact the Executive Council or their designee

11) Should the family wish to dig the plot; a designee for the family will have to execute a release of liability which includes language assuring they will refrain from disrespectful and disorderly behavior while on cemetery grounds.

Section 8. Maintenance of the Cemetery and Burial Sites

The Tribal Cemetery is a location provided for our Tribal community, where we may remember and honor our family members, friends and ancestors in a manner that respects them and other members of our community who are rightfully using the Tribal Cemetery for such purposes. This is the guiding principal for all activity related to use and maintenance of the Cemetery. Thus, whether it concerns flags/banners, monuments/markers, flowers, or similar items used to honor, remember, and memorialize our friends, family members and ancestors, all such items shall be installed and maintained in a respectful manner and in a manner that does not unreasonably or regularly interfere with others' proper and rightful use of the Tribal Cemetery. For example, the images, words and other attributes of flags and banners must be respectful and consistent with something that is placed in a shared location to honor our ancestors.

Persons interested in planting living plants, flowers or trees must first consult the Executive Council to ensure that such a planting, including the related root structure development and plant growth, will not disturb human remains or otherwise interfere with the respectful use of the Cemetery. The Executive Council will also provide a common area that is within the Cemetery but unrelated to any particular plot(s) for the purpose of planting memorial trees, flowers, and other similar items. The Executive Council or its designee(s) will also arrange for the proper care of such plants, trees, and flowers placed in the common areas within the Cemetery (including irrigation, pruning, and similar care to ensure the longest possible life of such items).

Persons wishing to install benches or seating for a specific plot or multiple specific plots must also first consult the Executive Council to ensure that installation of such items does will not disturb human remains or otherwise interfere with the respectful use of the Cemetery. The Executive Council or its designee(s) will also provide seating in a common area that is within the Cemetery but unrelated to any particular plot(s), and it will arrange for the proper care and maintenance of such items.

Section 9. Respectful Behavior on Cemetery Grounds

As stated above, the Tribal Cemetery is a location provided for our Tribal community, where we may remember and honor our family members, friends and ancestors in a manner that respects them and other members of our community who are rightfully using the Tribal Cemetery for such purposes. The Cemetery should not be used for any other purpose. All persons entering and using the Cemetery must conduct themselves in a manner that is always respectful of the Tribal Cemetery, the people who are buried there, and the other people who use the Tribal Cemetery to honor and remember their departed. Anyone acting in a disrespectful manner may be asked to immediately stop that disrespectful conduct. In addition, in the event there are especially offensive or recurring disrespectful conduct, the Executive Council

may engage in other measures to ensure proper respect is maintained at all times.

Section 10. <u>Disinterment</u>

Disinterment from the Cemetery shall only occur upon order of the Executive Council. Disinterment is an extraordinary remedy that shall only be ordered when all other reasonable means for obtaining the requester's objective have been exhausted and when the Tribe's Executive Council determines that substantial cause exists to order disinterment following a hearing as described below.

A. A request to the Tribe's Executive Council to issue an order for disinterment from a Cemetery may be made by the following persons, in the following order of priority:

    1. The surviving Spouse of the deceased;
    2. An adult Child of the deceased;
    3. An adult Sibling of the deceased;
    4. A Parent of the deceased;
    5. A legal guardian of the deceased as the time of the deceased's death.

B. A requester shall notify the Executive Council and all individuals of the same or higher priority (as listed in Section 10(A) above) of his or her intent to request that the Executive Council issue an order of disinterment. If any member of the same or higher priority (as listed in Section 10(A) above) cannot be located, this, along with efforts taken to locate the individual(s), shall be reported to the Tribe's Executive Council. Notification shall specifically state:

    1. The requester's intent to obtain an order of disinterment;
    2. The reason for the disinterment;
    3. The place of re-interment or intent of the requestor to have human remains cremated; and
    4. That any objections shall be filed with the Executive Council within five (5) business days of receipt of the notification or may be presented at the hearing (below)

C. Upon receipt of notice of a request for disinterment, the Executive Council shall set a hearing date on the disinterment request at the earliest possible time after the deadline for filing objections has passed and shall issue an order on the matter within ten (10) days after the hearing, taking into consideration:

    1. The manner in which the deceased died;
    2. Whether disinterment would create a public health risk or

disrupt the remains of others in the Cemetery;

3. The decedents wishes, if known;
4. Any objections filed with the Executive Council or presented at the hearing;
5. Whether an order of disinterment from a non-Tribal court or other authority has been issued;
6. Whether any required permits regarding re-internment have been obtained; and
7. Any other factors deemed relevant by the Executive Council.

All factors listed in Section 10(C) (1-7) above shall be considered by the Executive Council when determining whether to allow disinterment, although the Executive Council may deny the request for disinterment based solely on any objections to the disinterment filed or presented by an individual with the same or higher priority as the requester.

The Executive Council may, for good cause, extend the time for an order to be issued for an additional ten (10) days.

The Executive Council may issue an additional order(s) to assist the requester in obtaining his or her objective for disinterment, including testing, inspection, and/or transportation of the remains.

D. Any appeal of an order issued under this Section 10 must be filed within five (5) business days after the order is issued.

E. If no appeal of an order for disinterment issued under this section has been filed, disinterment shall take place within sixty (60) days after the final judgment has been issued.

F. Following disinterment, the remains of the deceased person shall be reinterred or cremated within 48 hours.

G. The Executive Council shall be present at each disinterment and re-interment that occurs in the Cemetery and shall have authority to restrict who may be present during a disinterment or re-interment.

H. The requester shall be responsible for making all arrangements and incurring all costs associated with disinterment and re-interment.

Section 11. <u>Enforcement</u>

Enforcement of this Ordinance shall be by the Executive Council.

A. Violations of this Ordinance shall be subject to the jurisdiction of the Tribe. The Executive Council shall act on all reported violations

of this Ordinance. Wherever possible, the Executive Council shall grant the alleged violator an opportunity to correct the reported violation within a specified time, at his or her sole expense.

B. If the alleged violator fails to take corrective action upon being given the opportunity, the Executive Council shall notify the alleged violator by certified mail, return receipt requested, that he/she may be assessed a fine for the violation.

Section 12. <u>Appeals</u>

A. Any person aggrieved by an action of the Executive Council in relation to the implementation or administration of this Ordinance may make an appeal by filing a notice of appeal with the Tribal Court of Appeals, whose decision shall be final and binding upon all parties concerned. If no working Court of Appeals has been established, then the Executive Council shall appoint one from the Voting General Membership, consistent with Article XII of the Constitution, for the limited purposes of appeal under this Ordinance and Article XI of the Constitution. In either scenario, the following procedural standards apply.

1. An appeal of any decision under this Ordinance or Article XI of the Constitution must be filed within fifteen (15) calendar days of the action by the Executive Council that is the subject of the appeal.

2. An appeal is filed by submitting the appellate papers to the Tribal Court of Appeals, or if no working Court of Appeals has been established, then to the Executive Council, to the attention of the Secretary, via registered mail with return receipt.

B. The Tribal Court of Appeals (or those appointed to that function by the Executive Council consistent with Article XII of the Constitution) shall consider the appeal and the record upon which the action appealed from was taken. The aggrieved party has the right to be heard by the appellate body, as does the Executive Council.

C. Within sixty (60) days of submitting the appeal, the Tribal Court of Appeals (or those appointed to that function by the Executive Council consistent with Article XII of the Constitution) shall render its decision on the matter in writing.

D. The decision of the Tribal Court of Appeals (or those appointed to that function by the Executive Council consistent with Article XII of the Constitution) upon an appeal is final and conclusive as

to all things involved in the matter.

Section 13. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

Section 14. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action taken pursuant to this Ordinance.

Section 15. Amendments

This Ordinance, or any section herein, may be amended at any time in accordance with the Tribe's Constitution.

Section 16. Construction

To the extent that this Ordinance may be inconsistent with prior Tribal laws, this Ordinance shall prevail.

Section 17. Effective Date

This Ordinance shall take effect immediately upon passage.

{CERTIFICATION ON THE NEXT PAGE}

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CERTIFICATION

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a *monthly* meeting thereof, duly called, noticed and conducted on this day of ***October 26, 2018*** and that this Resolution was adopted by an affirmative vote of 5 **YEAS**, 1 **NAY**, and 1 **ABSTENTION**. We further certify that since its amended adoption the Resolution and/or Enrollment Ordinance has not been rescinded, amended, or modified in any way.

DATED SIGNED: November 16th **, 2018**

ATTEST:

SHERRY TREPPA,
Executive Council (EC) Chairperson

IRIS PICTON,
Executive Council (EC) Secretary