

**BEAR RIVER BAND OF THE ROHNERVILLE RANCHERIA  
FAMILY CODE**



**ARTICLE ONE: GENERAL PROVISIONS**

**SECTION 4.25.01 PURPOSE**

The Bear River Band of the Rohnerville Rancheria recognizes that its sovereignty depends on the Tribe's ability to safeguard and provide for the peace, safety, health and general welfare of the members of the Bear River Band of the Rohnerville Rancheria. The Tribe further recognizes that continued connection between the Tribe and its children is crucial for Tribal self-determination and political integrity. In accordance with the Constitution of the Bear River Band and in the exercise of the Bear River Band's inherent sovereign power to safeguard and provide for the peace, safety, health and general welfare of the members of the Bear River Band, the Tribal Council enacts this Family Code to protect Tribal members and their families through the following legal protections in accordance with Bear River culture, tradition, and values: providing for legal recognition of marriage; minimizing the potential harm to spouses or non-married couples and their children by promoting the peaceful and fair settlement of disputes when a marriage or relationship ends; strengthening parental responsibility for family and ensuring the best interests of the child are supported in child custody disputes.

**SECTION 4.25.02 INTERPRETATION**

This Family Code is meant to incorporate the evolving relationship practices of the Bear River Band of the Rohnerville Rancheria and to apply in family law cases where at least one party, and/or the child whose custody is being decided, is a member of or eligible for membership in the Tribe. It is the policy of the Tribe to consider carefully the circumstances of each family and to treat each family individually. The Bear River Band Tribal Court shall encourage a non-adversarial approach to resolve family disputes under this Code.

**SECTION 4.25.03 JURISDICTION**

This Code is enacted to guide relationships within the Tribe and those within its jurisdiction.

1. Subject matter: the Bear River Band Tribal Court shall have the jurisdiction to hear any case that arises under the provisions of this Code.
2. Personal Jurisdiction: The Tribal Court shall have personal jurisdiction over people described in subsections 5.0(b) and 12.0 of the Act Establishing the Judiciary. For the Tribal Court to have jurisdiction in a family law case under this Code, at least one of the parties or a child whose custody is being determined must be a Tribal member or eligible for enrollment, and at least one of the parties must have resided within the Bear River Band service area, which is within ninety (90) miles from Loop Road, for at least six (6) months. In family law cases, this includes but is not limited to, jurisdiction over:
  - a. Persons who married a Tribal member;
  - b. Persons who have children with a Tribal member;
  - c. Persons who resided within the reservation boundaries during their marriage or while raising a Tribal member child;
  - d. Persons who consent to the jurisdiction of the Tribal Court through obtaining a Tribal marriage license;

- e. Persons who consent to the jurisdiction of the Tribal Court by filing a family law court case or responding to a family law court case, other than to object to jurisdiction; and/or
  - f. Any person described above who received the benefit of any Tribal funds or services.
3. The Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable Tribal law and custom in cases involving child custody, provided that the court's exercise of jurisdiction is in the best interest of the child.
  4. Simultaneous Proceedings in Another Jurisdiction: Public law 280 grants California Courts concurrent jurisdiction over civil matters that arise on the reservation and Tribal families can be made of members of different Tribes. These situations create the possibility that a family law case will be filed in the Bear River Tribal Court by one party, and in a state or other Tribal Court by the other party. Should this happen, the Tribal Court Judge may communicate with another jurisdiction's Judge to decide which Court will keep jurisdiction. The Court may allow the parties to participate in the communication, and if not, the parties must be allowed to present facts and legal arguments before a decision on jurisdiction is made. The factual findings and conclusions of law relied on to decide whether the Tribal Court will keep or transfer the case must be explained in a written decision.
  5. If one Court has already established jurisdiction over the parties, there is a presumption that the case will remain in that jurisdiction. The presumption may be overcome by the parties agreeing to transfer the case, one Court being better able to protect the best interests of the child, or the interests of justice otherwise supporting the transfer.

#### **SECTION 4.25.04 DEFINITIONS**

As used in this Code, these terms have the following meanings:

1. *Certified Copy* means a copy of a document filed with a court to which the Court Clerk has attached a certificate which includes a statement that the original of the document has been filed with the Court, and that the copy is a true and correct copy of the original. A certified copy of a document filed with a Court is often required by government agencies and others as proof that the original document exists and has been filed with the Court.
2. *Child* refers to any person under the age of eighteen (18), or any person who is over eighteen (18) and is enrolled full-time in high school or a General Equivalency Diploma program, and is not otherwise emancipated, self-supporting, married, or an active member of the armed forces.
3. *Code* means the Bear River Band Family Code, unless the context used herein clearly indicates otherwise.
4. *Coercive Control* is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.
5. *Community Property* refers to all property acquired during a marriage, other than property that meets the definition of Separate Property. Property purchased after legal separation with community assets may, depending on the facts, still be classified as community property.
6. *Court* or *Tribal Court* means the Bear River Band of the Rohnerville Rancheria Tribal Court, unless otherwise stated (i.e. a reference to a state Court or another Tribal Court).

7. *Custody Order* refers to a court order that establishes the legal and physical custody of a child, and the residential schedule for the child. The custody order is incorporated in any final decree, judgment, or order in an action for dissolution of marriage, declaration of invalidity, legal separation, or child custody.
8. *Financial Marital Misconduct* means when one spouse unfairly conceals, wastes or manipulates marital assets to gain a financial advantage over the other spouse. This includes financial abuse during the marriage.
9. *Good Faith* means an honest reasonable belief or purpose and the lack of intent to harm, defraud or injure.
10. *Guardian Ad Litem (GAL)* refers to a person appointed by the Tribal Court to represent the best interests of a child under this Code.
11. *Legal Custody* refers to a parent's authority to make decisions regarding the children's education, health care, religious or spiritual upbringing, and any other decisions related to the child's overall welfare.
12. *Marriage* refers to the union of two individuals by any ceremony or practice recognized under the Tribes law.
13. *Parent* refers to a natural or adoptive parent of a child.
14. *Parental Kidnapping* occurs when a parent, or someone acting on the parent's behalf, takes and conceals a child when they do not have custody or visitation, with an intended purpose of depriving the other parent or lawful custodian of their custody or visitation rights. Fleeing domestic violence or good faith intent to protect a child from abuse or neglect shall be defenses to allegations of parental kidnapping.
15. *Physical Custody* means who the child lives with most of the time. Sole physical custody describes when a parent primarily resides with one parent. Shared or Joint Physical custody is ordered when a child will spend a significant time in each parent's home.
16. *Putative Spouse* means a person who in good faith believed their marriage was valid, only to later discover that a legal impediment makes their marriage void or voidable. A person who forces or fraudulently induces another to marry them, who marries someone who they know to be incapacitated, or who is over the age of 18 and marries someone who they know to be under the age of 18 cannot be a putative spouse.
17. *Quasi Community Property* means property held by parties in an invalid marriage that would have been community property if the marriage had been valid. At least one spouse must be a putative spouse in order for the court to classify property acquired during the marriage as quasi community property.
18. *Separate Property* is any of the following: allotted/assigned property, Tribal regalia, and any property created for the primary purpose of involvement in dance and/or ceremony will be treated as separate property regardless of when it is acquired; property acquired prior to a marriage; property acquired after a legal separation; property gifted or inherited to a spouse individually during a marriage, property purchased or acquired solely with separate property at any time, including proceeds of the sale of separate property. Separate property may become community property if comingled with community property and used for community purposes unless one of the following is true:
  - a. The parties have a clear agreement that the money will be repaid to the spouse whose separate property it was;
  - b. The owner of the separate property proves unjust enrichment of the other spouse will occur if the separate property is classified as Community Property; or

- c. The owner of the separate property proves that the use of their separate property for community expenses was the result of financial abuse by the other spouse.
19. *Spousal Support Order* refers to a judgment, decree, or order issued by a court of competent jurisdiction for the support and maintenance of a spouse or former spouse.
20. *Tribe* means the Bear River Band of the Rohnerville Rancheria unless otherwise stated.
21. *Unmarried Couple* refers to two people who are over the age of eighteen (18) or who are legally emancipated who are sharing a home and have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
22. *Unjust Enrichment* occurs in marriages or with unmarried couples when one spouse or partner receives a benefit, such as money or property, at the expense of the other, and retaining that benefit would be inequitable or unjust under the circumstances. Unjust enrichment does not require bad faith on the part of the enriched spouse or partner, though evidence of bad faith can support a claim of unjust enrichment. Unjust enrichment may occur because of an accident or a mistake, not intentional wrongdoing.
23. *Visitation* refers to the time with a child awarded to a parent who does not have sole or shared physical custody of the child.

#### **SECTION 4.25.05    MEDIATION**

In any family law case, the Tribal Court may order the parties to mediation for any issues they disagree on prior to the contested hearing. The purpose of mediation is to encourage cooperation, reduce acrimony and develop an agreement that to the greatest extent possible is equitable and allows the parties the resources and support they need to start their separate lives. Any agreements regarding child custody must support the best interests of the child or children whose custody is being agreed upon. The mediator shall put in writing any agreements reached by the parties. The Court will incorporate any agreements reached by the parties into an order or judgment, provided the terms appear equitable and, if relevant, are in the best interest of the child(ren).

The Court's permission is needed for anyone other than the parties to attend the mediation. The court may request that the mediator summarize in writing the issues the parties could not reach agreement on and the positions of the parties as each of those issues. The Court may limit or deny mediation in cases where one of the parties has proven that domestic violence has occurred or other safety concerns exist. The parties may utilize an informal resolution process other than mediation provided they agree on the process and obtain the court's permission for use of an alternative process.

#### **SECTION 4.25.06    SETTLEMENT CONFERENCE**

In any family law case, the court may require the parties attend a settlement conference for any issues they disagree on prior to setting a contested hearing. The purpose of the settlement conference is for the parties to explain the barriers they have to resolving their disputes, and for the court to try and assist the parties in finding solutions to the issues they have been unable to resolve themselves. The Court will incorporate any agreements reached by the parties into a court order, provided the terms appear equitable, and, if relevant, are in the best interest of the child(ren).

## **SECTION 4.25.07 INDEPENDENCE OF PROVISIONS OF DECREE OR ORDER**

If a party fails to comply with a provision of any decree, order, or injunction issued under the Family Code, the obligation of the other party to make payments for support or to comply with any custody order, any order dividing property or debt, or any other court order is not automatically suspended. The compliant party may ask the Court to find the noncompliant party in contempt of court, request modification of existing orders, ask for a money damages or a monetary penalty, or any other remedy reasonably likely to deter future noncompliance.

## **ARTICLE TWO: MARRIAGE**

### **SECTION 4.25.08 PERSONS WHO MAY MARRY**

Marriage is a personal relationship between two individuals arising out of a civil contract to which the consent of the parties is essential, and typically any two persons may marry. However, no marriage license shall be issued or marriage performed unless the persons to be married meet the following criteria:

1. Both persons to be married are at least eighteen (18) years old; and
2. At least one of the persons to be married has been domiciled within the Bear River Band Rancheria or has been a member of the Tribe for at least ninety (90) days prior to the license application.

### **SECTION 4.25.09 PROHIBITED MARRIAGES**

1. Marriages in the following cases are prohibited:
  - a. When either party already has a wife or husband living at the time of marriage;
  - b. No person may marry one of his or her parents, children, grandchildren, or aunt or uncle, or anyone known to be a cousin.
2. Parties to a marriage prohibited under Section 4.25.09 subsection 1. who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

### **SECTION 4.25.10 WHO MAY PERFORM MARRIAGE CEREMONIES**

1. A marriage may be solemnized and performed on the Bear River Band Rancheria by the following:
  - a. A person who has been certified by the Bear River Band Tribal Court for the purpose of marrying others pursuant to this Code. This includes a person with the authority to perform a specific marriage ceremony under the Single Officiant Certification;
  - b. A recognized member of the clergy or person recognized by their religion as having authority to perform marriages; or
  - c. A Judge of the Tribal Court.
2. A certification process will be established by the Tribal Court.
3. No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for lack of such authority, if consummated in the belief of one or both parties that they have been lawfully joined in marriage.

#### **SECTION 4.25.11 MARRIAGE CEREMONY**

No particular form of marriage ceremony is required; provided, that the persons to be married shall declare in the presence of the person performing the marriage ceremony their intention to be married to one another and that such declaration is made in the presence of at least two attending witnesses.

#### **SECTION 4.25.12 MARRIAGE LICENSES AND CERTIFICATES**

1. No marriage ceremony shall be performed unless the parties have first obtained a marriage license from the Clerk of the Tribal Court.
2. In addition to payment of a fee to be set by the Tribal Court, the Court Clerk shall require each party to make and file an affidavit upon forms provided by the Tribal Court showing that the applicants are eighteen (18) years of age or older, and that one of the parties has been domiciled on the Bear River Band Rancheria or has been a member of the Tribe for at least ninety (90) days.
3. The Court Clerk shall keep a public record of all marriage licenses and certificates issued.
4. The marriage license, properly endorsed by the authorized person performing the marriage and two attending witnesses, shall within thirty (30) days of the ceremony be returned to the Court Clerk, who shall issue a marriage certificate to the parties.
5. The Tribal Court is authorized to develop a marriage license, an affidavit form, and other documents and records necessary to implement this Article.

#### **SECTION 4.25.13 VOIDABLE MARRIAGES**

When either party to a marriage is incapable of consenting thereto, for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, such marriage is voidable, but only by the party laboring under the disability, their parent, legal guardian or conservator, or by the party upon whom the force of fraud is imposed.

#### **SECTION 4.25.14 EXISTING MARRIAGES**

All marriages performed in other jurisdictions that are valid under the laws of the jurisdiction where and when performed are valid within the jurisdiction of the Tribe.

### **ARTICLE THREE: DISSOLUTION, LEGAL SEPARATION, DECLARATION OF INVALIDITY OR PROPERTY DISPUTES BETWEEN DOMESTIC PARTNERS**

#### **SECTION 4.25.15 PETITION FOR DISSOLUTION, SEPARATION OR INVALIDITY**

1. The petition in a proceeding for dissolution of marriage, legal separation or declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth:
  - a. The name, last known address, length of domicile on the Bear River Band Rancheria, and Tribal enrollment, if any, of each party;
  - b. The date of the marriage, the place where the marriage ceremony was performed, and whether the marriage license was issued by the Bear River Band Tribal Court;
  - c. If the parties are separated, the date on which the separation occurred;

- d. The names, ages and addresses of all living minor children, natural or adopted, common to the parties and whether the wife is pregnant;
  - e. The details of any agreements of the parties related to child custody, spousal or child support, property or debt division, or any other issue to be addressed in the judgment;
  - f. A listing of marital property or debts that need to be divided, as well as any separate property or debts to be confirmed to either party;
  - g. The relief requested. This can include any of the following: an explanation of how the petitioner is requesting the marital and separate property be divided, what custody and/or visitation orders the petitioner is requesting, a request for spousal support, and request for restoration of a party's prior name. Child support requests will be referred to the Bear River Band Child Support Services and may be heard separately under the Tribal Child Support Ordinance.
2. Either or both parties to the marriage may initiate the proceeding.
  3. The Tribal Court may join additional parties necessary for the exercise of its authority.

#### **SECTION 4.25.16 TEMPORARY ORDERS**

##### **1. Temporary Orders**

In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, either party may request temporary orders. Examples of temporary orders include orders for custody, spousal support, control of specific property items or a requirement that one party pay specific bills. Any motion for temporary orders shall be accompanied by a statement setting forth the factual basis for the motion and the relief requested. Temporary orders may be based upon an agreement of the parties provided the court finds the agreement is in the best interest of the child if child custody is at issue, or is fair and equitable for temporary property or spousal support order. Temporary child support must be requested in the separate support case under the Child Support Ordinance.

##### **2. Preliminary Injunctions**

The Family Law Summons may include preliminary injunctions to protect a child's enrollment in the Tribe, to prevent a parent from removing a child whose custody is at issue from the court's jurisdiction, to prevent a party from disposing of property or from changing insurance coverage that applies to the other party or any shared minor children.

#### **SECTION 4.25.17 MARITAL SETTLEMENT AGREEMENT**

##### **1. Provisions of Agreement**

To promote amicable settlement of disputes between parties to a marriage or parental relationship upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the parties may enter into a written agreement containing provisions for disposition of any property owned by either of them, spousal support, and/or the custody and support of their children.

##### **2. Effect of Terms**

The terms of the agreement shall be binding upon the Tribal Court unless it finds, after considering all of the relevant evidence produced by the parties, that the agreement is not equitable, is not in the child's best interests, or is the result of coercive control by one spouse.

##### **3. Agreement not Approved**

If the Tribal Court finds that it cannot approve the agreement, it may either request that the parties submit a revised separation agreement or make orders for the disposition of property, support, or custody.

4. Incorporation by Reference

If the Tribal Court finds that the terms of the agreement are voluntarily entered into by the parties, are equitable, and in the best interests of the child, the agreement shall be set forth or incorporated by reference in the decree of dissolution, legal separation, or declaration of invalidity and the parties shall be ordered to comply with its terms.

5. Enforcement

Terms of the agreement set forth or incorporated by reference in an order of the Tribal Court shall be enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

### **SECTION 4.25.18 NECESSARY FINDINGS**

1. Decree of Legal Separation or Dissolution of Marriage

The Tribal Court may enter a decree of legal separation if it finds that it has personal jurisdiction over the parties and states the factual basis for the jurisdiction; and additionally makes one of the following findings:

- a. That the marriage is irretrievably broken in accordance with Section 4.25.19 of this Code; or
- b. That the other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the Tribal Court shall direct one of the parties to amend the pleadings to seek dissolution of the marriage.

2. Decree of Invalidity of Marriage

a. Necessary Findings

The Tribal Court may enter a declaration of invalidity of marriage if it finds that it has personal jurisdiction over the parties and states the factual basis for the jurisdiction; and additionally finds that the marriage should not have been contracted because of at least one of the following circumstances:

- i. The age of one or both of the parties;
- ii. A prior undissolved marriage of one or both of the parties;
- iii. One of the parties lacked capacity to consent to the marriage because of mental incapacity or the influence of alcohol or other intoxicating substance;
- iv. One of the parties was induced to enter into the marriage by force, duress, or fraud involving the essentials of the marriage; or
- v. The spouses are so closely related that their marriage is prohibited under Section 4.25.09 of this Code; and
- vi. No defense exists to the invalidity of the marriage.

3. Defenses to Finding of Invalidity

If either party proves the following, the Tribal Court will not declare the marriage invalid:

- a. If a party reasonably thought a prior marriage was dissolved although it was not, the subsequent dissolution of that marriage will cure or waive its effect of invalidating a later marriage.

- b. The parties ratified their marriage by voluntarily cohabiting after attaining the age of consent, after attaining capacity to consent, after cessation of the force or duress or after discovery of the fraud.

#### **SECTION 4.25.19 IRRETRIEVABLE BREAKDOWN OF MARRIAGE – FINDING**

The Tribal Court shall make a finding that the marriage is irretrievably broken if one party states at hearing that they believe the marriage is irretrievably broken and they wish to move forward with the dissolution of marriage or legal separation. The parties do not have to agree that the marriage is irretrievably broken for the Court to make this finding.

#### **SECTION 4.25.20 RELIEF AVAILABLE**

In a decree of dissolution of marriage or legal separation, the Tribal Court may order any of the following relief if requested by a party. In cases of invalidity of marriage, the Tribal Court may provide the following relief, however, may only award spousal support or classify and divide quasi community property if one party can prove they are a putative spouse.

1. Support

If the issue of support of either spouse is before the Court at the time it issues a decree under this Article, the Tribal Court may concurrently issue an order for spousal support and/or incorporate an order for child support issued in accordance with The Bear River Band Paternity and Child Support Code. Child support shall proceed as a separate matter to the dissolution, legal separation or invalidity of marriage actions and a decree may issue with a child support determination still pending.

2. Division of Property and Debt

At the time the Court issues a decree under this Article, the Tribal Court may concurrently divide the property and debt of the parties in accordance with Section 4.25.21.

3. Custody

If the issue of child custody is before the Court at the time it issues a decree under this article, the Tribal Court may concurrently issue a custody order in accordance with Article Four of this Code.

4. Restoration of a Prior Unmarried Name

If requested, the Court shall restore the prior unmarried name of a spouse.

#### **SECTION 4.25.21 DIVISION OF PROPERTY AND DEBT**

In a proceeding for dissolution of marriage, legal separation, or an action to declare a marriage invalid, the Tribal Court shall divide the community property or quasi community property and debts of the parties in a just and equitable manner after considering all relevant factors including:

1. The nature and extent of the community property or quasi community property.
2. The nature and extent of each spouse's separate property, including any trust or restricted property and any property that was gifted from one spouse to the other.
3. An informed and voluntary agreement reached by the parties regarding division of property or debts.
4. The duration of the marriage.
5. The economic circumstances of each party at the time the division of property and debts is to become effective including:

- a. The age and health of the parties;
  - b. The desirability of awarding the family home or the right to live therein for reasonable periods to a party with whom the children reside the majority of the time;
  - c. The desirability of ensuring that both parties' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized; and
  - d. The direct or indirect contribution of each party to the education or career development of the other party, including any interruption in education or career opportunities to benefit the other's career, the marriage, or any children.
6. Whether one party is primarily responsible for debts and primarily benefited from the debts.
  7. Unjust enrichment by a spouse. Examples include, but are not limited to:
    - a. One spouse significantly contributes financially or through labor to the acquisition of or preservation of property or a business solely owned by the other spouse without receiving reasonable reimbursement or fair compensation.
    - b. One spouse sacrifices their own career or opportunities to advance the other's career.
  8. Financial Marital Misconduct by a Spouse. Examples include, but are not limited to:
    - a. One spouse hides significant money or other community assets from the other spouse during the marriage or the dissolution case;
    - b. Dissipation of assets: one spouse spends excessively on expenses unrelated to the marriage such as luxury items when the other spouse does not purchase similar items; uses marital assets to support an addiction; uses marital assets to fund an extra marital affair;
    - c. One spouse takes out excessive debt without the other spouse's knowledge;
    - d. One spouse misrepresents their income or assets to the other which results in the other taking actions based on those misrepresentations that result in them now being at a financial disadvantage; or
    - e. Making misrepresentations on required financial disclosures in the action to terminate the marriage.

9. Valuation of Property

The Tribal Court shall value the assets and liabilities as near as practicable to the time of trial, unless good cause exists to value the property at a specific post legal separation date to ensure an equitable division of community assets and liabilities. When a spouse seeks reimbursement for purchases of property claimed by or awarded to the other spouse or for payments made that primarily benefitted the other, the Court may consider the value of use of the services or property by the party seeking reimbursement before deciding on any amount owed to the party.

## **SECTION 4.25.22 SPOUSAL SUPPORT**

1. Necessary Findings

In proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court may grant a maintenance order for either party only if it finds that the party seeking support:

- a. Lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs;

- b. Is unable to support himself or herself through appropriate employment; or
  - c. Is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.
2. Determination of Amount
- The support order shall be in such amounts and for such periods of time as the Tribal Court deems just after considering all relevant factors, including:
- a. The financial resources of the party seeking support, including marital property apportioned to the party and their ability to meet their reasonable needs independently;
  - b. The ability of the party from whom support is sought to meet their needs while paying spousal support; taking into account their earning capacity, earned and unearned income, assets, and standard of living;
  - c. The marketable skills of the party seeking support; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.
  - d. The extent to which the present or future earning capacity of the party seeking support is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties;
  - e. The extent to which the party seeking support contributed to the attainment of an education, training, a career position, or a license of the other spouse;
  - f. The ability of the party seeking support to engage in gainful employment without unduly interfering with the interests of dependent children in their custody;
  - g. The standard of living established during the marriage;
  - h. The duration of the marriage;
  - i. The age and physical and emotional condition of the party seeking support; and
  - j. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community property by the party from whom support is sought.

3. Modification or Termination

The provisions of any decree respecting spousal support may be modified only upon a showing of changed circumstances that are substantial and continuing. Spousal support shall be modified only as to installments accruing subsequent to the motion for modification, unless the party receiving support failed to honestly disclose their actual unmet needs. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future spousal support is terminated upon the death of either party or the remarriage of the party receiving support.

**SECTION 4.25.23 PROPERTY ISSUES BETWEEN UNMARRIED COUPLES**

Unmarried couples do not have community property rights, however, they may jointly own property that is held in both of their names or was jointly purchased with the intention that they both would have ownership of the item. They may also have verbal or written contractual agreements between them regarding property. Or, one partner may have been unjustly enriched by the other’s financial support or labor during the relationship.

When at least one person of the unmarried couple is a Tribal member, at least one person of the couple resides within the Bear River Band of the Rohnerville Rancheria Service area, and at least

one person intends to end the relationship, either person in the couple may request that the Tribal Court award them specific items of property that they claim ownership of, request the Court enforce any contractual agreements between them, or request reimbursement for money paid towards the maintenance and upkeep of their former partner's property if they can prove unjust enrichment by their former partner.

1. Burden of Proof

The person alleging ownership of specific property, that a contractual agreement is in place, or that they deserve reimbursement to prevent unjust enrichment has the burden of proving their claim by a preponderance of the evidence.

2. Contractual Agreements

A party claiming that a contractual agreement exists must prove that all elements of a contract claim were met: offer, acceptance, awareness, consideration, capacity and legality.

3. Unjust Enrichment

Unjust enrichment between non-married partners includes, but is not limited to, the following:

- a. One partner makes payments or purchases based on unfulfilled assurances from the other that they would be paid back or that the purchased property would be jointly owned;
- b. One partner significantly contributes financially or through labor to the acquisition or preservation of property or a business solely owned by the other partner without receiving reasonable reimbursement or fair compensation;
- c. One partner sacrifices their own career or opportunities to advance the other's career; or
- d. One partner misrepresents their income or assets to the other which results in the other taking actions based on those misrepresentations that now results in them being at a financial disadvantage.

4. Valuation of Property

The Tribal Court shall value the assets and liabilities as near as practicable to the time of trial, unless good cause exists to value the property at a specific date if necessary for an equitable outcome. When a partner seeks reimbursement for purchases of property claimed by or awarded to the other partner, or for payments made that primarily benefitted the other, the Court may consider the value of use of the property or services by the party seeking reimbursement before deciding on any amount owed to the party.

## **ARTICLE FOUR: CHILD CUSTODY AND VISITATION**

### **SECTION 4.25.24 BEST INTERESTS OF THE CHILD**

1. In any proceeding between parents under this Article, the best interests of the child shall be the standard by which the Tribal Court determines and allocates parental responsibilities. The interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, Tribal and cultural ties, health and stability, educational needs, and physical care.
2. The Tribe recognizes the fundamental importance of the parent-child relationship. The relationship between the child and each parent should be fostered unless inconsistent with the best interests of the child. The best interests of the child are ordinarily served when the

existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, educational, mental or emotional harm.

3. The Tribe also recognizes the fundamental importance of the Bear River Band Rancheria community and Tribe in retaining its children in its society, The best interests of the child shall include consideration of the rights of the child as a Bear River Band of the Rohnerville Rancheria Member: political membership in the Tribe and the attendant benefits such as hunting and fishing rights; the child's cultural heritage; the opportunity to participate in the ongoing customary life of the Tribe; and to maintain the connection that each Bear River Band Rancheria member has with their extended family.

#### **SECTION 4.25.25 PETITION**

Either parent may petition the Tribal Court for resolution of a child custody dispute provided that one of the parents and/or the child is a member of or eligible for membership in the Tribe and one of the parents has resided within the Bear River Band Service area for six (6) months prior to the filing of the petition. If the issue of child custody is before the Court at the time it issues a decree of legal separation, dissolution of marriage, or declaration of invalidity of marriage under this Code, the Tribal Court shall concurrently issue a custody order under this Article.

#### **SECTION 4.25.26 AGREEMENT BETWEEN THE PARENTS**

It is in the children's best interests when parents can agree on the terms of custody and visitation. Mediation and/or settlement conferences shall be encouraged unless there is a history of coercive control, domestic violence, or such poor communication that the Tribal Court finds that it is in the children's best interests for the Court to decide the matter after a contested hearing.

An agreement between parents as to the children's custody and/or visitation is called a parenting plan. The Court shall adopt the parenting plan provided that upon review it appears to be in the child's best interests. If the Tribal Court finds that any term of the proposed parenting plan is not in the child's best interests, the judge shall state on the record the reason why the term is not in the child's best interests, and may either give the parents the opportunity to try and reach an agreement that is in the child's best interests, or may set the matter for a contested hearing to decide the unresolved issues.

#### **SECTION 4.25.27 CONSIDERATION OF CHILD'S WISHES**

1. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the Tribal Court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation. If a child is fourteen (14) years of age or older and wishes to address the Tribal Court regarding custody or visitation, the child shall be permitted to do so, unless the Court determines that doing so is not in the child's best interest, in which case, the Court shall state its reasons for that finding on the record. This section does not prevent a child who is less than fourteen (14) years of age from addressing the Court regarding custody or visitation, if the Court determines that is appropriate and in the child's best interest, nor does it require any child to express a preference or to provide other input regarding custody or visitation.

2. With a witness under the age of eighteen (18), the Tribal Court shall take special care to protect him or her from undue harassment or embarrassment, and to restrict the unnecessary repetition of questions. The Court shall also take special care to ensure that questions are stated in a form which is appropriate to the age or cognitive level of the witness. The Court may, in the interests of justice, on objection by a party, forbid the asking of a question which is in a form that is not reasonably likely to be understood by a person of the age or cognitive level of the witness.
3. The Tribal Court shall not permit a child addressing the Court regarding custody or visitation to do so in the presence of the parties. The Tribal Court shall provide an alternative to having the child address the Court in the presence of the parties in order to obtain input directly from the child.

#### **SECTION 4.25.28 GUARDIAN AD LITEM**

The Tribal Court may appoint a guardian ad litem when necessary to represent the child's best interests in the matter.

#### **SECTION 4.25.29 CONTACT WITH MINOR CHILDREN**

It is consistent with the Bear River Band values to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children. The Court shall encourage parents who have shown they are able to act in their child(ren)'s best interests to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage.

A parent requesting sole custody shall have the burden to prove that joint custody would be detrimental to the child(ren). If the Court determines joint custody is detrimental, it shall explain the basis for that finding.

#### **SECTION 4.25.30 OBJECTIVES**

The objectives of any Custody Order shall be:

1. To provide for the child's physical care, to maintain the child's emotional stability, and to provide for the child's education;
2. To provide for the child's changing needs as the child grows;
3. To promote and preserve the child's Bear River Band heritage and to provide for the maintenance of the child's Tribal affiliation;
4. To set forth the rights and responsibilities of each parent consistent with the restrictions noted in Section 4.25.32;
5. To minimize the child's exposure to harmful parental conflict;
6. To encourage the placement of siblings together where appropriate; and
7. To otherwise protect the best interests of the child consistent with the policy expressed in Section 4.25.24.

## **SECTION 4.25.31 CONTENTS OF A CUSTODY ORDER**

A temporary custody order may include only some of these terms, and shall remain in effect until the next court date or other court ordered timeline. A final custody order shall remain in effect until modified by the Tribal Court or the child is no longer subject to the order and shall include:

### **1. Process for Dispute Resolution**

A process for resolving disputes, other than Tribal Court action, shall be provided unless it is beyond the financial means of the parties, there are safety concerns, or the Court otherwise finds it is not in the children's best interests. The dispute resolution process may include counseling, mediation, arbitration or another method agreed upon by the parties.

In the dispute resolution process:

- a. Preference shall be given to carrying out the custody order or the terms of the agreement;
- b. The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency;
- c. If the Tribal Court finds that a parent has frustrated the dispute resolution process without good reason, the Tribal Court may impose financial sanctions against that parent; and
- d. Both parents have the right to court review of the dispute resolution process.

### **2. Legal Custody**

The custody order shall allocate decision-making authority to one or both parents regarding the children's education, health care, religious or spiritual upbringing, and any other decisions related to the child's overall welfare.

- a. Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child; and
- b. When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute resolution process.

### **3. Physical Custody and/or Visitation**

The Tribal Court shall order a residential schedule designating in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations, dances or ceremonies, and other special occasions. Custody orders shall promote family connections, which could include visitation with extended family. Physical custody refers to the parent whose home the child primarily resides in, and may be jointly awarded when the residential schedule is equally shared or close to equally shared with the intent of joint physical custody.

### **4. Child as a Dependent for Purposes of Income Tax**

The custody order shall include a term designating when each parent is allowed to claim the child(ren) for income tax purposes.

## **SECTION 4.25.32 CUSTODY RESTRICTIONS**

### **1. Basis for Restrictions**

The Tribal Court may restrict or limit a parent's legal custody of, physical custody of, or their visitation with the child based on factors or conduct that the Court finds by a preponderance of the evidence is adverse to the best interests of the child, including:

- a. Distance between parent's homes that results in a lengthy commute;
  - b. Abandonment that continues for an extended period of time as shown by a parent's failure to communicate with the child or to provide financial or other support to the child;
  - c. Physical, sexual or emotional abuse of a child;
  - d. Domestic violence committed by a parent;
  - e. Neglect or substantial nonperformance of parenting functions;
  - f. Emotional or physical impairment that interferes with the parent's performance of parenting functions;
  - g. Drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
  - h. A pattern of refusing to co-parent by one parent which includes, but is not limited to, ignoring agreed-upon schedules, making unilateral decisions about the child, withholding the child from the other parent or other parent's extended family without good cause, or refusing to communicate constructively; or
  - i. Such other factors as the Tribal Court expressly finds adverse to the best interests of the child.
2. Types of Restrictions

The Tribal Court may order any restriction necessary to protect the child or the other parent if domestic violence has occurred between the parents. Examples of restrictions include:

- a. Granting the non-restricted parent sole legal or physical custody;
- b. Limiting a parent's time with the child or denying visitation;
- c. Requiring supervised visitation;
- d. Prohibiting overnight visitation;
- e. Requiring that custody exchanges occur in a protected setting and/or authorizing or requiring someone other than a parent be present at the exchange;
- f. Prohibiting specific individuals from being around the child or being left alone with the child;
- g. Prohibiting a parent from using alcohol or other drugs for a period of time prior to a custody exchange and while the child is in their care;
- h. Requiring drug testing prior to visitation or at the request of the other parent if a parent is found to have substance use issue that interferes with their ability to parent;
- i. Requiring a parent to post a bond for the safe return of the child prior to allowing in person visitation;
- j. Prohibiting a parent from removing a child from the Bear River Rancheria boundaries, the town of Loleta, and/or Humboldt County during visitation;
- k. Requiring that the address and telephone number of the parent or child be kept confidential in the proceedings;
- l. Requiring the parents do all of some of the following:
  - i. Communicate via text messaging;
  - ii. Complete parenting classes focused on parental communication;
  - iii. Utilize apps designed for communication regarding custody, and/or

- iv. Assigning a custody monitor, if one is available, who will monitor the parent's communication.
- m. Requiring that a parent complete a batterer's intervention program, substance abuse services, mental health services, or other rehabilitative services before the Tribal Court will consider modification of the current visitation schedule;
- n. Prohibiting a parent from attending specific events or requiring a parent stay away from specific locations; or
- o. Any other terms the Tribal Court finds are necessary to protect either the best interests of the child or a parent from future domestic violence.

#### **SECTION 4.25.33 EMERGENCY CUSTODY REQUESTS**

The Tribal Court shall only grant or modify custody without notice to the other parent if there is a showing that a child is at immediate risk of significant harm or immediate risk of parental kidnapping. Any request for emergency orders without notice to the other parent must include an explanation of why notice should be waived. Any time the Tribal Court issues emergency ex parte custody orders, a hearing must be set under Section 4.25.34.

#### **SECTION 4.25.34 WHEN EVIDENCE OF ABUSE, NEGLECT, DOMESTIC VIOLENCE, OR PARENTAL KIDNAPPING RISK IS OFFERED**

If a party offers evidence that the other parent has committed child abuse, neglect, domestic violence, or is likely to kidnap the child, the Court may hold a hearing to determine whether or not the allegations are true. The party making the allegations has the burden to prove they are true by a preponderance of the evidence, however, if the accused party fails to appear or does not offer evidence, the Court may only make a finding that the allegations are true by clear and convincing evidence. If the accused party agrees the allegations are true, they may present evidence of rehabilitation or other circumstances to rebut the presumption that their custody or visitation is not in the best interests of the child, or they may offer a safety plan to allow for continued contact with the child.

#### **SECTION 4.25.35 WHEN ADDITIONAL INFORMATION NEEDED**

If the parents are unable to reach agreement on the terms of the custody order and the Tribal Court determines that it needs additional information before deciding on the terms of a custody order, the Tribal Court may:

1. Ask the mediator to convene a family meeting with the parties and/or extended family members and interested parties for the purpose of reaching an agreed-upon custody order.
2. Appoint a custody evaluator who will make recommendations to the Court. Payment obligations for such an evaluation will be determined by the Court pursuant to any and all resources available.
3. Order additional reports and/or documents to be secured by the parties and lodged with the Court.

#### **SECTION 4.25.36 EFFECT OF FAILURE TO COMPLY**

If a parent fails to comply with a provision of the custody order, the other parent's obligations under the custody order are not affected. A parent may request any of the remedies discussed in

Section 4.25.07 - Independence of Provisions of Decree or Order. Any circumstances that justify a custody restriction shall be grounds for a modification of a custody order including the other parent's failure to comply with the court ordered schedule, making unilateral decisions regarding the child, withholding the child from the other parent without good cause, refusing to communicate constructively, or otherwise refusing to co-parent.

#### **SECTION 4.25.37 VISITATION REQUEST BY STEPPARENT OR EXTENDED FAMILY MEMBER**

1. The Tribal Court may grant visitation rights to a stepparent and/or any extended family member when the visitation would be in the best interests of the child and the visitation would not significantly interfere with any parent-child relationship.
2. The petitioner must be able to show by clear and convincing evidence that a significant relationship exists with the child for whom the visitation is sought for the Tribal Court to grant the visitation request.
3. When considering whether the requested visitation is in the child's best interests, the Court may consider the following factors:
  - a. The strength of the relationship between the child and the petitioner;
  - b. The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;
  - c. The nature and reason for either parent's objection to granting the petitioner visitation;
  - d. The effect that granting visitation will have on the relationship between the child and the child's parents;
  - e. The residential time sharing arrangements between the parents;
  - f. The good faith of the petitioner;
  - g. Any criminal history or history of physical, emotional, or sexual abuse or neglect by the petitioner; and
  - h. Any other factor relevant to the child's best interest.

#### **SECTION 4.25.38 MODIFICATION OF CUSTODY ORDER OR VISITATION**

1. A custody order or visitation with the child may be modified if the Tribal Court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the custody order or visitation with the child and the modification is granted, the Tribal Court shall enter on the record the reasons for the modification.
2. In a proceeding involving the modification of a custody order or visitation with a child, a finding by clear and convincing evidence that a crime involving domestic violence has occurred since the last custody order or visitation determination is a finding of change of circumstances under subsection (a) of this section.
3. The parents may agree on a modification and file the proposed modification with the Tribal Court. The proposed modification must be in writing and signed by both parents. The Court may order the modification without setting a hearing if the proposed modification appears to be in the child's best interests and the terms of the modification are sufficiently clear. The Tribal Court may set a hearing on a proposed modification if the Court needs additional information to determine if the proposal is in the child's best interests or to clarify the terms of the proposed modification.

## **SECTION 4.25.39 REGISTRATION OF FOREIGN FAMILY LAW ORDERS**

The Tribe recognizes the importance of ensuring that child custody orders, decrees of legal separation and decrees ending a marriage are enforceable if parties move across state and Tribal boundaries. As a matter of comity, the Tribal Court will recognize and enforce a foreign family law order that meets all requirements of this Article.

### **1. Required Documents**

A child custody order or decree of legal custody or decree terminating a marriage issued by a court of another Tribe or a state may be registered with the Tribal Court, with or without a simultaneous request for enforcement, by sending to the Clerk of the Tribal Court:

- a. A written registration request listing the names and current addresses of all parties bound by the foreign family law order;
- b. A filing fee;
- c. A certified copy of the foreign family law order.

### **2. Requirements for Registration**

The Court may give comity to a foreign family law order only if:

- a. The issuing court had personal jurisdiction over the parties and/or the child;
- b. The issuing court had subject matter jurisdiction over the issues addressed in the foreign order;
- c. The issuing court was an impartial tribunal and provided due process of the law to the parties;
- d. The foreign order being registered has not been vacated, stayed, or modified; The issuing jurisdiction would give reciprocity to a Bear River Band Tribal Court Order;
- e. The Order was not obtained by fraud; and/or
- f. The Order does not violate Bear River Tribal law, customs, or traditions.

### **3. Notice**

The person requesting Registration of another Tribe's or State's family law order must provide Notice of the Request for Registration to any other people bound by the foreign order. The Notice shall explain that a person wishing to contest the Registration must request a hearing within twenty (20) days after service of the notice.

### **4. Defenses**

A person contesting the registration of a foreign family law order must request a hearing within 20 days after service of the notice. At that hearing, the Tribal Court shall confirm the registered determination unless the person contesting registration establishes that one or more of the Requirements for Registration under subsection 2. above, was not met.

### **5. Default**

If a request for a hearing to contest the validity of the registration is not made within twenty (20) days, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation. The deadline for requesting a hearing may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed outside California with an adequate opportunity to respond.

## **ARTICLE FIVE: TRIBAL COURT APPEALS**

### **SECTION 4.25.40 WHO CAN APPEAL**

Any party to a Tribal Court proceeding may appeal a final Court Order through the Northern California Tribal Court Coalition (NCTCC).

### **SECTION 4.25.41 APPELLATE PROCEDURE**

All appeals shall be conducted in accordance with Chapter Nine of the Bear River Band Tribal Court - Rules of Court.

## **ARTICLE SIX: BEAR RIVER BAND TRIBAL PROVISIONS**

### **SECTION 4.25.42 NO WAIVER OF SOVEREIGN IMMUNITY**

The Bear River Band of the Rohnerville Rancheria, the Bear River Tribal Council, and all arms of the Tribe, including but not limited to, all Tribal agencies, committees, departments, entities or employees of any kind shall be immune from suit for any acts or omissions done during the performance of Tribal duties. Nothing contained in the Code is a waiver of sovereign immunity. Such consent or waiver must be expressly made by Tribal Council in accordance with Bear River Band Tribal law.

### **SECTION 4.25.43 CHOICE OF LAW**

In interpreting and enforcing this Family Code, Tribal Council shall apply Bear River Band Tribal Laws, Codes and Constitution, including the traditions and customs of the indigenous groups of the Bear River Band of the Rohnerville Rancheria.

### **SECTION 4.25.44 SEVERABILITY**

If any provisions of this Code or its application to any person or circumstance is held invalid, the remainder of the Code or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Code are severable. If the provisions of this Code conflict with the provisions of any other previously enacted Tribal law, the provisions of this Code shall control.

### **SECTION 4.25.45 AMENDMENTS**

The Tribal Council of Bear River Band of the Rohnerville Rancheria has the authority to make amendments to this Code. The Bear River Band Tribal Court may make amendment recommendations for Tribal Council consideration.

### **SECTION 4.25.46 EFFECTIVE DATE**

The Code shall take effect immediately after its adoption by Bear River Tribal Council.

**\*C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N\***

This is to certify that the Bear River Band of the Rohnerville Rancheria Tribal Council duly assembled in Loleta, CA and adopted the foregoing document on December 29, 2025 by a vote of 6 For, 0 Against, 0 Abstentions and 1 Absent.

*Josefina Frank*

Josefina Frank, Chairperson

\_\_\_\_\_  
Aileen Meyer, Vice-Chairperson

*Dakota McGinnis, Jr.*

\_\_\_\_\_  
Dakota McGinnis, Jr., Secretary

*M. Wortmon*

\_\_\_\_\_  
Maggie Wortmon, Treasurer

*John D. McGinnis*

\_\_\_\_\_  
John D. McGinnis, Member-at-Large 1

*Edward Bowie*

\_\_\_\_\_  
Edward Bowie, Member-at-Large 2

*Derek Bowman*

\_\_\_\_\_  
Derek Bowman, Member at Large 3