

## CHAPTER 6. - TRESPASS

### Section 12-6-1. - Statement of purpose.

Pueblo Land is reserved for use by Pueblo members pursuant to Pueblo law, custom and tradition. Unless consent to use Pueblo Land is authorized by the Pueblo Council, Pueblo law or tradition, an allottee, assignee, or lessee, as applicable, or the use conforms to an approved easement, right-of-way, lease, license, use agreement, access permit, business agreement or such other appropriate document, it will constitute trespass. This chapter establishes a process for resolving trespasses and imposing civil assessments and other remedies or consequences for trespass.

### Section 12-6-2. - Definitions.

*Business Agreement* means an agreement between two or more persons to accomplish a specific business purpose which includes the right to use Pueblo Land and which has been approved by the Pueblo Council or authorized by Pueblo law.

*Easement* means the right to the beneficial use of the land that is not inconsistent with the use of the land by the Pueblo and its members and is set forth in an easement agreement, which, if required, is approved by the Secretary.

*Individual Trust Allotment* means a parcel of land within the Reservation granted to Pueblo members ("allottees") under federal law and held in trust by the United States for the allottee or a successor.

*Law Enforcement Officer* means any officer duly authorized or commissioned by the authority of the Pueblo to enforce or to make arrests for violations of Pueblo law.

*Lease* means the right to possession of property for a specified use and period of time, set forth in a lease agreement approved by the Pueblo Council, and if required, approved by the Secretary.

*Nonmember Resident* means a person who is not a member of the Pueblo but who is authorized by the Pueblo to reside on Pueblo Land, provided that the individual complies with Pueblo requirements regarding such residency.

*Person* means any individual, corporation, partnership, or other entity.

*Pueblo Council* means the Governing Body of the Pueblo of Laguna.

*Pueblo Cultural Resource* means any object of cultural patrimony, sacred object, funerary object, cultural artifact, shrine, pot shard, cultural item, and confidential cultural or religious traditions not intended for observation by the general public or non-Native Americans.

*Pueblo Land* means any land subject to the jurisdiction of the Pueblo, including land held by the United States in trust for Laguna Pueblo and land within the exterior boundaries of the Pueblo of Laguna Reservation or Pueblo grant, regardless of whether the land is owned in fee, held in trust by the United States for the Pueblo, or otherwise held, and includes the airspace above such land within 500 feet of the surface and the water, plant, animal, or mineral resources located on or under the surface of such land.

*Right-of-way* means the right to use Pueblo Land pursuant to the consent of the Pueblo Council and a valid grant of right-of-way by the Secretary or his authorized representative, or the Pueblo, under applicable Pueblo and federal law and regulations.

*Secretary* means the Secretary of the Interior or his or her designee authorized to approve or issue leases or right-of-ways over Pueblo Land.

*Trespass* means:

- (1) Entering upon, crossing, occupying or using Pueblo Land for any purpose without either the consent of the Pueblo Council, or, if applicable, the consent of the allottee, assignee, or lessee, or, if applicable, by disobedience of an exclusion order of a Pueblo village or Pueblo Court; or

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- (2) Operating on, crossing or using property located on an expired, cancelled or invalid access permit, Right-of-way, Easement, Lease, Business Agreement or Use agreement, which includes holding over on, failing to vacate, or failing to cease the use of Pueblo Land, a right-of-way, easement or lease and any improvements thereon, after the expiration, cancellation or invalidation of a Business Agreement, Lease, Right-of-way, access permit, or Easement; or
- (3) Entering Pueblo Land for any unauthorized purpose including, but not limited to, poaching, searching or retrieving any Pueblo Cultural Resource, riding vehicles or animals on land or a road that is not open to the general public, viewing or recording by any means confidential cultural, religious, or traditional activity that is not open to non-Native Americans or the general public, or observing or recording by any means another individual in a place where the individual has a reasonable expectation of privacy.
- (4) Trespass does not include use of Individual Trust Allotments, land assignments, or leased parcels if such use has been authorized by the respective allottee, assignee, or lessee and is not contrary to Pueblo law, nor the entry by any Law Enforcement Officer in the performance of his/her duty.

*Use Agreement* means the right to use Pueblo Land for a specific purpose and duration, and includes permissive use granted by a grazing permit, license, or access permit.

### **Section 12-6-3. - Trespass prohibited.**

Trespass to Pueblo Land is hereby prohibited. Any person who commits Trespass to Pueblo Land shall be subject to the assessments and other consequences set forth in this chapter and available by law. The Trespass assessments set out herein do not preclude prosecution of the trespass under applicable federal law or other Pueblo law.

### **Section 12-6-4. – Pueblo enforcement of Trespass on expired right-of-ways or other land use agreements.**

This section shall apply to Trespass against the Pueblo resulting from operating on, crossing or using property located on an expired, cancelled or invalid Right-of-way, Easement, Lease, Business Agreement or Use Agreement, which includes holding over, failing to vacate, or failing to cease the use of Pueblo Land, a Right-of-way, Easement or Lease and any improvements thereon, after the expiration or cancellation or invalidation of a Business Agreement, Use Agreement, Lease, Right-of-way or Easement.

- A. *Notice of trespass.* The Governor of the Pueblo shall serve, or cause to be served, a written notice of Trespass on any person trespassing on Pueblo Land on an expired Right-of-way or other land use agreement. The notice shall be delivered either in person, by mail or electronically to the last known electronic or mailing address of the person in trespass. The notice shall specify the action to be taken by the person to correct the Trespass, the time limits within which to correct such action and any consequences imposed. The Governor shall deliver a copy of the notice of Trespass to the Bureau of Indian Affairs. Failure of a trespasser to receive actual notice does not waive the Pueblo's right to enforce this chapter or impose consequences from the date of trespass.
- B. *Civil assessment and equitable relief.* The Governor shall serve, or cause to be served, the person trespassing with a written notice of civil assessment, calculated in accordance with Section 12-6-7.A, separately or along with the notice of Trespass either in person or by mailing the assessment notice to the last known address of the person in Trespass. The assessment shall be due and payable to the Pueblo within twenty (20) calendar days of the notice of assessment. Failure to pay any assessment levied shall be considered an additional violation of this chapter and constitute grounds for exclusion from Pueblo Land and seizure of property on Pueblo Land.

### **Section 12-6-5. - Enforcement of all other trespasses.**

- A. Any person found committing trespass to Pueblo Land, may be stopped by a Law Enforcement Officer who may issue a civil citation to the trespasser to appear in Pueblo Court for the imposition of a civil assessment in accordance with sec. 12-6-7.C and other applicable provisions.

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- B. A Law Enforcement Officer may immediately eject an alleged trespasser from trespassed Pueblo Land.
- C. If applicable, a Law Enforcement Officer may seize certain possessions of an alleged trespasser under section 8.
- D. A nonmember resident may be permanently excluded from a village or the Pueblo only pursuant to the Pueblo's Exclusion Ordinance, section 12-4-1, et seq., and the disobedience of such order constitutes Trespass under this chapter.
- E. *Trespassing by animals.* The provisions of Title X, Chapters 1 and/or 3, shall apply to trespass by animals.

**Section 12-6-6. – Additional Trespass Remedies.**

- A. The United States, through the appropriate agencies, may enforce or cause to be enforced the provisions of any applicable federal law or regulations governing trespass to Pueblo Land in addition to the provisions of this chapter.
- B. Any person suffering a Trespass to Pueblo Land, including an allotment, assignment, or leased parcel, may petition the Pueblo Court for enforcement of Sections 3, 5, and 7.C against an alleged trespasser, and as a prevailing party shall be entitled to a judgment of ejectment, enjoinder, damages, and costs in his/her favor as deemed proper by the Court.

**Section 12-6-7. - Civil assessments.**

- A. Assessments for section 12-6-4 violations: In addition to the remedial and injunctive action provided for under this chapter, the civil assessment for Trespass to Pueblo Land under section 4 for each day of the trespass shall be assessed in the following amounts:
  - (1) 1.45 cents (\$.0145) per kilowatt hour transmitted through electrical lines on expired or invalid Rights-of-way, Easements or Leases that are in Trespass increasing annually as of January 1 of each year beginning in 2008, using the GDP rate of inflation as published by the U.S. Commerce Department;
  - (2) Fifteen (15) percent of the Average Daily Gas Price Index as reported by Natural Gas Intelligence at El Paso non-Bonded per MMBtu transported beginning the first day that the Right-of-way terminates and ending with the first day of a new Right-of-way agreement or such other agreement as may be approved by the Pueblo to authorize the use of a pipeline; and
  - (3) Up to one thousand dollars (\$1,000.00) per day, as determined by the Governor, for all other Trespass either through use of expired Business Agreement, Use Agreement, Rights-of-way, Easement or Lease.
- B. The civil assessment under subsections A and C are in addition to any other consequences which may be imposed by Pueblo or federal law and are meant to compensate the Pueblo solely for the act of Trespass and not for any other violation of law or contract.
- C. Civil assessment for section 12-6-3 and section 12-6-5 violations: In addition to the seizure, remedial and injunctive consequences provided for under this chapter, the civil assessment for Trespass to Pueblo Land under sections 3 and 5 shall be no less than \$100 and no greater than \$5,000 per cite-able offense.
- D. Trespass assessments levied under this section shall be paid to the Pueblo Court.

**Section 12-6-8. - Seizure and forfeiture of property in trespass.**

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- A. *Discretionary Seizure and Forfeiture of Property:* Law Enforcement Officer is authorized to seize and impound any possession of the person found committing Trespass as security for payment of the civil assessment. The seized possession, except property subject to mandatory forfeiture under subsection B, may be released to the trespasser when the trespasser pays to the Pueblo Court the civil assessment and damages or provides some other security to the Pueblo Court to ensure payment of any assessments and damages. If assessments and damages are not paid within twenty (20) calendar days of an order, the Court may declare forfeiture and order law enforcement to conduct a commercially reasonable sale of the property. After payment of assessment and damages and the costs of the sale are deducted, any excess funds shall be refunded to the trespasser.
- B. *Mandatory Seizure and Forfeiture of Property:* Any Pueblo Cultural Resource (including recorded media of any kind no matter where stored), or any plant, animal, or mineral material for which the trespasser has no authority to obtain or possess, shall be seized by a Law Enforcement Officer and shall be subject to forfeiture by Pueblo Court order. Pueblo law enforcement shall impound property subject to forfeiture pending the disposition of Pueblo Court. If the item is perishable, Pueblo law enforcement shall take necessary action to preserve a record of the evidence, and dispose of the property in a responsible manner prior to Court action.

**Section 12-6-9. - Interest on assessments.**

Interest on any delinquent payment of assessments shall accrue at the rate of fifteen (15) percent a year, computed on a daily basis from the first day following the day on which assessment is due until the date the assessment is paid.

**Section 12-6-10. – Court Appearance and Process.**

- A. Any person to whom a notice of Trespass is issued or Trespass petition is served may appear in Pueblo Court to deny the allegation, and to present evidence and testimony at a hearing without a jury to rebut the Trespass allegation or Governor's assessment under Section 4.
- B. Upon failure to appear in Pueblo Court, or following the conclusion of the presentation of evidence the Judge finds by a preponderance of the evidence that a Trespass occurred and/or the Governor's assessment is reasonable, the Pueblo Court shall impose a civil assessment in accordance with Section 7 and may order other remedy under Sections 6, 8, and 9.
- C. A decision of the Pueblo Court may be appealed to the Court of Appeals.

**Section 12-6-11. - No waiver of sovereign immunity.**

The Pueblo does not waive the sovereign immunity of the Pueblo or any Pueblo officials, employees or agents, from suit in any court of any jurisdiction for any claims or appeal made under this chapter. Any action taken to enforce this chapter shall not constitute a waiver of sovereign immunity or consent to be sued or counter-sued without an express written waiver of sovereign immunity approved by resolution of the Pueblo Council.

**Section 12-6-12. - Retroactive application.**

The civil assessments and other remedies provided for in this chapter shall apply to any trespass action initiated after the date of enactment of this chapter. The assessment and remedy shall apply from the date of trespass even if that date precedes the effective date of this chapter. The civil assessment is one means of valuing the use of Pueblo Land and is intended to apply retroactively, if necessary, to any unauthorized use of, or Trespass to, Pueblo Land.

**Section 12-6-13. – Reserved.**