



TRIBAL COUNCIL RESOLUTION NO. 2012 - 09

**TRIBAL RESOLUTION ADOPTING
THE PUEBLO OF JEMEZ CIVIL TRESPASS CODE**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez, the following resolution was passed:

WHEREAS, the Pueblo of Jemez is a federally recognized Indian Tribe with inherent powers of self-government and pursuant to its tribal sovereignty has the powers to legislate and enact tribal laws to control the conduct and activities within its tribal lands; and

WHEREAS, pursuant to its inherent sovereign powers over Pueblo lands, the Pueblo grants leases, easements, rights-of-ways and permits affecting pueblo lands; and

WHEREAS, on occasion Persons as defined in the Pueblo of Jemez Civil Trespass Code will be in trespass upon pueblo lands causing economic damage and other harm to the Pueblo; and

WHEREAS, the purpose of the Pueblo of Jemez Civil Trespass Code is to provide terms upon which the Pueblo can grant consent to persons to obtain an interest in, enter upon, remain on or otherwise use Pueblo lands; to designate administrative responsibilities to respond to trespasses on pueblo lands and to provide a remedy for trespasses on pueblo lands; and

WHEREAS, the Tribal Administration, Tribal Realty Office and the Pueblo's legal counsel have reviewed and revised the Civil Trespass Code and recommend for adoption the Pueblo of Jemez Civil Trespass Code and that it be incorporated and made a part of the Pueblo of Jemez Tribal Code as Title XIV.

NOW THEREFORE BE IT RESOLVED that the Pueblo of Jemez Civil Trespass Code, Title XIV, Sections 1 to Section 21 are adopted as laws of the Pueblo and are to be incorporated into the Pueblo of Jemez Tribal Code.

Office of the Governor

PO Box 100 • Jemez Pueblo • New Mexico • 87024
(575) 834-7359 • Fax (575) 834-7331

CERTIFICATION

I, the undersigned, as the Governor of the Pueblo of Jemez hereby certify that at a duly called meeting of the Tribal Council held on the 15th day of June 2012, the foregoing resolution was passed, a quorum being present and that 10 voted for with 0 opposed and 0 abstained.

ATTEST:

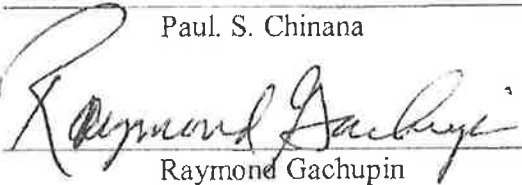

Lieutenant Governor

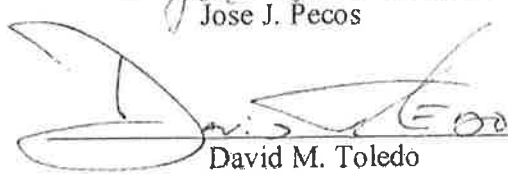

Governor Joshua Madalena

TRIBAL COUNCIL:

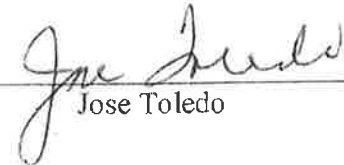

Joe Cajero


Roger Madalena

Paul S. Chinana

Raymond Gachupin

Jose J. Pecos

David M. Toledo


Frank Loretto


Jose Toledo

J. Leonard Loretto

Michael Toledo, Jr.

Raymond Loretto


Paul Tosa


Jose E. Magdalena


Vincent A. Toya Sr.

Office of the Governor

**TITLE XIV
PUEBLO OF JEMEZ CIVIL TRESPASS CODE**

SECTION 14-1-1 FINDINGS

The Tribal Council finds and declares that:

- a. The Pueblo possesses inherent sovereign powers over Pueblo lands; and
- b. From time to time, the Pueblo grants leases, easements, rights-of-way, and permits affecting Pueblo lands; and
- c. Trespass upon Pueblo lands causes substantial economic damage and other harm to the Pueblo.

SECTION 14-1-2 PURPOSE

The purposes of this Code are to:

- a. Set the terms upon which the Pueblo will grant consent to persons to obtain an interest in, enter upon, remain on, or otherwise use Pueblo lands;
- b. Designate administrative responsibility for responding to trespasses on Pueblo lands;
- c. Provide a mechanism to remedy trespasses upon Pueblo lands; and
- d. Specify charges, penalties and damages for trespasses to Pueblo lands.

SECTION 14-1-3 DEFINITIONS

When used in this Code, the term:

- a. "Compliance incentive charge" means an amount equal to twenty percent of the original trespass charge for the first month plus ten percent of the then-current trespass charge times the number of months following notification of person in trespass for the second and subsequent months.
- b. "Governor" means the chief executive officer of the Pueblo.
- c. "Lease" means any agreement between the Pueblo and a person that grants a right of possession of Pueblo lands for a specified purpose and duration in accordance with applicable federal law and regulations.
- d. "Permit" means any agreement between the Pueblo and a person that grants a revocable privilege to use Pueblo lands for a specified purpose. Permit includes sand and gravel and borrow material permits.

- e. "Person" means any individual, group of individuals, corporation, partnership, association, state, municipality, commission, political subdivision of a state, interstate body, the federal government or any federal agency or any other entity, but does not include the Pueblo, or other Pueblo's entities or instrumentalities as may be determined by Tribal Council.
- f. "Pueblo" means Pueblo of Jemez, a federally recognized Indian tribe.
- g. "Pueblo lands" means any land or any interest in land owned or held by the Pueblo, or held in trust by the United States for the Pueblo.
- h. "Realty officer" means the realty officer of the Pueblo's Realty Department.
- i. "Right-of-way" means an agreement between the Pueblo and a person that grants an easement or right-of-way in, over, under, through or to Pueblo lands in accordance with applicable Pueblo and federal law and regulations.
- j. "Secretary" means the Secretary of the Interior or his authorized representative.
- k. "Trespass" means the unauthorized possession, occupancy, holding over upon, entry upon, or use of Pueblo lands.
- l. "Trespass charge" means the annual rental value of the total acreage encumbered by the property of the person in trespass which is equal to the encumbered acreage times the highest annual rental value per acre then in place anywhere on Pueblo lands as determined by the realty officer. A monthly trespass charge is then determined by dividing the annual rental value by twelve (12). The trespass charge may be changed at any time to reflect the then-current highest annual rental value on Pueblo lands.
- m. "Tribal Council" means the governing body of the Pueblo.

SECTION 14-1-4 APPLICABILITY

- 1. Except as otherwise provided in subsection (2) of this section, this Code applies to all Pueblo lands and to all persons holding or claiming an interest in, possessing, holding over upon, entering upon, or otherwise using, Pueblo lands.
- 2. This Code does not apply to persons who are Pueblo members holding or claiming an interest in, possessing, entering upon, or otherwise using Pueblo lands under a valid assignment granted by the Pueblo or the United States in accordance with applicable federal law or regulations.

SECTION 14-1-5 CONSTRUCTION

- 1. The provisions of this Code are to be liberally construed to effectuate the intent, findings, and purposes set forth in Sections 1 and 2 of this Code, but not to conflict with applicable federal law and regulations.

2. Nothing contained in this Code is to be construed to diminish, limit, or otherwise adversely affect any right or remedy otherwise held or available to the Pueblo or its members under other applicable law.

SECTION 14-1-6 CODE AS A CONDITION OF FUTURE CONSENTS, GRANTS AND AGREEMENTS

The provisions of this Code shall be incorporated as a term and condition of the consent or grant by the Tribal Council of every lease, easement, right-of-way, or permit, unless specifically waived by Tribal Council resolution.

SECTION 14-1-7 PROHIBITION AGAINST TRESPASS

It is unlawful to trespass upon Pueblo lands. Each day that a person trespasses constitutes a separate violation.

SECTION 14-1-8 PENALTIES

1. Any person who knowingly or intentionally trespasses shall be subject to a civil penalty not to exceed \$5,000 for each violation.
2. Any person who negligently trespasses shall be subject to a civil penalty not to exceed \$1,000 for each violation.
3. In determining the amount of a civil penalty, the Realty Officer shall consider the seriousness of the violation or violations, the economic benefit to the person in trespass, if any, resulting from the violation, any history of violations, any good-faith efforts to comply with applicable requirements, and any other factors as justice may require.
4. If a trespass occurs as a result of holding over, then the person in trespass shall pay a monthly trespass charge plus a compliance incentive charge. If the trespass is the result of knowing, intentional or negligent action of the person in trespass, the penalties specified in subsections (1) and (2) of this section may be added to trespass charges and compliance incentive charges and to any other damages specified in Section 9.

SECTION 14-1-9 DAMAGES

1. Any person who trespasses shall be liable to the Pueblo for all damages proximately caused by such violation.
2. Damage proximately caused by a trespass shall be determined by the Realty Officer based upon:

- a. the highest of the economic benefit to the person, the economic detriment to the Pueblo (including, but not limited to, lost opportunity costs), or the sum of the trespass charge and the compliance incentive charge;
- b. the expense of enforcing this Code against the person in trespass;
- c. the expense of removing the property of the person in trespass;
- d. the expense of restoring Pueblo lands damaged by the trespass; and
- e. all other consequential or special damages proximately flowing from the violation of this Code by the person in trespass.

SECTION 14-1-10 INFORMATION AND INVESTIGATION

1. Upon receipt of information indicating a trespass, the Realty Officer shall investigate to determine whether a trespass has occurred.
2. If the Realty Officer's investigation reveals a trespass, the Realty Officer shall, after notifying the Governor, proceed in accordance with Section 11 of this Code.

SECTION 14-1-11 ENFORCEMENT

Whenever the Realty Officer finds that a person has trespassed, the Realty Officer may take one or more of the following actions:

- a. Issue a Notice of Trespass and Order to Comply to the person in trespass in accordance with Section 12 of this Code;
- b. Issue a Notice of Assessment of Penalty and Damages to the person in trespass in accordance with Section 13 of this Code;
- c. Request the Governor to initiate proceedings to exclude the person in trespass from Pueblo lands in accordance with Title IV Exclusion and Removal of Persons from the Pueblo of Jemez in the Pueblo of Jemez Tribal Code; or
- d. Enforce the lease, easement, right-of-way, or permit to which the person in trespass is a party in accordance with Section 18 of this Code.

SECTION 14-1-12 NOTICE OF TRESPASS AND ORDER TO COMPLY

1. The Notice of Trespass and Order to Comply must be in writing, identify the person in trespass, the location and date of the trespass, and contain a short statement of facts indicating the nature and circumstances of the trespass.

2. The Notice of Trespass and Order to Comply must specify any one or more of the following actions to remedy the trespass:

a. Removal of the person in trespass or property of the person in trespass or both from the premises;

b. Compliance with the terms, conditions, covenants or restrictions of any applicable lease, easement, right-of-way, or permit;

c. Any other action as may be necessary to cure the trespass; or and

d. Specify a reasonable period of time within which the person in trespass may cure the trespass. The Notice of Trespass and Order to Comply, however, may not require any action or specify any time period inconsistent with any provision of the applicable lease, easement, right-of-way, or permit.

3. The Notice of Trespass and Order to Comply shall advise the person identified therein of the rights available under Section 16 of this Code.

4. The Realty Officer shall serve the Notice of Trespass and Order to Comply upon the person identified in the notice in accordance with the provisions of the applicable lease, easement, right-of-way, or permit, if any.

5. Nothing in this section prohibits the Realty Officer from assessing any penalties or damages or both for trespasses by the person in trespass occurring before service of the Notice of Trespass and Order to Comply or before the completion of any cure period provided in the Notice of Trespass and Order to Comply.

SECTION 14-1-13 NOTICE OF ASSESSMENT OF PENALTY AND DAMAGES

1. The Notice of Assessment of Penalty and Damages may be served with a Notice of Trespass and Order to Comply or at any time thereafter.

2. The Notice of Assessment of Penalty and Damages must be in writing, identify the person who is trespassing, the location and date of the trespass, and contain a short statement of facts indicating the nature and circumstances of the trespass.

3. The Notice of Assessment of Penalty and Damages shall specify:

a. the amount of any penalties assessed in accordance with Section 8 of this Code.

b. the amount of any damages assessed in accordance with Section 9 of this Code;

c. the time period for which each assessment is made;

d. the date payment is due; and

e. advise the person identified therein of the appeals rights available under Section 16 of this Code.

4. The Notice of Assessment of Penalty and Damages must be served upon the person identified in the notice in accordance with the applicable lease, easement, right-of-way, or permit, if any.

SECTION 14-1-14 SPECIAL LAND USE LICENSE

1. In lieu of imposing any penalties under Section 8 or damages under Section 9 of this Code, the Tribal Council may grant a Special Land Use License to the person in trespass for a period not to exceed three (3) months to allow temporary use of Pueblo lands in the absence of a valid lease, easement, rights-of-way, or permit providing the person in trespass:

- a. has requested a Special Land Use License;
- b. has filed an application for renewal with the Secretary or the Pueblo or both in accordance with applicable law, and paid any applicable fees; and
- c. pays a monthly Special Land Use License fee for the Special Land Use License.

2. The Tribal Council may renew the Special Land Use License for an additional period of three (3) months.

3. The Realty Officer shall determine the monthly amount of the Special Land Use License fee based on:

- a. the amount of acreage applied for;
- b. the prevailing annual per acre rental value of Pueblo lands as established by the realty officer using the Pueblo's land valuation methods;
- c. dividing the annual rental value by twelve (12); and
- d. adding a cumulative 1.5% settlement incentive charge per month (.015 times the first monthly rental value and .015 times the prior monthly rental value for each subsequent month).

4. Payment of the Special Land Use Fee shall be due as stated in the Schedule accompanying the Notice of Trespass and Order to Comply.

5. The amounts paid by the person for the Special Land Use License fee shall be credited against the final settlement amount for the trespass.

6. The Tribal Council may revoke the Special Land Use License if the person in trespass:

- a. fails to pay the Special Land Use License fee; or

b. does not diligently and in good faith pursue renegotiation of the lease, right-of-way, easement, or permit.

SECTION 14-1-15 PAYMENT OF PENALTIES AND DAMAGES

1. Penalties and damages assessed pursuant to Section 13 of this Code shall be due and payable upon receipt of Notice of Assessment of Penalty and Damages thereof and shall become delinquent thirty (30) days thereafter.

2. Payments shall be by certified check made payable to the order of the Pueblo.

3. Interest on any delinquent payment of penalties and damages shall accrue from the date of assessment thereof until paid. The interest shall be assessed at five percent (5%) above the highest prime rate listed on the date of assessment by any bank operating within Santa Fe County, New Mexico, and shall continue in effect until the assessment is paid or otherwise discharged.

4. Monies collected through payment of assessments of penalties and damages, and any interest thereon, shall be deposited into such account as designated by the Tribal Council.

SECTION 14-1-16 APPEALS

1. Any person who receives a Notice of Trespass and Order to Comply or Notice of Assessment of Penalty and Damages may file a notice of appeal with the Realty Officer within ten (10) days of the service of the Notice of Trespass and Order to Comply or Notice of Assessment of Penalty and Damages.

2. The notice of appeal must be in writing and:

a. identify the person who is alleged to be trespassing, the location and date of the alleged trespass, and contain a short statement of facts indicating the nature and circumstances of the alleged trespass;

b. specify the order or assessment being appealed;

c. Specify the legal basis for the appeal; and

d. Contain a statement of facts upon which the appellant relies in support of the appeal and any argument as appellant may care to make in support of the appeal.

e. Within ten (10) days after receiving a notice of appeal, the Realty Officer shall refer the notice of appeal to the Tribal Council.

SECTION 14-1-17 HEARING AND DECISION

1. The Tribal Council shall consider the appeal within twenty (20) days of receipt of the notice of appeal by the Realty Officer.
2. Notice shall be afforded to the parties at least ten (10) days in advance of the date set for Tribal Council to consider the appeal. Each party at the Tribal Council meeting to consider the appeal may be represented by counsel and shall have the opportunity to present evidence.
3. The decision of the Tribal Council regarding the appeal shall be final

SECTION 14-1-18 ENFORCEMENT OF LEASE, EASEMENT, RIGHT-OF-WAY OR PERMIT

1. The Tribal Council may take any action authorized or allowed under the provisions, terms and conditions and covenants of an applicable lease, easement or right-of-way, permit, or agreement relating thereto as well as such action as may be authorized or allowed under the applicable law.
2. If necessary, the Tribal Council may request the Secretary or other appropriate federal, pueblo, or state official or agency to enforce:
 - a. the provisions, terms, conditions and covenants of any lease, easement or right-of-way, permit or agreement relating thereto; and
 - b. federal, Pueblo, state or local law or laws applicable to any lease, easement, right-of-way, permit, or agreement relating thereto, or relating to the conduct of business or other activity on the Pueblo lands involved.

SECTION 14-1-19 JUDICIAL ENFORCEMENT

The Tribal Council may direct the tribal attorney to bring a civil action in any court of competent jurisdiction to enjoin a trespass or to obtain payment or enforcement of any assessment of damages or penalties, or for any other relief as may be authorized or allowed under any applicable law.

SECTION 14-1-20 SEVERABILITY

If any provision of this Code as enacted, or as later amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, then the invalidity shall not affect other provisions or applications of this Code that can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

SECTION 14-1-21 EFFECTIVE DATE

This Code applies to any trespass occurring after the date the Tribal Council enacts this Code.