

TITLE 5. SPECIAL PROCEEDINGS

Chapter 5.14

CIVIL TRESPASS

Sections:

5.14.1	Title.
5.14.2	Definitions.
5.14.3	Authorization.
5.14.4	Purpose.
5.14.5	Jurisdiction.
5.14.6	Definition of Trespass.
5.14.7	Trespass Procedures.
5.14.8	Hearing.
5.14.9	Remedies.
5.14.10	Civil Penalties.
5.14.11	Civil Penalties Enforcement.
5.14.12	Authorization to Remove.
5.14.13	Forfeiture Procedures.
5.14.14	Forfeiture Authorized.
5.14.15	Fractionated Lands and Possessory Interests.
5.14.16	Exclusion Authorized.
5.14.17	Time Limitation.
5.14.18	Full Faith and Credit.
5.14.19	Severability; Construction.
5.14.20	Effective Date.

5.14.1. Title. This chapter is known as the “Civil Trespass Ordinance” for the Suquamish Tribe of the Port Madison Indian Reservation. (Res. 2017-223, passed Dec. 11, 2017)

5.14.2. Definitions. As used in this chapter, the following meanings are used:

(a) “Citing Official” means any person or persons designated and empowered by the Tribal Council to enforce the provisions of this chapter, including Tribal Police, Department of Natural Resources employees, and any federal official who has responsibility for enforcing civil and criminal laws within the boundaries of the Port Madison Indian Reservation.

(b) “Days” means business days excluding weekends, tribal holidays, and tribal office closure days.

(c) “Landowner” means any person or entity who owns land in fee or whose land is held in trust by the United States for the benefit of the person or entity and includes the Suquamish Tribe.

(d) "Person" means an individual or entity.

(e) "Property" means both real and personal property.

(f) "Realty Office" means the office of the Tribe designated as the keeper of land ownership information for all lands subject to the jurisdiction of the Tribe.

(g) "Reservation" means:

(1) The Port Madison Indian Reservation;

(2) All other lands held in trust by the United States for the benefit of the Tribe or any individual who owns an interest in an allotment located within the exterior boundaries of the reservation; and

(3) Any fee lands within the boundaries of the reservation owned by the Tribe or any of its agencies or a member of the Suquamish Tribe.

(h) "Tribal Council" means the Tribal Council of the Suquamish Tribe of the Port Madison Indian Reservation.

(i) "Tribal Court" means the Suquamish Tribal Court.

(j) "Tribal Police" means the Suquamish Tribal Police Department and officers of any other jurisdiction duly deputized to serve the Suquamish Tribe.

(k) "Tribe" means the Suquamish Tribe of the Port Madison Indian Reservation. (Res. 2017-223, passed Dec. 11, 2017)

5.14.3. Authorization. This chapter is authorized by Article III (i) of the Constitution of the Suquamish Indian Tribe of the Port Madison Indian Reservation, which delegates to the Tribal Council the power to pass ordinances that govern the conduct of all persons and regulate all property within the Tribe's jurisdiction, that provide for the maintenance of law and order and the administration of justice, and that promote the social and economic welfare of the Suquamish people. This chapter is also authorized pursuant to the Tribe's inherent sovereign authority to exclude and self-govern. (Res. 2017-223, passed Dec. 11, 2017)

5.14.4. Purpose. (a) This chapter is intended to provide a means for the Tribe to protect its property, as well as the peace, property and public safety of those living on the reservation, from conduct by any persons that threatens, damages, injures or destroys the peace, health, safety, environment or general welfare of the Tribe and all others subject to the Tribe's jurisdiction.

(b) The Tribal Council hereby declares that acts of civil trespass threaten and directly affect the political integrity, the economic security, and the health and welfare of the Tribe, as well as the peace, safety, and environment of the reservation. The Tribe reserves consent to use its land, and to impose civil penalties for trespass on the reservation. The purpose of this chapter is to effect that policy. (Res. 2017-223, passed Dec. 11, 2017)

5.14.5. Jurisdiction. (a) The personal and subject matter jurisdiction of the Tribe and the Tribal Court, for purposes of this chapter, extends to (1) all persons and property found within the exterior boundaries of the reservation and (2) property owned by the Tribe or subject to the Tribe's jurisdiction outside the exterior boundaries of the reservation, to the full extent permitted by the Tribe's inherent authorities, the Treaty of Point Elliott, the Constitution and Bylaws of the Suquamish Tribe, the laws and customary practices of the Suquamish Tribe and people, and the laws of the United States.

(b) The Tribe possesses regulatory jurisdiction over all civil trespass actions pursuant to the Tribe's inherent sovereign authority to exclude. The Tribe possesses adjudicative jurisdiction over all civil trespass actions pursuant to its regulatory jurisdiction, its core sovereign right to exclude and self-govern, and the United States federal government's express policy of promoting tribal sovereignty. The Tribe possesses personal jurisdiction over all civil trespass actions because all trespassers on tribal lands should reasonably anticipate being hailed into Tribal Court. All civil trespass actions must exhaust Tribal Court remedies.

(c) The Tribe affirms that it provides all respondents rights to due process and equal protection. (Res. 2017-223, passed Dec. 11, 2017)

5.14.6. Definition of Trespass. Any person who physically invades another's possessory interest in real property by entering or otherwise occupying lands or structures on the reservation without necessary consent, permission, or authorization will be subject to the penalties and enforcement actions set forth in this chapter.

(a) A physical invasion of another's real property occurs when a person:

(1) Enters upon the land or structure of another;

(2) Causes another person or object(s) to enter the land or structure;

(3) Fails to remove an object from the land or structure when under a legal duty to remove; or

(4) Wrongfully remains on the land or in a structure, despite initial legal entry.

(b) Acts which constitute trespass include, but are not limited to:

(1) Cutting down, destroying, injuring, carrying away, or attempting to carry away any wood, timber, plant, vegetation, or crop of any landowner from such land;

(2) Discharging a firearm, releasing an arrow, or otherwise using any weapon on such land;

(3) Engaging in any act or attempted act of hunting, fishing, or trapping on such land;

(4) Digging, taking, or carrying away, or attempting to dig, take, or carry away earth, soil, stone, minerals, attachments, water, or any other natural resource including objects of historical or archeological significance from such land;

(5) Placing upon another's property any sign, notice, advertisement, printed material, or other writing or drawing;

(6) Placing or leaving rubbish, trash, debris, or other objects upon the land of another, including waterways or reservation roads;

(7) Destroying or injuring land, waters, livestock, buildings, equipment or any property of another;

(8) Parking, driving or allowing to be parked or driven any vehicle on the land of another absent express or constructive privilege to do so;

(9) Refusing to leave land to which the person has no reasonable claim or right of possession when requested to do so by the landowner or the Citing Official;

(10) Entering upon land with knowledge, either actual or constructive, that permission does not exist or has been expressly denied or revoked; and/or

(11) Using or possessing leased, assigned, or subleased property beyond the possessory rights granted by such lease, assignment, or sublease. (Res. 2017-223, passed Dec. 11, 2017)

5.14.7. Trespass Procedures. The following procedures will apply with respect to any act of civil trespass within the reservation:

(a) **Trespass Report.** Any person who has a possessory interest in land subject to the provisions of this chapter, any member of the public, or any employee of the Tribe may submit a report of trespass with the Tribal Police or Suquamish Department of Natural Resources ("DNR"). Although a written statement signed by the person filing

the report is preferred, the report need not be in writing but may be by personal communication. The person reporting need only state the location of the alleged trespass, the nature of the trespass, and the persons who have committed the trespass, if known.

(b) Investigation. As soon as reasonably possible, but no later than five (5) days from the date of the receipt of the report of trespass, the Tribal Police and/or DNR employee(s) will conduct an investigation of the alleged trespass. The Tribal Police and/or DNR employee will assemble a written report regarding the status of the land, including maps, photographic or video documentation, witness statements, or interviews as necessary. Each day a violation exists may be a separate act of civil trespass and subject to a separate fine.

(1) If the investigator determines that the report of trespass is unsubstantiated, a written report will nevertheless be prepared with a notation that the report is unsubstantiated. The report will be filed immediately with the Tribe's Realty Office.

(2) If the investigator determines that a trespass is occurring or has occurred, the report will be filed immediately with the Tribe's Realty Office. The investigator may seize personal property found upon the trespassed land until such time as the hearing is concluded.

(c) Notice.

(1) If the person(s) alleged to be responsible for violation of this chapter is present on the land, the Citing Official will verbally notify the trespasser that he or she is trespassing on the land and that he or she must vacate the land immediately or face a removal action in Tribal Court. The Citing Official will make a written record of verbal notification and post a Notice of Trespass on a conspicuous place on the property.

(2) If the person(s) alleged to be responsible for violation of this chapter is not present or is unknown, the Citing Official will post a Notice of Trespass on a conspicuous place on the property. This Notice need not be in any particular form and need only state the date of the investigation, the name of the violator, if known, and that he or she must vacate the land or property immediately or face a removal action in Tribal Court.

(d) Citation. Within ten (10) days of the Notice of Trespass, the Natural Resources Director will issue a citation which will include the following:

(1) The name of the violator, if known; if unknown, the citation may designate "all unauthorized occupants;"

(2) The date and time of the investigation;

(3) An identifier of the land upon which the trespass occurs (address or allotment number) and the name of the legal owner/occupier of the land;

(4) A description of the act(s) of trespass;

(5) The fine for the offense; and

(6) That a court appearance is mandatory and the date and time of the hearing, which will be no later than ten (10) days of the date of the citation.

The offender may request a copy of the investigative report through the Citing Official any time before the date of the hearing.

(e) Service of Citation. Tribal Police will immediately serve the citation in any of the following ways:

(1) By personal delivery to the person responsible for the violation;

(2) By mailing the citation via certified mail to the responsible person(s) at his or her last known address; and/or

(3) By posting the citation in one or more conspicuous place(s) on the property upon which the trespass occurred. (Res. 2017-223, passed Dec. 11, 2017)

5.14.8. Hearing. (a) Generally. The Tribal Court will conduct the hearing on the record and will issue a written decision at the conclusion of the hearing.

(b) Representation. The Citing Official may be represented by counsel through the Tribe's Legal Department Civil Division. The respondent may be represented by counsel by his or her own expense.

(c) Burden of proof. The Citing Official will have the burden of showing by a preponderance of the evidence that a civil trespass has occurred and that the respondent committed the act of civil trespass.

(d) Affirmative Defense. Proof that the respondent had a legal right to occupy the property of another pursuant to federal and/or tribal law is the only affirmative defense to a charge of civil trespass.

(e) Disposition. If the Court finds that the respondent did commit trespass, it will enter an appropriate order on its record. If the Court finds the respondent did not commit civil trespass, it will enter an order dismissing the case.

(f) Failure to Appear. If the respondent fails to appear at the hearing, the Court may enter a default judgment adopting the conclusions from the investigative report that civil trespass did occur and that the respondent(s) did commit the trespass. (Res. 2017-223, passed Dec. 11, 2017)

5.14.9. Remedies. Upon a finding that civil trespass has occurred and that the respondent did commit the act of civil trespass, the Tribal Court will issue such order as will provide an appropriate remedy, including but not limited to:

- (a) Civil monetary penalties;
- (b) Forfeiture;
- (c) Temporary or permanent injunction; and
- (d) An order of removal. (Res. 2017-223, passed Dec. 11, 2017)

5.14.10. Civil Penalties. In addition to being subject to removal from the property on which the trespass occurred, any person whom the Tribal Court has found to have committed an act of civil trespass will be liable for:

(a) A civil penalty equal to actual damages resulting from each act of trespass to be paid through the Clerk of the Tribal Court for the benefit of the Tribe or landowner who suffered such damages. The Citing Official may request an extension of the damages portion of the order until such time as actual damages are determined; however, the request for damages hearing must be no later than ninety (90) days from the date the order issued;

(b) A fine of not less than one hundred dollars (\$100) for each act of trespass, payable to the Tribe through the Clerk of the Tribal Court for costs associated with enforcement of this chapter; and

(c) A punitive damages penalty for each act of civil trespass found to be intentional, willful or malicious to be paid through the Clerk of the Tribal Court for the benefit of the Tribe or the landowner who suffered the harm, provided such punitive damages will not exceed three (3) times the amount of actual damage determined pursuant to subsection (a) of this section. (Res. 2017-223, passed Dec. 11, 2017)

5.14.11. Enforcement of Civil Penalties. (a) Any civil penalty imposed will be judgment against the respondent subject to enforcement, satisfaction, or execution by the Tribal Court, and is an obligation of the respondent to the Tribe. A civil penalty imposed will be deemed a lien upon any personal or other property of the respondent located within the exterior boundaries of the reservation.

(b) The Tribe may bring suit or file an action for enforcement of a foreign judgment based on the Tribal Court judgment in any other court where the respondent

or any property belonging to the respondent may be located outside the exterior boundaries of the reservation as provided by the law of such other jurisdiction. (Res. 2017-223, passed Dec. 11, 2017)

5.14.12. Forfeiture Authorized. Any property used or which could reasonably have been used to commit an act of civil trespass and any object, including but not limited to, personal property, furniture, vehicles, or tools found on the property, wild game and non-game animals, any vegetation or crop, green or dry wood or timber, or any rock or mineral may be subject to forfeiture. All forfeiture actions will be considered in rem, against the property only, and not against the person. (Res. 2017-223, passed Dec. 11, 2017)

5.14.13. Forfeiture Procedures. Upon a finding that civil trespass has occurred, the Tribal Court may order forfeiture as set forth in this section:

(a) The Tribe may request forfeiture and the Tribal Court may issue a writ of attachment or other appropriate writ in aid of, or necessary to, the action.

(b) Property subject to forfeiture and not otherwise released to an owner or claimant will be held for a period of sixty (60) days following a finding of civil trespass, during which period notice by personal service, regular, certified or registered mail, publication, or otherwise, will be given to all parties who, after reasonable inquiry, have been determined to have an interest in property and pending forfeiture.

(c) During the sixty (60) day period that the property is held, any party claiming an interest in the property may file with the Tribal Court a claim for the recovery of the property. The Tribal Court, after a hearing for which the Tribe and all known interested parties have been given notice, will order the property restored or transferred to the claimant if such claimant proves by a preponderance of the evidence that:

(1) The claimant is a lawful owner of, has a valid, recorded security interest in, or has an ownership interest by operation of law in the property, or the possession, use, or other act of the claimant is or was lawful; and

(2) The possession, use, or other act upon which forfeiture is sought was without the knowledge and consent of the claimant; and

(3) The property will not be used to commit future acts of civil trespass on the reservation.

(d) After sixty (60) days if no claimant provides the proof required in subsection (c) of this section, the Tribal Court will declare the property forfeited to the Tribe. If the property forfeited is money, currency, or other legal tender, the Tribal Court will order it released to the Tribe's Finance Department for deposit in the Tribe's general fund. Otherwise the Tribal Court will order the property:

(1) Destroyed by the Tribal Police; or

(2) Sold at public auction with any expenses of keeping and selling such property, and the amount of all valid liens established by a claim filed with the Tribal Court by a lienholder or other secured party, paid out of the proceeds of the sale, with any balance credited to the Tribe's general fund; or

(3) Returned to the owner, lienholder, or other secured party upon payment of expenses if the property is worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset; or

(4) Retained for the Tribe's official use with expenses for keeping and transferring such property to be paid by the Tribe. (Res. 2017-223, passed Dec. 11, 2017)

5.14.14. Authority to Remove. All removal orders entered by the Tribal Court will be carried out by the Tribal Police who are authorized to take reasonable action necessary to remove the trespasser or trespassing object from the land. Any person observed or reasonably suspected of squatting, unlawfully hunting, fishing, hiking, trapping, camping, cutting or collecting wood, peddling or doing any unauthorized official business on any land within the reservation, or otherwise engaging in any activity or conduct prohibited by the provisions of this chapter may be forcibly removed and ejected from the reservation by a law enforcement official. (Res. 2017-223, passed Dec. 11, 2017)

5.14.15. Fractionated Lands and Possessory Interests. A finding of civil trespass on fractionated lands may be overturned by a defense of affirmative consent only if the alleged trespasser is able to show that he or she had completed the following before the act(s) of trespass:

(a) Notified all undivided trust or restricted interest holders; and

(b) Obtained consent from the following applicable percentage of undivided trust or restricted interest holders, consistent with the consent requirements under federal regulation 25 CFR § 162.012(a)(1) and any amendments to that regulation:

If the number of owners of the undivided trust or restricted interest in the tract is...	Then the required percentage of the undivided trust or restricted interest is...
One to five	90 percent
Six to 10	80 percent
14 to 19	60 percent
20 or more	Over 50 percent

(Res. 2017-223, passed Dec. 11, 2017)

5.14.16. Exclusion Authorized. The Tribe expressly retains authority to exclude from the reservation any person who has been found by the Tribal Court to have committed an act of civil trespass. This provision applies to tribal members and descendants as well as non-tribal members and non-Indians. All policies and procedures required for orders of exclusion, including appropriate notice, will apply. (Res. 2017-223, passed Dec. 11, 2017)

5.14.17. Time Limitation. An action for civil trespass must be filed with the Tribal Court within two (2) years of the date the trespass occurred. Each day a trespass occurs constitutes a new act of trespass that is actionable under this chapter of the Suquamish Tribal Code. On-going civil trespass violations that began more than two (2) years before the initiation of a trespass action but that are still occurring at the time the action is initiated will not be barred under this section. (Res. 2017-223, passed Dec. 11, 2017)

5.14.18. Full Faith and Credit. An order of removal or forfeiture issued by the Suquamish Tribal Court will be enforceable throughout the State of Washington pursuant to RCW 13.34.240, RCW 26.52 and Washington Superior Court Civil Rule 82.5(c). (Res. 2017-223, passed Dec. 11, 2017)

5.14.19. Severability; Construction. If any phrase, clause, part, sentence, provision, or section of this chapter is found to be invalid by a court of competent jurisdiction, the remainder of this chapter will not be affected and will remain in full force and effect and continue to be in effect as if the invalid provision(s) were not a part of this chapter. If the operation of any clause, part, or section of this chapter is held to impair the obligation of contract or deny any person any right secured to her or him by the Constitution of the Suquamish or the United States Constitution, it is hereby declared that the remainder of the chapter would nevertheless be enacted without such invalid clause, part, or section. (Res. 2017-223, passed Dec. 11, 2017)

5.14.20. Effective Date. This chapter became effective January 1, 2018. (Res. 2017-223, passed Dec. 11, 2017)