

Ordinance No. 52. – Resolution H-98-97 approves the Hopi Tribal Civil Trespass Ordinance.

HOPI TRIBAL COUNCIL
RESOLUTION
H-098-97

WHEREAS, Pursuant to ARTICLES I - JURISDICTION, IV - THE TRIBAL COUNCIL, and VI - POWERS OF THE TRIBAL COUNCIL of the Constitution and By-laws of the Hopi Tribe, the Hopi Tribal Council is the governing body of the Hopi Tribe and is responsible for protecting the lands and resources of the Tribe; and

WHEREAS, the Hopi Tribe permits the use of its lands for different purposes, including but not limited to grazing, hunting, woodcutting, agriculture and mining; and

WHEREAS, the Hopi Tribe currently has no civil trespass ordinance under which to enforce its permits and take action and collect fines for unpermitted uses of its lands; and


WHEREAS, it is in the best interests of the Hopi Tribe to enact a Civil Trespass Ordinance under which to regulate the uses of its lands;

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby approves and adopts the attached Hopi Tribal Civil Trespass Ordinance.


HOPI TRIBAL COUNCIL
RESOLUTION
H-098-97

CERTIFICATION

The foregoing resolution was duly adopted by the Hopi Tribal Council on September 23, 1997, at a meeting at which a quorum was present with a vote of 14 in favor, 1 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE I - JURISDICTION, ARTICLE IV - POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does not require Secretarial approval.


Ferrell Secakuku, Chairman
Hopi Tribal Council

ATTEST:


Mary A. Felter, Tribal Secretary
Hopi Tribal Council

HOPI TRIBAL CIVIL TRESPASS ORDINANCE ORDINANCE NO. 52

CHAPTER 1 GENERAL PROVISIONS

Section 1.00 Definitions

As used in this chapter:

- (A) "Area Director" means the Area Director of the Phoenix Area Office of the United States Bureau of Indian Affairs or its successor agency, or her or his authorized representative.

- (B) "Easement" and "Right-of-Way" mean any valid, duly authorized grant of, or agreement relating to, an easement or right-of-way in, over, under through or to Hopi lands. Where the context requires, "easement" and "right-of-way" refer to the interest created by a grant of easement or right-of-way. As applied to trust or restricted lands, "easement" and right-of-way" include all interests in land held in accordance with the provisions of 25 U.S.C. § 311-328 and the regulations contained at 25 C.F.R. Part 169, or any other federal law authorizing easement or right-of-ways in Indian lands, including all amendments thereto and successors thereof.

- (C) "Hopi customary use or practice" means the usage or practice of the Hopi people which, by common acquiescence, governs and has governed their traditional activities and relationships among themselves from time immemorial, whether or not later interpreted by the courts of the Hopi Tribe or other courts of competent jurisdiction.

- (D) "Hopi Tribe" means:
 - (1) When referring to the body politic, the same meaning as set forth in Article III-Organization, Section 1 of the Constitution and By-Laws of the Hopi Tribe;

 - (2) When referring to governmental territory, all land within the territorial boundaries of the Hopi Tribe, including:
 - (a) all land within the exterior boundaries of the Hopi Indian Reservation;

 - (b) all land held in trust by the United States for, or restricted by the United States, or otherwise set aside or apart under the

superintendence of the United States for, the use or benefit of the Hopi Tribe, or any individual Hopi Indian as such; and

- (c) all other land over which the Hopi Tribe may exercise governmental jurisdiction in accordance with federal or international law; and
 - (d) all land which subsequently becomes Hopi land by any means.
- (E) "Hopi Tribal Council" means the governing body of the Hopi Tribe as set forth in Articles I-Jurisdiction, IV-The Tribal Council, and VI-Powers of the Tribal Council of The Constitution and By-Laws of the Hopi Tribe.
- (F) "Hopi lands" means any land or any interest in land owned or held by the Hopi Tribe, or held in trust by the United States for the Hopi Tribe, whether within or outside the boundaries of the Hopi Reservation.
- (G) "Land" means any and all land interests in land, whether freehold or leasehold or otherwise, including land held by original title, land held in trust by the United States, land held in fee simple, and land held under lease, easement, permit or otherwise, whether restricted or unrestricted, and includes all rights and incidents appurtenant to any land or interests in land, including but not limited to, rights to water and to minerals, whether surface or underground or subsurface.
- (H) "Lease" means any valid, duly authorized lease or lease agreement conveying a leasehold interest in or to, and authorizing the possession and use of, Hopi lands. Where the context requires, "lease" refers to the interest created by a lease or lease agreement. As applied to trust or restricted lands, "lease" includes all permits and leases issued in accordance with the provisions of the Indian Leasing Act, 25 U.S.C. § 415-415d, the Navajo-Hopi Land Dispute Settlement Act of 1996, 110 Stat. 3649 (1996), the Navajo-Hopi Rehabilitation Act, 25 U.S.C. § 635, and the regulations contained at 25 C.F.R. Part 162; the Indian Mineral Leasing Act, 25 U.S.C. § 396a - 396f, and the regulations contained at 25 C.F.R. Parts 210, 211 and 221; or any other federal law authorizing the leasing of Indian lands, and all amendments to or successors of any of them.
- (I) "Manager" means the Manager of the Hopi Tribe's Department of Natural Resources, or its successor agency, or his or her designee.
- (J) "Permit" means any document or agreement granting, authorizing or relating to any duly authorized usufruct or permissive use of Hopi lands. When the context requires, "permit" refers to the usufruct or permissive use granted or authorized thereby. "Permit" includes sand and gravel and borrow material permits.

- (K) "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 Hopi Tribe.
- (L) "Secretary" means the Secretary of the United States Department of the Interior or his or her authorized representative.
- (M) "Trespass" means unauthorized or unprivileged interest in, possession of, holding over upon, entry upon, or other use of, Hopi lands.

Section 1.01 Applicability

- (A) Except as otherwise provided in subsection (B) of this section, this chapter shall apply to all Hopi lands and to all persons holding or claiming an interest in, possessing, holding over upon, entering upon, or otherwise using, Hopi lands.
- (B) This ordinance shall not apply to Hopi persons holding or claiming an interest in, possessing, entering upon, or otherwise using, Hopi lands pursuant to and in accordance with Hopi customary use or practice, or with a valid Hopi Partitioned Lands homesite and or agricultural land assignment, grazing permit or woodcutting permit duly issues by the Hopi Tribe or by the United States in accordance with applicable laws.

Section 1.02 Rules and Regulations

- (A) The Manager is hereby authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Ordinance, including:
 - (1) regulations governing the determination of penalties and damages for trespass; and
 - (2) regulations governing administration of this Ordinance by the Manager.
- (B) Any such rules and regulations proposed by the Manager shall be published for public review and comment for at least thirty (30) days prior to their adoption. Such rules and regulations shall be effective in accordance with their terms after review and approval by the Tribal Council.
- (C) The effectiveness and enforceability of the provisions of this ordinance shall not be dependent upon the promulgation of rules or regulations by the Manager pursuant to this section.

Section 1.03 Severability

If any provision of this Ordinance, or its application to any person or class of persons, or to any

lands or to any circumstances, is held invalid for any reason by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 1.04 Condition of Future Leases, Grants and Agreements

- (A) The provisions and applicability of this Ordinance shall be a term and condition of the consent or grant by the Hopi Tribe to or
- (B) Nothing contained in subsection (A) of this section shall be construed to diminish, limit or otherwise adversely affect the application of this Ordinance to any person or lands to any existing lease, easement or right-of-way, permit, or agreement relating thereto.

Section 1.05 Short Title

This chapter shall be known and may be cited as the "Hopi Tribal Civil Trespass Ordinance".

**CHAPTER 2
PROHIBITIONS, UNLAWFUL ACTS; PENALTIES, DAMAGES**

Section 2.00 Prohibition on Possession or Use of Hopi Land Without Permission

- (A) Except as otherwise provided in subsection (B) of this section, no person shall have an interest in, or to, or possess, enter upon or use Hopi lands, except pursuant to and in strict accordance with the terms and conditions of a valid lease, easement, right-of-way or permit, duly issued by the Hopi Tribe, or by the United States with the express valid consent of the Hopi Tribe.
- (B) Notwithstanding the provisions of subsection (A) of this section, it shall be lawful and permissible to have an interest in, possess, enter upon or otherwise use Hopi lands pursuant to and in substantial compliance with Hopi customary use or practice, or with a valid Hopi Partitioned Lands homesite and/or agricultural land assignment, or a grazing permit or woodcutting permit duly issued by the Hopi Tribe or by the United States in accordance with applicable laws. As used in this subsection, "substantial compliance" includes possession and use of land under a homesite lease which has expired, where a timely request for renewal thereof has been made and remains pending.

Section 2.01 Unlawful Acts

It shall be unlawful to possess, hold over upon, enter upon or otherwise use Hopi lands within the

Hopi Reservation in violation of Section 2.00 of this Ordinance. Each day that a person shall so violate Section 2.00 of this Ordinance shall constitute a separate violation. Each violation with respect to a separate parcel of land shall constitute a separate violation. Parcels shall be considered "separate" for purposes of this section where rights to or interests in them are created by separate instruments, where they are not physically contiguous, or where they are put to separate uses.

Section 2.02 Penalties

- (A) Any person who knowingly violates any provision of Section 2.01 of this Ordinance shall be subject to a civil penalty not to exceed \$5,000.00 for each violation.
- (B) Any person who negligently violates any provision of Section 2.01 of this Ordinance shall be subject to a civil penalty not to exceed \$1,000.00 for each violation.
- (C) In determining the amount of a civil penalty, the Manager or the court, as the case may be, shall be consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, and such other factors as justice may require.

Section 2.03 Damages

- (A) Any person who violates any provision of Section 2.01 of this Ordinance shall be liable to the Hopi Tribe for all damages proximately caused by such violation.
- (B) Damages proximately caused by a violation shall be determined by the Manager or the court, as the case may be, based upon:
 - (1) the higher of the economic benefit to the violator or the detriment to the Hopi Tribe (including, but not limited to, lost opportunity costs);
 - (2) the costs of enforcement; and
 - (3) all other consequential or special damages proximately flowing form the violation.

**CHAPTER 3
ENFORCEMENT**

Section 3.00 Information and Investigation

- (A) Any person may provide information to the Manager in writing concerning facts which

indicate a trespass upon Hopi lands.

- (B) Any employee or official of the Hopi Tribe with knowledge of facts which indicate a trespass upon Hopi lands shall promptly report such information to the Manager in writing.
- (C) Upon receipt of information indicating a trespass upon Hopi lands, the Manager shall:
 - (1) Notify affected Villages, divisions, departments, programs; and
 - (2) Undertake such investigation as may be necessary to determine whether a trespass has occurred and how to proceed in case a trespass is found.
- (D) The Manager shall consult with affected divisions, departments or programs prior to determining how to proceed in case a trespass is found.
- (E) If the lands involved are within the Hopi Reservation, the Manager shall proceed in accordance with Section 3.01 of this Ordinance. If the lands involved are outside the Hopi Reservation, the Manager shall proceed in accordance with Section 3.09 of this Ordinance.

Section 3.01 Enforcement within the Hopi Reservation

Whenever on the basis of information available to him the Manager finds that any person has violated any provision of Section 2.01 of this Ordinance, the Manager may take any of the following actions or combination of actions:

- (A) Issue a Notice of Trespass and Order to Comply in accordance with Section 3.02 of this Ordinance;
- (B) Issue a Notice of Assessment of Penalty and Damages in accordance with Section 3.03 of this Ordinance;
- (C) Request the Chairman of the Hopi Tribe to initiate exclusion proceedings pursuant to Hopi Tribal Ordinance #46, "Ordinance for the Regulation, Exclusion and Removal of Non-members";
- (D) Enforce the lease, easement or right-of-way or permit in accordance with Section 3.10 of this Ordinance; and
- (E) Request the Tribe's General Counsel to bring a civil action in accordance with Section 3.11 of this Ordinance.

Section 3.02 Notice of Trespass and Order to Comply

- (A) A Notice of Trespass and Order to Comply shall be in writing and shall identify the person who is trespassing, the location and date of the trespass, and shall contain a short statement of facts indicating the nature and circumstances of the trespass.
- (B) The notice and order shall specify what action to remedy the trespass is required of the person who is trespassing. Action required may include:
 - (1) Removal of persons or property from the premises;
 - (2) Compliance with the terms, conditions, covenants or restrictions of any applicable laws, easement or right-of-way or permit; and
 - (3) Such other action as may be necessary to cure a violation.
- (C) The notice and order shall specify a reasonable period of time within which to comply.
- (D) The notice and order shall not require any action or specify any time period inconsistent with any provision of an applicable lease agreement, easement or right-of-way agreement or permit.
- (E) The notice and order shall advise the person identified therein of the rights available under Section 3.06, 3.07 and 3.08 of this Ordinance.
- (F) The notice and order shall be served upon the person identified in the notice in accordance with the provisions of Rule 2 of the Hopi Rules of Civil Procedure, or as otherwise specified in an applicable lease agreement, easement or right-of-way agreement or permit.
- (G) Nothing in this section shall prohibit the assessment of penalties and/or damages for trespasses occurring prior to service of a notice and order or prior to the completion of any compliance period provided for by a notice and order.

Section 3.03 Notice of Assessment of Penalty and Damages

- (A) A Notice of Assessment of Penalty and Damages may be served with a Notice of Trespass and Order to Comply or within 30 days thereafter.
- (B) The Notice of Assessment of Penalty and Damages shall be in writing and shall identify the person who is trespassing, the location and date of the trespass, and shall contain a short statement of facts indicating the nature and circumstances of the trespass.
- (C) The notice shall specify:
 - (1) the amount of penalties assessed in accordance with Section 2.02 of this Ordinance;

- (2) the amount of damages assessed in accordance with Section 2.03 of this Ordinance; and
- (3) the time period for which each assessment is made.
- (D) Each item of assessment of penalty or damages shall reference the provisions of this Ordinance, or of the rules or regulations adopted pursuant to this Ordinance, which govern the assessment, and shall be accompanied by a short description of the method by which the amount of said assessment was determined.
- (E) The notice shall specify the date payment is due to the Tribe and shall recite the provisions of subsections (A), (B) and (C) of Section 3.04 of this Ordinance.
- (F) The notice shall advise the person identified therein of the rights available under Sections 3.06, 3.07 and 3.08 of this Ordinance.
- (G) The notice shall be served upon the person identified in the notice in the same manner as a summons and complaint pursuant to the Hopi Rules of Civil Procedure, or as otherwise specified in an applicable lease agreement, easement or right-of-way agreement or permit.

Section 3.04 Payment of Penalties and Damages

- (A) Penalties and damages assessed pursuant to Section 2.02 and/or 2.03 of this Ordinance shall be due and payable upon receipt of notice thereof and shall become delinquent thirty (30) days thereafter.
- (B) Payments shall be made by certified check payable to the order of the Hopi Tribe.
- (C) Interest on any delinquent payment of penalties and damages shall accrue from the date such payment is due and payable. Said interest shall be assessed at the rate of two percent (2%) per month until said assessment is paid or otherwise discharged.
- (D) Monies collected through payment of assessment of penalties and damages, and any interest thereon, shall be deposited in the Hopi Tribe's General Fund.

Section 3.05 Notice to Divisions, Departments and Programs

The Manager shall deliver a copy of the Notice of Trespass and Order to Comply and the Notice of Assessment of Penalty and Damages, and any subsequent notices, pleadings, orders or other documents or materials filed with or by the Manager, or by any party to any appeal, to:

- (A) the Office of the Chairman of the Hopi Tribal Council (which shall provide copies to the other members of the Hopi Tribal Council);

- (B) the Office of the General Counsel of the Hopi Tribe;
- (C) the Hopi Resources Enforcement Services;
- (D) the Office of Mining and Mineral Resources, if the trespass involved mineral resources, sand and gravel, geology, and/or energy related leases, easements, right-of-way or permit; and
- (E) the Office of Realty, if the trespass involves a business site lease, easement, right-of-way or permit; and
- (F) the division, department or program that issued or approved the lease, easement, right-of-way or permit.

Section 3.06 Appeals

- (A) Any person who receives a Notice of Trespass and Order to Comply or Notice of Assessment of Penalty and Damages pursuant to Section 3.02 or 3.03 of this Ordinance may appeal by filing with the Manager a Notice of Appeal within fifteen (15) days of the date such Notice of Trespass or Notice of Assessment is served upon such person.
- (B) The Notice of Appeal shall be in writing and shall:
 - (1) 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.
 - (2) specify the order or assessment being appealed;
 - (3) specify the legal basis for the appeal; and
 - (4) contain a statement of facts upon which the appellant relies in support of the appeal and such argument as appellant may care to make in support of the appeal.
- (C) Upon the receipt of a Notice of Appeal, the Manager shall refer the appeal to the Chairman of the Hopi Tribe, who shall, within five (5) days, assign the appeal to a qualified and impartial hearing officer and notify the parties of the name of that hearing officer and the telephone number and address where he or she can be reached.

Section 3.07 Stay Upon Appeal

- (A) The filing of a Notice of Appeal with the Manager shall not stay the enforcement of the Notice of Trespass and Order to Comply or Notice of Assessment of Penalties and

Damages. However, an appellant may request the hearing office to grant a stay of enforcement any time after filing the Notice of Appeal but before the issuance of a decision by the hearing officer. A stay may be granted by the hearing officer where justice so requires, and upon such terms and conditions (including the posting of a bond) as the hearing office may find just and proper. An order granting a stay shall be in writing and shall state the grounds therefore and the terms and conditions thereof.

- (B) An order granting or denying a stay, and any terms and conditions thereof, shall be final and may be appealed to the Hopi Tribal Court within five (5) days of its issuance, pursuant to Section 3.11 of this Ordinance.

Section 3.08 Hearing and Decision

- (A) The hearing officer shall hear the appeal within thirty (30) days of receipt of the Notice of Appeal by the Manager. Upon request of a party, a delay of not more than fifteen (15) days may be granted.
- (B) Notice shall be afforded to the parties at least ten (10) days in advance of the date set for hearing. Each party at the hearing may be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and examine witnesses.
- (C) Within twenty (20) days after the hearing, the hearing officer shall issue written findings of fact and conclusions of law which shall state the decision and grounds therefor. The hearing officer may uphold, reverse, or modify the decision of the Manager or any part thereof, but may not grant any other relief.
- (D) The decisions of the hearing officer shall be final and may be appealed by any party to the Hopi Tribal Court pursuant to Section 3.11 of this Ordinance.

Section 3.09 Enforcement Outside the Hopi Reservation

Whenever on the basis of information available to him the Manager finds that any person has violated the provisions of Section 2.01 of this Ordinance on Hopi lands outside the Hopi Reservation, the Manager may take any of the following actions or combination of actions:

- (A) Enforce the lease, easement or right-of-way or permit in accordance with Section 3.10 of this Ordinance;
- (B) Request the Tribe's General Counsel to bring a civil action in accordance with Section 3.11 of this Ordinance; and
- (C) Exercise such other rights or remedies on behalf of the Hopi Tribe as may be authorized by law.

Section 3.10 Enforcement of Lease, Easement, Right-of-Way or Permit

- (A) The Manager 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 any applicable law.
- (B) The Manager may request the Secretary, the Area Director, or other appropriate federal, tribal, state or local official or agency, to enforce:
 - (1) The provisions, terms, conditions and covenants of any lease, easement or right-of-way, permit or agreement relating thereto; and
 - (2) Federal, tribal, state or local law or laws applicable to any lease, easement or right-of-way, permit, or agreement relating thereto, or relating to the conduct of business or other activity on the lands involved.

Section 3.11 Judicial Review and Enforcement

- (A) The decision of the hearing officer made pursuant to Sections 3.07 and 3.08 of this Ordinance may be appealed by any party within thirty (30) days of its issuance (except as otherwise provided in Section 3.07 of this Ordinance) to the Hopi Tribal Court. Such appeals shall be made in accordance with the Hopi Rules of Civil Procedure. The Court shall review the decision of the hearing officer on the Administrative Record only. The Court shall uphold the decision of the hearing officer unless it finds that hte decision was arbitrary, capricious or an abuse of discretion.
- (B) At the request of the Manager or otherwise, the General Counsel of the Hopi Tribe may 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 such other relief as may be authorized or allowed under any applicable law.