

WARM SPRINGS TRIBAL CODE

CHAPTER 306

TRESPASS

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306.001 Legislative Intent and Findings. It is the intent of the Tribal Council that Warm Springs Tribal Code Chapter 306 "fill the gap" created by existing federal, state and tribal laws relating to trespass by non-Indians on Reservation land. The present milieu of laws has created a situation in which the Reservation has become a no-mans land with regard to enforcement of illegal entry onto Reservation lands. There is no federal statute prohibiting trespass on Indian lands. Federal and state officials have, however, taken the position that only federal courts have jurisdiction over trespasses by non-Indians on Reservation land and that state law does not apply. The Oregon State Police Department has indicated that its policy is not to cite for trespass upon private lands, including tribal land. The Wasco County District Attorney has indicated that he would not prosecute non-Indians cited for trespass upon the Reservation.

The Tribal Council expressly finds that trespass upon Reservation lands has caused or contributed to the following problems:

- (1) Range and forest fires;
- (2) Injury to or destruction of fish spawning beds;
- (3) Intrusion on privacy of Reservation residents;
- (4) Loss of Reservation and resident resources, including firewood, timber, fish, horses, cattle, and other livestock.
- (5) Injury to tribal housing and loss of rent for tribal housing occupied by trespassers.

The Tribal Council expressly finds that without the institution of this Chapter that there will be serious interference with the functioning of the tribal government within the Reservation and jeopardy to tribal resources.

306.010 Definition.

- (1) "Indian" means a member of the Confederated Tribes of the Warm Springs Reservation of Oregon, or any other person of Indian blood who is a member of a federally recognized Indian tribe, or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian and Alaska native.
- (2) "Reservation" means the lands within the exterior boundaries of the Confederated Tribes of the Warm Springs Indian Reservation of Oregon. Created pursuant to the Treaty of June 25, 1855 (12 Stat. 963) and the Act of September 21, 1972 (Public Law 92-427).

- (3) "Enter or remain unlawfully" means:
 - (a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public, or when the entrant is not otherwise licensed or privileged to do so; or
 - (b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.
- (4) "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.
- (5) "Person in charge" means a person, his representative or his employee who has lawful control of premises by ownership, tenancy, official position or other legal relationship. It includes, but is not limited to, the person, or holder of a position, designated as the person or position holder in charge by the Tribal Council.
- (6) "Premises" includes any building or real property, whether privately owned, owned by the Confederated Tribes or owned by the United States Government in trust for the Confederated Tribes.

306.020 Trespass. A person commits the civil infraction of trespass if he enters or remains unlawfully in or upon premises.

306.030 Trespass with Intent to Commit a Crime. A person commits the infraction of trespass with intent to commit a crime if he enters or remains unlawfully in or upon premises, and at any time while doing so, has the present intent to commit a crime as defined by State of Oregon, federal, or tribal law. In determining whether or not the person intends to violate a tribal criminal law, it must be established that the intended conduct would satisfy all elements of the definition with the exception that the offender be an Indian. Trespass with intent to commit a crime is a Class A infraction as defined by WSTC 306.035.

306.035 Infractions; Classes of Infractions.

- (1) Violation of WSTC 306.020 through 306.040 by any person subject to this Chapter shall constitute a civil infraction punishable by fine or exclusion from the Reservation pursuant to WSTC Chapter 300.
- (2) There shall be three classes of infractions. A Class C infraction shall be punishable by a maximum \$100 fine. A Class B infraction shall be punishable by a maximum \$250 fine. A Class A infraction shall be punishable by a maximum \$500 fine. With the exception of trespass with intent to commit a crime, which is a Class A infraction, other violations shall be punishable as follows: The first violation of the provisions of this Chapter within a three year period shall be deemed a Class C infraction. The second violation of the provisions of this

Chapter within a three year period shall be deemed a Class B infraction. The third or subsequent violation of the provisions of this Chapter within a three year period shall be deemed a Class A infraction.

306.040 Persons not Subject to this Chapter. Indians shall not be subject to the provisions of this Chapter.

306.045 Authority to Issue Citation. A police officer as defined in WSTC 310.010(13) may issue a citation to a person for trespass at any place within the external boundaries of the Reservation.

306.047 Private Person may Commence Action. A private person may commence an action pursuant to this Chapter by following the procedure set forth in WSTC 310.150.

306.049 Appearance by Defendant. The defendant shall either appear in tribal court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check, cash or money order in the amount of bail set forth in the summons, and enclosing therewith:

- (1) A request for a hearing; or
- (2) A statement of matters in explanation or mitigation of the offense charged; or
- (3) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement of explanation or mitigation also may be included with the guilty plea.

306.051 Hearing Date. If the defendant requests a hearing, the court shall fix a date and time for the hearing and shall, at least five days in advance of the hearing, mail to the defendant notice of the date and time so fixed. If the defendant shall fail to appear for the hearing, the court shall be entitled to presume that the defendant does not contest the charges and may enter a finding that the defendant is guilty, just as if the defendant had appeared and been found guilty.

306.053 Trial; Burden of Proof.

- (1) The trial of any trespass infraction shall be by the court without a jury.
- (2) The prosecution shall have the burden of proving the alleged trespass infraction by a preponderance of the evidence.

306.055 Appeal. There shall be no appeal from a judgment involving a trespass infraction.

306.060 Seizure of Security. In the discretion of the citing officer, the officer may seize such personal property in the possession of the defendant as the officer deems reasonably necessary to secure payment of any fine which may be levied upon the defendant upon conviction of the infraction. The officer shall, at the time of seizure, give to the defendant a

receipt accurately describing the items seized. The officer shall further advise the defendant of his right to post security pursuant to WSTC 200.725. The seizure and disposition of security pursuant to this Chapter shall be conducted in accordance with the provisions of WSTC 200.700 through 200.750.

306.065 Removal from Reservation. A Warm Springs Police Officer may remove or escort from the Reservation any person committing a violation of this Chapter other than Reservation residents and employees of the Confederated Tribes or the federal government.