

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi? yuhwatsya·té tewatenhotúkwa? Ukwehuwé·ne
That of the earth one opens it up Oneida Nation

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609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this law is to prevent improper access, use and trespass to Tribal lands.

609.1-2. *Policy.* It is the policy of the Nation to limit access to Tribal lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A, BC-01-13-16-C and BC-07-26-17-D.

609.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

609.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law controls.

609.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

609.2-6. This law may not be construed to preclude the Nation from pursuing relief for criminal trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal lands.

(b) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(c) “Lease” means any lease or agreement, including business site leases, entered into by the Nation and any person to allow the use of Tribal lands.

(d) “Nation” means the Oneida Nation.

(e) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(f) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment, the imposition of a wildlife protection assessment (civil recovery value), and restitution.

(g) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(h) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under any law, rule, permit or lease of the Nation.

(i) “Tribal Land” means all of the Nation’s trust lands, and any land or interest in land held by the Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this law and enforce the provisions of this law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

(d) Implement and interpret the provisions of this law.

(e) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all persons who are granted land access permission by the Nation through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Nation; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Nation.

(1) A Conservation Warden or Oneida Police Officer may require a person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Nation and where such designation does not pose significant risk of damage to the Nation’s policies and/or the land’s cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this law may be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

- (a) Employees of the Nation who are performing their job duties;
- (b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Nation;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal land is designated as limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

- (i) published in the Nation’s newspaper; and
- (ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

- (2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.
 - (3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:
 - (A) Existing uses of the land and buildings within the general area of the land in question.
 - (B) Suitability of the land in question to the uses permitted under the existing Land Access Map.
 - (4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the Nation's best interest and is not solely for the interest of the applicant.
- (c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:
- (1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or
 - (2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

- (a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.
- (b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Nation's website and/or in the Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:
 - (1) A sign at least eleven inches (11") square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.
 - (2) Markings at least one foot (1') long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:¹

- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
- (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
- (3) Engages in any act, or attempted act of hunting, trapping or fishing.
- (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
- (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
- (6) Parks or drives any vehicle on the land.
- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or sub-leased lands beyond the possessory rights granted by such lease or sub-lease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

609.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the citation schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The issuance of a citation or fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A
Emergency Amended – BC 07-08-15-C
Amended – BC-01-13-16-C
Amended – BC-07-26-17-D