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# SHINNECOCK INDIAN NATION



## Residency Ordinance

Adopted by General Council through  
Referendum on September 13<sup>th</sup>, 2014

## **RESIDENCY ORDINANCE**

### **Section 1: Purpose**

The purpose of the ordinance is to define who can lawfully reside on the Shinnecock Indian Nation Territory. Also, this ordinance provides a means for the Tribe to protect its property and the property of those living on the Territory from theft, vandalism and other harm and to protect the Nation, its members, and other persons living on the Territory from people whose presence on the Territory is harmful to, or threatens harm to the peace, health, safety, environment, morals and general welfare of the Territory.

### **Section 2: Background and Intent**

The Council of Trustees has determined that acts of third parties that interfere with the property rights and / or welfare of the Tribe, Tribal members, residents and guests threaten the peace, health, safety, environment, morals and general welfare of the Territory and the health, welfare, environment, political integrity and economic security of the Tribe. It is the intent of the Council of Trustee to make such acts a Civil or Criminal Violation with the desire to protect such rights.

### **Section 3: Definitions**

As used in this ordinance, the following words or phrases shall have the following definitions:

- A. "Indian" shall mean a member of a state or federally recognized Indian Tribe.
- B. "Council of Trustees" shall mean the Council of Trustees of the Shinnecock Indian Nation.
- C. "Territory" shall mean all lands that are part of the Shinnecock Indian Nation.
- D. "Nation" shall mean or refer to the Shinnecock Indian Nation.
- E. "Tribal member" shall mean an enrolled member of the Shinnecock Indian Nation.
- F. "Homeowner" shall mean any person or entity who owns a home on tribal territory.
- G. "Property" shall mean real estate, as well as governmental, commercial, or residential dwellings.
- H. "Trespasser" shall mean a person who is not an enrolled member of the Nation, and who has entered the land of the Shinnecock Indian Nation without consent or permission of an enrolled tribal member or is not a person defined in section 4 or 5 of this ordinance, and/or who has violated section 6 of this ordinance.

## **Section 4: LEGAL RESIDENTS**

### **4.1 Enrolled Members**

**All enrolled members of the Shinnecock Indian Nation may reside on the Nation's Territories.**

### **4.2 Legal Spouse**

**An enrolled Tribal member's spouse may legally reside on the Nation's territory under the following circumstances:**

- 1. The spouse is legally married to an enrolled tribe member and has produced a certificate of marriage to the enrollment office.**
- 2. The spouse resides with the enrolled tribal member.**
- 3. The spouse has not been barred from the Territory.**

### **4.3 Widow or Widower**

**An enrolled Tribal member's widow or widower may legally reside on the Nation's territory under the following circumstances:**

- 1. The widow or widower must reside in the enrolled Tribal member's home.**
- 2. The widow or widower cannot have any non-enrolled persons living in the home.**
- 3. The widow or widower has not been barred from the Territory.**

### **4.4 Divorcee**

**An enrolled Tribal member's divorced spouse may legally reside on the Nation's territory under the following circumstances:**

- 1. The divorcee has enrolled children under the age of 21**
- 2. The divorcee's enrolled children reside with the divorcee**
- 3. The divorcee has not been barred from the Territory**

### **4.5 Non-enrolled child**

**If an enrolled Tribal member has legal custody of a non-enrolled child then that child may reside on the reservation on a case by case basis and under the following circumstances:**

- 1. The child is under the age of 18**
- 2. The child resides with the enrolled Tribal member**
- 3. The child has not been barred from the Territory**

## **SECTION 5: GUEST**

### **Section 5.1 Non-Native Guest**

**Enrolled Tribal members residing on the Territory are permitted to have non-native guest stay on the territory under the following circumstances:**

- 1. The tribal member must register their guest with the Tribal office if they are staying more than five (5) days.**
- 2. The guest can stay on the territory up to two (2) weeks or longer but must get approval from the Council of Trustees.**
- 3. The guest must stay with the enrolled member who registered them.**
- 4. The guest has not been barred from the territory.**

### **Section 5.2 Native Guest**

**Enrolled Tribal members residing on the territory are permitted to have native guest stay on the territory under the following circumstances:**

- 1. The tribal member must register their guest with the Tribal office if they are staying more than five (5) days.**
- 2. The Native guest must produce a Tribal I.D. card from a state or federally recognized tribe.**
- 3. The Native guest may stay for up to six (6) months but must notify the Tribal office and get approval from the Council of Trustees.**
- 4. The guest must stay with the enrolled member who registered them.**
- 5. The Native guest has not been barred from the territory**

### **5.3 Special needs professional**

**An enrolled Tribal member's special needs professional may legally reside on the Nation's territory under the following circumstances:**

- 1. The professional is licensed or certified and is in good standing and has provided legal documentation to the Tribal office.**
- 2. The Tribal member or their family has provided documentation pertaining to the extent of the stay to the Tribal office.**
- 3. The Tribal member must register for a short term special residency card from the enrollment office.**

## **SECTION 6: TRESPASSING**

**The Nation hereby establishes the violation of Trespass to be prosecuted as a civil or criminal violation in accordance with Tribal, State, and Federal law. The Council of Trustees declares that persons committing the violation of Trespass threaten the peace, health, safety, environment, morals and general welfare of the Reservation and the health welfare, environment, political integrity and economic security of the Tribe.**

**A person commits the Violation of Trespass if the person enters land of the Shinnecock Indian Nation without consent or permission of an enrolled tribal member or is not a person defined in section 4 or 5 of this ordinance.**

## **SECTION 7: REVOCATION OF GUEST STATUS**

**Any guest visiting a Tribal member and registered with the Tribal Office will have his/her guest status revoked if they commit any of the following acts, unless otherwise authorized under applicable law:**

- 1.Cuts down, destroys, or injures any wood, timber, plant, vegetation, or crop standing on the land allotment of another, or carries away any wood, timber, plant, vegetation or crop of the Nation;**
- 2.Discharges a firearm, releases arrows from a bow, or otherwise uses any weapon;**
- 3.Engages in any act, or attempted act of hunting, trapping or fishing;**

4. Digs, takes, or carries away from the allotment of another, 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. Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land;
7. Opens, damages, renders inoperable, or destroys a fence, or gate on enclosed land allotment of another;
8. Destroys or injures allotted land, waters, livestock, poultry, buildings, equipment, or any property or another;
9. Permits or allows livestock or any other domesticated animal to enter upon or remain upon the land;
10. Parks or drives any vehicle on the allotted land of another or drives recklessly and/or under the influence of alcohol or drugs.
11. Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so;
12. Enters upon such land with knowledge, actual or constructive, that permission by the Homeowner for such person to enter such land does not exist, or has been expressly denied or revoked;
14. Violates any restraining order, including a domestic restraining order issued or recognized by the Shinnecock Indian Nation.
15. Enters upon lands owned by or leased from the Tribe in violation of regulations governing access to such lands.

## **SECTION 8: REMOVAL AND EXCLUSION OF PERSONS**

### **A. Penalty Cumulative**

In addition to any penalty imposed for the Violation of Trespasser a trespasser may be excluded from the reservation as provided in this Ordinance.

### **B. Tribal Removal and Exclusion**

1. Persons violating this Ordinance may be removed and excluded from all or any part of the lands within the exterior boundaries of the Territory, upon a showing by a preponderance of the evidence, of any of the following grounds:
  - a. Commission of a crime or civil offense or violation as defined by laws of the United States, the Tribe or the State of New York;
  - b. Hunting, fishing, or trapping on the Territory without authority from the Tribe or contrary to the rules and regulations of the Nation governing such activities;
  - c. Trading, or conducting business upon the Territory in violation of Tribal regulations;
  - d. Prospecting, mining, cutting timber or other plant life, grazing or other use, abuse or damage to the Territory environment or Tribal or Tribal entity infrastructure without authority from the Nation.
  - e. Exploring for or excavating items, sites, or locations of historic, religious, scientific or cultural resources without authority from the Nation or in violation of federal, Tribal, or state laws, ordinances or regulations; or
  - f. Doing or threatening to do any act upon the Territory that seriously threatens the peace, health, safety, environment, morals or general welfare of the Territory, or the health, welfare, environment, political integrity, or economic security of the Nation, or its members.
2. The provisions of removal and exclusion shall not be invoked to exclude persons: From lands owned by, or held in trust by the United States for the Shinnecock Indian Nation, when such person are authorized by federal statute or regulation to be present on such lands.
3. An exclusion may authorize an excluded person to travel on any part of the Reservation for certain limited purposes, which include without limitation, maintaining employment, fulfilling familial duties, or meeting educational requirements.

## **SECTION 9: TERM OF EXCLUSION**

The Council of Trustees and/or the General Council shall have the absolute discretion to determine the term of any exclusion; provided that repeat offenders of this Ordinance should be excluded for significantly greater periods of time.

## **SECTION 10: APPLICATION FOR EXCLUSION**

1. The Tribal attorney or any resident of the Reservation may make an application, in writing, to the Tribal Office requesting that a non-enrolled person be excluded from any part or all of the Territory and stating the grounds for the exclusion.
2. Based on the content of the application, an order to show cause shall be issued by the

**Council of Trustees upon an express finding that there exists a reasonable basis for belief that the proposed exclusion is justified under one or more of the grounds stated above. Such order to show cause shall state the ground or grounds for the proposed exclusion, a brief summary of the facts relied upon to justify the proposed exclusion, and the names and addresses of witnesses who will be produced to support the proposed exclusion. The order shall**

- a. Name a time and a place where the person may appear to show cause  
Why he or she should not be excluded from the designated areas of the Reservation.**
- b. Clearly state that, at the show cause hearing, the person may**
  - 1. Call witnesses and present evidence on his or her on behalf; and**
  - 2. Clearly state that if the person fails to appear at the show cause hearing or to request a timely continuance, the Council of Trustees may enter an order and judgment excluding the person from all or part of the Reservation.**
- 3. The Constitution shall govern the exclusion proceedings; provided, that at the time that the Tribal Attorney files an application for exclusion, he or she must also provide a copy of the application to the Council of Trustees.**
- 4. If the Shinnecock Council of Trustees has probable cause to believe that an emergency threatens the peace, health, safety, morals or general welfare of the Tribe, its members, or other persons living on the Territory the State Police may remove persons from the Reservation; provided, that within five (5) working days, either the Council of Trustees or the Tribal Attorney shall commence show cause proceedings under this section. If the Tribal Attorney commences such proceedings, the emergency removal order shall remain in effect until the Council of Trustees has the opportunity to rule on the emergency exclusion.**

## **SECTION 11: RULEMAKING AUTHORITY**

**Using the regulations procedures set forth, the Council of Trustees and the General Council shall have the authority to prescribe such rules and regulations as it deems necessary to carry out the purpose of this ordinance and to facilitate its operation.**

## **SECTION 12: SEVERABILITY**

**If any provision of this ordinance or the application of any provision of this ordinance to any person or circumstance is held invalid by a court of competent jurisdiction, that provision shall be severed from the ordinance and the remainder of this ordinance shall remain in full force and effect.**

## **SECTION 13: SOVEREIGN IMMUNITY**

**Nothing in this ordinance shall be construed as a waiver of sovereign immunity of the Tribe or any entities chartered, established, or otherwise created under Tribal law.**

**No exclusion order may issue for directors, officers, employees, agents and representatives of the Tribe or such entities, acting within the scope of their employment or authority**

#### **SECTION 14: COOPERATIVE ENFORCEMENT**

**The Shinnecock Council of Trustees or its delegate is authorized to enter into cooperative intergovernmental law enforcement agreements to carry out the provisions of this ordinance. However, no such agreements are required to make this ordinance effective.**

#### **SECTION 15: AMENDMENTS**

**This ordinance can be amended by the Council of Trustees or General Council through the referendum, or initiative process in accordance with the legislative procedure code.**