



CAYUGA NATION

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CAYUGA NATION BANISHMENT ORDINANCE

1. CHAPTER 1-GENERAL PROVISIONS

- 1.1. **Title.** This Ordinance shall be entitled the "Banishment Ordinance" of the Cayuga Nation.
- 1.2. **Legislative findings.** In enacting this Ordinance, the Cayuga Nation Council hereby finds that as the governing body of the Nation, it has the duty and authority to protect all people who are within the jurisdiction of the Nation from harassing, threatening, and violent behavior and to provide a safe living and working environment for all people on the Reservation. The Cayuga Nation Council further finds that it has a duty to protect the children of the Reservation from any mental, physical and emotional harm associated with or resulting from the criminal activity of individuals on the Reservation. Finally, the Cayuga Nation Council finds that it has the inherent sovereign power to ban individuals from the Reservation and that this inherent power stems from the traditional practices of the past wherein individuals were banished from the reservation by their indigenous governments when their conduct was found to be contrary to the lifestyle, practices, traditions, and customs of their peoples and communities. The Cayuga Nation Council recognizes the importance of keeping such traditional practices alive as a means of punishing those who conduct themselves in a manner that is contrary to the Nation's traditions, practices and customs and who threaten the peace, safety and welfare of people within the Nation's jurisdiction.
- 1.3. **Purpose.** The purpose of this Title is to provide procedures for the partial or total banishment from the Reservation of individuals who engage in conduct which threatens the health, welfare, safety, and security of any member of the Nation or of any non-member who is present or located on the Reservation, to protect and safeguard every individual who is lawfully within the Nation's jurisdiction, to ensure that Nation business is not disrupted by unlawful or disorderly behavior, and to provide a safe and comfortable work environment for Nation employees.
- 1.4. **Authority.** This Ordinance is adopted by the Cayuga Nation Council by a duly-authorized Resolution in accordance with Cayuga Nation laws, customs, and traditions and pursuant to the Nation's inherent sovereign authority.

1.5. Definitions. The following definitions shall apply to terms used in this Ordinance:

- 1.5.1. Banishment:** means an action by the Cayuga Nation Council which prohibits or restricts a person's access to Nation land and Nation property.
- 1.5.2. Crime:** means any act or omission that could result in prosecution under the Cayuga Nation Penal Code if the actor were a Native American.
- 1.5.3. Crime of violence:** means any of the following crimes: murder, manslaughter, rape, aggravated assault, robbery, burglary, kidnapping, sexual assault or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;
- 1.5.4. Court:** means the Cayuga Nation Court.
- 1.5.5. Habitual criminal:** means a person who has been convicted of three or more felonies in any court of competent jurisdiction within a ten year period.
- 1.5.6. Harassing:** means a knowing and willful course of conduct directed at a specific person or persons which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose.
- 1.5.7. Nation:** means the Cayuga Nation.
- 1.5.8. Nation Land:** means any land owned by the Nation, whether owned by the Nation in fee or held in Trust by the United States on behalf of the Nation, and regardless of any lease of said property made to any individual.
- 1.5.9. Nation Property:** means any real or personal property owned by the Nation, including any buildings, structures, businesses, streets, roadways.
- 1.5.10. Partial banishment:** means a banishment which restricts a person's access to Nation land and Nation property.
- 1.5.11. Reservation:** means all land within the boundaries of the Cayuga Nation's 64,015 acre Reservation as established by the 1794 Treaty of Canandaigua.
- 1.5.12. Stalking:** means willfully, maliciously, and repeatedly following or harassing another person or making a credible threat to another person with intent to place the person in reasonable fear of death or great bodily injury.
- 1.5.13. Threatening:** means words or conduct intended to intimidate another or a declaration of an intention or determination to injure or harm another person.
- 1.5.14. Total banishment:** means a banishment which entirely prohibits a person from entering onto the Reservation.

1.5.15. Violent: means the use of physical force to injure or damage another person or another person's property.

2. CHAPTER 2-AUTHORITY TO BANISH

- 2.1. **Cayuga Nation Council Authority to Banish-Procedure.** The Cayuga Nation Council shall have the authority to banish any person from the Reservation who meets the grounds for banishment set out in Section 2.3 of this Chapter. Any Nation member or Nation prosecutor based on written reports from law enforcement may petition the Cayuga Nation Council to banish an individual who meets the grounds for banishment or the Cayuga Nation Council may act on its own initiative to banish an individual. Banishment shall be by Resolution of the Cayuga Nation Council after the notice and hearing requirements of Section 2.5 have been met, except in the case of an emergency banishment under Section 2.6. A banishment shall not be ordered until a determination is made that the individual meets the grounds for banishment and that the individual poses a threat to the safety and welfare of the Nation or any Nation citizen.
- 2.2. **Nation Court Authority to Banish.** The Nation Court shall also have authority to banish individuals from the Reservation as a sentence upon conviction of any crime set forth in the Nation's Penal Code.
- 2.3. **Grounds for Banishment.** Any person, whether the person is a Nation citizen or not, may be subject to a partial banishment or total banishment for any of the following reasons:
- 2.3.1. Conviction of a crime of violence, whether on or off the Reservation, as that term is defined in Section 1.4;
 - 2.3.2. Commission of an act on or within the Reservation which would otherwise constitute a crime under the Cayuga Nation Penal Code;
 - 2.3.3. Engaging in activity which threatens the safety and security of Nation citizens;
 - 2.3.4. Engaging in threatening, harassing, violent, or disorderly conduct which threatens the safety, security, or peace of any Nation citizen;
 - 2.3.5. Engaging in conduct which disrupts Nation business operations, including, without limitation, failure to obtain a license pursuant to the Nation's Business License and Regulation Ordinance or otherwise violating the Nation's Business License and Regulation Ordinance; or
 - 2.3.6. Destroying, vandalizing, or occupying Nation property without the permission of the Cayuga Nation Council.

2.4. **Form of banishment.** A banishment may be either partial or total as those terms are defined by Section 1.4 of this Title. If the banishment is a partial banishment, the banishment shall set out the specific restrictions placed on the individual and set forth all the terms of the banishment. A banishment may be perpetual or for a specific period. If the banishment is a total banishment, the individual shall be notified that he or she is required to immediately vacate the Reservation.

2.5. **Notice and hearing requirements.**

2.5.1. **Notice.** Except as provided in Section 2.6, a banishment shall not be ordered until the Cayuga Nation Council has given the individual notice and an opportunity to be heard. The Cayuga Nation Council shall give the individual written notification that he or she is being subject to banishment, the grounds for banishment and that he or she is entitled to a hearing before the Cayuga Nation Council upon written request. Notice shall be given by personal service or certified mail requested.

2.5.2. **Request for Hearing.** The individual shall have five days from the date he or she receives the notice to request a hearing. At the hearing, if one is requested, the individual shall have the opportunity to present evidence on his or her behalf and may be represented by an attorney.

2.5.3. **Failure to Request Hearing.** If the individual fails to make such a request within the five days provided for, the Cayuga Nation Council shall provide two subsequent notices. If the individual does not request a hearing within five days after the third notice, the Cayuga Nation Council may then proceed with the banishment.

2.5.4. **Determination.** After the hearing, the Cayuga Nation Council shall make a determination whether the individual meets the grounds for banishment as set out in the notice and that the individual poses a threat to the safety, welfare, and order of the Nation. If such a determination is made, the Cayuga Nation may then order the individual banished from the reservation as set out in Sections 2.1 and 2.4. The individual shall be given notice of the final decision of the Cayuga Nation Council, which shall include notice that violation of the order is a Class I misdemeanor. If the banishment is a total banishment, the person shall be notified that he or she is required to immediately vacate the reservation.

2.6. **Emergency banishment.** The Cayuga Nation Council shall have authority to order a temporary emergency banishment without notice and hearing when it is determined that an individual who meets the grounds for banishment poses an immediate threat to the safety and welfare of the Nation or to a Nation Citizen and the notice and hearing requirements should be dispensed with to protect the safety and welfare of the Nation and its citizens. If an emergency banishment is ordered under this section,

the Cayuga Nation Council shall thereafter notify the individual and give him or her the opportunity to be heard as provided in Section 2.5.

- 2.7. **Request for lifting of Cayuga Nation Council banishment.** After a period of one year has expired, a person who has been banished by the Cayuga Nation Council may request that the Cayuga Nation Council lift the banishment. The banishment may be lifted at the discretion of the Cayuga Nation Council upon a showing that the person has rehabilitated his or herself and no longer poses a threat to the safety and welfare of the Nation and its citizens. The Cayuga Nation Council may place any conditions it deems necessary on the individual and require that the individual follow such conditions as a condition to lifting the banishment.

3. CHAPTER 3-ENFORCEMENT OF BANISHMENTS AND PUNISHMENT

- 3.1. **Violation of banishment.** Any person who knowingly violates the terms of a banishment shall be guilty of a class A misdemeanor as defined by the Cayuga Nation Penal Code.

- 3.2. **Enforcement of banishments.** It shall be the responsibility of Nation law enforcement to enforce this Ordinance by arresting any person who violates the terms of a banishment. Upon arrest, the person shall be held in custody pending release on bond as provided in Section 3.3 of this Ordinance, unless the person is not a Native American, as defined in the Nation's Penal Code, in which case the person shall be removed from the Nation land or Nation property at issue and advised that return to Nation land or Nation property will result in an arrest for trespass and prosecution in a court of competent jurisdiction.

- 3.3. **Release on bond.** A person shall not be released from custody for a violation of this Chapter unless he or she shall post a minimum of a one-hundred thousand dollar bond with the clerk of courts. As a condition of release the person shall agree not to further violate the banishment and shall forfeit his or her bond if the conditions of release are violated.

This Ordinance was enacted by the Cayuga Nation Council by Resolution on 17th October,
2022.