

**HO-CHUNK NATION CODE (HCC)
TITLE 3 – HEALTH AND SAFETY CODE
SECTION 15 – DANGERS TO PUBLIC SAFETY
AND WELL-BEING ACT**

ENACTED BY LEGISLATURE: June 20, 2017

CITE AS: 3 HCC § 15

1. Authority.

- a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (õConstitutionö) grants the Legislature the power to make laws, including codes, acts, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- c. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, permit, or otherwise deal with the Nation's lands, interests in lands or other assets.
- d. Article V, Section 2(o) of the Constitution grants the Legislature the power to enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation.
- e. Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.
- f. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions; and
- g. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- h. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

- 2. Purpose.** This Act is meant to provide the authorization to the Ho-Chunk Nation Police Department and the Ho-Chunk Nation Department of Justice to expeditiously banish non-tribal member individual(s) from all Ho-Chunk Nation tribal lands and facilities if it is deemed that those individual(s) pose an immediate threat to the safety and well-being of Ho-Chunk tribal members and/or communities.

3. Declaration of Policy. The Ho-Chunk Nation recognizes that public safety is vital to the advancement of the general welfare of the people of the Ho-Chunk Nation and its communities. It shall be the policy of the Ho-Chunk Nation to expeditiously remove and banish non-Tribal members from all Ho-Chunk lands and facilities for up to an indefinite period of time if it is deemed they pose a threat to the safety and well-being of Ho-Chunk tribal members, Ho-Chunk communities and employees of the Ho-Chunk Nation

4. Scope. This act shall apply to all individual(s) who are not enrolled members of the Ho-Chunk Nation and are residing or located on Ho-Chunk Nation lands either permanently or temporarily.

5. Definitions.

- a. "Exclusion" means prohibiting or conditioning entry of a person on property of the Ho-Chunk Nation and includes exclusion of a non-Indian or non-member persons.
- b. "Immediate Threat" includes, but is not limited to:
 - i. Repeated violation of a restraining order of Tribal members against that person.
 - ii. Upon conviction, in any jurisdiction, of a felony involving domestic violence or child abuse or three (3) or more misdemeanor offenses involving domestic violence or child abuse against a tribal member, their children or non-member resident.
 - iii. Upon conviction, in any jurisdiction, of a serious violent felony committed against a tribal member, their children, or a non-member resident.
 - iv. Upon conviction in any jurisdiction of any felony charge involving production, manufacturing, trafficking, distribution or cultivation, of a controlled substance within the territory of the Ho-Chunk Nation or Ho-Chunk Nation property.
 - v. Repeated criminal damage to the property or natural resources of the Nation, including unauthorized hunting, gathering, land clearing, timber harvesting, and water quality impacts.
 - vi. Repeated unauthorized entry onto Tribal land.
 - vii. Conviction in any jurisdiction of crimes related to grave looting or destruction of traditional cultural properties.
 - viii. Exclusion from any Reservation of a Federally Recognized Tribe for offenses stated herein.
 - ix. Any other misconduct or objectionable condition that threatens the life, health, safety, or property of a Tribal member, their children, a non-member resident or the Nation and is found by the Tribal Court to be sufficient cause for expulsion.

- c. "Serious Violent Felony" includes conviction of an offense, during the course of which offense or conduct:
 - i. the person carried, possessed, or used a firearm or dangerous weapon; there occurred the death of or serious bodily injury to any person; or there occurred the use of force or attempted use of force against the person of another, without regard to whether any of the other circumstances listed in this paragraph, is an element of the offense or conduct of which or for which the person is convicted; and
 - ii. the convicted charge may result in an incarceration of one year or more.

6. Public Safety and Health.

a. Law Enforcement Exclusion.

- i. At any time, if the Ho-Chunk Nation Police Department, in consultation with the Ho-Chunk Nation Department of Justice determines that a non-tribal member individual or individual(s) pose an immediate threat to the safety and well-being of tribal members and/or tribal communities, they may serve notice to that individual or individuals that they have been excluded from all tribal lands and facilities for up to an indefinite period of time.
- ii. Upon making such a determination, the Ho-Chunk Nation Police Department shall give notice to the individual or individuals which will give them no more than 5 calendar days to vacate tribal lands or be escorted off by law enforcement personnel.
- iii. Tribal departments and facilities will be provided notice of the banishment including as much personal identification material as possible to aid in prohibiting any banished individual or individuals from entering tribal lands and facilities.
- iv. Any persons excluded from Ho-Chunk Nation lands under this section, may appeal the decision of the Ho-Chunk Nation Police Department, through the procedures established in Section 8, below. Due to exclusion, all appellate rights must be exercised through mail unless entry is expressly authorized by the Tribal Court for the limited purpose of appealing the exclusion.
- v. This provision may be used by law enforcement only when they are called to a scene where the facts show that an immediate threat is present or ongoing.

b. Exclusion Upon Petition.

- i. At any time, if the Ho-Chunk Nation Department of Justice determines that a non-tribal member individual or individual(s) pose an immediate threat to the safety and well-being of tribal members and/or tribal communities, they may file a Petition in the Ho-Chunk

- Nation Trial Court requesting an Order to exclude that individual or individuals from all tribal lands and facilities for up to an indefinite period of time.
- ii. After an opportunity for a hearing, whereby clear and convincing evidence is presented that the respondent poses an immediate threat, the Ho-Chunk Nation Trial Court may issue an Order excluding the individual or individuals from all tribal lands and facilities for up to an indefinite period of time.
 - iii. A fact-finding hearing shall be held within 30 days of the filing of the Petition. A waiver of the timeframe may be permitted, only upon good cause and at the request of the parties.
 - iv. The Court shall issue a final Exclusion Order within 14 days of the conclusion of the fact-finding hearing.

7. Non-Compliance.

- a. If excluded individuals are found on tribal lands after their exclusion has gone into effect, they shall be considered trespassing on tribal lands and shall be subject to a forfeiture of \$1,000.
- b. Affected individuals of Exclusion shall be prohibited entry into any of the Nation's facilities, unless expressly authorized by Ho-Chunk Nation Court Order. If any such individuals are found within any of the Nation's facilities they shall be removed or escorted from the facility immediately. Law enforcement shall be contacted and the individual(s) shall be considered trespassing and shall be subject to a forfeiture of \$1000 if on lands under the jurisdiction of the Ho-Chunk Nation or referred to the local jurisdiction for prosecution.
- c. Individuals are considered in non-compliance, even if they are in the process of appealing the Exclusion Order issued by law enforcement. Unless a Ho-Chunk Nation Court order expressly states otherwise. Any Ho-Chunk Nation Court order authorizing an exception under this section, should specify the geographic areas and/or facilities that the Excluded person may enter and for what purpose. If any such an order is issued, the Excluded person is responsible for keeping a copy on their person during the time in which they are on Ho-Chunk lands and/or facilities.

8. Appeal of Law Enforcement Exclusion.

- a. Individuals subject to exclusion by law enforcement under Section 6 may appeal that decision to the Attorney General of the Ho-Chunk Nation. In order to overturn an Exclusion decision, the individual must present clear and convincing evidence that the decision to exclude them was made in error by the failure to take into account all available evidence or that the decision was made arbitrarily.

b. The Attorney General shall have the authority to make the decision on any Exclusion appeal applicable to this section.

9. Appeals Generally. Any appeals of a Ho-Chunk Nation Court order issued under this Code, will comply with the Ho-Chunk Nation Rules of Appellate Procedure.

Legislative History:

06/20/17 Enacted by Quick Passage through Resolution 06/20/17Y.