

**HO-CHUNK NATION CODE (HCC)
TITLE 3 – HEALTH AND SAFETY
SECTION 6 – ENVIRONMENTAL AND PUBLIC HEALTH
ORDINANCE**

ENACTED BY LEGISLATURE: JUNE 6, 2000

Restated October 25, 2001 and last restated and amended September 23, 2008.

CITE AS: 3 HCC § 6

1. Authority.

a. Article V, Section 2(a) of the Constitution of the Ho-Chunk Nation (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, 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(I) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

d. Article V, Section 2(q) of the Constitution the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.

e. 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.

f. 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.

g. Health and Safety Agreement between the Ho-Chunk Nation and the Wisconsin Department of Health and Family Services.

2. Purpose.

a. This Ordinance regulates the operation, maintenance and safety of the Nation’s restaurants, vending of food, hotels and motels, in order to protect the health and safety of the public. It also provides regulatory guidance for implementation of the Health and Safety Agreement between the Ho-Chunk Nation and the Wisconsin Department of

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Health and Family Services for health and safety standards for the Ho-Chunk Casino, Hotel and Convention Center Complex.

b. Upon the Legislature passing a *Pool Ordinance* (3 HCC § 8), the following shall be controlled by the Pool Ordinance:

(1) The Design and Construction of Ho-Chunk Nation Swimming Pools and Water Attractions; and

(2) The Safety, Maintenance, and Operation of Ho-Chunk Nation Pools and Water Attractions.

3. **Declaration of Policy.** It is declared to be the policy of the Nation to regulate and control persons engaged in the Nation’s food service and hotel businesses, as reasonably necessary to protect, promote, and preserve the health and general welfare of the public, to establish rules and regulations relating thereto, and to provide for effectively enforcing rules and regulations through inspection procedures. The provisions of this Ordinance shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

4. **Scope.** This Ordinance shall apply to all food and/or beverage service and retail operations, hotels, motels, tourist rooming houses, , water slides, and water parks located on properties owned by the Ho-Chunk Nation that are held in trust by the U.S. Government and properties that are adjacent to trust properties when the buildings are physically connected.

5. **Departmental Power.** The Environmental Health Services Program Office of the Ho-Chunk Community Health Division is charged with the responsibility of enforcing the provisions of this Ordinance.

a. For the purposes of this Ordinance, the following terms are defined:

(1) “Department” shall mean the Ho-Chunk Department of Health,

(2) “Division” shall mean the Division of Community Health.

(3) “Director” shall mean the Director of the Division of Community Health.

(4) “Environmental Health Services” shall mean the Office of the Environmental Health Services Program.

(5) “Program Manager” shall mean the Environmental Health Services Program Manager.

(6) “Agent” shall mean the Environmental Health Services Program Manager for the purposes of the Health and Safety Agreement with the State of Wisconsin.

(7) “Regulatory Authority” shall mean a Registered Sanitarian from Environmental Health Services designated to conduct surveys, inspections and investigations of complaints for compliance and enforcement of this Ordinance.

b. The Regulatory Authority has the authority to:

(1) Issue Written Directives for serious, repeated, or uncorrected violations of this Ordinance.

(2) To temporarily close facilities or shut-down operations in the event of immediate danger to health or public safety resulting from construction, sanitary condition, operation or method of operation of the premise of the establishment.

(3) To seek a tribal court order or injunction to enforce the provisions of this Ordinance.

6. Interfering with Environmental Health Services Personnel. It is unlawful for any person to fail or refuse to obey a lawful order of the Director or a Regulatory Authority or to hinder, delay or otherwise interfere with any survey, inspection or investigation by Environmental Health Services personnel in the performance of their duties.

7. Adoption of Food Service Sanitation Rules and Regulations. There is hereby adopted for the purpose of establishing reasonable rules and regulations for the sanitary and safe maintenance and operation of food service establishments of the Nation, the 1999 United States Food and Drug Administration (FDA) Food Code (except for provisions noted herein), and any amendments thereto that may from time to time be made, and the whole thereof, as set forth fully therein.

a. Policy. Environmental Health Services shall enforce the 1999 U.S. FDA Food Code (“Food Code”), Chapters One (1) through Seven (7), to safeguard public health and to ensure that food is safe, unadulterated, and honestly presented when offered to the consumer.

b. Special Provisions.

(1) Temporary food stands are exempt from this Food Code.

(2) The Regulatory Authority will issue Written Directives (see paragraph 12c, below) to food and/or beverage mangers to enforce compliance with the Food Code. A Written Directive will be issued in the following instances:

(a) To stop the use of a piece of food service equipment that no longer meets code or is considered to be a health hazard.

(b) To hold and not distribute food when a health hazard is suspected.

(c) When serious or repeated code violations remain uncorrected beyond the time frames ordered by the Regulatory Authority.

(d) Failure to comply with a Regulatory Authority order issued regarding a food and/or beverage service employee whom the Regulatory Authority has reasonable cause to believe is transmitting disease; may be infected with a disease in a communicable form that is transmitted through food; or is affected with a boil, an infected wound, or acute respiratory infection. See Chapter 8-501 of the Food Code for procedural guidelines for the Investigation and Control of Foodborne Disease

Transmission by Employees.

(e) If a manager denies access to the establishment, denies access to records relating to food purchased, received, or used in the establishment, or does not allow the Regulatory Authority to examine or sample food or collect other evidence.

(3) The Department shall keep and maintain sufficient copies of the Food Code to enable it to provide one to each food service establishment.

8. Adoption of Hotel and Motel Rules and Regulations. There is hereby adopted, for the purpose of establishing reasonable rules and regulations for the sanitary and safe maintenance and operation of the hotels and motels of the Nation, the Wisconsin Administrative Code, Chapter HFS 195, Hotels, Motels and Tourist Rooming Houses, (except for provisions noted herein), and any amendments thereto that may from time to time be made, and the whole thereof, as set forth fully therein.

a. Policy. Environmental Health Services shall enforce Wisconsin Administrative Code, Chapter HFS 195, Hotels, Motels and Tourist Rooming Houses, except for Sections HFS 195.04, 195.09(1), and 195.12, to protect public health and safety.

b. Special Provisions.

(1) The Ho-Chunk Nation Fire Safety Ordinance shall be used to promulgate and enforce fire safety codes. See **6 HCC § 8-8.**

(2) The Department shall keep and maintain sufficient copies of HFS 195 to enable it to provide one to each hotel and motel.

9. Adoption of Vending of Food Rules and Regulations. There is hereby adopted, for the purpose of establishing reasonable rules and regulations for the sanitary and safe maintenance and operation of food vending machines of the Nation, the Wisconsin Administrative Code, Chapter HFS 198, Vending of Food (except for provisions noted in herein), and any amendments thereto that may from time to time be made, and the whole thereof, as set forth fully therein.

a. Policy. Environmental Health Services shall enforce Wisconsin Administrative Code, Chapter HFS 198, Vending of Food, except for Sections HFS 198.04 (1) & (2), 198.05 (2), (3) & (4), and 198.15, to safeguard public health and to ensure that food is safe, unadulterated, and honestly presented when offered to the consumer.

b. Special Provisions.

(1) The Regulatory Authority will issue Written Directives (see paragraph 12c, below) to food and/or beverage managers to enforce compliance with the Vending of Food Code. A Written Directive will be issued in the following instances:

(a) To stop the use of any vending equipment that no longer meets code or is considered to be a health hazard.

(b) To hold and not distribute food when a health hazard is suspected.

(c) If serious or repeated code violations remain uncorrected beyond the time frames ordered by the Regulatory Authority,

(d) If the on-site manager denies access to the vending area and equipment or denies access to records relating to food purchased, received, or used in the vending machines or does not allow the Regulatory Authority to examine or sample food or collect other evidence.

(2) Temporary food stands are exempt from this code.

10. Designation of Responsible Managers. The general manager of each establishment or facility subject to this Ordinance shall report the name of the designated on-site manager responsible for the supervision of implementation of this Ordinance for each of the below listed operations to Environmental Health Services. Environmental Health Services shall be notified each time there is a change in one of the designated managers. On-site managers for the purposes of this Ordinance are required for each of the following operations:

a. Food and/or Beverage Service.

b. Hotel, Motel, and Tourist Rooming Houses.

c. Vending of Food.

11. Compliance and Enforcement.

a. Right of Entry. The Director and Regulatory Authority shall have the right to enter upon the premises of any establishment and facility subject to this Ordinance for the purpose of making such surveys, inspections, and investigations as may be reasonably necessary or advisable to determine compliance with the rules and regulations adopted.

All inspections shall be made at reasonable hours. All records of the establishment or facility pertaining to the operation and maintenance of the facility being inspected shall be made available to the inspector.

b. Surveys. Surveys of establishment or facilities subject to this Ordinance shall be conducted by a Registered Sanitarian from Environmental Health Services. A Sanitarian in-training working under the direct supervision of a Registered Sanitarian may conduct surveys.

(1) Frequency.

(a) All establishments and facilities subject to this Ordinance shall be surveyed or inspected by Environmental Health Services not less than once each year.

(b) A food service survey shall be conducted once every six (6) months in casino and bingo hall facilities and once annually in all other food service operations.

(c) Follow-up surveys shall be conducted when non-compliant conditions are not corrected on site during the scheduled survey. A reasonable time frame for corrective action shall be established by the inspecting Registered Sanitarian and a follow-up survey will be conducted after that date.

(2) Reports.

(a) Following each survey a written report shall be completed within seven (7) working days and sent to the designated manager, general manager, and the Executive Director of the Executive Department responsible for that program's oversight.

(b) Reports required by the Health and Safety Agreement will be forwarded by Environmental Health Services to the Wisconsin Department of Health and Family Services.

c. Written Directives. Whenever an inspection finds that the facility or establishment is not maintained or operated as required by this Ordinance, the Regulatory Authority shall notify the establishments manager in writing and shall specify the changes required to make the facility or establishment conform to the standards established by this Ordinance and the time period within which compliance must be effected.

(1) The Regulatory Authority may issue Written Directives to designated manager for repeated violations, which are not corrected within the timelines established by the Regulatory Authority.

(2) The Written Directive shall be considered served when the Regulatory Authority delivers a copy to the employee in-charge at the establishment.

(3) A copy of Written Directives issued will be placed in a file folder maintained for that establishment.

(4) Judicial Remedies.

(a) A Written Directive may be appealed by the General Manager of the establishment to the Ho-Chunk Nation Trial Court.

(b) Environmental Health Services may seek a court order or an injunction from the Ho-Chunk Nation Trial Court to enforce provisions of a Written Directive.

d. Should a Written Directive or court order result in the closing of an establishment, the operation of the establishment shall not resume until a re-inspection and the approval of the Regulatory Authority.

12. Handling of Complaints. It will be the policy of the Ho-Chunk Nation Department of Health that Environmental Health Services shall investigate all complaints regarding food and/or beverage service, hotel, and motel within twenty-four (24) hours of notification of the complaint.

a. Customer complaints and food or waterborne illness investigation shall be conducted in accordance with written procedures and will be given priority over routine work.

b. When a complaint is received, the following information will be documented and placed in the file folder for the establishment cited in the complaint.

(1) Name of person making the complaint.

(2) Address and telephone number of the complainant.

(3) Date and time of the complaint.

(4) Date and time of the incident.

(5) Nature of the complaint and any resulting illness or injury.

c. A Registered Sanitarian will conduct a visit to the establishment or facility named in the complaint to investigate the complaint within twenty-four (24) hours of the time the complaint is received. The results of the investigation will be documented and placed in the establishment's file folder. The following information will be included in the results:

(1) Name of the individual conducting the investigation.

(2) Date and time of the investigation.

(3) Findings of the investigation and any corrective actions that were taken.

d. The complainant shall be notified by telephone that a follow-up investigation was conducted and the results of any corrective action.

Legislative History:

6/6/00	Enacted by Legislative Resolution 6/6/00C
10/25/01	Restated to conform paragraph numbering IAW format prescribed by the Legislative Organization Act of 2001.
09/23/08	Removed any reference to swimming pools contained within Ordinance upon adoption of <i>Pool Ordinance</i> (3 HCC § 8).