HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC)
TITLE 3 – HEALTH AND SAFETY CODE
SECTION 14 – HUMAN HEALTH HAZARD ORDINANCE

ENACTED BY LEGISLATURE: 05-03-16

CITE AS: 3 HCC § 14

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(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, 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(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.

The purpose of this Ordinance is to investigate, abate, and prohibit human health hazards which result from an unreasonable activity or use of the Ho-Chunk Nation ("Nation") Real Property and Real Property Improvements on the Nation's land that interferes with the health and safety of the Nation's members. The Health Hazard Ordinance ("Ordinance") shall protect the public health, safety, and general welfare and maintain and protect the environment by prohibiting and abating the human health hazards defined in this Ordinance.

3. Applicability.

a. This Ordinance applies to owners, residents, tenants, lessees, and occupants residing on or storing personal property on land under the jurisdiction of the Nation.

b. This Ordinance shall be liberally construed and applied to promote its underlying purpose to simplify, clarify, modernize, and revise the laws governing the management of Real Property and Real Property Improvements under the jurisdiction of the Nation.

c. If this Ordinance conflicts with any provisions of other laws regarding the purpose and intentions of this Ordinance, the terms of this Ordinance shall control.

d. This Ordinance shall be utilized to enforce violations declared to be a human health hazard on all Real Property and Real Property Improvements under the jurisdiction of the Nation.

4. Definitions.

For the purpose of this Ordinance, the following terms are defined.

a. "Abate" means to put to an end to, to nullify, or to do away with.

b. "Condemned" means to pronounce to be unfit for use or habitation.

c. "Complainant" means one who applies to the courts for legal redress by filing a complaint, that is, the plaintiff.

d. "Enjoin" means to require a person to perform or to abstain or desist from some Ordinance.

e. "Heating system" means a system for heating the rooms of a Building by means of radiators or air vents connected by pipes or ducts to a central source of heat and meets all appropriate building and fire codes (a space heater does not meet the definition of a heating system).

f. "Human Health Hazard" means a substance, activity or conditions that are known to have the potential to cause acute or chronic illness, injury, or death if exposure to the substance, activity or condition is not abated.

g. "Immediate Health Hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show a product, practice, circumstance, or event creates a situation that can cause food infection, food intoxication, disease transmission, vermin infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

h. "Injunction" means a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.

i. "Occupant" means any person or entity having any present possessory use or enjoyment of Real Property or Real Property Improvements or any portion thereof.

j. "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state or federal agency, attorney/representative, or lawfully appointed representative.

k. "Placard" means to post for public notice that the Building is not safe for habitation.

l. "Pollution" means the contamination or altering of waters, lands, subsurface land, or air in a manner that creates a public nuisance.

m. "Public Nuisance" means the unreasonable, unwarranted and/or unlawful use of Real Property and Real Property Improvements, which causes inconvenience or damage to others, either to individuals and/or to the general public. Nuisances can include noxious, but are not limited to, smells, noise, burning, misdirection of water onto other property, unauthorized collections of rusting autos, or indecent signs and pictures on buildings.

n. "Real Property" means all land and Real Property Improvements included in the Nation's Territory, as Territory is defined under Article I, Section 1 of the Nation's Constitution.

o. "Real Property Improvements" means real property in the form of man-made structures permanently attached to the land, including, without limitation, houses, garages, buildings, and manufactured homes affixed to the land by being set upon a foundation.

p. "Reasonable cause" means a reason that would motivate a person of ordinary intelligence under the circumstances.

q. "Registered Sanitarian" means a licensed specialist in sanitary science and public health.

r. "Structures" means temporary or permanent buildings, outbuildings, or sheds on Nation lands. Structures related to cultural activities shall be excluded from this Ordinance.

s. "Undertaking" means a written promise offered as security for the performance of a particular act required in a legal action.

5. Occupant(s) Obligations.

It is the responsibility of the Occupant(s) to maintain the Real Property and Real Property Improvements owned or occupied in a hazard-free manner. Occupant(s) are responsible for the abatement and correction of any human health hazards determined to exist on the Real Property

and Real Property Improvements. No person shall erect, construct, cause, continue, maintain, or permit any human health hazard within the jurisdiction of the Nation. Any person who shall cause, create, or maintain a human health hazard or who shall in any way aid or contribute to the cause, creating ,or maintenance thereof shall be guilty of a violation of this Ordinance, and shall be liable for all costs and expenses incurred upon the removal and correction of such human health hazard.

6. Jurisdiction over Human Health Hazards.

a. The Ho-Chunk Nation Department of Health and its delegated agents (e.g. Registered Sanitarian) are charged with the responsibility of enforcing this Health Hazard Ordinance.

b. A Registered Sanitarian may enter onto Nation Real Property and Real Property Improvements and examine any place at any time to ascertain health conditions. All inspections shall be made during reasonable hours.

c. The Registered Sanitarian shall investigate all alleged human health hazards and shall determine whether or not a human health hazard exists.

d. If a human health hazard is found on Real Property and Real Property Improvements, the Registered Sanitarian shall notify the Occupant(s) of the Real Property and Real Property Improvements, in person or by registered mail with return receipt requested, of the presence of the human health hazard and order its abatement or removal within a specified date.

e. Whenever the Registered Sanitarian determines that a violation exists or has reasonable grounds to believe that there has been a violation of any provision of this Ordinance, or any rule or regulation adopted pursuant thereto, the Registered Sanitarian shall give or cause to be given, notice of such violation to the Occupant(s) responsible therefore. Such notice shall be in writing, including a description of the Real Property and Real Property Improvements involved, and a statement of violations and corrective actions required, and allowing a reasonable time for the performance of any act required. Such notice shall be served upon the Occupant(s) as the case may require, and may be served by certified mail.

f. Any person may maintain an action in Ho-Chunk Nation Trial Court ("Trial Court") to abate a health hazard to recover damages from injuries the Complainant suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same.

7. Human Health Hazards.

The following conditions constitute, but are not limited to, a human health hazard subject to this Ordinance:

a. Solid Waste. Accumulation of garbage and/or refuse as defined in 3 HCC § 1 which renders any Real Property and Real Property Improvements unsanitary, unhealthy, or unfit for human habitation, occupation, or use.

b. Mold. Extensive mold, mildew, or fungi that is greater than 100 contiguous square feet in an area established by Indian Health Service indoor air guidelines.

c. Animal Carcasses. Carcasses of animals or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within a reasonable time as specified by the Registered Sanitarian.

d. Air Pollution. The presence in the atmosphere of one (1) or more air contaminants in such quantities and of such duration as is or tends to be injurious to public health or harmful for commercial or recreational use. The emission of smoke, soot, cinders, noxious fumes or gases, fly-ash, industrial emissions or any other atmospheric pollutant which violates Wis. Admin. Code Ch. NR 400.

e. Noxious Odors. Creating or maintaining a condition which emits or causes to emit any foul, offensive, or noxious odors that affects the use and quiet enjoyment of adjoining properties. This subsection shall not apply to animal waste stored and spread in the normal course of farming operations or industrial plants and facilities.

f. Unbarricaded Openings. Unbarricaded open walls, holes, cisterns, and abandoned excavations.

g. Surface Water Pollution. The depositing of any substance in any stream, lake, or other body of surface water that creates noncompliance with Wis. Admin. Code Chs. NR 102 & 103.

h. Groundwater Pollution. The depositing of any substance that would cause groundwater to be unpalatable or unfit for human consumption. These substances include, but are not limited to, chemicals and/or biological substances listed in Wis. Admin. Code Ch. NR 400.

i. Wastewater and Sewage. Wastewater and sewage effluent discharged onto the ground surface or surface waters or groundwater in violation of applicable state and county codes. The presence of wastewater or sewage effluent from buildings on the ground surface, backing up into the building and/or running into surface water body caused by a damaged, malfunctioning, improperly constructed, or inadequately maintained private sewage system, on private sewage lateral. Also, any wastewater or sewage effluent that is not handled and disposed of in compliance with all applicable county and state codes.

j. Food or Breeding places for Vermin, Insects, etc. Accumulations of decayed animal or vegetable matter, trash, rubbish, garbage, tires, rotting lumber, bedding or packing material, scrap metal, animal and human fecal matter, or any substance in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed, live, nest or shelter.

k. Toxic and Hazardous Material. Any chemical and/or biological material that is stored, used or disposed of in such quality or manner that it is, or has, the potential to create a human health hazard.

l. Unsanitary Public Restrooms. Any public restroom which is soiled by human or other waste or maintained in a filthy and unclean manner or any public restroom without functioning toilet and sink facilities or other fixtures considered necessary to ensure a sanitary condition in a public building.

m. Other. Any other situation or condition which renders Real Property or Real Property Improvements or any part thereof unsanitary, unhealthy, or unfit for human habitation, occupation or use or renders the Real Property or Real Property Improvements unsanitary or unhealthy to any person or the public.

8. Designation of Housing as Human Health Hazard.

a. The Registered Sanitarian may declare any Real Property or Real Property Improvements found to have a human health hazard as defined in Section 7 above. The Real Property or Real Property Improvements shall be deemed as unfit for human habitation and shall be placarded by the Registered Sanitarian if:

1. The Real Property or Real Property Improvements which is so damaged, decayed, dilapidated, unsanitary, and unsafe or vermin infested that it creates a serious hazard to the health or safety of the occupants or to the public; or

2. The Real Property or Real Property Improvements used for housing which lacks a potable water supply, a properly functioning public or private sanitary sewer system, or a functioning heating system adequate to protect the health or safety of the occupants or of the public; or

3. The Real Property or Real Property Improvements which, because of its general condition or location, is unsanitary or otherwise dangerous to the health or safety of the occupants or to the public; or

4. The Real Property or Real Property Improvements will be declared unfit if there is an excessive accumulation of human or animal feces or urine; or

5. The Real Property or Real Property Improvements which, because of its condition, has been implicated as the source of a confirmed case of lead poisoning or asbestosis; or

6. The Real Property or Real Property Improvements which contains the accumulation of and failure to discard a large number of objects, extensive clutter in living spaces that prevents the use of those spaces, the accumulation of a large number of animals (more than the typical pet owner), usually not for the purpose of breeding/sale, or the failure to provide adequate living conditions for the animals (overcrowding, lack of sanitation, medical care or nutrition).

b. No person shall continue to occupy, rent, or lease quarters for human habitation which is declared unfit for human habitation by the Registered Sanitarian.

c. Real Property or Real Property Improvements deemed as unfit for human habitation, and so designated and placarded by the Registered Sanitarian, shall be vacated within reasonable time, as specified by the Registered Sanitarian.

d. No Real Property or Real Property Improvements which have been placarded and deemed as unfit for human habitation shall again be used for human habitation until a written approval is secured from the Registered Sanitarian. The Registered Sanitarian shall remove the placard when the defect upon which the placarding was based has been eliminated.

e. Any Real Property or Real Property Improvements shall be condemned if the cost of repairs and/or renovations exceeds the value of the building.

f. No person shall deface or remove the placard from any Real Property or Real Property Improvements which has been deemed as unfit for human habitation.

g. Any person affected by any notice or order relating to the condemning or placarding of a Real Property or Real Property Improvements for human habitation may request and shall be granted a hearing in the matter before the Trial Court.

9. Inspection of Property.

a. The Nation recognizes that public safety is vital to advance the general welfare of the Nation's people. Timely inspections are intended to assure the overall quality of life for the Nation's members and others living or domiciled on or near the Nation's Real Property or Real Property Improvements. These inspections are intended to reveal potential unreasonable interference's with the people's use and enjoyment of Real Property or Real Property Improvements under the jurisdiction of the Nation.

b. Reasonable Cause to Inspect. The Registered Sanitarian may inspect Real Property or Real Property Improvements under the jurisdiction of the Nation when, at their discretion, there is a Human Health Hazard.

c. Right of Entry. Agent(s) of the Nation shall have the right to enter upon the Real Property or Real Property Improvements of any Occupant(s)for the purpose of making inspections as may be reasonable necessary or advisable to determine compliance with Nation rules and regulations.

d. Notification of Violations. Whenever an inspection of Real Property or Real Property Improvements possessed by an Occupant(s) establishes that the Real Property or Real Property Improvements is not maintained as required by the rules and regulations of the Nation, the inspector shall notify the Occupant(s) in writing and shall specify the changes required to make

the Real Property or Real Property Improvements conform to the established standards and the time period within which compliance must in effect.

10. Health Hazard Abatement.

a. If a human health hazard exists, the Ho-Chunk Nation Attorney General ("Attorney General"), or any person, may maintain an action in Trial Court in the name of the Ho-Chunk Nation to abate the human health hazard and to perpetually enjoin every person guilty thereof from continuing, maintaining, or permitting the health hazard as provided by this Ordinance.

b. After a human health hazard is identified the Registered Sanitarian shall do the following:

1. Written Order. The Registered Sanitarian shall issue the violator a written order. The order shall contain the following:

i. The nature of the violation and the specific human health hazard observed.
ii. The remediation needed to abate or correct the condition.
iii. The time period in which the remediation must occur.
iv. The applicable forfeiture/penalty.

c. Abatement may result from:

2. Voluntary abatement of the cause of the violation by the Occupant(s) or perpetrator of the human health hazard.

3. Court-imposed Injunction. If the existence of the human health hazard is shown in the action to the satisfaction of the Trial Court, either by verified complaint or affidavit, the Trial Court may issue a temporary injunction to abate and prevent the continuance or recurrence of the human health hazard, including the issuance of an order requiring the closure of the Real Property or Real Property Improvements.

i. All temporary injunctions actions begun by the Attorney General shall be issued. In an action instituted by other persons, the temporary injunction shall be discretionary.

4. Permanent injunctions enjoin the responsible party from perpetuating the human health hazard.

5. An Agent of the Ho-Chunk Nation, i.e., a Registered Sanitarian may determine satisfactory abatement of the human health hazard.

11. Parties to a Violation.

A person is in violation of this Ordinance if the person does any of the following:

a. Directly commits the violation; or

b. Aids and abets by falsely denying knowledge of or destroying evidence regarding a violation of this Ordinance; or

c. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise attempts to procure assistance from any person to commit a violation of this Ordinance.

d. Any person that is party of a violation of this Ordinance shall be charged with and convicted of the violation although the person did not directly commit the violation and although the person who directly committed the violation has not been convicted of the violation.

12. Compliance.

a. In case of judgment that the human health hazard be abated and removed:

1. The Trial Court shall issue an Order requiring abatement of the human health hazard at the expense of the defendant.

2. The plaintiff shall be entitled to damages and costs incurred at the expense of the defendant.

b. The Trial Court may, on the application of the defendant, order a stay of the Order for such time as may be necessary, not to exceed six (6) months, to give the defendant an opportunity to remove the human health hazard, upon the defendant's giving plaintiff satisfactory security to do so within the time specified in the order.

13. Enforcement

a. The cost of abatement or removal of a human health hazard under this Section shall be at the expense of, or may be recovered from, the person permitting the violation.

b. Written Order. When, upon investigation, the investigator shall determine a health hazard exists, the investigator shall issue the violator a written order. The order shall contain the following:

1. The nature of the violation and the specific health hazard observed.
2. The remediation needed to abate or correct the condition.
3. The time period in which the remediation must occur.

4. The applicable forfeiture/penalty.

a. Emergency orders. In situations or conditions where the existence of a health hazard exists and such situation or condition poses an immediate health hazard, the Registered Sanitarian shall issue an order for immediate remediation and no extended time need be provided. A citation may be summarily issued by the Ho-Chunk Nation Police Department for failure to implement immediate remediation.

b. Forfeiture. Any person who creates or maintains a health hazard on Real Property or Real Property Improvements, and such person has not complied with the written order described in this Section, such person shall be subject to a forfeiture of not less than $100.00 nor more than $500.00, plus the cost of prosecution for each violation. Each day a violation exists after notice shall be a separate offense.

c. Injunction. As an alternative or an addition to any other Action, the Nation may seek a temporary order and permanent injunction for violation of any part of this ordinance.

14. Expense of Abating and How Collected.

a. The expense of abating such human health hazard pursuant to such warrant shall be collected in the same manner as damages and costs are collected upon execution or may be collected by finding the defendant personally liable for these expenses.

b. The Trial Court, on finding liability, may enforce collection of expenses pursuant to the Nation's *Claims against Per Capita Ordinance.*

15. Dismissal of Action and Costs.

A filed complaint shall not be dismissed, except upon a sworn statement made by the Complainant setting forth the reasons why the action should be dismissed; and the dismissal shall be approved by the Attorney General in writing or in open court. If the Trial Court is of the opinion that the action ought not to be dismissed it may direct the Attorney General to prosecute said action to judgment. If the Trial Court finds that there was no reasonable ground or cause for said action, the costs shall be taxed to the complainant.

16. Contempt Proceedings.

a. . A party found guilty of contempt under the provisions of Section 10 is punishable by a fine of not more than $1,000, or assigned to community service for a term of hours to be determined by the Court, or both.

b. A fine imposed for contempt is a "debt owed to the Nation" to the extent of the interest of that individual or person in the premises and is enforceable and collectible by execution issued by the order of the Court.

c. A "debt owed to the Nation" may be enforced pursuant to the Nation's *Claims against Per Capita Ordinance.*

17. Release of Building or Structure.

a. Undertaking to Release. The Occupant of any Real Property or Real Property Improvements affected by an Action under Section 10 may appear at any time after the commencement of the Action and file an undertaking, with the sureties required by the Court, to the effect that the person shall immediately abate the human health hazard, and prevent the same from being re-established in the Real Property or Real Property Improvements, and will pay all costs that may be awarded against the defendant in the Action.

b. Upon receipt of the undertaking, the Court may dismiss the Action as to the Real Property or Real Property Improvements and revoke any order previously made closing the Real Property or Real Property Improvements; but that dismissal and revocation shall not release the Real Property or Real Property Improvements from any judgment, lien, penalty, or liability that the Real Property or Real Property Improvements is subject to by law. The Court has discretion in accepting any undertaking the sum, supervision, satisfaction, and all other conditions of the undertaking, but the period that the undertaking shall run may not be less than one (1) year.

c. Release of Real Property or Real Property Improvements to Occupant(s).

1. The Court may order the human health hazard abated, delivered to the Occupant(s),and cancel the order of abatement if the Occupant(s) of the Real Property or Real Property Improvements:

a) Has not been guilty of a contempt in the proceedings,

b) Appears and pays all costs, fees, and allowances that are a lien on the Real Property or Real Property Improvements, and

c) Files a bond with sureties approved by the Court in an amount determined by the Court to the effect that the Occupant(s) will abate the human health hazard that exists at the Real Property or Real Property Improvements and prevent the human health hazard from being established within a period of one (1) year thereafter.

2. The lease of the Real Property or Real Property Improvements does not release it from a judgment, lien, penalty, or liability to which it may be subject by law.

3. A cancellation of the order of abatement does not affect a termination of a lease or rental agreement.

18. Dismissal in General.

If an individual files the complaint, the Action may be dismissed only upon approval of the Attorney General and upon review of affidavit(s) of the Complainant giving the reasons why the suit should be dismissed. The Court may refuse to dismiss the suit and may direct the Attorney General to prosecute the Action.

19. Compromise by Attorney General.

In all cases, the Attorney General may arbitrate, compromise, or settle any Action filed under this Ordinance.

Legislative History:

02.12.16	Legislature places a draft version of the *Human Health Ordinance* out for 45 Day Public Comment.
05.03.16	Legislature adopts the *Human Health Ordinance* (3 HCC § 14) by resolution 05.03.16H.