

HO-CHUNK NATION CODE (HCC)
TITLE 3 - HEALTH AND SAFETY
SECTION 16-CURFEW ORDINANCE
ENACTED BY LEGISLATURE: APRIL 21, 2020

CITE AS: 3 HCC § 16

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(1) 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 grants 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. The Ho-Chunk Nation Law Enforcement Agreements outline the relationship by and between the Ho-Chunk Nation Police Department and the local Wisconsin Sheriff's Departments.

2. Purpose.

- a. This Ordinance regulates the movement of residents within the jurisdiction of the Ho-Chunk Nation when necessitated by the Ho-Chunk Nation President or Legislature, for example, activation can be during an Emergency Declaration).

3. Declaration of Policy. It is declared to be the policy of the Nation to regulate all persons within the jurisdiction of the Ho-Chunk Nation as reasonably necessary to protect, promote, and preserve the health and general welfare of the public, and to establish rules and regulations relating thereto, and to provide a means for effectively enforcing laws, rules, and regulations. The provisions of

this Ordinance shall be liberally construed and applied to promote its underlying purpose of protecting the public health for safety reasons.

4. Scope. This Ordinance shall apply to 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 Ho-Chunk Nation Police Department is charged with enforcing the provisions of this Ordinance. Enforcement can be in the form of a notice placed on public playgrounds and public buildings and parking lots, a verbal or written warning, a check point, a citation, a patrol, a guard protecting the premises, and other necessary basic deterrents of movement of the persons for safety.

6. Curfew hours.

a. It shall be unlawful for any person to loiter idle or remain upon any street or road, or other public place in the Ho-Chunk Nation jurisdiction from a specified time set forth by the Ho-Chunk Nation President or Legislature, including a time set forth during an Emergency Declaration. The Ho-Chunk Nation shall make known such curfew hours in a manner for all tribal members and residents to have knowledge of, and to adhere to. Such publication of the curfew shall require that the hour set forth for, “The curfew hours for the _____ (community/location) are as follows: from ____pm to ____ am, every night, until lifted.”

b. Curfew hours will be determined on the extent of the emergency and at the discretion of the Chief of Police, Attorney General, Incident Command and the Legislature during any declared emergency, with notice given to the Legislature.

7. Essential Travel. Individuals engaged in any essential travel must comply with social distancing requirements to the extent possible. For the purposes of this Ordinance, essential travel includes any travel related to the provision of or access to essential activities, special situations, essential governmental functions, and essential businesses and operations.

8. Exceptions. The following shall constitute valid exceptions to the operation of the curfew Ordinance:

- a. At any time, in the event of an emergency which would justify the reasonableness of the person's presence.
- b. At any time while the person is pursuing the duties of their employment.
- c. If the person is coming directly home from elsewhere.
- d. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.

- e. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, or any other related services. This allows for travel for students to reach a designated temporary wifi spot to facilitate learning.
- f. Travel to return to a place of residence from outside the jurisdiction. If you have traveled to areas or counties that have been affected by widespread outbreak of positive cases, you must notify Ho-Chunk Nation Health Department and have provisions for immediate quarantine.
- g. Travel required by law enforcement or court order, including transport of children pursuant to a custody agreement.
- h. Travel required for non-residents to return to their place of residence outside the reservation.

9. Warning

- a. Warning. The first time a person is warned by a law enforcement officer, as provided herein, the person shall be advised as to the provisions of this Ordinance and shall be further advised that any violation of this Ordinance occurring thereafter by this person may result in a penalty being imposed as hereinafter provided.
- b. If further warnings are issued within a time frame of thirty (30) days or less, the officer may be compelled to issue a citation.

- 10. **Violation of Laws relating to Health.** Any person who willfully violates or obstructs the execution of any provision of this Ordinance or Health Department Order, under this Ordinance or relating to the Ho-Chunk Nation Department of Health, for which no other penalty is prescribed, may be imprisoned for not more than 30 days and/or fined.
- 11. **Penalties.** Any person who, directly or indirectly, violates any provision of this Article shall be subject to a fine not exceeding \$1,000.00, for each violation, or exclusion from the jurisdiction of the Ho-Chunk Nation, or both. Such fines may be considered a debt to the Nation and can be collected from the person's next tribal per capita payment. A schedule for such fines will be developed by the Ho-Chunk Nation Chief of Police and the Attorney General and, if applicable, criteria for incarceration will also be developed.
- 12. **Civil remedies.** Any person injured as a result of any violation or threatened violation of the provisions of this part ordinance shall be entitled to injunctive, declaratory and monetary relief from the Nation's Tribal Court, including the Nation itself, provided that the Nation, its entities or officials and employees retain sovereign immunity from suit.
- 13. **Severability.** The provisions of this part f. are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then such declaration shall not affect the remaining provisions of this part.
- 14. **Sovereign Immunity.** Nothing in this Article shall be construed as waiving the sovereign powers or immunities of Ho-Chunk Nation or its agents, entities, instrumentalities, employees, or officials.

Legislative History:

04/21/20 Curfew Ordinance enacted by Resolution 04-21-20K by Quick Passage Procedure.
04/21/20 Legislature places the Curfew Ordinance out for 45-Day Public Review by Resolution 04-21-20K.