

HO-CHUNK NATION CODE (HCC)

TITLE 3 - HEALTH AND SAFETY

SECTION 17 - WOOXETE KĪ FACE COVERING ORDINANCE

ENACTED BY LEGISLATURE: August 4, 2020

CITE AS: 3 HCC § 17

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(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

~~c~~ 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.

~~d~~ e. 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.

~~e~~ 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.

~~f~~ 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.

~~g~~ 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.

h g. Article V, Section 2(v) of the Constitution grants the Legislature the power to establish and maintain headquarters for the Ho-Chunk Nation.

2. Purpose. This Ordinance regulates the Tribal Government Headquarters of the Ho-Chunk Nation and the conduct of individuals within the jurisdiction of the Ho-Chunk Nation when necessitated by the written recommendation of the Ho-Chunk Nation Health Officer during a State of Emergency related to a communicable disease. Wearing face coverings has been scientifically proven to dramatically reduce the spread of COVID-19.

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. The Nation intends to provide education on the requirements of this Ordinance and its Policy, while also promoting voluntary compliance.

4. Scope. This Ordinance shall apply to buildings and property owned by the Ho-Chunk Nation that are accessible to the public and/or its employees.

5. Definitions.

- a) "Face Covering" means a manufactured or homemade cloth covering that fully covers an individual's nose and mouth that is secured with ear straps or otherwise tied or secured so as to prevent slipping, and/or a face shield which covers the mouth and nose, fits snugly against the side of the face, and is secured on the head, or as otherwise conforms to the Centers for Disease Control and Prevention ("CDC") "do-it-yourself" face covering instructions.
- b) "Indoor area open to the public" means any structure or premises subject to the jurisdiction of the Ho-Chunk Nation or used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or other use by the public.
- c) "Mass gathering" means a planned event with a large number of individuals in attendance, such as a concert, festival, meeting, training, conference, performance, show, party, or sporting event. Individuals that are members of the same household or living unit do not count towards the mass gathering numbers in their own household or living unit.
- d) "Qualifying vehicle" means a paratransit vehicle, a taxi, a private car service vehicle, a ride sharing vehicle, or any other for-hire vehicle.
- e) "Tribal Government Headquarters" means the Ho-Chunk Nation Tribal Office Building (T.O.B.), located at W 9814 Airport Road, Black River Falls, WI, unless otherwise updated and revised by the Nation.

6. Face Coverings Required.

- a) Subject to Section 7, every individual age five (5) and older who is present in a building owned by the Ho-Chunk Nation or other property owned by the Nation shall wear a face covering that covers their nose and mouth at any time they are or will be in contact with other people who are not household members. This requirement includes the following areas: in shared office areas, or meeting rooms when more than one person is present, in indoor areas open to the public, while driving or riding in Tribal transportation or a qualifying vehicle, in public, or at a mass gathering indoors, unless exempted under this section.
- b) The Ho-Chunk Nation Health Officer is delegated authority to issue orders, as reasonably needed and necessary, within the scope of the ordinance to decrease or increase public health restrictions based on data and information used to make public health decisions, and consistent with any Declaration of Emergency issued by the Legislature or the President.

7. Exemptions. This Ordinance is not applicable to:

- a) Any individual who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove their face covering without assistance.
- b) Any individual who falls within the CDC's guidance for those who should not wear face coverings due to a medical condition, mental health condition, or disability that prevents them from wearing a face covering.
- c) Any individual who is communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.
- d) Individuals for whom wearing a face covering would create a risk to the person related to their work, as determined by government safety guidelines.
- e) Individuals in settings where it is not practical or feasible to wear face coverings when obtaining or rendering goods or services to the extent necessary to obtain or render such goods and services including, but not limited to, the receipt of dental services or medical treatments or consuming food or beverages.
- f) Individuals working in a private office within the Scope for which this Ordinance applies.
- g) Individuals speaking to an audience, whether in-person or through broadcast, so long as the speaker remains six (6) feet or more away from other individuals.
- h) Individuals participating in religious ceremonies.

- i) Individuals gathered on private property or in private residences. However, individuals who are congregated with others not from the same household are strongly encouraged to wear face coverings and maintain social distancing of six (6) feet.
- j) Any individual actively engaged in exercising in a gym or similar indoor facility, so long as physical separation of not less than six (6) feet is maintained and the individual wears a face covering at all times when not actively engaged in exercising or engaged in post-exercise hygiene activity for which a mask is impracticable, such as showering in a locker room, so long as six (6) feet of physical separation is maintained between individuals.
- k) Whenever tribal or other applicable law prohibits wearing a face covering or where it is necessary to evaluate or verify an individual's identity.
- l) Within Ho-Chunk Nation gaming and non-gaming enterprises, indoor areas open to the public are exempt for patrons and guests, where the Nation's Executive Director of Business and Health Officer have approved a governing safety plan, which shall be reported to the Legislature.

8. Tribal Government Headquarters. Article V, Section 2(v) authorizes the Legislature to maintain headquarters for the Ho-Chunk Nation. The Ho-Chunk Nation Health Officer is delegated authority to issue orders, as reasonably needed and necessary, within the scope of the ordinance to decrease or increase public health restrictions, including the closure of the Tribal Government Headquarters to the public, based on data and information used to make public health decisions, and consistent with any Declaration of Emergency issued by the Legislature or the President.

8.9. Enforcement. Failure to comply with this Order may endanger the public and may result in civil enforcement action to include the refusal of service, issuance of citations or additional orders. Notwithstanding the preceding, the Nation, through its Health Department, will seek to educate persons subject to this law on the importance of face coverings and compliance.

- a) The Ho-Chunk Nation Police Department is granted authority to assist with the execution of this Ordinance and enforcement authority.
 - i. The Ho-Chunk Nation Police Department shall ensure compliance with this Ordinance by seeking voluntary compliance and/or issuing civil citations to any and all individuals who refuse to comply. Citations shall begin at \$10 and increase by increments of \$10 for each subsequent violation of this ordinance, with a maximum penalty of \$50 per violator.
- b) Any Tribal license or certificate holder may be subject to administrative action for licenses or certificates they possess with the Nation for failure to adhere to these requirements.

9. Applicability. This Ordinance shall remain in effect until such time that it is repealed by vote of the Ho-Chunk Nation Legislature. The Ho-Chunk Nation Health Officer may recommend that this ordinance be repealed by issuing a written recommendation containing scientific and/or medical data to the Legislature.

10. Severability. The provisions of this law are hereby declared to be severable. If any provision is declared void, invalid, or unenforceable in whole or in part, then such declaration shall not affect the remaining provisions of the law.

Legislative History:

- 07/28/20 Legislature receives request from Executive Director of Health to consider adoption of an Ordinance to address the wearing of masks and face coverings on the Nation's lands, as a preventive measure against the COVID-19 pandemic. Legislature adopts a motion requesting that Legislative Counsel work with the Department of Justice to draft such an Ordinance and bring back to the Legislative Meeting on August 4, 2020, with input from interested Legislators.
- 08/04/20 Legislature adopts *Wooxete kij Face Covering Ordinance* (codified in the Ho-Chunk Code at 3 HCC § 17) by Resolution 8-04-20 I. It was adopted by Quick Passage procedure and is effective immediately.
- 6/08/21 Legislature adopts amendments to *Wooxete kij Face Covering Ordinance* by Quick Passage Procedure, through Resolution 6-08-21K, which took effect immediately. The amendments were to Section 6 (Face Coverings Required) and Section 7 (Exemptions).