



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC) TITLE 3 – HEALTH AND SAFETY CODE SECTION 2 – PUBLIC NUISANCE ACT

ENACTED BY LEGISLATURE: AUGUST 22, 2000

LAST AMENDED August 9, 2022

CITE AS: 3 HCC § 2

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. This Act regulates the causes of substantial and unreasonable interference with the use or enjoyment of real property owned by the Ho-Chunk Nation. It is intended to improve the overall quality of life for the Nation’s members and others living or domiciled on or near the Nation’s real property. It also addresses violations involving property owned by the Ho-Chunk Nation in cases such as, trespass, failure to abide by occupancy conditions, or similar violations, including but not limited to matters which may affect the health and safety of adjoining landowners or tenants.

3. **Declaration of Policy.**

a. The Ho-Chunk Nation recognizes that public safety is vital to the advancement of the general welfare of the Nation's people. A public nuisance is conduct that interferes with the comfortable enjoyment of life and property by the entire community or neighborhood. Repeated or continuous violation of a tribal law, rule, regulation, act or ordinance is declared a public nuisance, and an action may be maintained to abate such nuisance and enjoin such violation.

b. The concept that a possessor of real property can, in all cases do as he pleases with his property is no longer in harmony with the realities of society. The Ho-Chunk Nation herein adopts the "reasonable use" rule codified in the Second Restatement of the Law of Torts. "Reasonable Use" means "Where an act is one which a reasonable person would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or the particular manner in which it is done."

4. **Scope.**

a. This Act applies to all owners, tenants, and occupants residing on or storing personal property on lands owned by the Ho-Chunk Nation.

b. This Act shall be liberally construed and applied to promote its underlying purpose and policies to simplify, clarify, modernize, and revise the laws governing the management of real property owned by the Ho-Chunk Nation.

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

d. This Act shall be utilized to enforce violations declared to be a public nuisance on all real property owned by the Ho-Chunk Nation.

5. **Definitions.** For the purpose of this Act, the following terms are defined.

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

b. "Chattel" means a thing personal and movable.

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

d. "Controlled Substance" means a drug, substance or immediate precursor included in the Schedules of controlled substances in the CONTROLLED SUBSTANCES ACT 9 HCC §961.

e. “Controlled Substance Analog” means a substance the chemical structure which is substantially similar to the chemical structure as defined by the CONTROLLED SUBSTANCE ACT 9 HCC §961.

f. “Criminal Gang” means an ongoing organization, association or group of 3 or more person, whether formal or informal, that has as one of its primary activities the commission of or more of the criminal acts or acts that would be criminal if the actor were an adult, that has a common name or a common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

g. “Enjoin” means to require a person to perform or to abstain or desist from some act.

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

i. “Nuisance” means an unreasonable activity or use of property that interferes substantially with comfortable enjoyment of life, health, safety of another or others.

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. “Permanent Improvement” means buildings, other structures, and associated infrastructure attached to the land.

l. “Public Nuisance” means conduct that interferes with comfortable enjoyment of life, health, safety, and property by the entire community or neighborhood or any considerable number of persons.

m. “Real Property” means any Ho-Chunk Nation property that is defined as and shall be constructed liberally as: “Any land and associated structures owned in trust, fee simple, leased by the Ho-Chunk Nation, or the Nation’s agents, entities, or enterprises.”

n. “Tenant/Participant” means a party who holds equitable title in a property transfer agreement, where the Ho-Chunk Nation, as the other party, holds legal title to the property.

6. Public Nuisances. The following are some commonly occurring examples of public nuisances per se and are not inclusive of all public nuisances.

a. Every violation of this Act is declared to be a public nuisance.

b. Repeated or continuous violation of a tribal law, rule, regulation, act or ordinance is declared a public nuisance, and an action may be maintained to abate such nuisance and enjoin such violation.

c. Disorderly House. A building, part of a building, erection, or place wherein lewdness, assignation or prostitution is committed.

d. Vehicle Abandonment. See the Nation's *Storage and Disposal of Junk, Garbage and other Waste Ordinance*.

e. Nuisances Created by Animals. See the Nation's *Animal Control Ordinance*.

f. Drug or Criminal "Gang-Houses".

(1) Any building or structure that is used to facilitate the use, delivery, distribution or manufacture a controlled substance or a controlled substance analog, and any building or structure where those acts take place, is a public nuisance per se.

(2) For purposes of this Act, a violation of local, state, federal laws regarding a controlled substance or a controlled substance analog is a public nuisance per se.

(3) Any building or structure that is used as a meeting place of a criminal gang or that is used to encourage, promote, facilitate the activities of a criminal gang, is a public nuisance and may be proceeded against under this section.

7. Jurisdiction over Nuisances. Any person may maintain an action in Ho-Chunk Nation Judiciary to abate a public nuisance to recover damages from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same.

8. Nuisance Abatement.

a. If a nuisance exists, the Ho-Chunk Nation Department of Justice or any person may maintain an action in Tribal Court in the name of the Ho-Chunk Nation to abate the nuisance and to perpetually enjoin every person guilty thereof from continuing, maintaining or permitting the nuisance as provided by this Act.

b. Every violation may be abated by legal action brought by any person in the name of the Ho-Chunk Nation.

c. Abatement may result from:

(1) Court-imposed Injunction. If the existence of the nuisance is shown in the action to the satisfaction of the court, either by verified complaint or affidavit, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of the nuisance, including the issuance of an order requiring the closure of property.

(a) All temporary injunctions in actions begun by the Ho-Chunk Nation Department of Justice shall be issued. In actions instituted by other persons, temporary injunctions shall be discretionary with the court or presiding judge to issue them without the undertaking.

(b) Permanent injunctions enjoin the responsible party from perpetuating the public nuisance.

(2) An Agent of the Ho-Chunk Nation,

(3) If public safety is at issue, the court may issue a Temporary Restraining Order (TRO) pursuant to paragraph 19.

(4) Voluntary abatement of the cause of the violation by the tenant/participant or perpetrator of the nuisance.

9. Parties to a Violation.

a. Whoever is concerned in the commission of a violation of this Act for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although the person did not directly commit it and although the person who directly committed it has not been convicted of the violation.

b. A person is concerned in the commission of the violation if the person does any of the following:

(1) Directly commits the violation.

(2) Aids and abets by falsely denying knowledge of or destroying evidence regarding a violation of this Act.

(3) 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 Act.

(4) Is the owner of a Permanent Improvement that is used in the violation of this Act and has not taken appropriate steps to end the violation through eviction or other legal process.

10. Admissibility of Evidence to Prove Public Nuisance.

a. The conviction of any person, of the offense of lewdness, assignation or prostitution committed in the building or part of a building, erection or place shall be sufficient proof of the existence of a nuisance in the building or part of a building, erection or place, in an action for abatement commenced within thirty (30) days after the conviction.

b. Unlawful Use of Premises. A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for, but not limited to, one of the below listed activities, is guilty of maintaining a nuisance. The building, structure, place (to include its

furniture, fixtures, and other contents) or the ground itself in or upon which or in any part of which the activity is conducted, permitted, carried on, continues, or exists, constitute a nuisance and may be enjoined and abated. Activities that constitute a nuisance include, but are not limited to:

(1) Illegal activity involving:

(a) Alcoholic beverages.

(b) A controlled substance.

(c) Activities that promote or enhance criminal gang activity within the community.

(d) Illegal activity that involves damage to Ho-Chunk property.

(2) Evidence derived from any court records regarding previous complaints concerning alleged violations, arrests for or convictions of violations of laws based on activity set out in this section.

c. To prove the existence of a nuisance, the court may consider:

(1) Tribal law, Ho-Chunk custom and tradition, and federal or state law violations.

(2) Evidence of reputation within the local community by tribal members, security patrol, etc.

(3) Evidence derived from reports and records from investigations or inspections by agents of the Ho-Chunk Nation.

d. The Tribal Court will view repeated violation of any Tribal law as constituting a public nuisance as a matter of law.

11. 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 Department of Justice of the Ho-Chunk Nation in writing or in open court. If the court finds that there was no reasonable ground or cause for said action, the costs shall be paid by the complainant.

12. Judgment. In such actions when the plaintiff prevails, the plaintiff shall, in addition to judgment for damages and costs, also have judgment that the nuisance be abated unless the court shall otherwise order. See paragraph 20. **Abatement Orders.**

13. Execution and Warrant.

a. In case of judgment that the nuisance be abated and removed, the plaintiff shall have; execution in the common form for the plaintiff's damages and costs, and a separate warrant to

agent(s) of the Ho-Chunk Nation requiring the agent(s) of the Ho-Chunk Nation to abate and remove the nuisance at the expense of the defendant.

b. The court may, on the application of the defendant, order a stay of such warrant for such time as may be necessary, not exceeding six (6) months, to give the defendant an opportunity to remove the nuisance, upon the defendant's giving plaintiff satisfactory security to do so within the time specified in the order.

14. Injunction against Public Nuisance.

a. An action to enjoin a public nuisance may be commenced by and shall be prosecuted in the name of the Ho-Chunk Nation, either by a private attorney or the Department of Justice on information obtained by agents of the Department of Justice, or upon the relation of a private individual.

b. An injunction can only enjoin activities that constitute violations of this Act.

c. No stay of any order or judgment enjoining or abating, in any action under this Act may be had unless the appeal is taken within five (5) days after notice of entry of the judgment or order or service of the injunction. Upon appeal and stay, the return to the Supreme Court of the Ho-Chunk Nation shall be made immediately.

15. Expense of Abating and How Collected.

a. The expense of abating such nuisance 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. See paragraph 22. **Sale of Property and Use of Proceeds.**

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

16. Inspection of Property. The Ho-Chunk 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. These inspections are intended to reveal potential unreasonable interference's with the people's use and enjoyment of real property owned by the Nation.

Inspection Frequency. All property subject to this Act may be inspected by assigned agents of the Ho-Chunk Nation not less than once in each calendar year.

Right of Entry. Agents of the Ho-Chunk Nation shall have the right to enter upon the property of any tenant/participant for the purpose of making inspections as may be reasonable necessary or advisable to determine compliance with Ho-Chunk Nation rules and regulations. All inspections shall be made during the reasonable hours. All records of the tenant/participant pertaining to the

maintenance of the property being inspected shall be made available to the inspector by the tenant/participant.

Notification of Violations. Whenever an inspection of property possessed by a tenant/participant establishes that the property is not maintained as required by the rules and regulations of the Ho-Chunk Nation, the inspector shall notify the tenant/participant in writing and shall specify the changes required to make the property conform to the established standards and the time period within which compliance must be effected. Written Notice of such violations may be posted on the doorway of the residence.

17. Protection of Property.

a. **Damage to Property.** Whoever intentionally causes damage to any physical property of another, including the Ho-Chunk Nation government, without the person's consent, shall forfeit not more than \$5,000,000.00; and in addition, shall be liable in restitution to the owner for the actual cost to repair, replace, or restore the property damaged; and such person(s) may be ordered to perform appropriate community service. If the person(s) responsible are under the age of majority, the Court in its discretion, may hold the minor(s) and/or the parents or guardians of the minor(s) responsible for any remedy ordered under this provision.

b. **Graffiti.** Whoever intentionally marks, draws or writes with paint, ink, or another substance on, or intentionally etches into, the physical property of another, including Ho-Chunk Nation property, without the person's consent, shall forfeit not more than \$5,000.00; and in addition, shall be liable in restitution to the owner for the actual cost to repair, replace or restore the property marked, drawn, written or etched upon, and in addition may be ordered to perform appropriate community service; and if the person(s) responsible are under the age of majority, the Court, in its discretion, may hold the minor(s) and/or the parents or guardians of the minor(s) responsible for any remedy ordered under this provision.

18. Temporary Restraining Order (TRO).

a. An application for a TRO shall include:

(1) Notice to the adverse party; or, the TRO may be granted without written or oral notice to the adverse party only, if the facts show evidence that immediate and irreparable injury, loss, or damage will result before the adverse party can be heard in opposition to the TRO and the applicant certifies to the court the efforts, if any, which have been made to give notice and reasons supporting the claim that notice should not be given.

(2) Set forth the specific reasons for its issuance and describe in reasonable detail the act(s) sought to be restrained.

(3) The identity of the party or parties to be restrained.

b. The TRO shall expire within ten (10) days of issuance unless the court extends for an additional ten (10) days for good cause.

c. Violation of Injunction. A party found guilty of contempt for the violation of any injunction granted by the court under this Act shall be punished by a fine of not less than \$200 nor more than \$10,000 or assigned community service for a term to be determined by the court or both.

19. **Abatement Orders.**

a. If the court finds and enters judgment that a nuisance exist, the court shall enter an order of abatement. The order of abatement may direct:

(1) Termination of the lease or rental agreement, if any, on the premises subject to the order, if the tenant who occupies under lease or rental agreement has been given notice of proceedings under this Act.

(2) The removal from the building or place of fixtures, furniture, and movable property used in the nuisance and their sale in the manner prescribed for the sale of property under this Act.

(3) The closing of the building or place against its use for any purpose for a period of one year unless sooner released by the court.

b. Closure of Property.

(1) In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(a) The extent and duration of the nuisance at the time of the request for closure.

(b) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(c) The nature and extent of any effect that the nuisance has upon other persons, such as residents or businesses.

(d) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance.

(e) The pendency of any action to evict a resident or occupant and any evidence of participation by a resident or occupant in the nuisance activity.

(2) A person who breaks and enters or uses a building, structure, or other place directed to be closed by a court order is guilty of contempt and shall be punished for contempt as provided in paragraph 23.

20. **Judgment and Order of Sale of Property.**

a. Drug or Gang Related. If the existence of the nuisance is established in an action under paragraph 6f (Drug or Criminal “Gang House”), an order of abatement shall be entered as part of the judgment in the case. In that order, the court may order any or all of the following:

(1) Direct the removal from the building or structure of all furniture, equipment and other personal property used in the nuisance.

(2) Order the sale of the personal property.

(3) Order the closure of the building or structure for any purpose.

(4) Order the closure of the building or structure until all building code violations are corrected and the building or structure is released under paragraph 24 or sold under paragraph (2), above.

(5) Order the sale of the building or structure where it is located or, order that the building or structure be razed and the expense of the razing collected under paragraph 15.

b. Disorderly House or Other Criminal Activity. If the existence of the nuisance be established in an action under paragraph 6c or in a criminal proceeding, an order of abatement shall direct the removal from the building or place of all fixtures, furniture, musical instruments, including but not limited to movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under paragraph 22 and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released by the court.

c. Any person breaking and entering or using a building or structure ordered closed under this section shall be punished for contempt under paragraph 23.

21. Sale of Property and Use of Proceeds.

a. Drug or Gang Related Property.

(1) If personal and real property are ordered sold under paragraph 21 and the real property is not released to the possessor under paragraph 24, the Ho-Chunk Nation shall sell the property at either a public or private sale. The proceeds of the sale shall be applied to the payment of the costs of the action and abatement and any liens on the property, and the balance, if any, paid as provided below. The plaintiff may file a notice of the pendency of the action as in actions affecting the title to property and if the possessor of the building or structure is found guilty of the nuisance, the judgment for costs of the action not paid out of the proceeds of the sale of the property shall constitute a debt owed the Nation.

(2) Any balance remaining from the proceeds of the sale of property shall be paid in equal shares to the following officials for the purposes listed:

(a) The law enforcement agency used for gang-related and drug-related law enforcement activities.

(b) The Treasurer of the Ho-Chunk Nation or the Department that brought the action, to be placed in a designated fund established to provide grants to organizations for gang abatement and drug and alcohol treatment programs.

(c) The Treasurer of the Ho-Chunk Nation to be placed in a designated fund established to provide grants to organizations for housing rehabilitation, neighborhood revitalization and neighborhood crime prevention activities.

b. Disorderly House or Other Criminally Related Property. The proceeds of the sale of such personal property shall be applied in the payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant.

c. Other Property Subject to Sale. The proceeds of these sales of property should be applied as follows:

(1) The payment of fees and costs of the removal and sale.

(2) Payment of the allowances and costs of closing and keeping closed the buildings or places.

(3) The payment of plaintiff's costs.

(4) The payment of any balance remaining to the Treasurer of Ho-Chunk Nation to be dispersed pursuant to paragraph 22a(2)(c).

d. If the sale proceeds do not fully discharge all the costs, fees, and allowances, the fixtures may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to a lien, judgment, or costs unless the possessor, or an agent or representative of the possessor, has been duly served with process in the action and been given an opportunity to show good faith and to immediately abate the nuisance.

22. **Contempt Proceedings.**

a. If an injunction granted under the provisions of this Act is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of paragraph 9b 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 as punishment for contempt is a "debt owed 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 the Nation” may be enforced pursuant to the Nation’s *Claims against Per Capita Ordinance*.

23. **Release of Building or Structure.**

a. Undertaking to Release. The possessor of any building or structure, or the possessor of the land upon which the building or structure is located, affected by an action under paragraph 9 may appear at any time after the commencement of the action and file an undertaking in a sum and with the sureties required by the court to the effect that the person will immediately abate the alleged nuisance, if it exists, and prevent the same from being re-established in the building or structure, and will pay all costs that may be awarded against the defendant in the action. Upon receipt of the undertaking, the court may dismiss the action as to the building or structure and revoke any order previously made closing the building or structure; but that dismissal and revocation shall not release the property from any judgment, lien, penalty, or liability that the property 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 year.

b. Release of Premises to Possessor.

(1) The court may order the nuisance abated under paragraph 20a, delivered to the possessor and cancel the order of abatement if the possessor of the property:

(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 premises,
and

(c) Files a bond with sureties approved by the court in an amount determined by the court to the effect that the possessor will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one (1) year thereafter.

(2) The lease of the property 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 made under paragraph 20a(1).

24. **Dismissal in General.** If an individual files the complaint, the action may be dismissed only upon approval of the Department of Justice of the Ho-Chunk Nation and upon review of affidavit(s) of the complainant giving the reasons why the suit should be dismissed.

25. **Compromise by Department of Justice.** In all cases, the Department of Justice of the Ho-Chunk Nation may arbitrate, compromise, or settle any action filed under this Act.

26. **Severability.** If any provisions of this Act are determined by the Judiciary to be contrary to the CONSTITUTION, the invalid provision shall be severed from this Act and the remaining provisions shall be given full force and effect.

Legislative History:

06/14/00	Reviewed by Administration Committee and referred to full Legislature.
06/20/00	Legislature posts for 45-day public review period.
08/22/00	Enacted by Legislative Resolution 08-22-00B.
10/25/01	Restated to conform paragraph numbering IAW format prescribed by the Legislative Organization Act of 2001.
08/23/11	Legislature adopts Resolution 08-23-11C to post for Forty-five day Public Review – adds sec. 17. Protection of Property. This amendment is <i>due to the unfortunate events involving damage to property within the Nation's jurisdiction.</i>
12/06/11	Legislature adopts Resolution 12-06-114C to adopt amendments presented on 08-23-11 with additional comments from Law Enforcement Commission.
02/12/16	Legislature posts for 45-Day public review period.
05/03/16	Amended by Resolution 05-03-16G.
06/07/22	Legislature posts for 45-Day public review period
08/09/22	Amended by Resolution 08-09-22A