



**HO-CHUNK NATION CODE (HCC)
TITLE 3 – HEALTH AND SAFETY CODE
SECTION 10 – HOOCĀK NATION EXCLUSION AND REMOVAL ACT**

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TABLE OF CONTENTS

1. Authority	1
2. Purpose	2
3. Definitions	3
4. Persons Subject to Exclusion and Removal	3
5. Grounds for Exclusion and Removal	3
6. Proceedings for Exclusion	4
7. Hearing on Exclusion and Removal	6
8. Appeals	7
9. Judicial Review and Modification or Termination of Orders of Exclusion and Removal	7
10. Enforcement of Orders of Exclusion and Removal	8
11. Exclusion and Removal Records	9
12. Sovereign Immunity	9
13. Severability	9

1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("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. 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. Article V, Section 2(1) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, or other Ho- Chunk assets;

e. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

f. 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. 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. Article V, Section 2 (x) of the Constitution grants the Legislature the power to enact other law, ordinances, resolutions, and statutes necessary to exercise its Legislative powers delegated by the General Council pursuant to Article III, but not limited to the enumerated list of powers.

i. This law is enacted pursuant to the inherent sovereign authority of the Ho-Chunk Nation to, as a tribal government, protect the political integrity, economic security, and/or health and welfare of the tribe through the power to exclude and regulate persons on the Nation's land.

j. The jurisdiction of the Nation extends to all territory set forth in Article I, Section 1 of the Constitution and to any and all persons or activities therein, based upon the inherent sovereign authority of the Nation.

k. This Act shall not permit the disenrollment of a member of the Tribe, as removal of a member from the Membership Roll shall only be determined by the Judiciary based upon the rule of law and based upon evidence that a person cannot meet DNA parentage requirements pursuant to Article II of the Constitution.

l. The Indian Civil Rights Act and the Nation's Constitution provide that the Nation shall not "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

2. Purpose

The Nation finds that it is necessary to establish standards for the removal and exclusion, from those lands which are subject to the territorial authority of the Nation, of persons whose conduct or associations pose a threat to the health, safety and welfare of the tribe. The Nation shall be authorized to exclude any person from the lands and facilities of (the Ho-Chunk Nation and to determine conditions upon which they may remain. It is the purpose of this Act to provide for exclusion and expulsion of people from the lands and facilities of the Ho-Chunk Nation who act in disregard of the Nation's law, destroy the natural resources of the Nation, trespass upon the Nation's property, pollute the Nation's lands and waters, destroy real and personal property of the Nation or its members or endanger the lives of members to the harm of the natural social and psychological well-being of members or other persons.

3. Definitions

a. "Exclusion and removal" means the temporary expulsion of an individual from Ho-Chunk Nation lands and facilities.

b. "Fraud" means a false representation of a matter of material fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

c. "Ho-Chunk Nation lands" means any land owned by the Ho-Chunk Nation whether trust or fee simple land.

d. "Ho-Chunk Nation facilities" means any facility owned or operated by the Ho-Chunk Nation or its corporations whether run for profit or not for profit.

e. "Member" means any enrolled member of the Ho-Chunk Nation.

f. "Tribal Law Enforcement Officer" means any law enforcement or police officer authorized to enforce actions arising out of the application of this law.

4. Persons Subject to Exclusion and Removal

Except as provided by this section, any person may be excluded or removed from Ho-Chunk Nation lands or facilities or parts thereof. A person authorized by federal law to be present on tribal land may not be excluded. Any person having an interest in real property on Ho-Chunk Nation lands may be excluded from any portion of Ho-Chunk Nation lands or facilities as long as he or she is not denied access to or the use of such property.

5. Grounds for Exclusion and Removal

a. In addition to any remedy or penalty provided by this Act, a person subject to removal and exclusion under this Act may be subject to a civil proceeding for exclusion or removal from Ho-Chunk Nation lands or facilities if his/her conduct substantially threatens or has some direct effect on the political integrity, institutional process, economic security or health or welfare of the Ho-Chunk Nation, its members or residents of the Ho-Chunk Nation lands.

b. In determining whether to issue an order of exclusion, the Court shall consider the number and pattern of acts committed and the history, circumstances and/or significance of each act.

c. Acts for which an individual may be excluded from the Ho-Chunk Nation lands or facilities may include, but are not limited to, the following:

1. Doing or attempting to do any act upon the Ho-Chunk Nation lands or facilities which unlawfully threatens the peace, health, safety, morals or general welfare of the Nation its members, or other persons;

2. Any act causing serious physical loss or damage of any nature to the property of the Nation or any tribal member;
3. Entering an area in violation of any order of the Ho-Chunk Nation Legislature designating such area as closed;
4. Failing or refusing to pay any taxes, rents or other charges justly due the Ho-Chunk Nation or entity of the Nation, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;
5. Mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to the Nation's property without authorization;
6. Committing a fraud;
7. Trading or conducting business within Ho-Chunk Nation lands or facilities in violation of the Nation's laws;
8. Disturbing or excavating items, sites or locations of religious, historic, cultural or scientific significance without the authority of the Nation or in violation of tribal or federal law;
9. Failing to obey an order of the Ho-Chunk Nation Trial Court; or
10. Committing any criminal offense as defined by state, federal or tribal law. ;
11. Committing an act which violates the criminal or civil laws of the Ho-Chunk Nation, regardless of whether the Nation has jurisdiction to prosecute the person for the act;
12. Evading arrest or prosecution for an offense committed in another jurisdiction;
13. Threatening or causing harm to persons on the Nation's lands;
14. Repeated public drunkenness; or
15. Using, possessing or selling of any narcotic drug or controlled substance in violation of tribal, state or federal law.

6. Proceedings for Exclusion

a. Exclusion by Tribal Law Enforcement Officer

1. If any person is engaging in conduct in violation of Paragraph 5c which constitutes an imminent threat to the health, safety, security, or property rights of a Member, a tribal law enforcement officer may exclude or remove such person if it is more likely than not that the grounds for exclusion or removal exist. In such instance, the person may be immediately excluded or removed from the property and/or Nation's lands by order of the tribal law enforcement officer.

2. Such an exclusion or removal issued by law enforcement shall be temporary, lasting no more than 60 days unless extended by the Court pursuant to the procedure below.

3. A written Notice of Exclusion shall be provided to the excluded individual at the time of exclusion or removal which shall include the following:

- i. The name and date of birth, or other identifying characteristics, of the individual,
- ii. The mailing address to which the excluded individual wants any further communication to be sent, or an indication by the officer that the excluded individual has refused to provide an address,
- iii. Any applicable grounds for exclusion under Section 5c, above,
- iv. A description of the facts and circumstances supporting the grounds for exclusion,
- v. The specific lands or property from which the individual is to be excluded,
- vi. The duration of the exclusion (no more than 60 days),
- vii. A date and time certain for the individual to appear before Court for an Exclusion Hearing,
- viii. A statement that failing to appear for the Exclusion Hearing may result in an extension of the period of exclusion,
- ix. A statement that it is the duty of the individual to update the court as to his/her current address and that mail sent by the Court to the address on file shall constitute sufficient notice of any future hearings and orders, and
- x. Contact information for the Tribal Court and HCN Department of Justice.

4. The written Notice of Exclusion shall be filed with the Court no later than two business days following its issuance.

5. An excluded individual may request a hearing earlier than the date set on the Notice of Exclusion. If desired, a hearing will be held within three (3) business days of Court receiving the request.

6. The HCN Department of Justice shall represent the Nation and the HCN Police Department at any hearings associated with a Notice of Exclusion issued by a law enforcement officer from that department. Should the Department of Justice request an exclusion longer than sixty (60) days at the hearing, the Department shall file a formal complaint to amend or replace the Notice of Exclusion, using the procedure set forth in section 6.b, unless the respondent fails to appear at the hearing resulting in a default as fairly noticed to the excluded individual pursuant to section 6.a.3(viii). An oral motion during the hearing for such extension, supported by facts presented, shall be sufficient for an extension in the event of the excluded individual's nonappearance.

b. If an immediate exclusion or removal is not pursued, the Ho-Chunk Nation Department of Justice may bring an exclusion action pursuant to this Act on behalf of the Nation by filing a complaint in the Ho-Chunk Nation Trial Court. Before filing such complaint, the Department of Justice shall cause any proposed exclusion and removal to be investigated sufficiently to determine whether an action under this Act shall be filed on behalf of the Nation. The filing of a complaint under this Act shall constitute a civil cause of action.

7. Hearing on Exclusion and Removal

a. Unless otherwise provided by this Act, and upon the filing of a complaint for exclusion and removal or a Notice of Exclusion issued by a law enforcement officer, the procedures for civil actions under Ho-Chunk Nation law or its Rules of Civil Procedure shall apply. If the Trial Court shall have reasonable cause to believe that an emergency exists, and the notice so states, a Temporary Emergency Order of Exclusion and Removal may be issued immediately by the Trial Court as long as a hearing is held within three (3) business days from the time of service or mailing whichever is later.

b. The burden of proof shall be upon the Department of Justice to prove by a preponderance of the evidence that the respondent committed one or more of the acts set forth in this Act.

c. If the respondent is found to have committed one or more of the acts set forth in this Act, the Trial Court shall issue an Order of Exclusion and Removal.

1. The Order shall include the duration of the exclusion, areas of exclusion, and what conditions, if any, should be instituted.

i. The Court may issue Orders of Exclusion and Removal that permit an excluded individual entry into certain areas for the limited purpose of accessing critical services, such as the Nation's healthcare facilities, unless there is evidence that exclusion is necessary to protect the safety and well-being of the Nation's membership or communities.

ii. If the respondent is not present at such hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the respondent in the manner provided above informing him of the action of the Trial Court and such notice shall include a copy of any order issued under this section.

d. An order issued under this section shall remain in force for the duration provided in the order or, unless the order specifically provides otherwise or until terminated by the court pursuant to section 9, below.

1. The duration of an exclusion shall be temporary. The maximum period of time that may be ordered for an exclusion is five (5) years, with the availability for the respondent to request periodic judicial reviews as addressed in section 9.

2. Nothing in this Act shall prevent future proceedings for exclusion and removal against a person previously excluded and removed should new facts and circumstances give rise to grounds in the future. Such shall require a new filed written Notice of Exclusion or Complaint pursuant to the procedures set forth above.

e. Physical attendance at the exclusion hearing at the Tribal Courthouse shall not be considered a violation of an exclusion order or Notice of Exclusion, unless specifically stated by the Court.

8. Appeals

Any person upon whom an order is issued as provided in this Act may appeal such order to the Ho-Chunk Nation Court of Appeals as provided by Ho-Chunk Nation laws.

9. Judicial Reviews and Modification or Termination of Orders of Exclusion and Removal

- a. For all Orders of Exclusion and Removal lasting longer than one (1) year, any excluded individual shall have the right to file a motion requesting a review hearing twelve (12) months from the issuance date of the Order of Exclusion and Removal. Unless otherwise provided by this Act, the Ho-Chunk Nation Rules of Civil Procedure shall apply to the reviews addressed within this section.
- b. The purpose of a review hearing will be to determine whether the excluded individual has reformed their behavior to permit reintegration into the Tribal community.
 1. When deciding whether an excluded individual has reformed their behavior, the Court may consider, at a minimum, all of the following factors:
 - i. Whether the individual has engaged in drug and alcohol treatment (AODA treatment), anger management, batterer's treatment, counseling, therapy, and similar activities as applicable; and
 - ii. Current employment status and likelihood of continued employment; and
 - iii. The period of time the individual has exhibited changed and acceptable behavior; and
 - iv. Any other factor the Court determines applicable to evaluate whether the individual is no longer a threat to the Nation, its lands, or its members and residents.
- c. The burden of proof shall be upon the excluded individual and the standard shall be a preponderance of the evidence.
 1. The excluded individual must prove:
 - i. that their conduct no longer substantially threatens or has some direct effect on the political integrity, institutional process, or economic; environmental; historic preservation/cultural security of the Ho-Chunk Nation, its members or residents, or of the Ho-Chunk Nation lands; and
 - ii. that their conduct no longer substantially threatens or has some direct effect on the health, safety, or welfare of the Ho-Chunk Nation members or residents. This includes behavior no longer endangering the lives or bringing harm to the social and psychological well-being of members or residents; and

- iii. that their status and/or behavior has substantially changed since the original hearing such that a modification or termination of the Order of Exclusion and Removal is warranted.

d. Review Hearing Orders.

1. Modification. If the excluded individual is found to have made some reform efforts, the Trial Court may issue an Order modifying the Order of Exclusion and Removal which shall include the duration of the exclusion, areas of exclusion, and what conditions, if any, should be instituted. Should the modified Order's duration continue to run longer than one (1) year, then the Order shall include notice that the excluded individual may request another review twelve (12) months from the date of the Order.

2. If the excluded individual is found to have fully reformed, the Trial Court may issue an Order dismissing the Order of Exclusion and Removal.

3. If no progress has been proven, the Order of Exclusion and Removal shall remain unchanged. Should the original Order's duration run longer than one (1) year, then the excluded individual must wait twelve (12) months from the date of the Order from the review hearing for another opportunity to request a review.

- e. Physical attendance at the review hearing at the Tribal Courthouse shall not be considered a violation of an Exclusion and Removal Order, unless specifically stated by the Court.

10. Enforcement of Orders of Exclusion and Removal

Any person who does not obey an order of exclusion, or assists another person in violating an order of exclusion issued by the Trial Court pursuant to this Act, shall be in violation of this Act for which the Trial Court may issue one or more of the following orders:

a. Direct any tribal law enforcement officer to remove the respondent from the Nation's lands or facilities or portions thereof covered by the exclusion order at the respondent's expense;

b. Direct any tribal law enforcement officer to prevent the respondent from reentry onto any Nation's lands covered by the exclusion order for so long as the order remains in effect;

c. Refer the matter to the appropriate law enforcement agency for appropriate action;
or

d. Prosecute the respondent and/or take any other action authorized under any applicable Tribal, Federal or State law.

11. Exclusion and Removal Records

a. Department of Justice Records. The Department of Justice shall maintain records of all exclusion and removal proceedings initiated pursuant to this Act. Once an Order of Exclusion and Removal is issued by the Trial Court, the Department of Justice shall forward a copy of the Order to the Administration Department for dissemination to all Department heads, Ho-Chunk Nation officials and security personnel.

b. Court Records. The Trial Court shall maintain records of all exclusion and removal proceedings and orders issued pursuant to this Act.

12. Sovereign Immunity

a. Nothing in this Act shall be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

b. Pursuant to Article XII, Sections 1 and 2 of the Constitution, the Legislature in taking any action will be deemed to not have waived the Nation's sovereign immunity from suit, unless the Legislature expressly waives the Nation's sovereign immunity.

13. 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:

- Draft Introduced April 2, 2009 in order to protect the Ho-Chunk Nation and its members while ensuring an impartial, fair process for all parties involved.
- Definition of Ho-Chunk Nation Lands and He-Chunk Nation Facilities added to clarify that all lands and facilities of the He-Chunk Nation are included within the purview of this Code.
- Language added to include a provision which allows the Trial Court to issue a Temporary Emergency Order of Exclusion and Removal.
- Adopted by Resolution 4-2-09A on April 2, 2009.
- Amended by Legislative Resolution 09-09-14M
- Placed out for 45 Day Public Comment via Resolution 05.02.23M
- Adopt Amendments by Resolution 09.19.23A