

POTAWATOMI LAW AND ORDER CODE

TITLE 14-1 EXCLUSION

Section 14-1-1. Authority.

This Title is adopted pursuant to Article V, Section 1(g), (i), (k), (m) and (p), of the Tribal Constitution. The cited sections grant the Tribal Council authority to manage tribal land regardless of whether it is located inside or outside the Reservation. Taken together, the cited sections grant to the Tribal Council the power to exclude from Potawatomi Indian land any person not legally entitled to be thereon.

Section 14-1-2. Definition of Potawatomi Indian Land.

As used in this Title, "Potawatomi Indian land" means:

- (A) Land owners by or held in trust for the Tribe or any tribal entity, regardless of whether such land is located inside or outside the Reservation, and
- (B) Allotments inside the Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such land.

Section 14-1-3. Who May be Excluded; Extent of Exclusion.

Any non-member of the Tribe, except a person authorized by federal law to be present on Potawatomi Indian land, may be temporarily or permanently excluded and removed from all or any portion of Potawatomi Indian land.

Section 14-1-4. Grounds for Exclusion.

Any non-member may be excluded and removed from Potawatomi Indian land as provided in Section 14-3 for commission of one or more of the following acts inside the Reservation or on Potawatomi Indian land outside the Reservation:

- (A) Disorderly conduct.
- (B) Repeated public drunkenness.
- (C) Entering an area in violation of any order of the Tribal Council designating such area as closed because of fire hazard or for any other reason.
- (D) Failing or refusing to pay any taxes, rents or other charges justly due the Tribe or any tribal entity, after reasonable notice and an opportunity to pay.

- (E)** Mining, cutting timber or vegetation or other use, abuse or damage to tribal property without authorization from the Tribe or the Secretary of the Interior.
- (F)** Any act causing physical loss or damage of any nature to the property of the Tribe, its enrolled members, or the other residents of the Reservation or off-Reservation Potawatomi Indian land.
- (G)** Committing a crime, as defined by state, federal or tribal law, or any act which, if committed by a member of the Tribe, would be a crime under tribal law.
- (H)** Violating any law of the Tribe, including any rule or regulation of the Tribal Tax Commission.
- (I)** Forcing entry into any home inside the Reservation or on off-Reservation Potawatomi Indian land without the consent of the occupant.
- (J)** Unauthorized prospecting.
- (K)** Committing a fraud, a confidence game, or usury against any tribal member or any other resident of the Reservation or off-Reservation Potawatomi Indian land.
- (L)** Inducing any tribal member or other resident of the Reservation or off-Reservation Potawatomi Indian land to enter into an unconscionable or grossly unfair contract of any nature.
- (M)** Trading or conducting business inside the Reservation in violation of tribal or federal law.
- (N)** Defrauding any tribal member of just compensation for his labor or service of any nature done at the request of the non-member.
- (O)** Hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law.
- (P)** Entering or remaining upon the Reservation or upon off-Reservation Potawatomi Indian land while afflicted by a communicable or contagious disease.
- (Q)** Unauthorized taking of any property from the Reservation or from off-Reservation Potawatomi Indian land.
- (R)** Using, possessing or selling of any narcotic drug or controlled substance in violation of tribal, state or federal law.

(S) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Tribe or in violation of tribal or federal law.

(T) Violating tribal customs.

(U) Threatening to cause disturbances or riots or to conduct any activity prohibited by the Tribe.

(V) Failing to obey an order of the Tribal Court.

Section 14-1-5. Complaint for Exclusion.

Any person may make a complaint for exclusion. Forms for such complaints shall be kept by the Tribal Secretary at the tribal headquarters. A complaint for exclusion shall be valid only if it bears the signature of the complaining witness and is witnessed by a police officer, a police employee, the Tribal Secretary, or if it is duly executed by the Tribal Tax Commission.

After the complaint has been duly signed and witnessed, it shall be delivered to the Tribal Secretary. The Tribal Council may then, in its sole discretion, initiate emergency exclusion proceedings as provided in Section 14-9, or may initiate District Court exclusion proceedings by signing the complaint and forwarding it to the Court Clerk.

Section 14-1-6. Notice to Proposed Exclusion.

Upon receipt of a complaint for exclusion, duly signed by the Tribal Council, or duly executed by the Tribal Tax Commission, the Court Clerk shall then promptly cause notice to be served personally or by registered mail upon the non-member involved. The notice shall state the reason for the proposed exclusion and shall state a time and place at which the non-member may appear before the District Court to show cause why he should not be excluded from Potawatomi Indian land.

The District Court hearing shall not be less than thirty days after the time of service or mailing. An emergency exclusion hearing before the Tribal Council may be held after 24 hours after the time of service.

Section 14-1-7. Exclusion Hearing Before District Court.

After notice to the non-member proposed for exclusion, the District Court shall hold a hearing to decide whether the non-member shall be excluded from Potawatomi Indian land. The non-member shall be given an opportunity to present his defense at the hearing, and may be represented by counsel at his own expense. The District Court may, in its discretion, grant a continuance of the hearing on request by the non-member or upon its own motion. The standard of proof applied by the District Court shall be a preponderance of the evidence. After the hearing, or at the time set for the hearing if the non-member does not appear, the

District Court may order him temporarily or permanently excluded from Potawatomi Indian land in accordance with Section 14-3 or may permit him to remain upon Potawatomi Indian land on such conditions as the District Court sees fit to impose.

Conditions which the District Court may impose in an Order of Exclusion may include, but shall not be limited to, payment of taxes, interest and penalties owed to the Tribe, as determined by the Tribal Tax Commission; payment of restitution to any person or to the Tribe for damage caused by the non-member; performance of labor; and payment of a civil penalty. The civil penalty levied and paid under any Order of Exclusion shall not be a criminal fine and shall be for the purpose of defraying costs of enforcement of this Title and protecting lives and property on the Reservation.

An Order of Exclusion shall remain in force until revoked by the District Court unless the Order specifically provides otherwise.

Section 14-1-8. Enforcement Proceedings.

If any non-member ordered excluded from Potawatomi Indian land by the Council does not promptly obey the Order of Exclusion the District Court may issue a Writ of Exclusion which shall order any police officer to:

- (A) Remove the non-member and any of his property from all Potawatomi Indian land covered by the Order of Exclusion, at the non-member's expense, and
- (B) Prevent the reentry of the non-member onto any Potawatomi Indian land covered by the Order of Exclusion. The police officer executing the Writ shall use only so much force as is necessary to effect removal or prevent reentry. The Tribal Council may also refer the matter to the United States Attorney for prosecution of any federal crime committed.

Section 14-1-9. Emergency Exclusion-Physical Removal.

In cases involving immediate danger to the life, health, morals or property of the Tribe or any of its members or the non-member proposed for exclusion, or where delay would result in irreparable damage, the Tribal Council may issue an Emergency Writ of Exclusion which shall order any police officer to remove the non-member and any of his property from Potawatomi Indian land, either before or after the hearing provided for in Section 14-7. The police officer executing the Writ shall use only so much force as is necessary to effect the removal. If the service of the notice provided for in Section 14-6 has not already been made on the non-member, the Tribal Council shall cause the police officer to serve the notice upon the non-member at the time of removal or as soon after the removal as possible. An Emergency Writ of Exclusion shall remain in force until revoked by the District Court or until the hearing provided for in Section 14-7 if such hearing has not already been held.

Section 14-1-10. Finality of Exclusion Order.

An Order of Exclusion by the District Court shall be final but may be appealed to the Court of Appeals pursuant to Title 4 of this Code. Any person excluded by an order of the District Court may apply to the Tribal Council to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year.

(Enacted by PBP TC No. 92-59, November 18, 1992)

