



# NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

2221 1 1/2 MILE RD. • FULTON, MI 49052

P: 269.704.8404 • F: 269.729.4826 - ORI NO. MID10077J

## COURT RULES FOR EXCLUSION CODE PROCEEDINGS CHAPTER 18

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## COURT RULES FOR EXCLUSION CODE PROCEEDINGS CHAPTER 18

### Section 1. Title

- A. This Chapter of Court Rules will be known as the *Court Rules for Exclusion Code Proceedings*.

### Section 2. Purpose

- A. The purpose of this Chapter of Court Rules is to facilitate proceedings filed pursuant to the *Nottawaseppi Huron Band of the Potawatomi (NHBP) Exclusion Code* and to establish procedures for the intent and purpose of the *Exclusion Code* to be carried out to benefit all persons coming under the authority of the *Exclusion Code* and before the NHBP Tribal Court.

### Section 3. Definitions

- A. This Chapter of Court Rules recognizes and adopts, for the purposes of this Chapter, the definitions found in Title VIII, Chapter 8 § 8.16-4 (hereinafter identified by § Number) of the *Exclusion Code* (“Exclusion Code”), unless otherwise modified by this Chapter.
1. “*Council*” or “*Tribal Council*” means the Nottawaseppi Huron Band of the Potawatomi Tribal Council, the governing body of the Tribe pursuant to Article IV of the Constitution.
  2. “*Court*” or “*Tribal Court*” means the Nottawaseppi Huron Band of the Potawatomi Court, as established under Article XI of the Constitution.
  3. “*Exclusion*” means prohibiting or conditioning entry of a person from all or a portion of the Tribe's lands or properties and includes the exclusion or permanent banishment of NHBP tribal members, non-member Indians and non-Indian persons.

4. “*Person*” means any individual, firm, corporation, or public or private entity, including a business entity.
  5. “*Police Department*” refers to the NHBP Police Department, or any subsequent tribal department or agency with primary law enforcement responsibilities on the Tribe's land or properties.
  6. “*Public Right of Way*” refers to any lawful right-of-way, such as a public road, located within the boundaries of tribal lands that is open to public access as a matter of federal law or applicable state law.
  7. “*Tribal Lands*” refers to all lands defined as "Indian country" by 18 U.S.C. § 1151, the Pine Creek Reservation, Firekeepers Casino and Hotel, and any other property owned in fee by NHBP or any of its agencies, subdivisions or instrumentalities, or held in trust for NHBP now and in the future.
- B. This Chapter of Court Rules also uses the following definitions that are either modifications of definitions in the *Exclusion Code* or not taken from the *Exclusion Code*.
1. “*Band*” or “*Nation*” or “*Tribe*” means pursuant to the Nottawaseppi Huron Band of the Potawatomi (NHBP), a federally recognized tribe.
  2. “*Presenting Officer*” means the attorney representing the Tribe in Tribal Court Exclusion Hearings.
  3. “*Respondent*” means the person subject to a proposed exclusion order under the *Exclusion Code*.
  4. “*Respondent-Appellant*” means the person subject to an exclusion order under the *Exclusion Code* that is being appealed to the Supreme Court.
  5. “*Tribal Court Exclusion Hearing*” refers to the hearing conducted by the Tribal Court upon filing of a complaint has been filed alleging sufficient cause exists to initiate exclusion proceedings.

#### **Section 4. Jurisdiction**

- A. Pursuant to § 8.16-6 of the *Exclusion Code*, jurisdiction shall extend to all persons, including nonmembers, in order to implement the Tribe's authority and responsibility to protect the health and safety of the tribal community and persons within the jurisdiction of the Band under the authority of the Exclusion Code and the authority to exclude persons

not qualified to enter or reside on the NHBP Reservation, set forth in Article VI, Section 1(k) of the NHBP Constitution.

- B. Pursuant to § 8.16-7 of the *Exclusion Code*, all requests for exclusion of a person shall be initiated through a written complaint filed with the Tribal Council.
- C. The following individuals may submit a request to Tribal Council for an exclusion order directed to a specific person pursuant to procedures established by Tribal Council:
  - 1. Any Member of Tribal Council;
  - 2. The Chief of the Police Department;
  - 3. The Tribal Prosecutor; or
  - 4. Any enrolled Tribal Citizen.
- D. The Tribal Court has inherent authority to exclude persons from tribal lands or property under the following circumstances:
  - 1. As a condition of bond for any person charged with a criminal offense in the Tribal Court;
  - 2. As a condition of a personal protection order; or
  - 3. As a condition of any judgment entered upon conviction a criminal act.

### **Section 5. Grounds for Exclusion**

- A. Pursuant to § 8.16-5 of the *Exclusion Code*, grounds for exclusion include:
  - 1. Repeated invasion of the privacy, stalking or harassment of tribal members or Reservation residents as evidenced by restraining orders against that person by tribal members, the Tribe, or Reservation residents;
  - 2. Conviction of domestic violence or multiple domestic violence offenses occurring on or off tribal lands or properties, which involve physical injury or sexual assault;
  - 3. Conviction of a serious crime on or off the reservation involving violence against persons or property, including arson, murder, rape, assault with a deadly weapon, or a sexual offense against a minor or a vulnerable adult;
  - 4. As a condition of bond or release for any person charged with an offense of domestic or family violence, or any other serious offense involving violence or threats of violence against persons or property within tribal lands or property;

5. Illegal controlled substance production, manufacture, trafficking, distribution or cultivation, including the cultivation of marijuana plants within or on tribal lands and property;
6. Repeated or serious illegal damage to the property or natural resources of the Tribe, including land clearing, timber harvesting, and water quality impacts;
7. Repeated unauthorized entry onto tribal lands or property, or premises leased to individuals on tribal lands or property, including residing in tribal rental housing in violation of housing policies and/or any rental agreement;
8. Conviction of crimes committed on or off reservation related to disturbing or excavating items, sites or locations of religious, historic or scientific purposes, including graves, without authorization of the Tribe or in violation of the laws, customs, or traditions of the Tribe or any state or federal law;
9. Interference or threats to interfere with the governmental operations or business activities of the Band;
10. Exclusion from a neighboring reservation for offenses or conduct stated herein; or
11. Any other misconduct or objectionable condition that threatens the life, health, safety, or property of a tribal member, a Reservation resident, or the Tribe and is found by the Tribal Court or Council to be sufficient cause for expulsion, so long as the person is first advised of the objection and given notice to desist but nevertheless continues the misconduct or condition.

#### **Section 6. Notice for Tribal Court Exclusion Hearing**

- A. Upon receipt of the complaint, petition, and resolution of the Tribal Council, pursuant to a majority vote determining that sufficient cause exists for the Tribal Prosecutor or Legal Department, as appropriate, to initiate exclusion proceedings, the Chief Judge shall assign the Trial Court Judge to preside over the Tribal Court Exclusion Hearing.
- B. The presiding Judge shall schedule a Tribal Court Exclusion Hearing.
- C. Notice for a Tribal Court Exclusion Hearing shall:
  1. State the date, time and location of the hearing scheduled in the Tribal Court for consideration of the exclusion request;

2. Include a copy of the complaint filed with the Tribal Council stating the grounds for the exclusion order, including a brief summary of facts, which shall serve as the basis for the proposed exclusion order;
  3. Inform the person of his or her right:
    - a. To be represented by private counsel at his or her own expense;
    - b. To present evidence and witnesses; and
    - c. To cross-examine adverse witnesses.
- D. Notice for a Tribal Court Exclusion Hearing shall be served by the Tribal Court no later than ten (10) days prior to the Hearing and shall be:
1. By personal service; or
  2. By first class mail, return receipt requested:
    - a. To the person's last known address; or
    - b. In the case of a nonnatural person, by first class mail, return receipt requested, to a designated officer or agent for service.
  3. If notice is by mail, service shall be deemed complete upon the date of the return service.
  4. If personal service or service by first class mail, return receipt requested, cannot be completed, notice may be provided by any manner authorized under the *Tribal Court Rules of Civil Procedure*.
- E. If there are processes or procedures not addressed by this Chapter of Court Rules, *Chapter 5 – Court Rules of Civil Procedure* shall govern the proceedings.

### **Section 7. Tribal Court Exclusion Code Hearings**

- A. Pursuant to § 8.16-10 of the *Exclusion Code*:
1. Tribal Court Exclusion Code Hearings shall be recorded.
  2. The burden of proof is on the Presenting Officer to establish the grounds for exclusion by clear and convincing evidence.
  3. The Presenting Officer shall establish the basis for the proposed exclusion action by presenting evidence, including any witness testimony, and may cross-examine Respondent's witnesses

4. The Respondent or Respondent's attorney, if applicable, may present evidence, call witnesses to oppose the exclusion, and cross-examine witnesses called by the Presenting Officer.
5. The Court shall have the discretion to direct questions to either side relative to the proposed exclusion.

### **Section 8. Tribal Court Exclusion Hearing Findings, Scope & Conditions of Exclusion**

- A. Pursuant to § 8.16-10 of the *Exclusion Code*, the Court shall, within one (1) week following the conclusion of the Tribal Court Exclusion Hearing, the Court shall issue a written order containing:
  1. Proposed findings of facts; and
  2. Conclusions of law.
- B. Pursuant to § 8.16-11 of the *Exclusion Code*:
  1. An exclusion ordered under this code may be from all, or any portion, of tribal lands or property.
  2. An exclusion ordered under this code may be for any period of time including an indefinite or intermittent period or a permanent lifetime ban. An exclusion order may also be for all tribal lands and property or only as to a specific location
  3. Exclusions may be conditional, and could be subject to stipulations that involve restitution to NHBP or to individuals, compliance with restraining orders, or any other condition deemed necessary and appropriate by the Tribal Court.
  4. If the exclusion resolution or order is directed to a person who is eligible to receive health or other services from the NHBP Health and Human Services Department, that person will be permitted to meet with relevant NHBP program staff, provided that:
    - a. The exclusion resolution is not for exclusion from the Health Department, any of its offices or in relation to a protective order issued to protect a staff member in the Department from the excluded person;
    - b. An appointment with the relevant staff or program is scheduled in advance;
    - c. The excluded person or party provides not less than 24 hours advance notice to the Tribal Police Department of:

- i. The name of the NHBP staff with whom the appointment has been scheduled; and
    - ii. The date and time of the appointment.
  - d. The excluded person or party must receive written documentation from the Tribal Police Department acknowledging confirmation of the excluded person or party's appointment and authorizing the visit to the excluded location; and
  - e. The excluded person or party refrains from all unnecessary socializing with other NHBP staff and avoids all discussion with NHBP staff and community members regarding the circumstances of his or her exclusion.
5. Tribal Council reserves the right to exclude persons from participating in/attending cultural or social events held on any tribal lands or property, including the Tribal Community Center or Pow Wow grounds.

## **Section 9. Appeal to the Supreme Court**

- A. The *NHBP Tribal Court Rules of Appellate Procedure – Chapter 9* shall apply to the procedures for an appeal of an exclusion order under the *Exclusion Code* with the exception of the following provisions as stated in § 8.16-14 (A) of the *Exclusion Code*:
- 1. An appeal of an exclusion order under the *Exclusion Code* shall be filed in writing within thirty (30) days from the date the Tribal Court decision was filed.
  - 2. The Respondent-Appellant shall file a copy of the appeal on the Tribe's Legal Department at 1485 Mno-Bmadzewen Way, Fulton, Michigan 49052.
    - a. Tribal Council may file a written response to the appeal.
    - b. If filed, a written reply shall be filed not less than seven (7) days prior to Oral Arguments before the Supreme Court.
    - c. Tribal Council shall serve the Respondent with a copy of a written response, if filed.
  - 3. The Supreme Court shall hold Oral Arguments within three (3) weeks of the date the appeal was filed.
    - a. Notice for Oral Arguments shall be sent by mail fourteen (14) days prior to the date of Oral Arguments.
    - b. The Court may grant a written motion for adjournment:
      - i. Upon stipulation of the parties; or

- ii. At discretion of the Court upon good cause.
- 4. The Supreme Court shall respect the broad discretion, which the NHBP Constitution and this code vests in the Tribal Council with respect to its powers of exclusion.
- 5. Pursuant to § 8.16-14 (E) of the *Exclusion Code*, the decision of the Supreme Court must be released within five (5) days of Oral Arguments or, if the hearing was continued or adjourned for any purpose, within five (5) days of the last court proceeding on the matter.
- 6. Pursuant to § 8.16-14 of the *Exclusion Code*, an exclusion shall remain in effect at all times during the pendency of an appeal to the Supreme Court.
  - a. The Respondent-Appellant shall be permitted at the Court to file pleadings and other documents with the Court and for all Tribal Supreme Court proceedings.
  - b. Pursuant to § 8.16-14 (G) of the *Exclusion Code*, the Supreme Court is encouraged to recite statutory authority for re-entry on its notices of Tribal Supreme Court proceedings to the excluded person or party.
  - c. Pursuant to § 8.16-14 (G) of the *Exclusion Code*, the Supreme Court shall provide notice to the Tribal Police of any Supreme Court proceedings and the excluded person's requirement to be present.

## **Section 10. Recovery of Costs**

- A. Pursuant to § 8.16-16 (A) of the *Exclusion Code*, an exclusion order enacted under the *Exclusion Code* may include a requirement for the person or party excluded to pay initial costs associated with his or her exclusion.
  - 1. Costs that can be recovered include, but are not limited to: execution of an eviction; any additional law enforcement effort required to ensure an individual complies with an exclusion order; recovery of Tribal property; costs to remove personal property left behind by the excluded individual.
- B. Pursuant to § 8.16-16 (B) of the *Exclusion Code*, if an assessment has been sent or otherwise provided to a person under this section but payment has not been received by the NHBP within sixty (60) days of the date of service, the Tribal Prosecutor may file a written motion to the Tribal Court to hold a hearing at which the person shall show cause as to why he or she should not be charged with a criminal offense under § 8.16-15 of this Act.

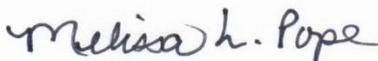
1. If an assessment has been sent by mail, the date of service shall be the date the assessment was mailed.
- C. Pursuant to § 8.16-16 (C) of the *Exclusion Code*, if the person subject to exclusion is an enrolled Tribal Citizen, the unpaid assessment amount or monetary penalty assessed under the *Exclusion Code* shall be deducted from the next regularly scheduled per capita distribution as provided for in the NHBP Garnishment of Per Capita Payments Code.
- D. Pursuant to § 8.16-16 (D) of the *Exclusion Code*, if the exclusion is reversed by the Supreme Court on appeal, no fees shall be incurred, and any costs paid shall be reimbursed.
  1. If the excluded person or party is an employee, he or she shall be able to return to work and be paid for the time lost as a result of the exclusion.

**Section 11. Short Title, Effective Date, and Citation Format**

- A. Short Title. These Rules are titled “Rules for Exclusion Code Proceedings”.
- B. Effective Date. These Rules become effective when adopted by the Chief Judge of the Nottawaseppi Huron Band of the Potawatomi Tribal Court.
- C. Citation. The official abbreviated citation form to these Rules is: NHBPCR 18.

**CERTIFICATE OF ADOPTION**

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on December 29, 2017.



\_\_\_\_\_  
Hon. Melissa L. Pope, Chief Judge

\_\_\_\_\_  
December 29, 2017

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Date of Adoption

**JUDICIAL HISTORY**

The Chief Judge adopted the *Court Rules for Exclusion Code Proceedings* on December 29, 2017.