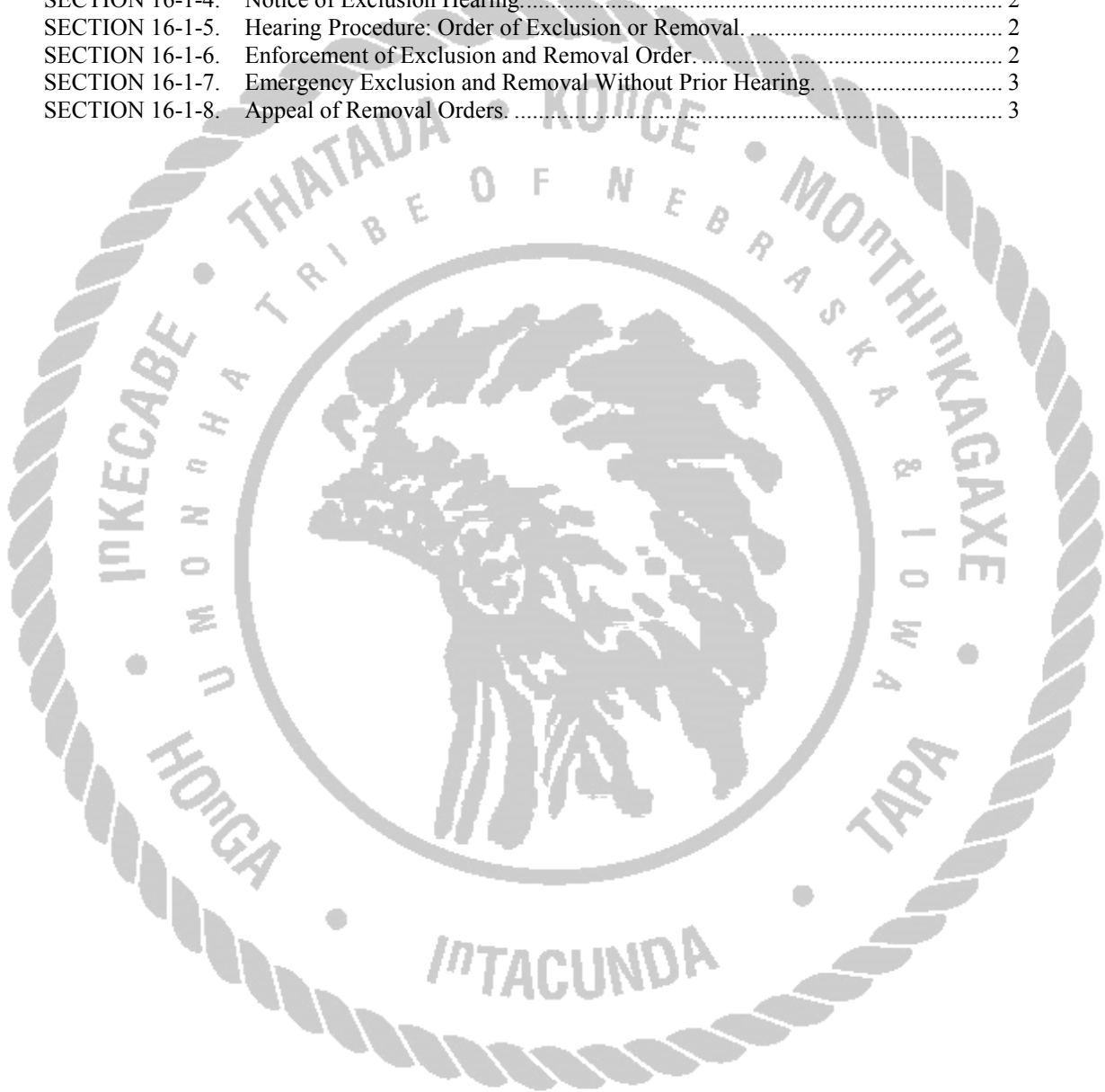


OMAHA TRIBAL CODE (2013)

TITLE 16. EXCLUSION AND REMOVAL

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TITLE 16. EXCLUSION AND REMOVAL

SECTION 16-1-1. Statement of Legislative Determination and Intent.

The Tribe by its Tribal Council hereby finds and determines that, pursuant to authority granted in Article VI of the Constitution of the Tribe, it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on the Reservation, from people whose presence on the Reservation is harmful to, or threatens harm to, the peace, health, safety, morals and general welfare of the Tribe and its members. Such action is deemed necessary as a result of the Tribe's interest in maintaining the aforementioned threatened interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of the Reservation who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while, at the same time, recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harms.

This Title is enacted pursuant to Article IV, Section I(J) of the Constitution of the Omaha Tribe of Nebraska (1982 Amend.) and the inherent sovereignty of the Tribe.

SECTION 16-1-2. Persons Subject to Exclusion and Removal.

All persons who are not members of the Tribe or who are not authorized by Federal Law to be present within the exterior boundaries of the Reservation may be excluded or removed from all or any portion of the Reservation as provided herein.

SECTION 16-1-3. Grounds for Exclusion and Removal.

(a) A person subject to exclusion and removal as provided herein may be excluded and/or removed from any territory under Tribal Jurisdiction as defined in this Law and Order Code, upon any one or more of the following grounds:

- (1) Hunting, fishing or trapping on the Reservation without authority from the Tribe or contrary to the rules and regulations of the Tribe governing such activities.
- (2) Trading or conducting business upon the Reservation in violation of Tribal regulations or regulations of the Secretary of the Interior.
- (3) Prospecting upon the Reservation without authorization from the Tribe or in violation of federal law.
- (4) Mining, cutting timber, grazing or other use, abuse or damage to Tribal property without authority from the Tribe or in violation of federal law.
- (5) Exploring for or excavating upon items, sites or locations of historic, religious or scientific significance without authority from the Tribe or in violation of federal laws.
- (6) Being or travelling upon the Reservation while afflicted by communicable or contagious disease.
- (7) Committing frauds, confidence games, or usury against Indian people residing on the Reservation, or inducing them to enter into grossly unfavorable contracts of any kind.
- (8) Repeated commission of criminal offenses.
- (9) Interfering with or photographing ceremonies or religious shrines without permission from the persons involved or the Tribe.
- (10) Interfering with the official, political, governmental business or religious affairs of the Tribe.
- (11) Doing or threatening to do any act upon the Reservation which seriously threatens the peace, health, safety, morals and general welfare of the Tribe, its members, or other persons living on the Reservation.

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(12) Engaging in any conduct on the Reservation which would be held to constitute a crime under federal, state or Tribal Law if it had been done within the criminal jurisdiction of the Federal Government, the State or the Tribe, respectively.

(13) Purchasing or soliciting the purchase of any Indian-made jewelry or other Indian crafts or art objects without a proper license or in violation of any regulation or requirement established by the Tribe governing such activity.

(14) Failure or refusal to pay any taxes, costs or other charges justly due the Tribe after reasonable notice and opportunity to pay.

SECTION 16-1-4. Notice of Exclusion Hearing.

(a) The Tribal Chairman may cause a Removal or Exclusion Petition to be filed in the Omaha Tribal Court and served personally or by registered mail with a summons issued by the Court clerk upon any non-member whenever such officer has reasonable grounds to believe that cause may exist under this Title for removal or exclusion of such non-member, or whenever the Tribal Council directs such officer to cause such petition to be filed and served.

(b) A petition hereunder shall state the ground or grounds, as listed in Section 16-1-3 for the proposed exclusion, and the names and addresses of witnesses whom the Tribe will produce to support the proposed exclusion. The summons shall name a date, time and place where the non-member may appear before the Tribal Court to show cause why he should not be excluded from areas of the Reservation designated in such notice.

(c) Except as otherwise provided in Section 16-1-7, the notice required under this Section shall be served at least ten (10) days in advance of the hearing provided for in Section 16-1-5. Return receipt shall be used in any service by mail.

SECTION 16-1-5. Hearing Procedure: Order of Exclusion or Removal.

(a) After notice has been served as provided in Section 16-1-4, the Tribal Court shall hold a hearing to determine whether or not the non-member shall be excluded from areas of the Reservation designated in such order. Such nonmember shall be given an opportunity at such hearing:

- (1) to confront and crossexamine any witness relied upon by the Tribe to justify the proposed exclusion,
 - (2) to present oral and written evidence in his defense, and
 - (3) to be represented by counsel of his own choice, including a self-retained professional attorney.
- (4) The Tribal Court may, in its discretion, grant the request of a non-member for a continuance in the hearing upon a showing of good cause.

(b) In all cases where permanent or indefinite exclusion is sought by the Tribe, and the factual basis therefor is disputed by the non-member, the Tribal Court shall find, as a condition to exclusion, that the parts supporting the same have been established by clear, unequivocal and convincing evidence. In any other case, the facts supporting exclusion shall be found to exist by a mere preponderance of the evidence. Each decision shall be in writing and shall be based only upon the facts and law presented at the hearing.

(c) After the hearing provided for in this Section, or after the time set for such hearing (if after notice the person proposed for exclusion does not appear), the Tribal court may order such person excluded from all or any part of the Reservation, or it may permit the person to remain upon the Reservation under such conditions as it deems appropriate. All orders following an exclusion hearing shall specify the period of time during which exclusion will be effective as well as any conditions imposed upon continued residence. Nothing herein, however, shall prevent exclusion for an indefinite period of time if a final order so provides.

SECTION 16-1-6. Enforcement of Exclusion and Removal Order.

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If any person ordered, excluded or removed by the Tribal Court from all or any part of the Reservation does not promptly obey such order, the Tribal Chairman is hereby expressly empowered:

(1) to direct the Tribal Police to use reasonable force to carry out the exclusion or removal order; any such direction from the Chairman is effective without further proceedings and without any further judicial decree to authorize the Tribal Police to exclude or remove the person or persons affected by the said order, and/or

(2) to refer the matter to the general counsel of the Tribe or to federal authorities with the request that they take any lawful action necessary to enforce said order.

SECTION 16-1-7. Emergency Exclusion and Removal Without Prior Hearing.

(a) Whenever the Tribal court finds upon the filing of an appropriate petition under this Title, that there is an immediate need to order the exclusion and/or removal of a person from the Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause irreparable harm to the interests of the Tribe or its members, the Tribal Court may immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision as outlined below.

(b) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served by the Tribal Police with a written order of such court action. Such order shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at such hearing and present evidence in his own defense, and shall inform him that his compliance with such order may be enforced by Tribal or governmental police officers. A copy of the order shall be served by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(c) Upon receipt of a petition for a hearing as provided next above, the Tribal court shall schedule a hearing within two weeks of the receipt of the petition; provided, however, that the order of exclusion and removal shall remain in force pending hearing and a decision thereon, except for the purpose of attending the hearing. The notice shall notify the non-member of a place on the Reservation boundary where he may re-enter in the company of a Tribal Police Officer for the purpose of attending the hearing required under Section 16-1-5. The Tribal Chairman may order a policeman to accompany such person while he is on the Reservation coming to and leaving the hearing.

(d) The Tribal court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person written notice of such decision in the same manner provided for service of other notices under this Title. A decision shall be rendered within 30 days of the hearing.

SECTION 16-1-8. Appeal of Removal Orders.

(a) The Tribal Court of Appeals has jurisdiction to review exclusion or removal, orders pursuant to Title VII, Omaha Rules of Appellate Procedure.

(b) The Appellate Court may reverse all or part of any removal or exclusion order appealed from where the Court finds that the Tribal court has committed an error of law or procedure, the effect of which was to substantially deprive the person ordered removed or excluded of any right guaranteed by federal or tribal law or which otherwise deprived that person of a fair hearing or that the Tribal Court made any material finding of fact which was not supported by substantial evidence. The court shall not reverse all or any part of a removal or exclusion order appealed from solely on account of the existence of harmless legal errors.