

# Iowa Tribe of Kansas and Nebraska Exclusion and Removal Policy

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## **Section 1. Authority**

- (a) While banishment is an inherent sovereign power exercised by the Iowa Tribe of Kansas and Nebraska since time immemorial, and an inherent power to be exercised by the General Council in the gravest of circumstances, this temporary banishment policy of the Executive Committee is authorized under the powers delegated to it by Article V section 1 of the Constitution and By-Laws of the Iowa Tribe of Kansas and Nebraska.
- (b) The Executive Committee of the Iowa Tribe of Kansas and Nebraska respectfully takes on the sacred duty of wielding the power of banishment in only the gravest of circumstances to protect its people, their property, natural resources, culture, land, water rights, and wildlife from any threat or conduct by non-members on the Reservation and any lands under the jurisdiction of the Iowa Tribe of Kansas and Nebraska Tribe. The exclusion and removal provisions set forth in this policy are hereby enacted to carry out and implement the obligations of the Executive Committee.
- (c) The General Council retains the authority to banish through its inherent sovereign powers and this banishment policy shall only remain effective until such time as superseded by any amendments or ordinances adopted pursuant to the Constitution and Bylaws of the Iowa Tribe of Kansas and Nebraska.

## **Section 2. Persons Subject to Removal and Exclusion**

- (a) Except as otherwise expressly provided in subsection (b) of this policy, any non-member of the Iowa Tribe of Kansas and Nebraska may be removed and excluded from all or any part of the lands within the exterior boundaries of the Reservation, for the reasons stated in Section 3, and according to procedures listed in Sections 4 through 6.
- (b) The provisions of this policy may not be invoked to exclude non-members, only in the following circumstances:
  - (1) From lands owned by, or held in trust for, the Iowa Tribe of Kansas and Nebraska when such non-members are authorized by Federal treaty to be present on such Tribal lands unless the non-member poses a threat to the general welfare, health, and safety, or tribal government functions; or
  - (2) From individually owned lands, whether held in trust, restricted or fee patent, when such non-members are present thereon with the consent of the individual owner or owners thereof. Provided, however, that such consent will not bar the exclusion of any non-member from such lands if it is determined, in a proceeding authorized under Section 5, that in addition to violation of one or more of the grounds specified in Section 3, such non-member poses a clear and continuing danger to the health or safety of Tribal members or property which outweighs the particular interest of the non-member in continued presence; or
  - (3) From access to State highways within the exterior boundaries of the Reservation,

unless it is determined, in a proceeding authorized under Section 5 that in addition to violation of one or more of the grounds specified in Section 3 such non-member poses a clear and continuing danger to the safety of persons or property on such highways which outweighs the particular interest of the non-member using same.

### **Section 3 Grounds for Exclusion**

Non-members of the Iowa Tribe of Kansas and Nebraska may be excluded on one or more of the following grounds only when such behavior has become a threat to the ongoing integrity, safety, or health of the community:

- (a) Commission of a crime, as defined by Federal, State, or Tribal law, including an ongoing pattern of violations of State or Tribal traffic regulations.
- (b) Unauthorized trading.
- (c) Unauthorized mining, timber cutting, or other activity causing physical loss or damage of any nature to property on the Reservation.
- (d) Forcible entry into the home or onto the land of any Tribal member without the consent of the occupant or occupants.
- (e) Interference with or photographing of Tribal ceremonies without the permission of the Tribal members involved.
- (f) Commission of fraud, confidence games, or usury against Tribal members, or inducing such members into grossly unfavorable contracts of any nature.
- (g) Defrauding any Tribal member of just compensation for his or her labor or services of any nature done at the request of the non-member.
- (h) Breach of the peace or repeated public drunkenness.
- (i) Spreading contagious disease.
- (j) Entry of an area on the Reservation in violation of an order of the Chairman of the Executive Committee, designating such area as closed because of fire hazard or any other reason.
- (k) Removal or attempted removal of any Tribal member under the age of eighteen (18) from the Reservation without prior approval of the parent or guardian of said member. Provided, however, that this ground for exclusion shall not apply in cases where such minor Tribal member is removed from the Reservation by the minor's adoptive parents, or by persons who have received custody of such child pursuant to an order of the Iowa Tribal Court or valid court order of a state of the United States.

- (l) Conducting missionary activities without prior authorization from the Executive Committee.
- (m) Hunting, fishing, foraging, or trapping without permits required under Tribal laws.
- (n) Failure or refusal to pay any taxes, costs, or other charges justly due the Iowa Tribe of Kansas and Nebraska after reasonable notice and opportunity to pay.
- (o) Pose a threat to the general welfare, health, and safety, of members of the Iowa Tribe of Kansas and Nebraska or tribal government functions.
- (p) Has engaged in a pattern of harm to any community member, physically, economically, or to their property.

#### **Section 4. Notice of Exclusion Hearing**

- (a) Prior to issuing a Notice of Exclusion, the Executive Committee shall determine if there is probable cause to suspect banishment is necessary. A simple majority is necessary to determine probable cause.
- (b) During the probable cause deliberations, any member of the Executive Committee may call for a vote to determine if there is probable cause an extraordinary threat to the community may exist. A two-thirds majority is necessary for a finding that there is probable cause of an extraordinary threat to the community that requires immediate removal of the accused non-member.
- (c) The Executive Committee shall direct the Chairman or Vice-Chairman to cause notice to be served personally or by registered mail upon any non-member whenever the Executive Committee finds probable cause that exclusion of a non-member is necessary. In the case there was a determination of probable cause of an extraordinary threat to the community may require immediate exclusion, the service must be personal and the Executive Committee shall direct the Chairman or Vice-Chairman to have law enforcement or other security personnel escort the accused, if necessary, to their home to collect personal effects, and then escort the accused outside the boundaries of the Reservation.
- (d) Such notice shall state the grounds, as listed in Section 3 for the proposed exclusion, a brief summary of the facts relied upon to justify the proposed exclusion, and the names and addresses of witnesses whom the Tribe will produce to support the proposed exclusion. The notice shall also name a time and place where the non-member may appear before the Executive Committee to show cause why they should not be excluded from areas of the Reservation designated in such notice.
- (e) In the case there was a determination of probable cause of an extraordinary threat to the community that may require immediate exclusion, such notice shall include all the requirements of subsection (d) but shall also notify the accused that they must immediately vacate the reservation and, if the exclusion requires the accused removing from their

residence, that the accused shall be escorted by law enforcement to collect important personal effects before the accused is escorted from the reservation boundaries.

- (f) The notice required under this Section shall be served at least ten (10) days in advance of the hearing provided in Section 5. Return receipt shall be used in any service by mail and such service will be complete upon the date of the return receipt, providing that any person immediately excluded under probable cause for extraordinary circumstances may make arrangements through the Secretary of the Executive Committee for a hearing as early as three (3) business days after exclusion from the Reservation.

### **Section 5. Hearing Procedure: Order of Exclusion**

- (a) After notice has been served as provided in Section 4, the Executive Committee with a quorum present, 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 non-member shall be given an opportunity at such hearing:
  - (1) To cross-examine any witness relied upon by the Tribe to justify the proposed exclusions;
  - (2) To present oral and written evidence in his/her defense; and
  - (3) To be represented by counsel of his/her own choice, including a professional attorney, retained at the expense of the accused non-member. The Executive Committee may, at its discretion, grant the request of a non-member for a continuance in the hearing upon a showing of good cause, including but not limited to a request for sufficient time to obtain counsel.
- (b) In all cases where permanent or indefinite exclusion is sought by the Tribe, or where the proposed grounds for exclusion include violation of Federal, State, or Tribal criminal laws and the factual basis thereof is disputed by the non-member, the Executive Committee shall find, as a condition to exclusion, that the facts supporting same violations 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 by a majority vote of those council members present and voting and shall be based only upon the facts and law presented at the hearing.
- (c) After notice has been served as provided in Section 4 in cases of alleged extraordinary circumstances requiring immediate exclusion, the Executive Committee must hold a hearing at the request of the accused no later than the earlier date requested by the accused, but in no event less than three (3) business days after the accused was removed from the Reservation. If the Executive Committee cannot convene a quorum by the date requested by the accused, but not less than three (3) business days after the accused has been removed from the Reservation, the accused may return to the Reservation until a hearing is held to adjudicate whether exclusion is necessary.

- (d) 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 Executive Committee may order such person excluded from all or any part of the Reservation, or it may permit the person to remain upon the Reservation, or it may permit the person to remain upon the Reservation under such conditions as it sees fit to impose. 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 6. Removal by Law Enforcement in Extraordinary Circumstances Prior to Exclusion Hearing**

- (a) In cases involving probable cause of extraordinary circumstances requiring immediate removal as there is probable cause to believe the presence of the accused non-member poses an ongoing danger to the life, health, or property of the Iowa Tribe of Kansas and Nebraska or any of its members, and where any delay could result in irreparable harm, the Executive Committee, by two-thirds (2/3) vote, may order any police officer to remove a non-member bodily from all or any part of the Reservation. The police officer executing such an emergency order shall only use such force as is necessary to conduct the removal and pursuant to the requirements of Section 4.
- (b) The non-member shall receive a hearing provided for in Section 5 at the time and place provided in the initial notice, unless the accused non-member submits a written request to the Executive Committee Secretary within three (3) business days of the issuance of the emergency order requesting a hearing at an earlier date, but not less than three (3) business days after the exclusion under extraordinary circumstances. The Secretary shall promptly provide the written request to the Executive Committee who shall determine when a quorum may be convened pursuant to Section 5 of this policy and issue the notice for the rescheduled hearing.
- (c) The notice for hearing under Section 5 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 purposes of attending the hearing. The Executive Committee shall order such police officer to escort the accused non-member while the person is on the Reservation coming to and leaving the hearing.
- (d) The Executive Committee, at its sole discretion, may, upon written request presented to the Secretary of the Executive Committee, permit the excluded accused non-member, while escorted by law enforcement at proscribed times or places before the hearing in Section 5, limited access to personal property, business the accused non-member has an interest in, or any other place reasonably designated, to retrieve items or effects necessary for day-to-day life, to prevent economic waste, or for any other good cause, as determined by the Executive Committee.