

Tribal Public Health Law:

GREAT PLAINS AREA

OVERVIEW

The Great Plains Area of the National Congress of American Indians (NCAI) contains North Dakota, South Dakota, and Nebraska. To be fully representative, this memo sheds light on a diverse sample of public health codes from tribal nations whose lands lie within each of these states. Tribal nations from the Great Plains Area that have given NCAI permission to share their codes through the database include: the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and the Winnebago Tribe of Nebraska. While these tribes have codified many laws in the interest of preventing community injury and harm, only those that carry unique insights for the broader field of public health are shared herein. For full access to codes from the Great Plains for which we have tribal consent to publicly share, please visit our new online Tribal Public Health Law Database at <http://www.ncai.org/policy-research-center/initiatives/projects/tribal-public-health-law>.

KEY THEMES

In the codes that follow, there are several kay takeaways that emerge. First, Great Plains tribes are looking to data and research reports to provide more concrete evidence of the public health threats and trends they observe in their community. In many of the codes, there was a section dedicated to “Findings,” which detailed various statistics of interest and provided a compelling case for the code’s additional protections. Second, in the codes that pertain to animals, there is a marked appreciation for and understanding of animals as extended relatives who warrant dignity and respect. In fact, dignity and quality of life was pronounced in every code surveyed—whether an adolescent or an elder, a prisoner or free, a human or plants or animals. Last but certainly not least, these codes contain much of the same legal and technical language as non-tribal codes, but they are fundamentally interwoven with and rooted in age-old cultural understandings of stewardship and care.

SAMPLE CODES

* **Flood Damage Prevention.** As the Winnebago Tribal lands are subject to “periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base,” a code was passed to establish an area of special flood hazard, as specified in an inter-state Flood Insurance Study. It also sets standards for anchoring, construction materials, utilities, subdivision proposals, and the review of building permits. As several tribes in this region face the Great Plains region similarly face flood hazards, the Winnebago code provides comprehensive regulations and strategic plans informed by scientific data.
* **Domestic Violence Ordinance.** This code, from the Sisseton-Wahpeton Oyate, was among the first we surveyed that explicitly framed domestic violence as a public health crisis/emergency in the community. At its core, the code orders the development of a public health plan to “assess the impact of domestic violence on the public’s health” and deploy curriculum designed to prevent its future incidence. Public education efforts must “integrate the specialized function, knowledge, and expertise of elders and medicine people,” and “promote cultural teachings and traditional Dakota values so as to nurture non-violence,” respect, and an understanding of “woDakota.”
* **Beekeeping.** The Spirit Lake Sioux Tribal Council found it necessary to regulate the conduct of those engaged in beekeeping near the Reservation, as it “directly affects the health, safety, and welfare of the Tribe, and its members, and all other persons in the Reservation” and it is also “important to avoid the spread of disease among bees and to regulate their safety and welfare.” To this end, the Tribe designated a Bee Inspector and a licensing process for both commercial and non-commercial apiaries.
* **Pollution Control.** Passed in 1998, the Winnebago Tribe began regulating and abating air, water, and land pollution that endangers human health, property, and/or constitutes a public nuisance. Once more, a particular issue is taken with livestock production, as “no person may operate a livestock feedlot with a capacity of 500 animal units or more without obtaining prior written permission of the Winnebago Tribal Council.” A ban on the use or sale of polychlorinated biphenyl (PCB), a toxic waste, is also specified, in accordance with U.S. Environmental Protection Agency standards.
* **Tribal Contraceptives Code.** Increasingly, tribes are focusing their attention to areas of sexual health and access to care. Given the findings that “approximately one in four babies are born to teenage mothers; the infant mortality rate for Native Americans in the Northern Plains is twice the national rate; and that minor Indians maintain a higher risk of acquiring sexually transmitted diseases than non-Indians,” the Sisseton-Wahpeton Oyate adopted a code to authorize minor Indians (under the age of 18) to access and receive non-surgical contraceptives, without parental consent, to avoid pregnancy and sexually transmitted diseases.
* **Utilities.** The Spirit Lake Sioux Tribe found it necessary to regulate all utilities operating within the Reservation given its sovereign power and jurisdiction exclusive of the state of North Dakota; given the Reservation’s “checkerboarded” and rural nature; given “the fact that many homes of tribal members are heated solely by electricity…and the health and very lives of many tribal member and nonmembers are dependent on an assured flow of electricity during the harsh, subzero winter months”; and given the imperiling rise of utility rates. As a model, the code lays the groundwork for the appointment of a Tribal Utility Commission and promotes the coverage of utility costs during cold weather months for “customers whose household incomes are less than 185% of the federal poverty level,” among other provisions.
* **Open Burning**. To prevent fire dangers and other environmental impacts, the Winnebago Tribe passed a code to regulate the open burning of household wastes and other products. What is unique, however, are the exceptions listed, which include “fires used for educational, recreational, cooking or religious purposes.”
* **Treatment of Prisoners.** Another code one might not presume to find in a public health law database, the Sisseton-Wahpeton Oyate code on the treatment of prisoners was originally reviewed for its references to basic health needs and sanitary conditions. But beyond the quarantine and care of prisoners with infectious diseases, this code demands the maintenance of human dignity. Prisoners are afforded natural light for reading, proper ventilation and heating, “food of nutritional value adequate for health and strength,” and the clothing they are “made to wear must not be degrading or humiliating.”
* **Drug-Free Workplace.** The Winnebago Tribe enacted a code to eliminate the abuse of alcohol, illegal drugs, prescription drugs, or any other substance that would prevent the maintenance of safe, healthful, and productive work environments. Beyond concerns for accidental injuries to persons or property, there was an interest in ensuring “the reputation of the Winnebago Tribe of Nebraska employees as good, responsible employees worthy of public trust.” A Drug-Free Awareness Program was developed to inform employees of the dangers of drug/alcohol abuse, substance use policies, and the availability of counseling and rehabilitation.
* **Exclusion.** Codes enforcing the exclusion of non-members from tribal lands also address public health concerns. As the Spirit Lake Nation’s code reveals, ground for exclusion include “entering or remaining upon the Reservation or upon off-Reservation Devils Lake Sioux land while afflicted by a communicable or contagious disease, violating tribal customs, exploring or excavating items, sites, or locations of historic, religious, or scientific significance without the lawful authority or permission of the Tribe,” among others. It is clear here that beyond the physical threat a person may pose through illness or disease, there are cultural threats that carry equal weight.
* **Individual Sewage Disposal Systems.** This code was developed by the Sisseton-Wahpeton Oyate to ensure that discharged human wastes do not contaminate drinking water supplies; are not accessible to insects, rodents, or other carriers that may come into contact with food or drinking water; do not pollute bathing beaches or streams used for water or recreation; are not accessible to children; and are not noisome to one’s sight and smell. This latter reference to potential threats to one’s aesthetic sensibilities was observed in public health codes from across Indian Country. However, absent in this code yet found elsewhere is reference to the preservation of waterways and their resources for traditional uses by tribal members.
* **Animals.** While the control of animals, as potential threats to humans if aggressive and/or afflicted with disease, is pronounced in the Winnebago tribal code, there is also a marked emphasis on their protection. “No person shall fail to provide his animals with sufficient, good, wholesome, and nutritious food, potable water in sufficient quantities, proper air, shelter which provides protection from the weather…veterinary care to prevent suffering, and humane care and treatment.” Some protections are of mutual benefit, as “it is unlawful to allow premises where animals are kept to become unclean and a threat to public health by failing to diligently remove all animal waste…and apply accepted methods of insect and parasite control.” Unique features of this code include the ban of any/all pit bull breeds within the Reservation’s boundaries as well as the prohibition of keeping livestock in the Village of Winnebago.