



Tribal Public Health Law: NORTHWEST AREA

OVERVIEW

The Northwest Area of the National Congress of American Indians (NCAI) contains Oregon, Washington, and Idaho. 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 Northwest Area that have given NCAI permission to share their codes through the database include: Nez Perce Tribe; Squaxin Island Tribe; Confederated Tribes of the Umatilla Indian Reservation; Jamestown S’Klallam Indian Tribe; Quinault Indian Nation; and Swinomish Indian Tribe. 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 Northwest region 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

From the Northwest Area, we found a strong emphasis on the relationship between the health of the people and the land. Whether manifest in the understanding that “water is medicine” or the desire to protect subsistence rights to harvest marine resources, the environment occupied a prominent place in the tribal codes we reviewed. Beyond this, we found concerns for economic sustainability alongside the social and environmental. In codes aimed at preserving water quality, preventing fires, and regulating the sale of shellfish as well as tobacco and liquor, there is explicit interest in supporting bureaucracy or infrastructure to minimize economic losses to the Tribes and their members. Somewhat uniquely, the Jamestown S’Klallam Tribe has implemented a stand-alone code focused on emergency management and training for the potential outbreak of infectious diseases and vectors.

SAMPLE CODES

- **Water.** The introduction to the Water Code of the Confederated Tribes of the Umatilla Indian Reservation is titled, “Plíx iwá čúuš” (Water is medicine). In it, it speaks of how the Tribes “think of fourteen generations of cold, clean, plentiful water”—seven generations back, and seven into the future. Speaking directly to the health, identity and survival of the people, “Water keeps all our bodies for us. Čúuš is a part of everything. It is within *natítayt* (Indian), it is within *tiičám* (land), and it is within *núsux* (salmon)...We drink water to remind us of who we are. Čúuš cleanses and heals our bodies.” The purpose of the code is to manage water use in a way that protects the exclusive fishing rights, cultural and religious integrity of tribal members.



- **Nuisance Abatement.** According to the code, “There currently exist within the Nez Perce Reservation unsanitary, unsafe, and uninhabitable dwellings, including eyesores as a result of abandoned materials or debris” and these nuisances “are causing an increase in crime and constitute a menace to the health and safety of surrounding neighbors and residents.” As such, the Reservation Sanitarian/Environmental Health Officer is charged with inspecting the property and reporting back to the Tribal Council how to abate, remedy, or remove the nuisance.
- **Shorelines & Sensitive Areas.** The Swinomish code explicitly links the health of shorelines to the health, welfare, political integrity, and economic security of the Tribe—willing that the reservation’s residents “may live in harmony with each other and the natural environment.” These sensitive areas are valued for reasons both cultural and economic, including: “(1) Traditional hunting, fishing, and gathering activities; (2) Traditional spiritual practices; (3) Protection of groundwater; (4) Protection of property from potential flood damage, soil erosion, and damage due to geologic hazards; (5) Viewing and appreciation of nature; and (6) Solitude and contemplation.” As the code further details, “fishing and hunting, including shellfish harvest, are a central focus of the Tribe’s culture and are of critical importance to the Tribe’s economy and the economic well-being of its members.” With respect to human injury prevention, the threat of landslides and earthquakes is cited as a side-effect of unregulated development of at-risk lands.
- **Fire Prevention.** The Confederated Tribes of the Umatilla Indian Reservation have crafted a fire prevention code that addresses not only the need “to protect the human and physical resources of the Reservation from damage due to fire or related hazards,” but also the need to conserve “human and financial resources” by stressing prevention programs and ensuring a self-sufficient Fire Department. To address the latter concern, the Fire Department is authorized to establish fees and subscription rates for the delivery of timely fire protection.
- **Control of Infectious Diseases & Vectors.** In accordance with the American Public Health Association and the Centers for Disease Control and Prevention, the Jamestown S’Klallam Tribe has passed a code to “follow universal precautions when responding to, and disinfecting after, incidents involving blood or potentially infectious bodily fluids.” Continued training on infectious disease control and prevention is emphasized. For the control of vectors, “tribal staff will insure that all Tribal Facilities are free of insects, rodents, or other pests that may constitute a public health hazard”—providing periodic applications of pesticides, fungicides, and rodenticides, as required. The application of Regulated Control Agents is to be documented with records of contractual extermination services at the Tribal offices.



- Tobacco & Liquor.** The Nez Perce Tribe has turned to the law to regulate the taxation and sale of tobacco and liquor products in all forms on its Reservation—requiring the licensing of all Indian-owned Tobacco and Liquor Outlets. For tobacco, a tribal tax is collected and the purchaser’s contact information is collected in an effort to track every tobacco-related transaction on the Reservation, with monthly sale reports due to the Tribe. For liquor, a monthly tax of 5 cents for every dollar collected in liquor sales is due to the Tribe. While sales to minors are prohibited, mention of the health impacts of the use of these substances is absent from the code.
- Shellfish Sanitation.** Responding to a consent decree on shellfish sanitation in *United States v. Washington*, the Squaxin Island Tribe has implemented a code to control “all phases of the harvesting, processing, distribution, and shipping of shellfish” by both local and international merchants. This code details the depuration process; proper shucking, packing, and storage; and the sanitation needs for processing plants, which must be free of insects, rodents, vermin, and poisonous or toxic materials. As shellfish sales are a primary economic driver for the region, it is not surprising that tribes have adopted codes specifically regulating the harvest and cleaning of this food source.
- Dog Control.** Wishing to control dogs that are jumping at vehicles, snapping at or threatening persons in public places, the Swinomish Tribal code levies fees from the owner for each violation, with the ultimate consequence of disposing of the animal. The Tribe also found there were “certain breeds of dogs within the exterior boundaries of the Reservation that have...dangerous traits and temperaments...such dogs constitute a serious threat to the public health and safety of the Village.” As found in the Great Plains region, a ban on the ownership of pit bull terrier breeds was put into effect.
- Fireworks.** All licensed vendors of fireworks on the Nez Perce Indian Reservation must be tribal members operating on trust lands who can “demonstrate legal responsibility and protect the safety of the public.” The code bans the sale of fireworks to minors (under age 18) unless the fireworks “are of a nature that has been designated as ‘Safe and Sane,’”—e.g. do not explode or produce aerial effects. Licensees may not sell and purchasers may not buy fireworks if they are under the influence of alcohol or drugs.
- Bed & Breakfast Food Sanitation.** In addition to its general Food Sanitation code, which adopts the recommendations of the U.S. Food and Drug Administration, the Umatilla Tribal code covers the business practices of bed & breakfast (B&B) establishments on the Reservation. With respect to specific foods, “the use of home canned goods and meat and dairy products from unapproved sources is prohibited.” And regarding animals on the premises, “aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.”



- **Wastewater.** In 1965, the Squaxin Island Tribe implemented a code to protect the health of the tribal community and environment (fish-bearing streams and shellfish growing areas in particular) from the adverse effects of exposure to sewage wastewater and treatment discharges. To support the enforcement of regulations contained in the code, a Tribal Utility Commission was established. As a part of their duties, the Commission must provide topographic evaluations and may revoke or deny a permit for a sewage system that threatens the public health.
- **Traffic.** Within its Traffic Code, the Swinomish Tribe has implemented laws banning texting and the use of wireless communications devices (unless hands-free) while driving; requiring the use of safety belts, child passenger restraints, life preservers (on boats), and helmets; and prohibiting driving under the influence of alcohol or with an open container in the vehicle. Littering is also identified as a threat to public health and safety, as “no person shall throw or deposit upon any roadway any glass, nails, tacks, wire, cans, bottle, or any other substance likely to injure any person or animal or vehicle.”





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 key 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.