

## **Subpart P Removal and Exclusion**

### **P-1 Who May be Removed**

Any person, not a Member of the Pueblo of Pojoaque who commits any act, which would be a crime under State or Federal Law, or who violates any provision of this Code may be:

- (a) Asked to leave the Pueblo, or
- (b) Taken into custody for delivery to State or Federal authorities for prosecution under State or Federal statutes, by a duly authorized police officer of the Pueblo.

### **P-2 Hearing, Removal and Release**

(a) A person, not a Member of the Pueblo of Pojoaque, asked to leave the Pueblo by a police officer may request a hearing before the Tribal Court.

(b) Upon a finding based upon a preponderance of the evidence that the person asked to leave the Pueblo committed a crime under State or Federal Law or violated a provision of this Code, the Tribal Court may:

1. Order the person to leave the Pueblo; or
2. Order the person to comply, under penalty or removal, with the requirements of a Court order.

(c) If the Court finds that the person asked to leave the Pueblo did not commit the acts alleged, it shall so instruct the police officer.

### **P-3 Delivery to State or Federal Authorities**

Any person ordered by the Court to leave the Pueblo may:

- (a) Be escorted under custody of a police officer to the exterior boundaries of the Pueblo; or
- (b) Be delivered into the custody of the State or Federal authorities for prosecution under State or Federal law.

### **P-4 Illegal Aliens & Unauthorized Persons**

It is the policy of the Tribal Council to exclude illegal aliens from the Pojoaque Pueblo Land Grant. Any such individuals currently residing within the Pueblo will have to leave by May 9, 1982. These individuals will not be allowed on the Pueblo at any time.

(a) Anyone residing in the Pueblo having illegal aliens or unauthorized persons living with them will be subject to immediate Tribal Court action.

(b) It is the responsibility of each Tribal Member to enforce this Tribal Ordinance by bringing these offenders to the Tribal Court.

(c) Failure to obey Council orders will result in Tribal Court action.

**P-5 Household Residency Restrictions**

Tribal Members will not be allowed to have anyone other than their immediate family living with them.

**P-6 RESERVED**

**P-7 Orders of Exclusion/Removal of Non-Members**

(a) Inherent Power to Exclude.

1. The Pueblo of Pojoaque has used its traditional, inherent powers in the past to exclude and/or remove non-members from the exterior boundaries of the Pueblo of Pojoaque. The Tribal Officials and the Pueblo of Pojoaque Tribal Court are authorized to exclude and/or remove non-members from entering the exterior boundaries of the Pueblo of Pojoaque.

2. The inherent power of Indian tribes to exclude and/or remove non-members has been recognized and affirmed by American courts.

3. Exclusion and/or removal means the temporary or permanent expulsion of an individual from within the exterior boundaries of the Pueblo of Pojoaque or any part of the exterior boundaries.

(b) Persons and Grounds for Exclusion or Removal.

1. All persons, except those authorized by federal law to be present within the Pueblo, may be excluded or removed. Any person who owns or works on non-Indian fee land may be excluded from the Pueblo as long as they are not denied access to or use of such property.

2. A person may be subject to expulsion or removal if they pose a threat to the health, safety or welfare of a Tribal Member or if their conduct substantially threatens or has a direct effect on the political integrity, institutional process, economic security of the Pueblo, a member of the Pueblo, a resident, an employee, or a visitor to the Pueblo of Pojoaque.

(c) Procedure and Required Hearings.

1. A Tribal Official may order the immediate removal or expulsion of any person at any time. The Order shall be reviewed by the Pueblo of Pojoaque Tribal Court to

ensure due process and to determine the extent and duration of the removal or exclusion.

2. The Pueblo of Pojoaque Tribal Court may, as part of a Court proceeding, on its own motion, or on a petition filed in the Court, consider the removal or expulsion of any person.

3. The Court shall consider the patterns of misconduct, the circumstances of each act, and the significance of each act in issuing an Exclusion and/or Removal Order.

4. The Court shall ensure that due process is afforded all parties subject to an Exclusion and/or Removal Order. The Order shall include the duration and scope of the exclusion and/or removal.

5. Emergency and temporary Orders may be issued by either a Tribal Official or the Court.

6. All decisions by the Pueblo of Pojoaque Tribal Court shall be considered final.

(d) Enforcement.

Any person who violates an Order of Exclusion and/or Removal may be subject to the following:

1. The Court may direct a Tribal police officer to remove the violator from the Pueblo at the violator's expense.
2. The Court may direct a Tribal police officer to prevent the violator from reentering the Pueblo.
3. The Court may direct a Tribal police officer to refer the matter to the United States Attorney or to the New Mexico District Attorney for appropriate action.
4. The Court may direct a Tribal police officer to refer the matter to the Pueblo of Pojoaque for appropriate civil or criminal action through the Tribal Law and Order Code.

**P-8 Exclusion of Sexual Offenders**

(a) A sexual offender shall be considered as any Indian found guilty of a sex offense crime or any Indian who had been found more likely than not to have committed a sex offense against another person, and those findings of guilt or findings of more likely than not have determined by any Tribal, Federal or State Court.

(b) Sexual offenders shall be permanently excluded from entering the exterior boundaries of the Pueblo of Pojoaque.

**P-9 Exclusion from Entering Gaming Facilities and Parking Areas**

(a) Gaming on the Pueblo of Pojoaque is a privilege, not a right.

(b) Persons and Grounds for Exclusion.

1. Any person whose conduct is undesirable may be excluded from the Pueblo of Pojoaque gaming facilities and parking areas.
2. Undesirable conduct includes, but is not limited to: causing a public disturbance, fighting, stealing, disorderly conduct, panhandling, suspicion of card counting, cheating, fraud, intoxication, theft, harassment, badgering of patrons or employees, illegal manipulation of games, loaning money to staff, threats to staff or patrons, suspicious activity, and any illegal activity.
3. A person may request a voluntary exclusion from the gaming facilities and adjacent parking areas.
4. The executive director of Pojoaque Gaming, Inc. or Buffalo Thunder, Inc. may determine whether any other activity is undesirable.
5. Persons excluded may be escorted from the Pueblo of Pojoaque gaming facilities and parking areas.
6. Persons suspected of illegal activity may be detained for a reasonable period of time while a law enforcement officer is contacted.

(c) Procedure for Exclusion.

1. When the undesirable activity is identified, the executive director of Pojoaque Gaming, Inc. or the executive director of Buffalo Thunder, Inc. or the manager on duty shall be contacted.
2. The executive director of Pojoaque Gaming, Inc. or the executive director of Buffalo Thunder, Inc. or the manager on duty shall be considered the management official who determines whether the activity is undesirable and whether the person should be excluded.
3. If the activity is undesirable and the person should be excluded, their photo shall be taken by either the Security Department or the Surveillance Department.
4. The person shall be served with a copy of a completed Exclusion Form and an Exclusion Fact Sheet.
5. The person shall be escorted from the premises by the Security Department.

(d) Appeal of the Exclusion.

1. Unless appealed, an exclusion is permanent.
2. An exclusion may be appealed, in writing, within ten (10) calendar days after the exclusion is issued.
3. Upon receiving a written appeal, the executive director of the Pueblo of Pojoaque Gaming Commission (“PPGC”) shall schedule a hearing before the PPGC.
4. The PPGC executive director shall mail notice of the scheduled hearing to the appellant.
5. The Security Department of Pojoaque Gaming, Inc. or Buffalo Thunder, Inc. shall represent the gaming facility at the hearing.
6. The appellant may be represented by an attorney.
7. Either party may present witnesses and documentary evidence at the hearing.
8. The rules of evidence shall not apply to the hearing.
9. The PPGC shall provide its written decision within fourteen (14) calendar days after the hearing.
10. The written decision shall include the PPGC’s decision on whether the exclusion was warranted, the duration of any ongoing exclusion, any conditions of a limited exclusion, or the termination of the exclusion. The written decision shall also include whether a trespassing charge is automatic for any future violations of the exclusion.

(e) Enforcement of the Exclusion.

1. The Surveillance Department of Pojoaque Gaming, Inc. and Buffalo Thunder, Inc. shall keep an up-to-date log on all exclusions. The log shall include a photo of the excluded person.
2. The Surveillance Department shall present a report to the Pueblo of Pojoaque Gaming Commission on an annual basis by July 1. The report shall include: the cumulative number of persons excluded from gaming facilities, the number of voluntary exclusions, and how many persons have been excluded for each calendar year.
3. The Surveillance Department is responsible for immediately notifying the Security Department dispatch office of any excluded person who has been observed on the premises or parking areas. If an excluded person is observed by the Security Department, they shall immediately notify the Surveillance Department.

4. The Security Department may detain or escort from the premises any person who violates an exclusion.
5. The Tribal Police, in conjunction with their commissions from the Santa Fe County Sheriff, may file applicable civil or criminal trespass charges in State and/or Tribal Court or any other applicable civil or criminal charges.

**P-10 Apprehension in Reservation Area**

Whenever the Governor is informed and believes that a Tribal Member has committed a crime outside the Pueblo of Pojoaque and is present in the Pueblo of Pojoaque, using it as an asylum from prosecution, the Governor may order a police officer of the Pueblo of Pojoaque to apprehend the Tribal Member and deliver him to the authorities seeking his arrest at the boundaries of the Pueblo of Pojoaque, if sought by another Pueblo court or State authority who have entered a reciprocal agreement with the Pojoaque Tribal Council for the return of persons sought by the Tribal Court.

**P-11 Hearing and Release**

If a person apprehended pursuant to Section P-10 of this Subpart, so demands, he shall be taken by the arresting police officers to the Tribal Court, where a Judge shall hold a hearing. If it appears that there is not probable cause to believe the Tribal Member is guilty of the crime with which he is charged outside the Pueblo of Pojoaque, or if it appears that the Tribal Member probably will not receive a fair trial in the state court, the Judge shall order the Tribal Member released from custody.