SOLID WASTE CODE WRITING
FOR TRIBAL ENVIRONMENTAL PROFESSIONALS

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Legislation is making laws. A legislator is one who makes law.

Much of the time, the person writing and creating a law is (or should be!) a lawyer. However, some types of law can be created by people who are not lawyers. Solid Waste laws are often this type of law, and they can be developed by non-lawyers.
MAIN FOCUS AREAS FOR TRIBAL PROFESSIONALS WHO ARE INTERESTED IN DEVELOPING A SOLID WASTE CODE:

- Community Need, Interest, and Buy-In
- Jurisdiction
- Research
- Writing/Deciphering/Using Plain Language
- Enforcement
- Outline and Legislative Process
COMMUNITY NEED, INTEREST, AND BUY-IN

Successful laws often start with community conversations.

To promulgate (a favorite attorney word) means to make widely known, or to publish a law. Organizing a community meeting or conversation before you begin working on a law increases its chances of becoming an effective law.

What specific issues need to be addressed? Who should you involve? Who could be helpful? Who has the final say if you do this work?
JURISDICTION

- “Juris” (law) + “dictio” (saying) = The power to say what the law is.
- Jurisdiction is the official power to make legal decisions and judgments.
- For tribal jurisdiction, there are 2 main questions:
  Type of Person + Type of Land, or “Who are we, and where are we?”
- There are entire classes taught on the issue of tribal jurisdiction. It is possible that your tribe already defines its jurisdiction over people and defines its jurisdictional boundaries in its constitution or in its code. If not, you will most likely need help to fine-tune your code so that it claims the proper legal jurisdiction over people and places.
- Legal review is the best way to ensure your code claims the correct jurisdiction over the right people (i.e. tribes have no criminal jurisdiction over non-Indians in Indian Country [except for DV VAWA 2013]). But this should not stop you from writing! Just keep in mind you will want a lawyer to review your jurisdiction sections and phrasing.
RESEARCH: WHERE TO START LOOKING?

- Many tribes publish their laws online.
- The Native American Rights Fund (NARF) in Boulder, Colorado runs the National Indian Law Library (NILL). It is a great place to start.
- Google can also be a helpful start.
- Keep a research log to keep track of all of the sites you visit and the codes you read.

- [http://www.narf.org/nill/](http://www.narf.org/nill/)
This is a good example of a targeted environmental code. The Tribe’s priorities are:

1) Dumping (divided into 9 separate sections)
2) Contracting with Garbage Collecting Services
3) Permits for Recycling and Transfer Stations,
4) Closure of Open Dumps, and
5) 13 pages (very manageable).

The Tribe uses both civil and criminal penalties. They use “person” and do not say that they don’t have jurisdiction over some persons. Very well written!
RESEARCH CONTINUED...

- **A Sample of Tribal Codes that you can Google (there are many!):**
  - Pawnee Nation Natural Resources Protection Act—138 pages
  - Cherokee Nation: 6 separate environmental codes on their website (search: Cherokee nation solid waste code)
  - Turtle Mountain—103 pages long, but online link turns into a word doc, which makes it easier to cut and paste
  - Blackfeet Solid Waste Code—22 pages
  - The National Indian Justice Center (NIJC) in Santa Rosa, CA has a Model Waste Code available online.
Writing/Deciphering/Using Plain Language

- **Rule #1: Only write words that you know the meaning to!**

- Writing law can be intimidating. Sometimes, writers often take language from a current law and use the same language in a new law because changing that language can be difficult (for several reasons). But it is VERY important that you don’t copy/use language in your law that you don’t 100% understand.

- **Rule #2: Rearrange and reorganize language anywhere you can to make the meaning clearer and easier to read.**

- When to use legal phrasing vs. plain language is disputed in the legal world. Many laws are written for lawyers to read, and lawyers have been trained to understand the nuances of legal terms and phrases. In these instances, language with legal phrasing makes sense. However, when writing a law that is meant for regular people to read, it is almost certainly better to write that law using plain language.
CLARITY EXAMPLE: LAWYERS LOVE TO SAY “PURSUANT TO”

- **Example from Swinomish Solid Waste Code:**
  - **Liability.** In addition to any penalties assessed or orders issued *pursuant to* STC 10-06.020 and any costs assessed *pursuant to* STC 10-06.060, any person who…

- Ok. But what about this? Replace pursuant with “under”:
  - **Liability.** In addition to any penalties assessed or ordered *under* STC Section 10-06.020 and any costs assessed *under* STC Section 10-06.060, any person who…
OTHER COMMON LEGAL WORDS YOU MAY ENCOUNTER

- Codified = make a draft law officially an active law

- Injunction = a court order forcing a person/party to do or not to do something

- Abatement = reduce, decrease, alleviate

- Conversion = a fancy way to say “steal”

- Mitigate = minimize the amount of loss/damage
ENFORCEMENT

- Does your tribe have a police department?
- Does your tribe have a tribal court?
- Possible enforcement mechanisms:
  1) Administrative Remedies
  2) Civil Penalties
  3) Criminal Penalties
- Sometimes, (especially in Alaska!) you must think outside of the box in order to find an effective way to enforce your code.
OUTLINE YOUR CODE

- Make an Outline. If you’re not sure where to start, you can use the focus areas from this presentation and write down all your questions under each area.

- **Example Questions:**
  - Why do you need a law?
  - What does your law need to say?
  - What needs to be included? What can be left out?
  - Who does the law apply to?
  - How will your tribe enforce this law?
  - What is your tribe’s legislative process?
OUTLINE (BROAD) CODE EXAMPLE

- **I. Purpose:** Why does the tribe need this law? What outcome does the tribe want?

- **II. Jurisdiction:** Who is the tribe exercising jurisdiction over?

- **II. Definitions:** Not required, but often helpful. You don’t need to write the definitions yet, but identify words you will likely use.

- **III. What are the rules?** What is permitted? What is not permitted?

- **IV. What are the penalties?** What’s the process when someone breaks the rules? Who is the authoritative body? Tribal court? Other?
OUTLINE (MORE SPECIFIC) CONTINUED...

- **I. General Provisions.** This chapter could contain the code's purpose, definitions, and other legal necessities such as applicability, severability, preserving sovereign immunity.

- **II. Prohibited Acts.** What kind of environmental code are you working on? What are the needs of the Tribe?

- **III. Enforcement.** Will the penalties be civil (fines) or criminal? Is it necessary to break up any offense into smaller parts? (i.e. littering vs. dumping). *NOTE: This is where jurisdiction is important. A tribe cannot claim criminal jurisdiction over a non-Indian for a solid waste offense.*

- **IV. Authority.** Is there a tribal court? What is the process when someone breaks the rules?
Set small goals. Example: today, I’m going to find 5 different definitions of composting and choose the best one that fits the tribe I’m writing for. Or, today I’m going to look at as many policy sections and see if any of them work for me.

Code writing can be overwhelming. Code writing is almost always a slow process. Working with a team can be really helpful, but it’s also important that the writing is left up to one person so that the end result is very reader-friendly.

Only use words and sentences that makes sense to you. Don’t be afraid to take pieces out of a code that you are using as a model if the piece does not make sense to you. If you don’t know a word, look it up. If you are writing code for people who probably won’t know what the word means either, look for an alternative word.

What about plagiarism? Normally, copying the words of others is absolutely wrong and unacceptable. Code writing seems to be the one exception that I’ve found in the professional world—taking words from one law and using them in a new or different law is not only allowed, but encouraged in many situations.
LEGISLATIVE PROCESS

- Passing code and creating law can be a difficult and time consuming process regardless of the system and structure where you are working.
  - If the code is held up, what changes could be made to help it move forward?
  - What is the tribe’s record keeping process for new laws?
  - Does the tribe publish its laws?
  - Are there forms that need to be drafted to compliment new law?
  - Remember to look around: has anyone been through a challenge you are currently facing?
LEGAL REVIEW

- After you have a completed draft of your code, you will need to give it to a lawyer to review it. Try to let go of any “creative process” ownership you may feel towards your law. Sometimes nothing but a legal phrase will work to convey the true and actual meaning of a sentence, and this is what lawyers are trained to see and to do.

- Maybe you replaced a “pursuant to” here and there, and the lawyer may change it back. That’s ok! Sometimes, “pursuant to” really does have to be there (but not nearly as often as we lawyers like to use it).

- If there are parts of your code that are important to you, or language that you chose specifically for a reason, tell the attorney that. Being able to explain why you want to keep a word or a sentence can help the attorney look at it from your perspective and keep it in even if it’s non-conventional.
ITEP OFFERS A CLASS

- Development and Implementation of Tribal Solid Waste Codes and Ordinance (5 day course)

  - Course Highlights:
  
  - Importance of Developing Community-Specific Codes & Navigating the Jurisdictional Labyrinth
  
  - Drafting Codes – Conducting Research and Deciphering Code Language & Identifying Solid Waste Issues
  
  - Outreach Methods & Strategies for Cultivating Public, Legal, and Governmental Support
  
  - Enforcement Issues, Enforcement Options, Enforcement Alternatives
  
  - Conducting/Managing Legal Review/Administrative Processes
Thank you!!

- Please feel free to contact me with any questions. I have some ability to review codes if you do not have access to an attorney to review it. Also remember to contact ITEP if you need help because they are a great resource!

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