

TRIBAL CODE

CHAPTER 74

AN ORDINANCE REGULATING THE ACTIVITIES OF MINORS

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HISTORY NOTE:

Current Ordinance:

Adopted June 9, 1986, Resolution No. 193(86).

Enacted by referendum July 8, 1986, and effective as to members on that date.

Secretarial approval July 15, 1986, and effective as to nonmembers on that date.

Amendments:

Resolution No. 152(91), June 9, 1986 Amendment to Chapter III, Provisions Relating to Alcohol and Drugs to that of current state legislation regarding the legal drinking age of twenty-one (21).

Resolution No. 10(97), January 13, 1997, amends 74.301(2) Tobacco is recognized as a drug as it pertains to 74.307, 74.308, 74.309.

Resolution No. 444(02), September 24, 2002 amends 74.504 penalties adding subsection 7.

Resolution No. 156(06), June 27, 2006, amends Curfew Ordinance to all children under the age of 18; 10 P.M. during daylight savings time and 9:00 P.M. during standard time.

Resolution No. 236(06), October 10, 2006, 74.304(3) No adult may intentionally encourage or contribute to a violation of Section 74.303(1) or (2).

Prior Ordinances:

Portions of the Law and Order Ordinance dealt with the matters contained in this ordinance. See History Note to Tribal Code Ch. 70.

An Ordinance Designating Curfew adopted May 24, 1976, by resolution. Repealed by the current ordinance.

Resolution No. 363(95), September 11, 1995, 74.203 (2) amends "curfews" 10:00 P.M. on non-school days when Daylight Savings Time is in effect.

Information only. Resolution No. 500(96) December 23, 1996, Tribal Cigarette Ordinance prohibit possession, purchase and use of tobacco products by certain age groups of children; the possession and use of tobacco produced by prohibited on the school premises, except for ceremonial purposes, and that if a citation is issued it be for community service hours only.

TRIBAL CODE

CHAPTER 74

AN ORDINANCE REGULATING THE ACTIVITIES OF MINORS

CHAPTER I: GENERAL PROVISIONS

74.101 Purpose.

The purpose of this ordinance is to provide for the welfare of reservation residents and the safety and protection of children by regulating the activities of children on the reservation, and of adults who deal with children, and by imposing certain duties and obligations upon the legal custodians of children.

74.102 Authority.

This ordinance is enacted pursuant to Article VI, Sections 1(a), (j), (2), (n), (q), and (u) of the Tribal Constitution and Section III of the Tribal Liquor Control Ordinance.

74.103 Effective Date.

This ordinance shall take effect as to members and tribal children on the day following the date of approval of this ordinance by referendum. This ordinance shall take effect as to non-members and those who are not tribal children upon approval by the Secretary of the Interior as provided in Article VI, Section 2 of the Tribal Constitution.

74.104 Abrogation and Greater Restrictions.

When this ordinance imposes greater restrictions than those contained in other tribal ordinance, codes, or resolutions, the provisions of this ordinance shall govern.

74.105 Interpretation.

In its interpretation and application the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed as a limitation upon or a repeal of any other tribal power or authority.

74.106 Severability and Non-Liability.

(1) If any section, provision, or portion of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

(2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents or employees for any damages which may occur as a result of reliance upon or conformance with this ordinance. The Tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

74.107 Applicability.

(1) This ordinance shall apply to activities on the reservation.

(2) This ordinance shall apply to members and tribal children and their parents.

(3) This ordinance shall also apply to the activities of non-members upon tribal lands as more particularly described herein: provided, that if the Town of Lac du Flambeau shall adopt an ordinance in substantial conformity with the provisions hereof and shall authorize enforcement of such ordinance by the tribal law enforcement officers, this ordinance shall apply only to members and tribal children and their parents.

74.108 Implied Consent.

Entry upon tribal land without the permission of the Tribe is prohibited. Such permission when given is expressly conditioned upon the consent of the person entering to the jurisdiction of the Tribe for purposes of enforcing this ordinance. Entry made not in conformity with the provisions of this ordinance is made without consent. Any person who enters upon tribal land shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this ordinance.

74.109 Definitions.

For purposes of this ordinance, the following terms shall have the meanings ascribed below:

(1) "Child" means any unmarried person who is less than 18 years of age. The singular shall stand for the plural when more than one child is involved.

(2) "Member" a person enrolled in the Tribe.

(3) "Parent" includes a biological or adoptive parent, guardian, foster parent, legal custodian or person acting in place of a parent, including an Indian custodian as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(6).

(4) "Reservation" the area within the external boundaries of the Lac du Flambeau Indian Reservation.

(5) "Tribe" the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(6) "Tribal Child" a child who is either"

(a) an enrolled member of the Tribe; or

(b) eligible for enrollment in the Tribe as of right;

(c) the biological child of an enrolled member of the Tribe who is eligible for membership by adoption.

(7) "Tribal Court": the Lac du Flambeau Tribal Court.

(8) "Tribal land": lands and waters or any interest herein within the reservation:

(a) owned in fee by the Tribe; or

(b) held in trust for the Tribe by the United States; or

(c) held in trust for the United States for the benefit of individual Indians, their heirs and devisees.

CHAPTER II: CURFEW

74.201 Tribal Children Under 18.

No tribal child under the age of 18 shall be out of doors at the following times:

(1) Between the hours of 9:00 p.m. and daylight during the period when Central Standard Time is in effect.

(2) Between the hours of 10:00 p.m. and daylight when Daylight Savings Time is in effect.

74.202 Other Children Under 18.

No child who is not a tribal child and is under the age of 18 shall be allowed out of doors on tribal land during the time periods set forth in §74.201.

74.203 Exceptions to Curfew.

The curfews established in §74.201 through §74.202 shall not apply in the following circumstances:

- (1) The child is accompanied by a parent or other adult with the consent of a parent.
- (2) The child is over 14 years of age and is engaged in employment or traveling to or from employment.
- (3) The child has attended a school, town, tribal, or community event at which children are allowed and it is within one hour from the termination of the event.
- (4) Emergency circumstances require the child to be out of doors.

Resolution No. 156(06), June 27, 2006

CHAPTER III: PROVISIONS RELATING TO ALCOHOL AND DRUGS

74.301 Additional definitions.

For purposes of this section, the following terms shall have the meanings ascribed below:

- (1) "Alcohol beverage." A fermented malt beverage or intoxicating liquor as defined in the Tribal Liquor Control Ordinance, Tribal Code Ch. 40, §40.201(2) and (3).
- (2) "Drug." A controlled substance in Schedules I to V of Wis. Stat. Ch. 161, Sub. Ch. II. For the purposes of §74.307 through 74.309 tobacco is recognized as a drug.
- (3) "Intoxicant." A drug or alcohol beverage.
- (4) "Under the influence of an intoxicant." The actor's physical or mental functioning is substantially impaired as a result of the use of an intoxicant.

74.302 Under the Influence: Prohibition.

(1) No tribal child or tribal member under the age of twenty-one (21) shall be under the influence of an intoxicant.

(2) No child shall be under the influence of an intoxicant on tribal land.

74.303 Use, Procurement, of Possession of Intoxicant; Prohibition.

(1) No tribal child or tribal member under the age of twenty-one (21) shall use, consume, procure, attempt to procure, or be in possession of an intoxicant except pursuant to a prescription for the use of such intoxicant.

(2) No child who is not a tribal child shall use, consume, or be in possession of an intoxicant on tribal land, except pursuant to a prescription for the use of such intoxicant.

74.304 Intoxicants: Restrictions Relating to Tribal Children.

(1) No person may procure for, sell, dispense or give away any intoxicant to a tribal child or a tribal member under the age of twenty-one (21), except pursuant to a prescription for the use of such intoxicant.

(2) No adult may knowingly permit or fail to take action to prevent the illegal consumption of intoxicants by a tribal child or a tribal member under the age of twenty-one (21) on premises owned by the adult or under the adult's control.

(3) No adult may intentionally encourage or contribute to a violation of Section 74.303(1) or sub. (1) or (2).

74.305 Presence of Tribal Child in Licensed Premises.

A tribal child or tribal member under the age of twenty-one (21) not accompanied by his or her parent may not enter or be allowed on any premises for which a license or permit for the retail sale of alcohol beverages has been issued pursuant to the Tribal Liquor Control Ordinance, Tribal Code Ch. 40, or loiter or congregate within 100 feet of such premises. This section does not apply to:

(1) A child who is a resident, employee, lodger or boarder on the premises;

(2) A child who enters or is on a Class A liquor (off-sale) premises for the purpose of purchasing times other than alcohol beverages.

(3) Premises operated under a Class B Beer or Liquor license (on-sale) where the principal business conducted is that of a restaurant, provided that the child is not in the bar area of the restaurant.

74.306 Falsely Representing Age: Prohibition.

No tribal child or tribal member under the age of twenty-one (21) shall falsely represent his or her age for the purpose of receiving alcohol beverages.

74.307 Use, Procurement, or Possession of Tobacco: Prohibition.

(1) No tribal child shall use, consume, purchase, procure, attempt to procure, or be in possession of tobacco on tribal land, except for religious or ceremonial purposes.

(2) No child who is not a tribal child shall use, consume, purchase, procure, attempt to procure, or be in possession of tobacco on tribal land, except for religious or ceremonial purposes.

74.308 Tobacco: Restrictions Relating to Tribal Children.

(1) No person may procure for, sell, dispense or give away any tobacco to a tribal child, except for religious or ceremonial purposes.

(2) No adult may knowingly permit or fail to take action to prevent the illegal use of tobacco by a tribal child on premises owned by the adult or under the adult's control.

(3) No adult may intentionally encourage or contribute to a violation of sub. (1) or (2).

(4) No adult may use or consume tobacco upon the premises or grounds of the Lac du Flambeau Public School during times when tribal children are in attendance, except for religious or ceremonial purposes.

(5) No adult may use or consume tobacco upon the premises or grounds of the Lac du Flambeau Abinoojiiyag Center, during times when tribal children are in attendance, except for religious or ceremonial purposes.

74.309 Falsely Representing Age: Prohibition.

No tribal child shall falsely represent his or her age for the purpose of purchasing tobacco.

CHAPTER IV: PARENTAL RESPONSIBILITY

74.401 Parental Responsibility for Violations.

(1) It is the duty and responsibility of the parent with custody of a child to see to it that the child complies with the provisions of this ordinance.

(2) The custodial parent of a child who violates any provision of this ordinance may be considered a party to the violation without proof of actual knowledge of the violation.

74.402 Responsibility for Care Costs.

The custodial parent of any child who is taken into custody for violation of this ordinance shall be liable for the entire cost of any crisis care or other necessary care of sheltering of the child necessitated by the unavailability of such parent to accept and assume the custody and care of the child. Such costs shall be assessed against the custodial parent as a part of any dispositional order entered by the tribal court.

74.403 Liability for Damages.

(1) The custodial parent of parents of a child, in any circumstance where he or she may not be otherwise liable under the common law, shall be held liable for damages to property or of personal injury attributable to a willful, malicious or wanton act of the child not to exceed \$1,000.

(2) Maximum recovery from any parent or parents of an child may not exceed the imitation provided in sub. (1) for any one act of such child, and if two or more children of the same parent or parents commit the same act, recovery shall not exceed in the aggregate \$1,000.

(3) Such damages may be assessed by the tribal court in any dispositional order in any case brought against the child or parent by the Tribe.

(4) This section shall not limit the amount of damages recoverable by an action against the child or parent except that any amount recovered shall be reduced and apportioned by the amounts received from the parent or parents under this section.

CHAPTER V: ENFORCEMENT AND PENALTIES

74.501 Enforcement Officers.

(1) Any tribal law enforcement officer may enforce the provisions of this ordinance. In addition, any law enforcement officer empowered to enforce the laws of the State of Wisconsin is hereby empowered to enforce the provisions of this ordinance and may institute proceeding in tribal court by issuance of a citation by using the state-approved form and following the procedures for issuance of a state citation.

(2) Any person authorized to enforce the provisions of this ordinance may execute and serve warrants and other process issued by tribal court in the same manner as any law enforcement officer of the State of Wisconsin may serve and execute warrants and other process under the state law.

(3) Any person authorized to enforce the provisions of this ordinance may stop and question any person upon reasonable belief that there is a violation of this ordinance. Any person authorized to enforce this ordinance may issue a citation to any person upon reasonable belief that such person has violated a provision of this ordinance and may seize and hold any property authorized to be seized pursuant to the civil remedial forfeiture provisions of this ordinance.

74.502 Taking a Child Into Custody.

(1) A child found violating a provision of this ordinance shall be detained and taken into custody for the purpose of returning such child to the care and control of the custodial parent; provided, that if the child is over the age of 14 and of suitable condition, the child may be returned to his or her home and released in his or her own care.

(2) If the custodial parent cannot be located after reasonable effort or is unable to accept the care and custody of the child, the officer shall attempt to locate a relative or other responsible adult willing and able to accept the care and custody of the child, and may release the child into the care and custody of such person.

(3) If no suitable person can be located with reasonable effort who will take care and custody of the child, a tribal child shall be taken into emergency custody pursuant to the Child Welfare Code, Tribal Code Ch. 31, §31.303 (1)(d) and turned over to the Child Welfare Office. A child who is not a tribal child shall be referred to Vilas County Department of Social Services.

74.503 Resisting of Fleeing an Officer; Identification.

(1) No person may assault, obstruct, or flee from any law enforcement officer enforcing or attempting to enforce the provisions of this ordinance.

(2) Any child shall produce identification and give his or her name, address, age, and parental information to any law enforcement officer upon request to do so. Any person who does not possess suitable identification may be detained for purposes of verifying age and identifying information.

74.504 Penalties.

Any person who violates any provision of this ordinance shall be liable for penalty as follows:

- (1) For a civil remedial money penalty in the amount of \$20 to \$500.
- (2) For a civil remedial forfeiture of any property used in the commissions of the violation of this ordinance.
- (3) For suspension or revocation of any license or permit issued pursuant to the Tribal Liquor Control Code.
- (4) For care costs as provided in §74.402.
- (5) For damages as provided in §74.403.
- (6) For court costs in the amount of \$10.
- (7) For violations of section 74.303(1) if the person is 17 years of age or older, a fine of not to exceed \$500 and/or imprisonment not to exceed 90 days. *Resolution No. 444(02), September 24, 2002.*

74.505 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance is principal and may be charged with the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of a violation.

- (2) A person is concerned in the commission of a violation if the person:
 - (a) directly commits the violation;
 - (b) aids and abets the commission of it;
 - (c) is a party to a conspiracy with another to commit it or advises, hires, or counsels or otherwise procures another to commit it; or

(d) is responsible as a custodial parent under §74.401(2).

74.506 Enforcement Procedure.

(1) Jurisdiction is hereby conferred upon the tribal court over matters related to enforcement of this ordinance.

(2) Proceeding involving children aged 14 or older and adults shall be conducted in accordance with Chapter IV of the Tribal Court Code, Tribal code Ch. 80; provided, that citations issued thereunder may be served by ordinary mail.

(3) Proceedings involving children under the age of 14 shall be conducted in accordance with Chapter III of the Child Welfare Code, Tribal Code Ch. 31.

(4) The institution of proceeding for violation of this ordinance is no intended to inhibit or prevent the filing of criminal or juvenile delinquency charges by the State of Wisconsin, any action for damages, or a child welfare petition under Chapter III of the Child Welfare Code, Tribal Code Ch. 31, against the same person for the same act alleged to be a violation hereof.