

TRIBAL CODE
CHAPTER 67
ROAD ENCROACHMENTS

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History Note:

Current Ordinance:

Adopted 10/17/2005, Resolution No 254(05), effective 10/17/2005.

TRIBAL CODE

CHAPTER 67

ROAD ENCROACHMENTS

67.101 Purpose.

The purpose of this Ordinance is to provide for a safe and unobstructed highway right-of-way use.

67.102 Authority.

This ordinance is adopted pursuant to Article VI, Sections 1(a) and (u) of the Tribal Constitution.

67.103 Effective Date.

This ordinance shall take effect upon approval by the Tribal Council and after this ordinance has been posted for 10 days pursuant to the Tribal posting rules.

67.104 Abrogation and Greater Restrictions.

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

67.105 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 repeal of any other Tribal power or authority.

67.106 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 shall not be affected thereby.
- (2) The Tribe declared that there is no liability on the part of the Tribe, it agencies, agents or employees for any damages which may occur as a result of reliance upon or conformance with in Ordinance. The

Tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

67.107 Applicability.

This ordinance shall apply to the activities of members, tribal children, non member Indians and non-members on the Reservation.

67.108 Implied consent.

Entry upon Tribal land without permission of the Tribe is prohibited. Such permission, when given, is expressly conditioned upon the consent of the person so entering 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.

67.109 Definitions.

As used in this ordinance:

- (1) Department shall mean the Tribal Roads Department.
- (2) Court shall mean the Lac du Flambeau Band of Lake Superior Tribal Court.

67.110 Enforcement.

- (1) This code shall be administered and enforced in accordance with the Code Compliance Code Ch. 64, governing the administration and enforcement of codes generally.
- (2) Any person authorized to enforce the provisions of this ordinance may seize and hold any property needed as evidence.

67.111 Highway Encroachments.

- (1) Order for removal. If any road right-of-way shall be encroached upon, under or over by any fence, stand, building or any other structure or object, the Department may order the occupant or owner of the land through or by which the road runs, and to which the encroachment shall be appurtenant, to remove the encroachment beyond the limits of the road within 15 days. The order shall specify

the extent and location of the encroachment with reasonable certainty, and shall be served upon the occupant or owner of the land through or by which the highway runs, and to which the encroachment shall be appurtenant.

- (2) Non-removal. If the occupant or owner upon whom the order is served shall not deny such encroachment, under sub(3) herein, and the encroachment is not removed within 15 days after the service of such order, the occupant or owner shall forfeit \$1 for every day after the expiration of the time during which the encroachment continues. An action to recover such penalty shall be brought in Tribal Court. In all cases where a judgment is rendered, the judgment shall order that the occupant or owner remove the encroachment within the time fixed by the judgment, and upon failure to obey the order, the Department may remove the encroachment and recover from the occupant or owner the cost thereof.
- (3) Denial of encroachment, procedure. If, within 15 days after being served with the order issued under sub (1) herein, the owner or occupant delivers a denial in writing of the alleged encroachment to the Department may commence and action to remove the encroachment in Tribal Court.