

TRIBAL CODE

CHAPTER 70

LAW AND ORDER ORDINANCE

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HISTORY NOTE:

Adopted by Tribal Council resolution December 20, 1948.

This ordinance fell into disuse with the enactment of P.L. 280 in 1953, and though never repealed has not been enforced since then.

Former Chapter III was superseded in its entirety by Tribal Code Chs. 30, 31, and 82.

Chapter II has been substantially modified and superseded by Tribal Code Chs. 80 and 81.

Specific crimes in Chapter IV have been replaced or modified by portions of Tribal Code Chs. 40, 43, 71, 72, 73, and 74.

This chapter was entirely rewritten and adopted by Resolution 235(95). The ordinance was approved by the Minneapolis Area Director, Denise Homer, on September 13, 1995.

Amendments:

Section 70.301 amended January 22, 2007, Resolution No. 19(07).

Chapter IV added as Tribal Gang and Violence Prevention Ordinance, December 12, 2011, Resolution No. 356(11).

TRIBAL CODE

CHAPTER 70

LAW AND ORDER ORDINANCE

CHAPTER I: GENERAL PROVISIONS

70.101 Purpose.

The purpose of this ordinance is to provide for the health, safety, morals and welfare of reservation residents and visitors to the reservation.

70.102 Authority.

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

70.103 Effective Date.

This ordinance shall take effect upon approval by the Secretary of the Interior as provided in Article VI, Section 2 of the Tribal Constitution and replaces and repeals the criminal code presently numbered and designated Chapter 70.

70.104 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.

70.105 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.

70.106 Severability and Nonliability.

(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 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.

#### 70.107 Applicability.

(1) This ordinance shall apply to the activities of members, tribal children and non-member Indians on the reservation.

(2) Nothing contained herein shall be construed as an infringement upon the power of the State of Wisconsin to enforce its criminal laws.

#### 70.108 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 so 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.

#### 70.109 Definitions.

As used in this ordinance:

(1) "Child" means any unmarried person who is less than 18 years of age.

(2) "Felony" means a crime punishable by imprisonment in a state prison.

(3) "Member" means a person enrolled in the Tribe.

(4) "Misdemeanor" means any crime punishable by incarceration of one year or less.

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

(6) "Tribe" means the Lac du Flambeau Band of Lake Superior Indians.

(7) "Tribal child" means a child who is either:

- (a) a member; or
- (b) eligible for membership as of right; or
- (c) the biological child of a member and eligible for membership by adoption.

(8) "Tribal court" means the Lac du Flambeau Tribal Court.

(9) "Tribal land" means all lands and waters or any interest therein located on the reservation which is:

- (a) owned by the Tribe; or
- (b) held in trust for the Tribe by the United States; or
- (c) held in trust by the United States for the benefit of individual Indians, their heirs and devisees.

## CHAPTER II: ENFORCEMENT AND PENALTIES

### 70.201 Enforcement.

(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 whose assistance has been requested by any tribal law enforcement officer is hereby empowered to enforce the provisions of this ordinance.

(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 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 seize and

hold any property needed as evidence or any property authorized to be seized pursuant to the remedial provisions of this ordinance.

70.202 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance is a 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; or
- (b) aids and abets the commission of it; or
- (c) is a party to a conspiracy with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

70.203 Enforcement Procedure.

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

(2) Citations and summons issued hereunder may be served by ordinary mail.

70.204 Court Procedure.

The court procedures set out in Chapter 80 of the Tribal Code shall be followed except where provisions of the Indian Civil Rights Act, 25 U.S.C. §1302, requires a different procedure in which case the provisions of the Indian Civil Rights Act shall govern.

70.205 Juries.

(1) In any case where a person is accused of an offense punishable by imprisonment there shall be a right, upon request, to a trial by a jury of six persons.

(2) A list of eligible jurors shall be prepared by the Tribal Council or their designee each year.

(3) In any case, a jury shall consist of six residents of the vicinity in which the trial is held, selected from the list of eligible jurors by the judge. any party to the case may challenge not more than three members of the jury panel so chosen.

(4) The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The judge shall render judgment in accordance with the verdict and existing law. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a majority vote.

(5) Each juror who serves upon a jury shall be entitled to a fee of \$12.50 per half day and \$25.00 dollars per whole day for each day his/her services are required in court.

#### 70.206 Commencement of Criminal Proceedings.

For the purposes of this chapter all provisions of Chapter 968 of the Wisconsin Statutes are incorporated by reference as if fully set forth herein.

#### 70.207 Bail and Other Conditions of Release.

For the purposes of this chapter all provisions of Chapter 969 of the Wisconsin Statutes are incorporated by reference as if fully set forth herein.

#### 70.208 Penalties.

Upon conviction the penalty for all offenses contained herein is incarceration for a period of not to exceed one year, a fine of not to exceed \$5,000 or both. In addition, the court may place an individual on probation with conditions of incarceration, payment of a fine or any other condition that will serve the interests of the Tribe in maintaining the peace and safety of the Tribe and its members. The defendant may also be required to pay all costs of the prosecution of his/her case.

### CHAPTER III: OFFENSES

#### 70.301 Crimes.

All provisions of Chapter 940, 941, 942, 943, 944, 945, 946, 947, 948, and 951 of the Wisconsin Statutes, including non-criminal provisions, are incorporated by reference as if fully set forth herein, except that any references to

penalties for violations of the provisions are governed by this ordinance. Any non-criminal provisions that are adopted shall be punishable by a civil remedial money penalty not to exceed (\$500.-\$5000.00). *Resolution No. 19(07)*.

70.302 Other Crimes.

All other provisions of the Wisconsin Statutes that provide for criminal penalties are incorporated by reference as if fully set forth herein, except that any references to penalties for violations of the provisions are governed by this ordinance.

CHAPTER IV: TRIBAL GANG AND VIOLENCE PREVENTION  
ORDINANCE

70.401 Definitions.

(1) "Criminal Act": Shall mean an act which is prohibited by tribal, federal or state law and punishable by fine or imprisonment or both.

(2) "Criminal Street Gang": Means any ongoing formal or informal association of three or more persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of a criminal act, or any act that would be a criminal act if the youth were an adult, and who has at least one individual who is an identified gang member.

(3) "Gang loitering": Means one or more persons loitering in all areas on the Lac du Flambeau Reservation or that would warrant a reasonable person to believe the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, including use of lookalike weapons, or to conceal or facilitate illegal activities.

(4) "Gang member": Shall mean an individual to whom two or more of the following criteria that indicate gang membership apply:

- (a) Self-proclamation.
- (b) Witness testimony or official statement
- (c) Written or electronic correspondence.
- (d) Paraphernalia or photographs.
- (e) Gang related tattoos.

- (f) Clothing or colors.
- (g) Any other indication of gang membership.

(5) “Gang-Related Offense”: Any offense identified under Lac du Flambeau Tribal Code adopting section 939.22(21) Wis. Stats. committed with the intent to promote or further the objectives of a criminal street gang.

(6) “Public Place”: Any location open to the public, whether publicly or privately owned.

(7) “Drive-by Shooting”: The discharge of a firearm, paint ball gun, BB or pellet gun, or the propulsion of any explosive or explosive device from a motor vehicle whether the vehicle is moving or stopped at the time of discharge with the intent of harm or intimidation of another person or persons.

(8) “Participant in a Drive-by Shooting ”: means any person who, of his or her own will, is physically present in a vehicle used in a drive-by shooting during the drive-by shooting.

(9) “Juvenile gathering”: A juvenile gathering is any assemblage where three or more persons under the age of 21 are present for a social occasion or a social activity and controlled substances or alcoholic beverages are possessed or consumed by any person under the age of 21.

#### 70.402 Participating in a criminal street gang.

(1) A person commits the crime of participating in a criminal street gang by:

- (a) Intentionally organizing, managing, directing or supervising a criminal street gang with the intent to promote or further the criminal objectives of the criminal gang; or
- (b) Knowingly enticing or inducing others to engage in violence or intimidation to promote or further the criminal objectives of the criminal street gang; or

- (c) Furnishing advice or direction in the conduct, financing or management of a criminal street gang's affairs with the intent to promote or further the objectives of a criminal street gang; or
- (d) Hiring, engaging, employing, or exchanging goods or services, or using a minor for any conduct preparatory to or in continuation of any offense in this section; or
- (e) Committing, attempting to commit, or soliciting one or more criminal offenses proscribed by this Ordinance or the Lac du Flambeau Tribe Law and Order Code with the intent of promoting or advancing the objectives of a criminal street gang.

(2) Any person guilty of this offense may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed \$5000.00, or both.

#### 70.403Gang Loitering.

(1) Whenever a police officer observes a criminal street gang member engaged in gang loitering with one or more other persons in any public place, the police officer shall, subject to all applicable procedures promulgated by the Chief of Police:

- (a) Inform all such persons that they are engaged in gang loitering in a public place; and
- (b) Order all such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and
- (c) Inform those persons that they will be subject to arrest if they fail to obey the order promptly, or, engage in further gang loitering within sight or hearing of the place at which the order was issued during the next eight hours.

(2) Any person who fails to promptly obey an order issued under subsection (c) (1), or who engages in further gang loitering within sight or hearing of the place at which such an order was issued during the eight-hour period following the time the order was issued, is subject to a fine of not less than \$50.00 and not more than \$5000.00 for each offense, or imprisonment for not more than twelve months for each offense, or both. In addition, any person who violates this subsection may be required to perform community service at the discretion of the Tribal Court.

#### 70.404 Drive-by Shooting.

(1) A person commits drive-by shooting by intentionally discharging a firearm, paintball gun, BB or pellet gun, or the propulsion of any explosive or explosive device from a motor vehicle whether the vehicle is moving or stopped at the time of discharge with the intent to harm or intimidate.

(2) A participant in a drive-by shooting may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed \$5000.00, or both.