

TRIBAL CODE

CHAPTER 73

AN ORDINANCE REGULATING OPEN CONTAINERS, DISORDERLY CONDUCT
AND CONTRIBUTING TO THE DELINQUENCY OF CHILDREN.

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History Note:

Adopted November 17, 1986, Resolution No. 410(86).

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Disapproved upon submission for Secretarial approval by the Great Lakes Agency, BIA, on December 11, 1986.

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Effective February 18, 1987.

Amendment:

Amended May 24, 1993, Resolution No. 162(93). Section 73.201 (1) adding channel area between Fence Lake and Big Crawling Stone Lake, and, Section 73.201 (2) adding channel area between Fence Lake and Big Crawling Stone Lake.

Amended September 11, 1995, Resolution No.364(95) adding Section 73.204, and Section 73.303(4) and renumbered 73.303(4),73.303(5) and 73.303(6).

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CHAPTER 73

AN ORDINANCE REGULATING OPEN CONTAINERS, DISORDERLY CONDUCT
AND CONTRIBUTING TO THE DELINQUENCY OF CHILDREN

CHAPTER I: GENERAL PROVISIONS

73.101 Purpose.

The purpose of this ordinance is to provide for the health, safety, morals and welfare of reservation residents and visitors to the reservation by regulating certain activities regarding open containers, disorderly conduct, and contributing to the delinquency of children.

73.102 Authority.

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

73.103 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; provided that the ordinance shall first have been approved by members at an advisory referendum.

73.104 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.

73.105 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 limitation upon or repeal of any other tribal power or authority.

73.106 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.

73.107 Applicability.

(1) This ordinance shall apply to the activities of members and tribal children on the reservation.

(2) This ordinance shall apply to the activities of nonmembers on tribal lands on the reservation 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 tribal law enforcement officers, this ordinance shall apply only to members and tribal children.

(3) Nothing contained herein shall be construed as an infringement upon the power of the State of Wisconsin to enforce its criminal laws, and specifically Wis. ss. 947.01 (disorderly conduct) and 947.15 (contributing to delinquency), on the reservation.

73.108 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.

73.109 Definitions.

As used in this ordinance:

(1) “Alcohol beverage” means a fermented malt beverage or intoxicating liquor as defined in the Tribal Liquor Control Ordinance, Tribal Code Ch. 40.

(2) “Child” means any unmarried person who is less than 18 years of age.

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

(4) “Reservation” means the area within external boundaries of the Lac du Flambeau Indian Reservation.

(5) “Roadway” means that portion of a road between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular traffic, including the shoulder.

(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: REGULATING CONDUCT

73.201 Open Container.

(1) No member may possess on his or her person any bottle or receptacle containing alcohol beverages in the downtown area of the reservation, and the channel area between Fence Lake and Big Crawling Stone Lake if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed.

(2) No person who is not a member may possess on his or her person any bottle or receptacle containing alcohol beverages in the downtown area of the reservation, or in the channel area between Fence Lake and Big Crawling Stone Lake, upon tribal land if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed.

(3) As used in this ordinance, the downtown area includes all those areas marked on the attached map, which is hereby incorporated herein. This area includes all commercial properties along Peace Pipe Road from the Flame to the laundromat on the south side and Jerry's Pizza on the north side. It also includes the Indian Bowl, Simpson Electric main plant grounds, the school grounds and both parking lots (but not the ball field), the community center and bingo hall parking lots, and the town hall and grounds. This area also includes the roadways of the following roads: High 47 from White feather Street to County Highway D north; Peace Pipe Road from Wild Rice Avenue to Highway 47; Wa-Swa-Gon Street (all); Wild Rice from Peace Pipe Road to Peace Pipe lane; Peace Pipe Lane (all); Moccasin Lane (all); Chippewa Street (all); Simpson Avenue from Wa-Swa-Gon Street to Highway 47; and Little Pines from Highway 47 to Chippewa Street.

(4) Nothing contained herein shall prevent the consumption of fermented malt beverages at a meeting, picnic, or similar gathering for which a temporary Class B Beer License has been issued pursuant to the Tribal Liquor Control Ordinance, Tribal Code Ch. 40.

73.202 Disorderly Conduct.

(1) No member or tribal child may in a public or private place engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.

(2) No person who is not a member may in a public or private place on tribal land engage violent, abusive, indecent, profane, boisterous, unreasonably loud or disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.

(3) The general phrase “disorderly conduct” means conduct having a tendency to disrupt good order and provoke a disturbance. It includes all such acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. Conduct is disorderly although it may not be violent, abusive, indecent, profane, boisterous or unreasonably loud if it is of a type which tends to disrupt good order and provoke a disturbance and unreasonably offends the sense of decency and propriety of the community.

(4) The conduct involved need not have resulted in an actual disturbance. The conduct need only be of a type which tends to cause or provoke a disturbance under the circumstances as they then existed.

73.203 Contributing to the Delinquency of Children.

No member may intentionally encourage or contribute to an act by any child which violates any state or federal criminal law or any ordinance of the Tribe punishable by fine, imprisonment, or civil remedial forfeiture.

73.204 Public Intoxication.

(1) No member or tribal child may be intoxicated in a place described in Section 73.201.

(2) No person who is not a member may be intoxicated in a place described in Section 73.202 upon tribal land.

CHAPTER III: ENFORCEMENT AND PENALTIES

73.301 Enforcement.

(1) Any tribal law enforcement officer may enforce the provisions of this ordinance. In addition, an 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 proceedings 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 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 pursuant to the civil remedial forfeiture provisions of this ordinance.

73.302 Resisting or Fleeing an Officer.

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

73.303 Penalties.

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

(1) For a violation of Section 73.201, for a civil remedial money penalty of not less than \$20 nor more than \$100, together with confiscation of all alcohol beverages in possession.

(2) For a violation of Section 73.202, for a civil remedial money penalty of not less than \$50 nor more than \$500.

(3) For a violation of Sections 73.203 or 73.302, for a civil remedial money penalty of not less than \$100 nor more than \$500.

(4) For a violation of Section 73.204, for a civil remedial money penalty of not less than \$20 nor more than \$500, together with confiscation of all alcoholic beverages in possession. Additionally, upon conviction a defendant may be ordered to undergo an assessment and undertake treatment at their expense. Their failure to do so may be viewed as contempt of court. Upon arrest for this offense a defendant may be detained for a period of up to four hours in a detention holding cell.

(5) For a civil remedial forfeiture of any property used in the commission of a violation of this ordinance.

(6) For court costs of \$20.

73.304 Repeat Offender.

When any person is found guilty of a violation and such person has been found guilty of a previous violation of this ordinance within a period of one year prior to the subsequent conviction, the forfeiture penalties shall be enhanced as follows:

(1) For a violation of Section 73.201, a minimum of \$50.

(2) For a violation of Section 73.202, a minimum of \$100.

(3) For a violation of Sections 73.203 or 73.302, a minimum of \$250.

- (4) For each violation thereafter within a year, a forfeiture of \$500.

73.305 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.

73.306 Enforcement Procedure.

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

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