

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

NON-MEMBER EXCLUSION CODE

SECTION 1. FINDINGS, INTENT, AND POLICY

- 1.1 This Lac Vieux Desert Band of Lake Superior Chippewa Indians Non-Member Exclusion Code shall be referred to as the “Non-Member Exclusion Code” or “Code” and,
- 1.2 The Tribe has inherent sovereign authority over the Tribe’s Reservation and jurisdiction; and,
- 1.3 This Code is enacted pursuant to the inherent sovereign powers of the Tribe, the Tribal Legislative Procedure Code, and in accordance with Article IV(b) of the Tribe’s Constitution (“Constitution”); and,
- 1.4 Under Article IV § 1(k) of the Constitution, the Tribe has the inherent sovereign power to exclude any person from the Reservation or from doing business with the Tribe, arms of the Tribe, or any member of the Tribe. Such power derives from the Tribe’s inherent police and regulatory powers to govern its Reservation to ensure the public health, safety, and welfare; and,
- 1.5 The Tribe has enacted this Code to further its constitutional mandate to protect the life, safety, health, and welfare, of its Members’ and the public as well as to guard and promote tribal self-sufficiency, self-determination, and economic welfare; and,
- 1.6 The Tribe intends to use this Code to implement its inherent police and regulatory powers; and,
- 1.7 The Tribe has also enacted this Code finding that at times, it is necessary to exclude Non-Members in order to protect the Tribe’s economy to alleviate issues of remoteness, poverty, the costs and burdens of self-government, and lack of resources; and,
- 1.8 The Tribe has also enacted this Code finding that at times, Exclusion is necessary to protect the Tribe’s honor, reputation, and standing in that the Tribe’s Reservation is not a haven for wrongdoers and the Tribe’s business relationships should not further wrongdoing or illegal activities; and,
- 1.9 The Tribe finds that excluding Non-Members may be necessary to protect the Tribe from violations of law or fraud as well as to remove interference that may prevent the Tribe from fulfilling its duties; and,
- 1.10 The Tribe seeks to provide clear standards for the process of Exclusion of Non-Members that both allow the Tribe to exercise its sovereign authority in the best interests of the Tribe and its membership as well as ensure due process rights for Non-Members facing Exclusion; and,

- 1.11 The Tribe shall not exercise its power to exclude Non-Members for pecuniary purposes or to advance any pecuniary interests and the Tribe shall make every reasonable effort to mitigate any such aftereffect; any monetary character of the exercise of eminent domain shall not be construed against the Tribe's exercise of its police powers; and,
- 1.12 The Tribe's sovereign power allows the Tribe to temporarily detain a Non-Member to affect the lawful Exclusion of the Non-Member, but the Tribe has placed limits on such detainment.

SECTION 2. DEFINITIONS

- 2.1 "Banishment" means the Exclusion of a Member as part of a criminal sentence. Banishment is not covered by this Code.
- 2.2 "Court" shall mean the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court.
- 2.3 "Court Rules" shall mean the rules governing practice and procedure before the Court.
- 2.4 "Exclusion" means removal, eviction, or exclusion of a Non-Member from the Reservation or other lands owned in fee by the Tribe and/or from dealings, business or otherwise, with any of the Tribal Constituencies. Without limitation, Exclusion may include (a) physical removal, eviction, or exclusion of a Non-Member from the Reservation property, (b) termination, avoidance, or prohibition of business and contractual relations or dealings between a Non-Member and any of the Tribal Constituencies, or (c) rendering any business and contractual relations or dealings between a Non-Member and any of the Tribal Constituencies null and void.
- 2.5 "Exclusion Resolution" or "Resolution" means a Tribal Council Resolution excluding a Non-Member from all or portions of the Tribe's Reservation, Fee Land or Jurisdiction.
- 2.6 "Member" means an enrolled member of the Tribe, as set out by the Tribe's Constitution.
- 2.7 "Non-Indian Non-Member" means a person that is not an enrolled member of any Indian tribe.
- 2.8 "Non-Member Indian" means a person that is not a Member but is an enrolled member of another Indian tribe.
- 2.9 "Non-Member" means any person who is not enrolled as a member of the Tribe including Non-Indian Non Members, Non-Member Indians, and those eligible to be enrolled in the Tribe or a tribe but not yet enrolled.
- 2.10 "Person" includes but is not limited to any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any

owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term does not include the Federal Government or federal agency, any State government or state agency, or any Tribal government or Tribal governmental agency, or any arm and instrumentality thereof.

- 2.11 “Reservation” means the land reserved and held in trust by the United States for the Tribe.
- 2.12 “Tribal Attorney” means the Tribe’s General Counsel, the Tribal Prosecutor, an attorney representing the Tribal Council, or any of their designees.
- 2.13 “Tribal Police” shall mean any officer of the Lac Vieux Desert Tribal Police Department or any other law enforcement official that is vested with authority or is authorized by the Tribe or the Federal Government to enforce laws within the Reservation.
- 2.14 “Tribe” means and refers to the Lac Vieux Desert Band of Lake Superior Chippewa Indians.
- 2.15 “Tribal Constituency” means any or all the following: (a) the Tribe, (b) any instrumentalities or arms of the Tribe, (c) any agencies, corporations, businesses, entities, or organizations owned or operated by the Tribe, and (d) the Tribe’s Members.
- 2.16 “Tribal Council” means the governing body of the Tribe.

SECTION 3. TRIBAL COURT POWERS; SOVEREIGN IMMUNITY; JURISDICTION

- 3.1 Powers of Court: Precedence over Other Actions.
 - a. In any proceeding under this Code, the Court shall take no action, including granting any injunctive relief or staying the action, or provide any right or remedy that is not provided for in this Code.
 - b. Unless otherwise specified in this Code, the Court may extend any deadlines and timeframes in this Code upon a motion and a showing of good cause.
 - c. All laws and Court Rules of the Tribe applicable to civil appeals shall apply to an Exclusion Action except as otherwise provided in this Code. Any party may request that the Court, or the Court may *sua sponte*, rely on, find persuasive, or adopt Michigan’s laws, rules, and Court decisions for any action authorized by this Code. However, in the event of any conflict, unless expressly ordered otherwise by the Court, the Tribe’s Constitution, laws, and Court Rules shall control.
- 3.2 Sovereign Immunity of the Tribe; Reserved Rights. All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe are hereby expressly reserved,

including sovereign immunity from suit in any federal, state, or tribal court. Nothing in this Code shall be deemed or construed to be a waiver of the Tribe's sovereign immunity or consent of the Tribe to any action, counterclaim, subpoena, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe.

3.3 Jurisdiction. Except as provided otherwise in this Code, laws of the Tribe, or by Congress, the Tribe and the Court shall have jurisdiction as follows:

- a. Jurisdiction over Members. To the extent authorized by this Code, the Tribe and the Court have jurisdiction over Members, including Tribal business entities organized under Tribal law.
- b. Jurisdiction over Indian Lands. The Tribe's jurisdiction encompasses all the Tribe's Reservation and Indian lands, including fee lands.
- c. Jurisdiction over Non-Members. The Tribe and the Court have jurisdiction over Non-Members who enter consensual contractual relationships (e.g., commercial dealings, contracts, leases, loans, or other arrangements) with any of the Tribal Constituency. For all matters arising under this Code, the Tribe and the Court have jurisdiction over any Non-Member who threatens the political integrity, the economic security, or the health or welfare of the Tribe or as otherwise as delegated by Congress.

SECTION 4. WHO MAY BE EXCLUDED; GROUNDS FOR EXCLUSION.

4.1 Any Non-Member may be excluded or removed from the Reservation pursuant to this Code.

4.2 Unless otherwise protected by the Indian Civil Rights Act ("ICRA"), 25 USC §§ 1301-1304, or the Tribe's Constitution, the Tribe may exclude any Non-Member to protect, promote, foster, or effectuate any of the Findings, Intent, and Policies described in Section 1 for grounds that include, but are not limited to:

- a. Entering an area of the Reservation for which a permit is required without first obtaining the requisite permit;
- b. Failure or refusal to pay any taxes, rents, fees, or other charges due to the Tribe, a Tribal agency, a Tribally owned business, or other Tribal entity, after reasonable notice and an opportunity to pay;
- c. Unlicensed employment or commercial activity from within the Tribe's jurisdiction;
- d. Threatening or disrespecting the Tribe's sovereignty;
- e. Defrauding, deceiving, stealing, or otherwise conspiring to harm any of the Tribal Constituency;

- f. A conviction or plea of guilty or no-contest for any violation of any tribal, state, or federal law;
- g. Theft or other unauthorized taking of any property from the Reservation;
- h. Any act causing any physical loss or damage to any Tribal property or to the property of any person lawfully on the Reservation;
- i. Threatening or endangering, including conduct that indirectly but consequently endangers, the health, welfare, economy, reputation, peace, or public safety of any of the Tribal Constituency;
- j. Any action that indirectly, whether intentionally or unintentionally, causes or creates a condition constituting a threat to the health, welfare, security, or property of any of the Tribal Constituency;
- k. Acts of economic exploitation, bad faith, vexatious litigation, or illegal, unconscionable, or sharp business practices harmful to any of the Tribal Constituency;
- l. Acts in violation of or breach of consensual contractual relationships (e.g., commercial dealings, contracts, leases, loans, or other arrangements) with any of the Tribal Constituency;
- m. Acts in violation of the laws of other jurisdictions or violations of state and federal laws, as well as the laws of other tribes, even if they are not prosecuted in another jurisdiction;
- n. Acts negatively affecting the Tribe's honor, reputation, and standing in that the Tribe's Reservation is not a haven for wrongdoers and the Tribe's business relationships should not further wrongdoing or illegal activities;
- o. Involvement in any illegal contracts or illegal business dealings affecting any of the Tribal Constituency;
- p. Acts of bigotry against tribal culture or that exploit or denigrate tribal culture; or
- q. Acts found by a Tribal Council Resolution that indicate that the Non-Member is unfit or otherwise unwelcome within the Tribe's jurisdiction.

SECTION 5. EXCLUSION BY TRIBAL COUNCIL RESOLUTION

- 5.1 Any Exclusion of a Non-Members shall be by Tribal Council Resolution.
- 5.2 Resolutions excluding a Non-Member shall state the reasons for Exclusion, the terms of the Exclusion, the areas excluded whether geographical or otherwise jurisdictional, and, when appropriate, provide any specific terms and conditions for the Exclusion to be lifted.

- 5.3 The Exclusion shall be effective immediately upon passage of the Resolution.
- 5.4 The Exclusion Resolution shall be delivered to the excluded Non-Member by any means likely to ensure it is received.
- 5.5 Unless otherwise stated in the Resolution, Exclusion Resolutions shall be effective for a duration of three (3) years.

SECTION 6. APPEALS.

- 6.1 Any Non-Member excluded by Tribal Council may appeal an Exclusion Resolution to the Tribal Court by filing a notice of appeal within twenty-one (21) days after the passage of the Resolution or decision to deny an Application for reconsideration.
- 6.2 The Non-Member shall file a notice of appeal with the Clerk of Court and pay the applicable fee which shall be set by the Court.
- 6.3 The Tribal Court's review shall be *de novo*.
- 6.4 Notice and Motion; Summons; Answer.
 - a. Notice and Motion. The notice, which shall be on a form developed by the Court for such purposes, shall at least include , the name of the Non-Member and a brief summary of any bases supporting the appeal. A copy of the Exclusion Resolution must be filed with the notice of appeal. The motion, which shall be filed simultaneously with the notice must include all information the Non-Member believes appropriate to support the bases for the appeal including legal briefing.
 - b. Summons. The summons and notice of hearing shall be served in accordance with applicable Court Rules.
 - c. Answer. Within twenty-eight (28) days after a notice is filed, the Tribal Council shall file a response to the notice.
- 6.5 The Court shall hold a hearing on the appeal in accordance with applicable Court Rules and the following:
 - a. The Non-Member and Tribal Attorney shall be given an equal opportunity to present legal arguments and evidence to the Court.
 - b. The Exclusion Resolution shall be admitted as direct evidence and shall be reviewed for clear error of all information therein.
 - c. The Non-Member may be represented by legal counsel.
 - d. The Non-Member may only come onto the Reservation to proceed with the Appeal when the Non-Member's appearance for the hearing cannot be effectuated by video conference or conference call, or by counsel.

- 6.6 Within thirty (30) days after the hearing, the Court shall issue a written Final Judgment. The Final Judgment shall supply any findings of fact and conclusions of law and either affirm the Exclusion Resolution or recommend that the Tribal Council reconsider the Exclusion Resolution based on the evidence and law presented at the hearing.
- 6.7 The Tribal Court shall not have the power to overturn, vacate, modify, or otherwise alter the Exclusion Resolution.
- 6.8 A Non-Member's appeal of an Exclusion Resolution shall not stay the Tribe's enforcement of the Exclusion Resolution pending the appeal.

SECTION 7. NON-MEMBER DETAINMENT

- 7.1 The Tribal Police may detain any Non-Member suspected or alleged to be in violation of this Code or of any Exclusion Resolution entered under this Code.
- 7.2 Upon detainment:
- a. As soon as possible, the Tribal Police shall verify that there is an Exclusion Resolution against the Non-Member and report the detainment to the Tribal Attorney.
 - i. If there is no Exclusion Resolution, the Tribal Attorney shall determine whether the Non-Member should be released or whether to continue detainment pursuant to the procedure set forth in subsection (b).
 - ii. If there is an Exclusion Resolution, the Tribal Attorney shall determine whether the Non-Member should be released or whether to continue detainment pending prosecution for violating the Exclusion Resolution.
 - b. Any Non-Member that has been detained under Section 7.1 and 7.2(a)(i) shall be immediately brought before the Court for an arraignment on any charged criminal offenses or initial appearance on any civil citations pursuant to applicable Court Rules:
 - i. For a Non-Indian Non-Member offender, the Court shall, following the initial appearance hearing, do one or more of the following:
 - 1. Order the Tribal Attorney to determine and notify, if applicable, the appropriate jurisdictional authority having criminal jurisdiction over such offender and arrange for the transfer of the Non-Indian Non-Member to the proper authority;
 - 2. Issue a civil infraction including any applicable fines, court costs and/or fees;
 - 3. Order the Non-Indian Non-Member transported off of the

reservation;

4. Release the Non-Indian Non-Member, with or without bond;
 5. Allow the Non-Indian Non-Member to consent to immediate Exclusion, that shall subsequently be memorialized in an Exclusion Resolution by Tribal Council .
- ii. For a Non-Member Indian offender, the Court shall, following the arraignment hearing, do one or more of the following:
 1. Set a bond to secure the appearance of such person, which may be posted as directed by the Court, after which the person may be released;
 2. Allow for the Non-Member Indian to consent to immediate Exclusion. that shall subsequently be memorialized in an Exclusion Resolution by Tribal Council;
 - iii. As used in this subsection, “immediately” shall mean no later than the first day of regular Court business following detainment.

SECTION 8. ENFORCEMENT OF EXCLUSION RESOLUTIONS; SANCTIONS FOR NONCOMPLIANCE

- 8.1 Tribal Police shall enforce any Exclusion Resolution against any non-compliant Non-Member by one or both of the following processes:
- a. Criminal Enforcement. The Tribal Police and Tribal Attorney shall determine whether arrest and criminal charges are appropriate for non-compliance and for any other offenses; and/or
 - b. Civil Contempt Enforcement: The Non-Member shall be civilly detained for violating his or her Exclusion Resolution and held until the following processes are completed.
 - i. Within one business day of the arrest, the Tribal Attorney shall to initiate civil contempt proceedings against the non-compliant excluded Non-Member;
 - ii. Within one (1) business day after the contempt charge is filed, the Court shall convene an evidentiary hearing to determine whether the Non-Member violated the Exclusion Resolution. If still detained, the Non-Member shall be brought to appear. The Non-Member may be represented by counsel.
 - iii. Any proceedings under Subsection 8.1 may be by video or teleconference.

- 8.2 Upon a finding by the Court that Non-Member has violated an Exclusion Resolution; the Court shall impose the following sanction(s):
- a. For any criminal enforcement, this Code shall not control, and the Court shall follow all applicable criminal procedure and court rule provisions. If applicable, after completion of any ordered imprisonment, the Tribal Police shall escort the Non-Member off the Reservation.
 - b. For any civil enforcement, the Court shall have the discretion to order any of the following civil penalties:
 - i. If the original Exclusion Resolution was a temporary order, the Court may request that the Tribal Council extend the Exclusion Resolution or modify the Exclusion to a Permanent Exclusion Resolution;
 - ii. The Court may order the Non-Member to pay any reasonable expenses incurred by the Tribe to remedy the non-compliance, including, but not limited to, costs and fees incurred by the Tribal Police, the Tribal Attorney, the Court, and the detention facility;
 - iii. A fine up to \$500;
 - iv. Imprisonment, if deemed necessary and appropriate to gain compliance with any Court order, including but not limited to collection of fines or costs imposed for non-compliance;
 - v. The Court may notify any jurisdictional authority with criminal jurisdiction over the Non-Member of the criminal trespass and request prosecution;
 - vi. The Court may order the Tribal Police to escort the Non-Member off the Reservation or to transfer the Non-Member to the custody of law enforcement with jurisdiction over the Non-Member.

SECTION 9. APPLICATION TO RESCIND EXCLUSION

- 9.1 Any person excluded by the Tribe may apply to the Tribal Council to rescind or modify the Exclusion by filing an application and supporting documents with the Tribal Attorney.
- 9.2 The application must be complete before consideration and must include:
- a. A written explanation indicating why the Tribe should reconsider the Exclusion of the Excluded Non-Member including factors tending to warrant reconsideration (see e, f, and g herein) and include any connection or affiliation the Applicant has with the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the community and relationships with any Tribal members.

- b. A character reference letter from an immediate relative (if applicable). Each character reference letter must include the name, address, and phone number of the author, and should indicate how long the author has known the Applicant.
- c. A character reference letter from a non-relative (if applicable). Each character reference letter must include the name, address, and phone number of the author, and should indicate how long the author has known the Applicant.
- d. A character reference from a professional reference. Each character reference letter must include the name, address, and phone number of the author, and should indicate how long the author has known the Applicant.
- e. A complete copy of the Applicant's criminal history background investigation report from a law enforcement agency (if applicable).
- f. Whether the Excluded Non-Member has participated in any educational programs or completed or achieved a new level of education, or enrolled in any university, college, trade school, or apprenticeship program, or taken any steps to further their educational or employment goals since the time of exclusion.
- g. Whether the Excluded Non-Member has taken steps or can demonstrate through documentation that they have received or have completed mental health and/or substance abuse program, treatment, or classes.
- h. Whether the Excluded Non-Member can substantially show that they no longer pose any threat to the health and safety of tribal members or the community.

9.3 Once the application is received, the Tribal Attorney will:

- a. If the application is complete, provide the application and supporting documents to the Tribal Council within five (5) business days of receipt for consideration and scheduling a Special Meeting in accordance with Section 9.4 herein.
- b. If the application is incomplete, return the application to the Excluded Non-Member within five (5) business days with correspondence related to any deficiencies in the application.

9.4 Upon receipt of a completed application, the Tribal Chairman will direct the Tribal Council Secretary to schedule a Special Meeting for the sole purpose of hearing the application within 14 business days.

9.5 The Applicant may be represented by counsel of his or her choosing and may present witnesses to speak on his or her character and rehabilitation. The name and contact information of the Applicant's counsel and any intended witnesses shall be provided to the Tribal Attorney, in writing, no later than three (3) business days prior to the date

of the Special Meeting.

- 9.6 The Tribal Council shall have the sole discretion over proceedings to deliberate and decide upon any such application.
- 9.7 The Tribal Council's decision must be reduced to a resolution and is appealable in accordance with this Ordinance.
- 9.8 There is no limitation to the number of times a person may apply to the Tribal Council under this section.

SECTION 10. MISCELLANEOUS

- 10.1 Construction. In construing the provisions of this Code, the following shall apply:
 - a. The provisions of this Code, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice for the Tribe and its members.
 - b. Words of the masculine gender or neutral include masculine and feminine genders and or the neutral.
 - c. Words in the present tense include the future and past tenses.
 - d. Words in the singular number include the plural, and words in the plural number include the singular.
 - e. Defined terms include capitalized and non-capitalized versions, unless the context specifically indicates otherwise.
- 10.2 Severability. If any section of this Code is invalidated the remaining sections shall not be affected.
- 10.3 Effective Date. This Code, and subsequent amendments, shall take effect and be in full force and effect upon the final passage and approval by the Tribal Council.