

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE # 02/09 AS AMENDED**

**CRIME AND DRUG POLICY: INVESTIGATIONS, ELIGIBILITY, EXCLUSIONS,
AND RE-ENTRY IN THE FOND DU LAC BAND HOUSING PROGRAM**

Adopted by Resolution #1120/09 of the Fond du Lac Reservation Business Committee on May 26, 2009.

Amended by Resolution #1187/10 of the Fond du Lac Reservation Business Committee on May 18, 2010.

Amended by Resolution #1405/10 of the Fond du Lac Reservation Business Committee on November 10, 2010.

Amended by Resolution #1388/17 of the Fond du Lac Reservation Business Committee on November 28, 2017.

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CHAPTER 1
GENERAL PROVISIONS

Section 101. Authority

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa (the “Band”), acting through the Reservation Business Committee (the “RBC”), as the governing body of the Band, as such authority is granted by Article VI of the Revised Minnesota Chippewa Tribe Constitution, and as recognized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”), 25 U.S.C. § 4101 *et seq.*, and in accordance with the Quality Housing and Work Responsibility Act of 1998, 42 U.S.C. § 13661 *et seq.*

Section 102. Purpose

The purpose of this Ordinance is to protect the safety and security of the Band by establishing standards of eligibility and occupancy for Housing Services provided through Housing Programs, which disqualify or requires the removal of individuals who have been involved in acts of violence or drugs, or who otherwise threaten the peace of the Band, and to meet the requirements of the NAHASDA and NAHASDA Guidance 18-08, and any updated and replacement guidance. For Housing Services provided by the Housing Division, this Ordinance incorporates and replaces the Policy on Violence and Drugs, amended on September 23, 2004, Resolution 1235/04, and the Fond du Lac Housing Division Criminal Background Check Policy, adopted on July 10, 2013, Resolution 1254/13.

Section 103. Scope

- a. This Ordinance shall apply to Applicants and Tenants receiving Housing Services, and their Household and guests.
- b. This Ordinance does not apply to individuals who only receive financial assistance through a Housing Program.
- c. This Ordinance does not apply to individuals who lease trust lands pursuant to Ordinance #02/15, as amended, Land Lease Ordinance, or housing matters pursuant to Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program, as amended.

Section 104. Interpretation

The provisions of this Ordinance shall be interpreted in a manner that gives plain effect to its terms and purposes, and to avoid unnecessary conflicts of law.

Section 105. Reservation of Rights

The RBC reserves the right to amend or repeal all or any part of this Ordinance at any time. All the rights, privileges, and immunities conferred by this Ordinance, or by acts done pursuant to this Ordinance, shall exist subject to the powers of the Band. Nothing in this Ordinance shall be construed to constitute a waiver of the Band's sovereign immunity or as a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2 DEFINITIONS

Section 201. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

- a. **“Applicant(s)”** shall mean the individual(s) applying for Housing Services and all members of the Household that are completing a Consent to Criminal History Investigation form.
- b. **“Household”** shall mean the Applicant and all individuals included in the application for Housing Services or a Tenant and any individuals included or added to the Tenant’s file that are receiving Housing Services.
- c. **“Housing Committee”** shall mean the advisory body designated and authorized by the Reservation Business Committee to oversee the administration of the Fond du Lac Housing Division pursuant to the Housing Committee Charter adopted by Ordinance #04/98, as amended.
- d. **“Housing Division”** shall mean the Fond du Lac Band of Lake Superior Chippewa Housing Division created in the Charter and Bylaws of the Fond du Lac Housing Committee, adopted by Resolution #1089/98 on March 30, 1998, as amended.
- e. **“Housing Program”** shall mean the housing programs owned and operated by the Fond du Lac Band of Lake Superior Chippewa and the administration of such programs by the Housing Division.
- f. **“Housing Services”** shall mean any services provided by a Housing Program for the purposes of leasing a temporary or permanent residence from the Housing Division. For the purposes of this Ordinance, Housing Services does not include financial assistance, emergency rental assistance, emergency housing services, or other emergency services that are provided by the Band for a period of two weeks or less.
- g. **“Tenant”** shall mean any individual who is the head of Household under any Housing Program.

CHAPTER 3
PROHIBITIONS BARRING ELIGIBILITY AND CONTINUED OCCUPANCY

Section 301. Prohibitions on Eligibility to Receive Housing Services

No Applicant for Housing Services from the Band shall receive services if their criminal history investigation indicates that any member of the Applicant's Household:

- a. Has been convicted in a court of competent jurisdiction of any felony involving the following crimes:
 - (i) labor or sex trafficking;
 - (ii) criminal sexual conduct;
 - (iii) criminal abuse or neglect;
 - (iv) malicious punishment of a child;
 - (v) neglect or endangerment;
 - (vi) arson;
 - (vii) crimes in which the use or possession of a deadly weapon is an element;
 - (viii) crimes committed for the benefit of a gang.
 - (ix) violent criminal activity: any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage (24 CFR § 5.100); or
 - (x) drug related criminal activity: the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in the Controlled Substance Act (24 CFR § 5.100).
- b. Is determined by the Housing Division to have a criminal record, reputation, habits, or associations that present a threat to the health, safety, or peace of the Band.

Section 302. Prohibited Conduct Restricting Continued Occupancy

- a. Prohibited conduct. Tenants of the Housing Division or members of the Household may be subject to a termination if, under the discretion of the Housing Director, there is substantial evidence that any member of the Household has engaged in any of the following conduct:

- (i) labor or sex trafficking;
 - (ii) criminal sexual conduct;
 - (iii) criminal abuse or neglect;
 - (iv) malicious punishment of a child;
 - (v) neglect or endangerment;
 - (vi) arson;
 - (vii) crimes in which the use or possession of a deadly weapon is an element;
 - (viii) crimes committed for the benefit of a gang;
 - (ix) contributing to the intoxication of a minor on Fond du Lac Housing Division premises;
 - (x) violent criminal activity: any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damages (24 CFR § 5.100);
 - (xi) drug related criminal activity: the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in the Controlled Substance Act (24 CFR § 5.100); or
 - (v) aiding and abetting any of the above conduct.
- b. Strict liability of Tenant for conduct of other residents. For the purposes of this Ordinance, a Tenant of the Housing Division may be held strictly liable for the prohibited conduct, as identified under Section 302 of this Ordinance, of members of the Tenant's Household and any guests, regardless of whether such individuals are juveniles or are otherwise related to the Tenant, except when the evidence indicates otherwise, as determined by the Housing Division.
- c. Manner of termination. Any Tenant of the Housing Division or member of the Household who is subject to termination of occupancy under this Ordinance shall be notified in writing at least 72 hours prior to the effective date of such termination. If the Tenant has not vacated the premises upon the expiration of the notice period, any individual still occupying the premises may be subject to an unlawful detainer proceeding in the Fond du Lac Tribal Court and treated as a trespasser in accordance with applicable law.
- d. Grievance. Any grievance of a termination of occupancy or denial of Housing Services under this Ordinance shall be in accordance with the Grievance Procedure, Ordinance # 02/17, but in no event shall such grievance stay or delay the date of the termination.

- e. Continued ineligibility for Housing Services. Persons who are terminated under this Ordinance shall remain ineligible for Housing Services with the Housing Division until such person has demonstrated rehabilitation and presents evidence of suitability to the Housing Committee.

CHAPTER 4
CRIMINAL HISTORY INVESTIGATIONS

Section 401. Criminal History Investigations of Applicants for Housing Services

- a. Each Applicant for Housing Services from the Housing Division, and every member of the Applicant's Household, shall be required to complete a "Consent to Criminal History Investigation" form (the "Consent") (Appendix A) no earlier than 30 days prior to receiving Housing Services. Before any new individual may be added to an existing Household the individual shall complete a Consent form no later than 15 days prior to being added to an existing Household.
- b. Upon receipt of a Consent form the Housing Division shall complete a "Request for Criminal History Check" form (the "Request") (Appendix B) and submit the Request and the Consent to the Fond du Lac Police Department.

Section 402. Criminal History Background Investigations by Fond du Lac Police Department

- a. Within 10 days of receiving a Request and Consent, the Fond du Lac Police Department shall conduct a criminal history investigation of the Applicant(s).
- b. Investigations shall include inquiries to every local law enforcement agency within the geographical region where the Applicant(s) has resided within the past ten (10) years. Written documentation of those contacts shall be retained by the Fond du Lac Police Department.
- c. The Fond du Lac Police Department shall immediately review the results, determine if a fingerprint search is needed, and convey the results of the initial search and fingerprint determination to the Housing Division.

Section 403. When a Fingerprint Check Must be Conducted

- a. If the initial search reveals no matches, or Minnesota state records only, the criminal background check is complete and no fingerprint check is required.
- b. If the initial search reveals an individual's name may match a record in a national database then a fingerprint check must be conducted of that individual.

Section 404. Conducting a Fingerprint Check

- a. The Housing Division will provide the individual with a fingerprint card with the individual's name on it.
- b. The individual will be required to bring the fingerprint card to the Fond du Lac Police Department to be fingerprinted.
- c. After taking the individual's fingerprints, the Police Department will return the fingerprint card to the Housing Division.
- d. The Housing Division will send the fingerprint card to its Federal Bureau of Investigations (the "FBI") approved Channeler for verification of criminal records in accordance with NAHASDA Guidance 13-08, Update to Instructions for Obtaining FBI Criminal History Record Information, as amended, updated, or replaced.

Section 405. Storage of the Results

- a. The results of the investigation and, if applicable, the fingerprint search will be stored in a background check file that will be kept separate from the Applicant's Tenant file.
- b. The background check files will be kept in a locked filing cabinet, and shall be under the custody and control of the Director of the Housing Division in accordance with NAHASDA regulations, 24 CFR 1000.154(b), and any amendments thereto.
- c. Background check files will also be maintained in accordance with the Fond du Lac Band of Lake Superior Chippewa Data Privacy & Record Management Policy.

Section 406. Grievance

If the Applicant(s) are denied eligibility for Housing Services or terminated from continued occupancy, then the Housing Program shall inform the Applicant(s) and the individual, if other than the Applicant(s), in writing of such finding, and shall inform them of the opportunity to file a grievance in accordance with the Grievance Procedure Ordinance.

CHAPTER 5
REHABILITATION OF PERSONS DENIED SERVICES
OR TERMINATED FROM HOUSING

Section 501. Petition for Recognition of Suitability

Any individual who has been denied Housing Services under this Ordinance may submit a completed “Petition for Recognition of Suitability for Housing Services” (the “Petition”) (Appendix C) to the Housing Committee.

Section 502. Evaluation of Petition

The Housing Committee shall evaluate the Petition under the following criteria:

- a. The nature and seriousness of the incident(s) in question;
- b. The amount of time since the incident(s);
- c. The circumstances surrounding the incident(s);
- c. The age of the individual at the time of the incident(s);
- d. Societal conditions that may have contributed to the incident(s);
- e. The probability of continued conduct of this type; and
- f. The individual’s commitment to rehabilitation and change of behavior.

Each Petition must be evaluated on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar Petitions have been handled in the past.

Granting a Petition for suitability shall remove the individual’s criminal history as a disqualification to eligibility, but shall not be a guarantee of Housing Services or make the person’s application a higher priority. A negative decision of the Housing Committee on a Petition may be reconsidered by the Housing Committee. An aggrieved individual may submit a written request for reconsideration of the Petition to the Housing Committee within 15 days of a denial on their Petition. An individual whose Petition has been denied initially or on reconsideration by the Housing Committee may submit another Petition one year after his or her initial Petition has been denied.

CHAPTER 6
EFFECTIVE DATE; AMENDMENT OR RESCISSION; CERTIFICATION

Section 601. Effective Date


The provisions of this Ordinance shall be effective on the date of adoption by the Reservation Business Committee.

Section 602. Amendment or Rescission


The provisions of this Ordinance may be amended or rescinded by Resolution of the Fond du Lac Reservation Business Committee.

Certification

We do hereby certify that the foregoing Ordinance #02/09 was duly presented and adopted by Resolution #1120/09 by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 26, 2009, on the Fond du Lac Reservation, subsequently amended by Resolution #1187/10 on May 18, 2010; Resolution #1405/10 on November 10, 2010; and Resolution #1388/17 on November 28, 2017.



Kevin R. Dupuis, Sr., Chairman



Ferdinand Martineau, Jr., Secretary/Treasurer

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
CONSENT TO CRIMINAL HISTORY INVESTIGATION
FOR HOUSING SERVICES**

I CONSENT TO ALLOW THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA TO REQUEST AND OBTAIN INFORMATION PERTAINING TO MY CRIMINAL HISTORY FROM ANY LEGALLY AVAILABLE SOURCES FOR THE PURPOSE OF VERIFYING MY ELIGIBILITY FOR HOUSING SERVICES FROM THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA IN ACCORDANCE WITH FOND DU LAC ORDINANCE #02/09. THIS CONSENT EXPIRES 15 MONTHS AFTER SIGNED.

SIGNATURES:

Head of Household/Applicant SSN: _____ DATE: _____

Other Household Member Over Age 18 SSN: _____ DATE: _____

Other Household Member Over Age 18 SSN: _____ DATE: _____

Other Household Member Over Age 18 SSN: _____ DATE: _____

Other Household Member Over Age 18 SSN: _____ DATE: _____

Other Household Member Over Age 18 SSN: _____ DATE: _____



FOND DU LAC LAW ENFORCEMENT

930 Trettel Lane
Cloquet, MN 55720
218-878-8040 Phone
218-878-8047 Fax

If your agency is requesting a Criminal History check this form **MUST BE FILLED OUT COMPLETELY** (This is for the BCA Auditors). This can either be filled out and faxed to use or dropped off in person.

NO FORM NO CRIMINAL HISTORY CHECK.

Date: ___/___/___

(Who is requesting the Criminal History check and reason why)

Personal Data:

(Last Name) (Maiden Name) (First Name) (Middle Name)

___/___/___

(Date of Birth)

Signature of person requesting

Division

**DO NOT WRITE BELOW THIS LINE
FOND DU LAC LAW ENFORCEMENT**

Initials of person who ran check _____

Date done ___/___/___

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
PETITION FOR RECOGNITION OF SUITABILITY
FOR HOUSING SERVICES

PURPOSE: Section 501 of Fond du Lac Ordinance #02/09 provides that an applicant who has been denied housing services from the Fond du Lac Band may submit this Petition for Recognition of Suitability. The purpose of this Petition is to enable such persons to demonstrate that he or she has become sufficiently rehabilitated and no longer presents a threat to the community. All information provided on this Petition shall be confidential. Failure to provide all of the information required on this Petition, or the provision of false information, will invalidate the Petition. The granting of this Petition does not assure the Applicant of housing services, but only removes his or her disqualification under FDL Ordinance #02/09.

1. NAME: _____
 First Middle Last Maiden

2. DATE OF BIRTH: _____

3. SOCIAL SECURITY NUMBER: _____

4. ADDRESS: _____

5. PERSONAL STATEMENT. Explain (1) why, despite your criminal history, you do not present a threat to the community, (2) why you consider yourself to be rehabilitated and (3) why you should no longer be disqualified from eligibility for housing services from the Fond du Lac Band. Attach additional pages as necessary.

6. CHARACTER REFERENCES. The Applicant must provide the names and letters of reference from at least three non-related, reputable individuals who have known the Applicant for at least two years and will attest to the Applicant's trustworthiness and good character. Attach the letters of reference to this Petition.

a. Name: _____

Address: _____

Telephone: _____

How Long Known: _____

Relationship: _____

b. Name: _____

Address: _____

Telephone: _____

How Long Known: _____

Relationship: _____

c. Name: _____

Address: _____

Telephone: _____

How Long Known: _____

Relationship: _____

7. ACKNOWLEDGEMENT AND RELEASE. I understand that the questions and requirements contained in this Petition are necessary to maintaining the safety and welfare of the Fond du Lac Reservation. I understand that all responses and materials submitted in this Petition are confidential, and that access to this information will

be limited to those officers or employees of the Fond du Lac Band who must review the information in order to fulfill their official duties to the Band. I consent to such investigation as is reasonably necessary to verify the responses contained in this petition and the documentation submitted in their support. I further acknowledge that any false or misleading information given in connection with this petition shall result in my continued disqualification for housing services from the Fond du Lac Band.

Signature: _____

Date: _____

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