

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE #04/99, AMENDED
REMOVAL AND EXCLUSION OF PERSONS FROM BAND LANDS

Adopted by the Fond du Lac Reservation Business Committee pursuant
to Resolution #1124/99 on May 27, 1999.
Amended by Resolution #1160/07 on May 15, 2007.

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CHAPTER 1

AUTHORITY AND PURPOSE

Section 101 Authority

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, Section 201(2) of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301(2), Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and under the common law of the United States of America.

Section 102 Findings, Purpose and Scope

The Reservation Business Committee finds that it is necessary and in the best interests of the Fond du Lac Band to establish standards and procedures for the removal and exclusion from those lands which are subject to the territorial authority of the Fond du Lac Band of persons whose conduct or associations pose a threat to the health, safety and welfare of the Band. The Reservation Business Committee accordingly enacts this Ordinance for the purpose of providing consistent criteria for review and decisionmaking in the identification of such persons, establishing standards of removal and exclusion which are appropriate and proportionate to the threat presented by such persons, and providing due process for persons who are removed or excluded. The standards and procedures under this Ordinance shall apply to any act of removal or exclusion of any person by the Fond du Lac Band from lands which are held in fee or trust buy or for the Fond du Lac Band and any premises located on such lands.

Section 103 Reservation of Rights

Nothing in this Ordinance, nor any action hereunder, shall operate as a waiver of the sovereign immunity of the Fond du Lac Band or as a consent to jurisdiction by any court or agency for any matter arising under law or equity with respect to the subject matter herein.

CHAPTER 2

DEFINITIONS & INTERPRETATION

Section 201 Definitions

The following definitions shall apply in the meanings and interpretation of the provisions of this Ordinance:

- a. **"Band lands"** or **"Lands of the Fond du Lac Band"** means, for the purposes of this Ordinance:
 - (1) Any lands which are held in trust or other restricted status by the United States for the benefit of the Fond du Lac Band or its members;
 - (2) Any lands which are held in trust or other restricted status by the United States for the benefit of the Minnesota Chippewa Tribe or its members which lie within the boundaries of the Fond du Lac Reservation; and
 - (3) Any lands which are held in fee by the Fond du Lac Band or any political subdivision of the Band.

- b. **"Fond du Lac Band"** or **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.

- c. **"Law Enforcement Officer"** means any law enforcement officer authorized to enforce the actions arising out of the operation of this Ordinance.

- d. **"Minnesota Chippewa Tribe"** means the federally recognized Indian tribe comprising the Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth bands of Chippewa.

- e. "Reservation Business Committee" means the duly elected governing body of the Fond du Lac Band.
- f. "Secretary" means the Secretary of the United States Department of the Interior or other person who is authorized to exercise the authority of the Secretary.
- g. "Tribal Court" means the Court of the Fond du Lac Band.
- h. "Weapon" means an instrument of offensive or defensive compact, or anything used, or designed to be used, in destroying, defeating or injuring a person.

Section 202 Interpretation

The provisions of this Ordinance shall, to the greatest extent possible, be interpreted and implemented in a manner which is consistent with other applicable laws, regulations and procedures of the Fond du Lac Band as established by the Reservation Business Committee.

CHAPTER 3

**APPLICABILITY TO PERSONS AND
GROUNDS FOR REMOVAL OR EXCLUSION**

Section 301 Persons Subject to Removal or Exclusion

Any person who has entered upon lands of the Fond du Lac Band of Lake Superior Chippewa is subject to removal or exclusion from all or any portion of said lands in accordance with the procedures set forth in this Ordinance.

Section 302 Grounds for Removal or Exclusion

Any person who is subject to removal or exclusion under Section 301 of this Ordinance may be removed or excluded from lands which are said lands for commission of one or more of the following acts within said lands:

- a. An act that is a crime, as defined by federal, state or Band law, or any act which, if committed by a member of the Band, would be a crime under Band law;
- b. Any act causing physical loss or damage of any nature to the property of the Fond du Lac Band or the Minnesota Chippewa Tribe, of an enrolled member of the Band, or of other residents or occupants of Band land;
- c. Distributing illegal drugs;
- d. Obstructing the performance of governmental functions by any elected official, officer, agent or employee of the Band through the use or threat of force or violence, bribery, deception or other unlawful means;
- e. Resisting arrest by a law enforcement officer through the use of threat of force or violence, bribery, deception or other unlawful means;
- f. Rendering criminal assistance by doing any one of the following acts for the purpose of hindering the apprehension, prosecution, conviction or punishment of a person known to have committed a crime, to be sought by law enforcement officers for the commission of a crime, or to have escaped from a detention facility:
 - (1) Harboring or concealing such person;
 - (2) Providing to such person a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension;
 - (3) Concealing, altering or destroying any physical evidence that might aid in the discovery or apprehension of such person;
 - (4) Warning such person of impending discovery or apprehension, except where such warning is given in an attempt to persuade the person to comply with the law; or
 - (5) Obstructing by force, threat, bribery or deception any person from performing an act that might aid in

the discovery, apprehension, prosecution or conviction of such person;

- g. Threatening to enter Band lands for the purpose of causing disturbances or conducting any other activity prohibited by law;
- h. Mining, cutting timber or vegetation or other use, abuse or damage to property of the Band or Minnesota Chippewa Tribe without authorization from the Band;
- i. Prospecting without authority from the Band;
- j. Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Band or in violation of Band or federal law;
- k. Committing frauds, confidence games or usury against any enrolled member of the Band or any other resident of lands under the jurisdiction of the Fond du Lac Band of Chippewa;
- l. Inducing any enrolled member of the Band or any other resident of said land to enter into a grossly unfavorable contract of any nature;
- m. Defrauding any enrolled member of the Band or any other resident of said land of just compensation for his labor or service of any nature;
- n. Unauthorized taking of any property from lands under the jurisdiction of the Fond du Lac Band of Lake Superior Chippewa; or
- o. Entering land under the jurisdiction of the Fond du Lac Band of Lake Superior Chippewa for the purpose of evicting of a Band member or the removal of any real or personal property of a Band member without his/her written consent.

Section 303 Exceptions

The removal and exclusion provisions of this Ordinance shall not be applicable in the following situations:

- a. To remove or exclude any person from land which is individually held in trust by the United States for that person;
- b. To dispossess any individual of a leasehold interest or other assignment in tribal trust lands where the lease or assignment document governs the permissible uses of the subject land; or
- c. To the banishment of any person from any business which is owned by the Fond du Lac Band by the board of directors of a corporate subdivision of the Band having management responsibility over such business.

CHAPTER 4

PROCEDURES FOR REMOVAL OR EXCLUSION

Section 401 Complaint for Exclusion

A complaint for exclusion shall be based upon one or more of the grounds specified under Section 302, and may be initiated by any member of the Reservation Business Committee, the Executive Director of the Band, the Housing Director of the Band, the Supervisory Police Officer of the Band, or the Fond du Lac Tribal Attorney. A complaint for exclusion shall be made through the form attached as Appendix A of this Ordinance. A complaint for exclusion shall be valid only if it bears the signature of the complaining party.

Section 402 Notice of Complaint to the Affected Person

Upon completion of a Complaint for Exclusion, the complaining party shall cause notice to be served personally or by registered mail upon the person proposed for exclusion, and shall immediately provide a copy of said notice to the Reservation Business Committee. The notice shall state the reason for the proposed exclusion and shall state that the person has seven (7) days to show cause in writing to the Reservation Business Committee as to why he or she should not be excluded from said land.

Section 403 Consideration of Complaint for Exclusion by the Reservation Business Committee

Upon receipt of a response from the person proposed to be excluded, or after seven (7) days has elapsed without the receipt of such response, the Reservation Business Committee shall consider the proposed exclusion in executive session to determine whether the person shall be excluded from all or any portion of Band lands. Following discussion, the Reservation Business Committee may decide the matter in the following manner:

- a. To grant a continuance of the matter pending further factfinding, or for the purpose of requiring the attendance of the person for direct questioning, which shall be by notice as prescribed under Section 402;
- b. To dismiss the matter without prejudice;
- c. To refer the matter to the Tribal Court, which would apply the terms of this Ordinance, or another tribunal;
or
- d. Upon the finding that the grounds for exclusion are supported by substantial evidence, the Reservation Business Committee may, by majority vote of a legal quorum, issue an order of exclusion to exclude the person from any or all Band lands, which shall be drawn in accordance with Section 404.

Section 404 Order of Exclusion

If the Reservation Business Committee has ordered the exclusion of a person under Section 403, within three (3) days after such decision an Order of Exclusion shall be issued, signed by the Chairman and Secretary/Treasurer of the Fond du Lac Band, which shall specify the following:

- c. The effective date of the exclusion;
- d. The Band lands included in the exclusion;
- e. The reasons for the exclusion;
- f. The duration of the exclusion;
- g. The conditions of the removal or the exclusion, if any, which may include but not necessarily be limited to the payment of money or performance of labor by the person to be excluded as restitution for damage caused by the person, and the payment of a civil penalty.

An order of exclusion shall remain in force until revoked by the Reservation Business Committee.

Section 405 Enforcement Processes

If any person ordered to be removed or excluded from Band lands does not promptly comply with the order of exclusion, the Reservation Business Committee may order such person's removal and exclusion, or the prevention of such person's re-entry onto the subject lands, by any available legal means.

Section 406 Recovery of Costs

In the event that enforcement of removal or exclusion under this Ordinance results in costs to the Fond du Lac Band, such costs may be recovered through the seizure and liquidation of any property of a person who is subject to the order of exclusion where such property is located on Band lands, and through any other available legal processes of recovery.

CHAPTER 5

EMERGENCY REMOVALS OR EXCLUSIONS

Section 501 Emergency Writs

If, upon receipt of a valid complaint for exclusion, the Reservation Business Committee finds, by majority vote of a legal quorum, that the presence of the person proposed for exclusion on Band lands presents an immediate danger to the health, safety, morals or property of the Band, its members or other residents of the Fond du Lac Reservation, and further finds that delay would result in irreparable injury, the Reservation Business Committee may issue an Emergency Writ of Exclusion without providing prior notice as required by Section 402, provided that such Writ shall be served upon the person in the most expeditious manner practical under the circumstances, and shall afford the subject person an opportunity to submit a written appeal to the Reservation Business Committee within thirty (30) days of the Writ, and that the Reservation Business Committee shall consider such timely written appeal in the manner prescribed under Section 403.

Section 502 Enforcement of an Emergency Writ of Exclusion

An Emergency Writ of Exclusion may, in addition to ordering the exclusion of a person, authorize the removal of said person from Band land by any available legal means. In the event that removal is ordered, the law enforcement officer executing the Writ shall use only so much force as is necessary to effect the removal, and shall serve a copy of the Writ upon the person at the time of removal or as soon thereafter as possible.

Section 503 Duration of Emergency Writ

An Emergency Writ of Exclusion shall remain in force until revoked by the Reservation Business Committee.

CHAPTER 6

EXCLUSION OF PERSONS BY LAWFUL POSSESSORS OF BAND LANDS

Section 601 Right of Lawful Possessors of Band Lands to Peaceful Use and Occupancy

- a. Any person who lawfully possesses and occupies trust lands owned by the Fond du Lac Band has the right to peaceful use, occupancy and control over those lands.
- b. For the purposes of this section, 'lawful possessor' shall include any person who holds a leasehold interest in such parcel, or who is the owner, homebuyer or lessee of record of a dwelling located on such parcel.

Section 602 Process for Exclusion of Individuals by Lawful Possessors

- a. Any lawful possessor of a parcel of land owned by the Fond du Lac Band may exclude any person whom the lawful possessor believes to be a threat to the peaceful use and occupancy of that parcel by filing a 'Trespass Notification' with the Fond du Lac Police Department.
- b. Upon the receipt of a Trespass Notification from a lawful possessor of Band land, the Fond du Lac Police shall:
 - (1) Serve (a) a copy of the executed Trespass Notification upon the excluded person and (b) a copy of the "Notice and Effect of Trespass Notifications filed by Lawful Possessors of Property Owned by the Fond du Lac Band";
 - (2) Act upon information that the excluded person has entered the lawful possessor's property by responding at the site and removing the excluded person; and

- (3) If the excluded person has entered upon the lawful possessor's property after receiving a Trespass Notification pursuant to subsection (1), the Fond du Lac Police shall treat the excluded person as a trespasser in accordance with applicable law.

CHAPTER 7

AMENDMENT AND RESCISSION

Section 701 Amendment and Rescission


The provisions of this Ordinance may only be amended by adoption of a separate ordinance by the affirmative vote of the Reservation Business Committee, and the terms of such amendment shall then be included herein. This Ordinance may be rescinded by resolution adopted by the Reservation Business Committee.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #04/99 was duly presented and adopted by Resolution #1124/99 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 27, 1999 on the Fond du Lac Reservation; and subsequently amended by Resolution #1160/07 on May 15, 2007.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

COMPLAINT FOR EXCLUSION

THE UNDERSIGNED COMPLAINANT SUBMITS THE INFORMATION CONTAINED HEREIN TO THE FOND DU LAC RESERVATION BUSINESS COMMITTEE FOR ITS CONSIDERATION AS TO WHETHER THE SUBJECT INDIVIDUAL SHOULD BE CONSIDERED A THREAT TO THE HEALTH, SAFETY AND WELFARE OF THE FOND DU LAC BAND AND SHOULD BE REMOVED OR EXCLUDED FROM LANDS OF THE BAND. ANY AVAILABLE DOCUMENTATION WHICH IS PROBATIVE OF THE CONDUCT AT ISSUE MUST BE ATTACHED TO THIS COMPLAINT. NO REMOVAL OR EXCLUSION OF ANY INDIVIDUAL FROM ANY LANDS OF THE FOND DU LAC BAND SHALL BECOME EFFECTIVE UNTIL AN ORDER OR WRIT OF EXCLUSION HAS BEEN ISSUED BY THE RESERVATION BUSINESS COMMITTEE IN ACCORDANCE WITH FOND DU LAC ORDINANCE #04/99.

NAME OF SUBJECT INDIVIDUAL: _____

ADDRESS OF SUBJECT INDIVIDUAL, IF KNOWN: _____

DESCRIPTION AND DATES OF CONDUCT AT ISSUE (RELEVANT DOCUMENTATION SHOULD BE REFERENCED AND ATTACHED, E.G. CRIMINAL HISTORY, POLICE REPORTS, ETC.): _____

THE UNDERSIGNED COMPLAINANT SUBMITS THIS INFORMATION IN THE BELIEF THAT IT IS A TRUE AND ACCURATE DESCRIPTION OF THE CONDUCT OF THE SUBJECT INDIVIDUAL.

COMPLAINANT

DATE

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
RESERVATION BUSINESS COMMITTEE
WRIT OF EXCLUSION FROM BAND LANDS**

THIS WRIT OF EXCLUSION IS ISSUED PURSUANT TO SECTION 501 OF ORDINANCE #04/99 OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA UNDER THE INHERENT SOVEREIGN AUTHORITY OF THE FOND DU LAC BAND TO REGULATE THE USE OF ITS LANDS AND TO DETERMINE INDIVIDUAL RIGHTS OF ENTRY AND/OR OCCUPANCY OF BAND LANDS. FOR THE PURPOSES OF THIS WRIT, "BAND LANDS" ARE ANY LANDS WHICH ARE HELD IN TRUST OR FEE BY OR ON BEHALF OF THE FOND DU LAC BAND OR THE MINNESOTA CHIPPEWA TRIBE WHICH LIE WITHIN THE BOUNDARIES OF THE FOND DU LAC RESERVATION. THIS WRIT MAY BE APPEALED IN WRITING WITHIN 30 DAYS OF ITS DATE OF ISSUANCE.

NAME OF SUBJECT INDIVIDUAL(S): _____

EFFECTIVE DATE OF EXCLUSION: _____

GROUND(S) FOR EXCLUSION: _____

AUTHORIZATION

This Writ of Exclusion was duly presented and issued by the Fond du Lac Reservation Business Committee on _____, _____.

CHAIRMAN: _____

DATE: _____

Trespass Notification

I _____ am the
Owner / lease holder / Renter of the home located at _____
_____.

As such, I am officially notifying you, _____,
that you are not welcome at this home or premises.

If you do enter this home or premises, Law Enforcement will be called and you will be charged with the
crime of trespass.

Signature _____

Notified by _____

Date Notified _____

5/10/2007

Notice and Effect of Trespass Notifications Filed by Lawful Possessors of Property Owned by the Fond du Lac Band

You have just been served with a Notice of Trespass in accordance with Chapter 6 of the Fond du Lac Exclusion and Removal Ordinance, FDL Ord. # 04-99. The property owner is telling you not to come back to his or her property. If you ignore this Notice of Trespass, you could face serious legal consequences, including arrest.

What does the Notice of Trespass require me to do?

The Notice of Trespass will describe the property that you are not allowed to enter. You must stay away from the entire premises of that property. You cannot enter the building. You also cannot enter the yard or any other part of the property.

What happens if I enter the property?

If you enter the property, the police will be called. The police will do two things.

First, the police are required to respond to the call and remove you from the property. Under the Band's laws, the police officer does not have a choice about removing you.

Second, the police may arrest you for trespass and you may be charged with a crime. Under Minn. Stat. § 609.605, trespassing is a crime. If you are convicted, you can receive up to 1 year in jail.

How long am I required to stay away?

Unless the Notice of Trespass contains a time limit, you are permanently required to stay away. In the future, the property owner may change his or her mind and revoke the Notice of Trespass.

What if I didn't deserve to receive the Notice of Trespass?

Even if you think you didn't do anything wrong, you must still obey the Notice of Trespass. In general, the property owner is allowed to decide whether to issue a Notice of Trespass.