

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #05/11

PROHIBITION OF CRUELTY TO ANIMALS

Adopted by Resolution #1338/11 of the Fond du Lac Reservation
Business Committee on October 11, 2011.

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

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CHAPTER 1

AUTHORITY, PURPOSE AND SCOPE

Section 101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Fond du Lac Band of Lake Superior Chippewa, as recognized under the Treaty of LaPointe, 10 Stat. 1109; Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; and under the common law of the United States.

Section 102 Findings and Purposes

The Fond du Lac Reservation Business Committee recognizes the importance of protecting the welfare of animals residing on lands of the Fond du Lac Band; the limitations of federal and state over such activities; and the need to identify a specific duty of care for any person exercising control over animals which are on Band lands.

Section 103 Scope and Applicability

The registration provisions of this Ordinance shall apply to any conduct upon lands of the Fond du Lac Band.

Section 104 Reservation of Rights

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to

the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2

DEFINITIONS AND INTERPRETATION

Section 201 Definitions

For the purposes of this Ordinance,

- a. **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- b. **"Band lands"** means any lands over which the Fond du Lac Band holds title or regulatory authority.
- c. **"Non-resident"** means any person who does not have a permanent place of abode on the Reservation, except as hereafter provided. Non-resident does not mean any temporary or seasonal resident (see "Resident").
- d. **"Resident"** means any person who has a permanent place of abode on the Reservation.
- e. **"Reservation"** means the Fond du Lac Reservation.
- f. **"Reservation Business Committee or "RBC"** means the governing body of the Fond du Lac Band of Lake Superior Chippewa.

CHAPTER 3

GENERAL PROVISIONS

Section 301 Prohibitions Against Mistreating Animals

- a. **Abuse and Neglect.** No person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim,

mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or to another person.

- b. **Nourishment; shelter.** No person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.
- c. **Enclosure.** No person shall keep any animal in any enclosure without providing wholesome exercise and change of air.
- d. **Abandonment.** No person shall abandon any animal. No person shall allow any maimed, sick, infirm, or disabled animal to lie in any street, road, or other public place for more than three hours after receiving notice of the animal's condition.
- e. **Cruelty.** No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.
- f. **Caging.** No person shall cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal.

CHAPTER 4

ADMINISTRATION AND ENFORCEMENT

Section 401 Administration of Ordinance

The Police Department of the Fond du Lac Band shall be responsible for the administration and enforcement of this ordinance, and shall investigate any allegation of violations defined under Chapter 3. Violations of this Ordinance shall be prosecuted through the Fond du Lac Tribal Court.

Section 402 Enforcement Procedures

- a. **Application for a Search Warrant.** Upon receipt of a complaint alleging that a violation of this Ordinance has occurred, the Fond du Lac Police shall promptly investigate such complaint.

If an unconsented search of the premises is necessary in order to undertake the investigation, the Chief Law Enforcement Officer may apply to the Fond du Lac Tribal Court for a search warrant. The application shall be supported by affidavit which sets forth facts tending to establish the grounds for believing a violation of this Ordinance has occurred, or probable cause to believe that a violation exists, and shall describe with particularity the violations alleged, the grounds for such allegations, and the premises to be searched.

- b. **Issuance of a Search Warrant.** If the Tribal Court is satisfied of the existence of the grounds of the application, or that there is probable cause to believe a violation exists, it shall issue a signed search warrant and order for investigation to be undertaken. The order may command that a doctor of veterinary medicine accompany the officer. The warrant shall contain the names of the persons presenting affidavits in support of the application and the grounds for its issuance. Service shall be made in person.
- c. **Execution of Warrant.** The Fond du Lac Police shall search the place designated in the warrant and, together with the veterinary doctor, if one is required by the warrant, shall conduct an investigation of the facts surrounding the alleged violation. The police officer may retain in custody, subject to the order of the Tribal Court, any property or things which are specified in the warrant, including any animal if the warrant so specifies. The warrant must be executed and returned to the Tribal Court within ten days after its date; after the expiration of that time the warrant, unless executed, is void. The officer executing the warrant shall promptly return the warrant to the Court, and deliver to it a written inventory of the property or things taken, verified by the certificate of the officer.

Section 403 Disposal of Animals

- a. **Immediate Disposal to End Suffering.** Upon a proper determination by a licensed doctor of veterinary medicine, any animal taken into custody pursuant to this ordinance may be immediately disposed of when the animal is suffering and is beyond cure through reasonable care and treatment. Any costs incurred under this section may be recovered from the responsible party by order of the Tribal Court or by any other legal means available.
- b. **Disposition of Seized Animal.** An animal taken into custody under this Ordinance may be humanely disposed of ten days after the animal is taken into custody, provided that the procedures in subdivision (d) are followed.

- c. **Posting of Security by Interested Parties**. A person claiming an interest in an animal in custody may prevent disposition of the animal by posting security in an amount sufficient to provide for the animal's actual costs of care and keeping. The security must be posted within ten days of the seizure inclusive of the date of the seizure.
- d. **Notice; Right to Hearing**. Notice of this section by delivering or mailing it to a person claiming an interest in the animal or by posting a copy of it at the place where the animal is taken into custody or by delivering it to a person residing on the property, and telephoning, if possible. The notice must include:
1. A description of the animal seized; the authority and purpose for the seizure; the time, place, and circumstances under which the animal was seized; and the location, address, telephone number, and contact person where the animal is kept;
 2. A statement that a person claiming an interest in the animal may post security to prevent disposition of the animal and may request a hearing concerning the seizure or impoundment and that failure to do so within ten days of the date of the notice will result in disposition of the animal; and
 3. A statement that all actual costs of the care, keeping, and disposal of the animal are the responsibility of the person claiming an interest in the animal, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law.

Section 404 Sheltering of Animals

Any officer of the Fond du Lac Police Department may remove, shelter, and care for any animal which is not properly sheltered from cold, hot, or inclement weather or any animal not properly fed and watered, or provided with suitable food and drink in circumstances that threaten the life of the animal. When necessary, the police officer may deliver the animal to another person to be sheltered and cared for, and furnished with suitable food and drink. In all cases, the owner, if known, shall be immediately notified in writing. If the owner or custodian is unknown and cannot by reasonable effort be ascertained, or does not, within ten days after notice, redeem the animal by paying the expenses authorized by this subdivision, the animal may be disposed of as provided under Section 403.

Section 405 Penalties

- a. **Fines & Restitution.** A person who is found to be guilty of a violation of this ordinance shall be subject to a fine not to exceed \$1000 and to restitution of any disposal or shelter costs required under this Chapter.

- b. **Restrictions.** If a person is convicted of violating this Ordinance, the Tribal Court may require that pet or companion animals that have not been seized and are in the custody or control of the person must be turned over to a the Fond du Lac Police for placement in an appropriate shelter unless the court determines that the person is able and fit to provide adequately for an animal. If the evidence indicates lack of proper and reasonable care of an animal, the burden is on the person to affirmatively demonstrate by clear and convincing evidence that the person is able and fit to have custody of and provide adequately for an animal. The Court may limit the person's further possession or custody of pet or companion animals, and may impose other conditions the court considers appropriate, including, but not limited to:
 - 1. Imposing a probation period during which the person may not have ownership, custody, or control of a pet or companion animal;
 - 2. Requiring periodic visits of the person by the Fond du Lac Police or other designated animal control officer;
 - 3. Requiring performance by the person of community service; and/or
 - 4. Requiring the person to receive psychological, behavioral, or other counseling.

**CHAPTER 5
AMENDMENTS; SEVERABILITY**

Section 501 Amendment or Rescission


The Reservation Business Committee may amend or rescind this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation.

Section 502 Severability


If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #05/11 was duly presented and adopted by Resolution #1338/11 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 October 11, 2011 on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

laws:2011.05(101111)

Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

RESOLUTION #1338/11

ENACTING AN ORDINANCE TO PROHIBIT CRUELTY TO ANIMALS

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the permanent home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and


WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as Governing Body of the Fond du Lac Band under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, the Reservation Business Committee has determined that it is necessary and in the best interests of the Fond du Lac Band to enact an ordinance to prevent cruelty to animals on Band lands and to authorize the Fond du Lac Police to respond appropriately to such situations;

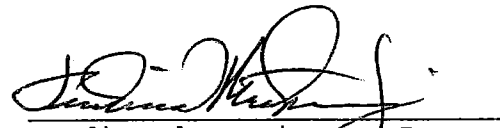
NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee hereby enacts Fond du Lac Ordinance #05/11, entitled "Prohibition of Cruelty to Animals", to become effective immediately.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon 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 October 11, 2011 on the Fond du Lac Reservation.



Karen R. Diver,
Chairwoman



Ferdinand Martineau, Jr.,
Secretary/Treasurer



Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Representative
Wally Dupuis

Dist. II Representative
Sandra M. Shabiash

Dist. III Representative
Mary S. Northrup

Executive Director,
Tribal Programs
Chuck Walt