

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE #08/10

PROHIBITION OF GANG-RELATED ACTIVITY
ON THE FOND DU LAC RESERVATION

Adopted by Resolution #1379/10 of the Fond du Lac Reservation
Business Committee on October 19, 2010.

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FOND DU LAC ORDINANCE #08/10

PROHIBITION OF GANG ACTIVITY

CHAPTER 1
AUTHORITY; PURPOSE; SCOPE

SECTION 101 AUTHORITY

This Ordinance is enacted pursuant to the authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, 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, and Section 201(2) of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301(2).

SECTION 102 FINDINGS; PURPOSES

The Fond du Lac Reservation Business Committee hereby finds and declares:

- a. That it is the right of every person within the Fond du Lac Reservation to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.
- b. That the peaceful occupation of the Fond du Lac Reservation by the Fond du Lac Band is threatened by criminal gangs whose members threaten, terrorize, and commit a multitude of crimes against the peace of the community. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.
- c. It is accordingly the intent of the Reservation Business Committee in enacting this Ordinance to protect the safety and security of the Fond du Lac Reservation by establishing standards by which gang-related activity on the Reservation is to be identified, reported and controlled.
- d. The provisions of this Ordinance shall be interpreted and administered concurrently with all other applicable law.

SECTION 103 SCOPE

This Ordinance shall apply to any conduct by any person on lands which are owned in fee or trust by the Fond du Lac Band within the boundaries of the Fond du Lac Reservation.

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 and there shall be no vested rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Reservation Business Committee to amend or repeal this Ordinance or any part herein at any time. 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 forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance which is adjudicated to be inconsistent or incompatible with applicable federal law shall be invalid and unenforceable to the extent of such inconsistency or incompatibility, provided, however, that all remaining provisions shall be given full force and effect.

**CHAPTER 2
DEFINITIONS AND INTERPRETATION**

SECTION 201 DEFINITIONS

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

- 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 within the boundaries of the Fond du Lac Reservation.
- b. **"Fond du Lac Band"** or **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- c. **"Fond du Lac Reservation"** means the historical land base of the Fond du Lac Band as set aside under Article 2 of the Treaty of LaPointe, 10 Stat. 1109, and any lands outside of those boundaries which were subsequently acquired in trust for the Band.
- d. **"Gang"** means any ongoing organization, association, or group of three or more persons, whether formal or informal, which meets all of the following criteria:
 1. Has as one of its primary activities, the commission of criminal conduct as defined by applicable law; and
 2. Has a common name or common identifying sign(s) or symbols(s); and
 3. Includes members who individually or collectively engage in or have engaged in a pattern of criminal activity.
- e. **"Gang-related activity"** means the commission of a predicate gang crime for the benefit of, at the direction of, or motivated by involvement with a gang, with the intent to promote, further, or assist in criminal conduct by gang members.
- f. **"Pattern of gang-related activity"** means the commission, attempt to commit, conspiring to commit, or solicitation of two or more predicate gang crimes, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same gang within a one-year period.
- g. **"Predicate gang crime"** means any of the following:
 1. Distribution of controlled substances;
 2. Any crime of violence that has an element involving the use or attempted use of physical force against the person on another; or

3. Any felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense, including:

- (a) Assault;
- (b) Battery;
- (c) Intimidation;
- (d) Compelling organizational membership;
- (e) Homicide or manslaughter;
- (f) Shooting at an occupied dwelling or motor vehicle;
- (g) Kidnapping;
- (h) Car jacking;
- (i) Robbery;
- (j) Burglary;
- (k) Drive-by shooting;
- (l) Unlawful use or possession of weapons;
- (m) Bribery;
- (n) Tampering with or retaliating against a witness, victim, informant, or juror;
- (o) Rape;
- (p) Torture;
- (q) Arson;
- (r) Money laundering;
- (s) Felony vandalism;
- (t) Unlawful sale of a firearm; or
- (u) Obstruction of justice.

i. "Reservation Business Committee or "RBC" means the governing body of the Fond du Lac Band of Lake Superior Chippewa.

SECTION 202 INTERPRETATION

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

CHAPTER 3
PROHIBITION AGAINST GANG-RELATED ACTIVITY OR RECRUITMENT;
IDENTIFICATION OF PRESUMPTIVE GANG MEMBERS

SECTION 301 PROHIBITION AGAINST GANG-RELATED ACTIVITY

The commission of any gang-related activity on Band lands, as defined under Section 201(e) of this Ordinance, is hereby prohibited.

SECTION 302 PROHIBITION AGAINST GANG RECRUITMENT & REPRISAL

It is hereby prohibited to engage in the following conduct on Band lands:

- a. To recruit, solicit, entice or intimidate any person to join a gang; or
- b. To expressly or impliedly threaten to do bodily harm to any person or that person's family or use any other criminally unlawful means to deter any person from leaving a gang or disassociating himself or herself from gang-related activity.

SECTION 303 IDENTIFICATION OF PRESUMPTIVE GANG MEMBERS

A person shall be presumed to be a gang member for the purposes of this Ordinance if there is any record by any law enforcement agency or court system identifying the individual as meeting any three of the following criteria:

- a. The person has admitted to being a gang member;
- b. The person is observed to associate with known gang members;
- c. The person has gang tattoos to show allegiance;
- d. The person wears gang symbols or colors which are associated with a gang;
- e. The person is photographed with known gang members or shows other overt signs of gang involvement;
- f. The person is recorded and written on gang documents and graffiti;
- g. The person is identified by a reliable source (e.g. a teacher, social worker, law enforcement officer) as being a gang member;
- h. The person is arrested with gang members;
- i. The person corresponds with gang members by telephone, mail, email, etc.; and/or

- j. The person writes gang symbols and other gang affiliation on notebooks, school work, etc.

CHAPTER 4
REPORTING & ADMINISTRATION

SECTION 401 CREATION OF FDL GANG-RELATED DATABASE;
MAINTENANCE OF INDIVIDUALIZED RECORDS

The Chief of Police of the Fond du Lac Band shall maintain a database of all gang-related activities, recruitment, reprisals, and presumptive gang members arising or operating within the Fond du Lac Reservation. The database shall include an individualized record of every identifiable person who is named in a report generated by the Fond du Lac Police Department who has engaged in conduct described in Chapter 3 of this Ordinance. The contents of the database shall be treated as confidential and shall not be disclosed except as provided under Section 402.

SECTION 402 DISSEMINATION OF RECORDS

Any records generated under Chapter 3 of this Ordinance or maintained under Section 401 may be disseminated, in the sound discretion of the Chief of Police, to the following agencies:

- a. Fond du Lac Reservation Business Committee
- b. Fond du Lac Tribal Attorney
- c. Fond du Lac Director of Housing
- d. Minnesota Gang Investigative Data System; and
- e. Other law enforcement agencies.

Upon the receipt of such records, each agency shall be authorized to utilize the information contained therein in accordance with applicable law and procedures.

CHAPTER 5
EFFECTIVE DATE; AMENDMENT OR RESCISSION

SECTION 501 EFFECTIVE DATE

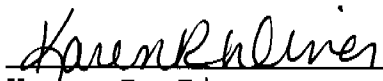
The provisions of this Ordinance shall be effective on the date of adoption by the Reservation Business Committee.

SECTION 502 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 #08/10 was duly presented and adopted by Resolution #1379/10 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on October 19, 2010, on the Fond du Lac Reservation.



Karen R. Diver,
Chairwoman



Ferdinand Martineau, Jr.,
Secretary/Treasurer

laws:2010.08(2010.10.19)

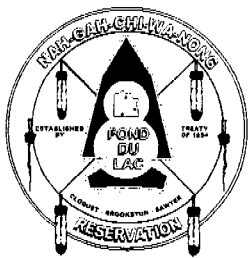
Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

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

RESOLUTION # 1379/10

ENACTING AN ORDINANCE TO PROHIBIT GANG-RELATED ACTIVITY ON THE FOND DU LAC RESERVATION



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

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

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 it to be necessary and in the best interests of the Fond du Lac Band to prohibit gang-related activity on the Fond du Lac Reservation, and has developed an Ordinance for that purpose; and


NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee hereby enacts FDL Ordinance #08/10 entitled "Prohibition of Gang-Related Activity on the Fond du Lac Reservation", to be effective immediately.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on October 19, 2010 on the Fond du Lac Reservation.



Karen R. Diver,
Chairwoman



Ferdinand Martineau, Jr.,
Secretary/Treasurer