

TITLE 39

EXCLUSION AND REMOVAL CODE
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TITLE 39

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS EXCLUSION AND REMOVAL CODE

39.0101 Statement of Legislative Determination and Intent.

The Turtle Mountain Band of Chippewa Indians, by its Tribal Council, hereby finds and determines that it is necessary to provide a means whereby the Tribe can protect itself, its members and other persons living in Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, from people whose presence or activities is harmful to or threatens harm to the peace, health, safety, morals, political integrity, economic security and general welfare of such members and other persons. Such action is deemed necessary in order to allow the Tribe to maintain and protect the aforementioned interests of enrolled Tribal members and community members as individuals and communities free from harm or the threat of harm, to protect the cultural identity and resources of the Tribe, and to protect those residents living in Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, from people whose presence or activities is harmful to or threatens harm to the peace, health, safety, morals, political integrity, economic security and general welfare of such members and other persons who may be imposed upon, harmed or otherwise disadvantaged and to clamp down on repeat offenders who pose a continuing nuisance and/or threat to the people living and property located in Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States,

39.0102 Statement of Authority.

As a sovereign nation, the Turtle Mountain Band of Chippewa Indians has the inherent power to exclude persons from Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians in Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, and has the power to exclude by virtue of Article IX, Section 4 of the Constitution of the Turtle Mountain Band of Chippewa Indians, which states that the Tribal Council has the following authority:

"To enact ordinances to remove from the reservation persons not legally entitled to reside thereon and whose presence may be injurious to the peace, happiness or welfare of the members of the Band, subject to the review of the Secretary of the Interior, or his duly authorized representative.

Further, the McCumber Agreement of 1904 states the individually-owned allotted lands of Turtle Mountain Tribal members are to be treated "the same as if they were on the reservation." Therefore, the authority of the Turtle Mountain Band of Chippewa Indians to exclude persons from Indian Country under the Band's jurisdiction is limited to Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States and limited by federal law.

39.0103 Intent.

The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while at the same time recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harms.

39.0104 Persons Subject to Exclusion and Removal.

Any Tribal member or non-member may be temporarily or permanently excluded and/or removed from any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, with the exception of property personally owned in fee by the member or non-member as provided herein.

39.0105 Grounds for Exclusion and Removal.

A person subject to exclusion and removal as provided herein may be excluded or removed from any or all portions of Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, upon any one or more of the following grounds:

- (1) Indians and/or non-Indians dealing, transporting (or assisting in the transport of) and/or selling drugs of any kind (and any derivative forms of such drugs), including but not limited to:
 - (a) Methamphetamine/Crank
 - (b) Cocaine
 - (c) Crack Cocaine
 - (d) Heroin
 - (e) Prescription drugs not prescribed to the person using them
 - (f) Marijuana
- (2) Indian or Non-Indians convicted in any jurisdiction of one or more crimes involving sexual violence (i.e., including but not limited to rape, incest, sexual abuse of a minor, etc.)
- (3) Non-Indians committing frauds, confidence games, or usury against Indian people residing or lawfully present within any or all portions of Indian Country

under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, by inducing them to enter into grossly unconscionable contracts of any kind.

- (4) Non-Indians doing or threatening to do any act within any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, that seriously threatens the peace, health, safety, morals or general welfare of the Tribe, its members, or other persons living or lawfully within any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States (i.e., public nuisances).

39.0106 Exclusion, Removal and Other Civil Penalties

A person convicted of one or more of the above offenses shall be subject to civil exclusion and removal as provided herein from Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States for the following periods of time:

(1) Indians and/or Non-Indians Dealing, Transporting (or assisting in the transport of) and/or Selling Drugs of Any Kind:

First Offense (Tribal or Federal) - warning

Second Offense (Tribal or Federal) - three-year exclusion

Third or further Offense (Tribal or Federal) - lifetime exclusion

(2) Other Non Drug-Related Grounds for Removal of Non-Indians Only:

First Offense - Warning

Second Offense - Second Warning

Third Offense - Six Month Exclusion

Fourth Offense - One Year Exclusion

Fifth or further Offense - Five Year Exclusion for each offense

(3) Indians and/or Non Indians Convicted of Repeated Sex Crimes

First Offense - Warning

Second Offense - One Year Exclusion

Third Offense - Lifetime Exclusion

39.0107 Proceedings for Exclusion and Removal.

Upon complaint of the Exclusion Ordinance Board, any member of the Tribe, or other person lawfully residing in Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, the Chairman may determine whether the accused person has committed any of the aforementioned actions constituting grounds for exclusion and removal and whether or not the removal and/or exclusion of such person is to be ordered. Such proceedings shall be conducted as provided below. Exclusion and/or removal may be effected only upon an order of the Tribal Chairman.

39.0108 Formation and Appointment of the Exclusion Ordinance Board.

The Tribal Council of the Turtle Mountain Band of Chippewa Indians hereby creates an Exclusion Ordinance Board. Such Board shall consist of five Tribal members to be appointed by the Tribal Council. Board members shall serve staggered four-year terms. In order to establish staggered terms, the Tribal Council shall initially designate two Board members to serve two-year terms and three Board members to serve four-year terms. The Exclusion Ordinance Board shall meet at least quarterly to review convictions requiring exclusion as a penalty. The sole function of the Exclusion Ordinance Board shall be to investigate and make recommendations to the Tribal Chairman regarding convictions requiring exclusion as a penalty.

39.0109 Authority of the Exclusion Ordinance Board.

- (1) The Exclusion Ordinance Board is authorized to create policies and procedures to utilize to investigate convictions requiring exclusion as a penalty as provided herein, and to enforce all provisions of this Exclusion Ordinance.
- (2) Nothing herein shall be construed to limit the authority of the Tribal Court, upon its own initiative or upon motion by the Tribal Prosecutor, to issue an Exclusion Order under other existing provisions of Tribal law.

39.0110 Administrative Hearing on Exclusion and Removal in Non-Emergency Situations.

- (1) In non-emergency cases of exclusion and/or removal, the Exclusion Ordinance Board shall cause to be served upon the offending person a copy of the Petition and Notice of Hearing by personal service, or if such service is not reasonably possible, by registered mail, return receipt requested, to the last known address of such person. Such Notice shall contain the date and time of the administrative pre-exclusion hearing, which hearing shall be not less than three days from the date of service, and shall further inform the person that he or she may appear with counsel at his or her own expense and present evidence in his or her own behalf.
- (2) The administrative pre-exclusion hearing on a proposed exclusion and/or removal may be held at a regular session of the Exclusion Ordinance Board.
- (3) The Exclusion Ordinance Board shall hear the evidence presented, and if appropriate, recommend the exclusion and/or removal of the person to the Tribal Chairman. If the person is not present at such hearing, or if a decision thereon is not rendered until after the hearing, appropriate notice shall be served on the person in the manner provided above, informing him of the action of the Tribal Chairman. Such notice shall include a copy of any recommendation made by the Exclusion Board to the Tribal Chairman for exclusion and/or removal that affects such person.

39.0111 Emergency Exclusion and Removal without Prior Hearing.

- (1) Whenever the Tribal Council finds that there is an immediate need to order the exclusion and/or removal of a person from any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States and that the granting of notice and opportunity to be heard to such person prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the

other persons resident in or on any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, the Tribal Chairman is hereby empowered to immediately order such exclusion and/or removal and provide for post-exclusion Notice and opportunity for review of such decision as outlined below.

- (2) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a Notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he or she has complied with the order he or she may immediately petition the Exclusion Ordinance Board for a hearing to reconsider the Exclusion Order, that he or she may be represented by counsel at such hearing at his or her own expense and present evidence in his or her own defense, and shall inform him that his or her compliance with such Exclusion Order to be enforced by Tribal or other police officers given the responsibility to do so. A copy of the Exclusion Order shall be served with the Notice upon the person to be excluded and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, to his or her last known address.
- (3) Upon receipt of a petition for a hearing, the Exclusion Ordinance Board shall schedule an administrative hearing to allow the person to present evidence. Such hearing shall be held within two weeks of receipt of the Petition for Removal, provided, however, that except for purposes of attending this hearing, the Exclusion and/or Removal Order shall remain in full force and effect pending the reconsideration hearing and a decision thereon.

- (4) After such hearing, the Exclusion Ordinance Board shall recommend to the Tribal Chairman to affirm, modify or rescind his or her previous Exclusion Order. If the decision is not rendered thereon until after the hearing, the Exclusion Ordinance Board shall give the person written Notice of such decision in the same manner as provided above for service of the Notice.

39.0112 No Review of Orders of Exclusion and Removal.

- (1) After an administrative hearing has been held thereon before the Exclusion Ordinance Board, the decision of the Tribal Chairman shall be final with respect to Exclusion and/or Removal Orders.
- (2) All emergency Exclusion and/or Removal Orders shall remain in full force and effect during periods of hearing by the Exclusion Ordinance Board or review by the Tribal Chairman.

39.0113 Enforcement of Exclusion and/or Removal Orders.

- (1) All law enforcement officers of the Turtle Mountain Band of Chippewa Indians and the United States Government are hereby empowered to carry into effect any Exclusion and/or Removal Order of the Tribal Chairman according to the terms of such Exclusion Order.
- (2) A violation of any Exclusion or Removal Order shall constitute a charge of Civil Contempt enforceable in the Turtle Mountain Tribal Court.
- (3) The harboring of a person duly excluded and/or removed from Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States shall be added appropriately to the Turtle Mountain Tribal Code.

- (4) The Tribal Prosecutor is hereby empowered to work with the Tribal Records Department to add the harboring of a person duly excluded and/or removed to the provisions regarding criminal offenses, penalties and procedures in the Turtle Mountain Tribal Code.
- (5) The names of any and all excluded and/or removed persons shall be published in the local newspapers.
- (6) The Turtle Mountain Band of Chippewa Indians reserves the right to suspend the Tribal membership of any member excluded and/or removed under this Ordinance so that such individual becomes ineligible for any and all Tribal and/or federal benefits associated with Tribal membership during the period of exclusion and/or removal.
- (7) In the event the Turtle Mountain Band of Chippewa Indians notifies the Enrollment Office of the Bureau of Indian Affairs that it wishes to exercise its right to suspend the Tribal membership of any member excluded and/or removed under this exclusion Ordinance, the Turtle Mountain Band of Chippewa Indians will instruct a Tribal official to provide Notice of such exclusion and/or removal to the Enrollment Office of the Bureau of Indian Affairs. Such Notice shall include a copy of the excluded individual's Exclusion and/or Removal Order. Once such Tribal official has provided Notice of such exclusion and/or removal to the Enrollment Office of the Bureau of Indian Affairs, such Tribal official shall instruct the Enrollment Office to affix a notation to the enrollment record of such member to the effect that the individual's Tribal enrollment has been suspended for the period stated in the Exclusion and/or Removal Order.

39.0114 No Ex Post Facto Application.

This law shall have prospective application only, and shall not be construed to have any retroactive application whatsoever.

39.0115 No Double Jeopardy

- (1) This Exclusion Ordinance does not constitute double jeopardy with respect to federal or state offenses as it is imposed by a separate Tribal sovereign government.
- (2) This law does not constitute double jeopardy with respect to Tribal offenses as this Exclusion Ordinance is civil, not criminal in nature; constitutes an administrative rather than a judicial process, and comports with basic due process as defined by the Tribal Administrative Procedures Act, and complies with the Indian Civil Rights Act.

39.0116 Incorporation into Tribal Code.

- (1) The Tribal Records Department of the Turtle Mountain Band of Chippewa Indians is hereby empowered to incorporate this Exclusion Ordinance into the appropriate portion of the Turtle Mountain Tribal Code.
- (2) Once such Exclusion Ordinance is incorporated into the Turtle Mountain Tribal Code, the Tribal Records Department shall cause the placement of such Exclusion Ordinance to be published for citation purposes.