

Ordinance 30-03

An Ordinance providing for the safety and health of the Mille Lacs Band of Ojibwe Indians on Band lands through the amendment of the Public Nuisance Ordinance.

The District I Representative introduced the following Bill on the 11th day of June, 2003.

Title 24 MLBSA PUBLIC NUISANCE ORDINANCE Part C

This Public Nuisance Ordinance represents the law pertaining to nuisance on Band Lands. Prior Title 24 MLBSA Part C (Nuisance) §§ 301-304 and 24 MLBSA Subchapter VI, § 1254 are repealed and replaced in their entirety by this Ordinance.

PREAMBLE: The Mille Lacs Band of Ojibwe Indians believes every person has the right to live a quiet and peaceful life. The Band recognizes certain conditions and behaviors are nuisances, which threaten the health, safety and well-being of other persons.

§ 301. Purpose. This Ordinance is created to minimize the impact of undesirable conditions and behaviors on Band Lands and to preserve the peace and tranquility of communities on Band Lands.

§ 302. Nuisance Defined. A nuisance is any substance, matter, emission, sound or thing, which is found upon, is found in, or is being discharged or is flowing from, any street, highway, railroad right-of-way, vehicle, body of water, excavation, building, lot, grounds or other property on Band Lands, and which creates a dangerous or unhealthy condition on, or which threatens the public peace on or the health, safety or sanitary condition of Band Lands, or which is offensive to or has a blighting influence on a community on Band Lands. Nuisances include, but are not limited to, the following:

(1) Abandoned Vehicle. Any vehicle that is parked for a period longer than thirty (30) days with either no tags or expired tags more than thirty (30) days overdue.

(2) Dangerous structure. A structure which is potentially hazardous to persons or property including, but not limited to:

- a. A structure which is in danger of partial or complete collapse; or

- b. A structure with any exterior parts which are loose or in danger of falling; or
- c. A structure with any parts such as floors, porches, railings, stairs, ramps, balconies or roofs, which are accessible and which have collapsed, are in danger of collapsing, or are unable to support the weight of normally imposed loads.

(3) Fire Hazards. Any thing or condition which creates a fire hazard or which is a violation of the fire code.

(4) Graffiti. Any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched upon a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure in violation of 24 MLBSA § 1161.

(5) Grass and Weeds. Grass or weeds in a yard surrounding a residence which have grown to a height of twelve (12) or more inches.

(6) Hazards. Any thing or condition on property which may contribute to the injury of any person present on the property, including, but not limited to, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators or trapping devices.

(7) Health Hazards. Any thing or condition which creates a health hazard or which is a violation of any health or sanitation law.

(8) Insects, rodents and pest harborage. Conditions that are conducive to the presence, harborage or breeding of insects, rodents or other pests, provided that beekeeping and equipment and devices used for beekeeping shall not be considered under this Ordinance.

(9) Loud Music. Any music emitted from any car, house or music player so as to create a disturbance to the neighbors or community members between the hours of 10:00 p.m. and 8:00 a.m.

(10) Refuse, noxious substances, hazardous wastes. Refuse, noxious substances or hazardous wastes laying, pooled, accumulated, piled, left, deposited, buried or discharged upon or in, or being discharged or flowing from, any property, structure or vehicle, except for:

- a. Refuse deposited at places designated and provided for that purpose and in compliance with 11 MLBSA § 1005 or other applicable law.

- b. Refuse stored in accordance with this Ordinance and 11 MLBSA §§ 1002-1007 or other applicable law, or vehicle parts stored in an enclosed structure.
- c. Compost piles established and maintained for gardening purposes.

(11) Uncontrolled Party. Any social gathering that creates a disturbance so as to disrupt the peacefulness of the neighborhood or community due to loud noises and/or fights or other obnoxious behavior.

§ 303. Other Definitions.

(1) Attractive Nuisance means any thing or condition located on property that could reasonably be viewed as attracting children to enter into or onto the property, thing or condition to play, and which pose a risk of injury or death to such children.

(2) Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.

(3) Enforcement Officer means any officially designated Mille Lacs Band Housing Authority representative, Community Development representative, Health & Human Services representative, Tribal Police Officer or Department of Natural Resources warden or official.

§ 304. Abatement Procedure. Except as provided in Section 305 of this Ordinance, the following procedure will be used to abate a nuisance:

(1) Order. An Enforcement Officer shall serve a written order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The Enforcement Officer may also serve the written order upon any other known party to the nuisance. The order shall contain the following:

- a. A full and complete street address or a real estate description sufficient to identify the location of the nuisance.
- b. A description of the nuisance and the remedial action required to abate the nuisance.
- c. The abatement deadline, to be determined by the Enforcement Officer, allowing a reasonable time for the performance of any act required.

- d. A statement that the order may be appealed and a hearing in the Court of Central Jurisdiction obtained by filing a written request for hearing with the Court Clerk prior to the abatement deadline designated in the order.
- e. A statement that, if the remedial action is not taken nor a request for a hearing filed with the Court Clerk within the time specified, the Mille Lacs Band will abate the nuisance and charge all costs incurred therein against the person responsible for creation of the nuisance or the Owner or Tenant of the property on which the nuisance is located.

(2) Setting Hearing Date. In the event that a request for hearing is filed, the Court Clerk shall schedule the matter for hearing. In all instances, the Court Clerk shall set the hearing no longer than sixty (60) days from the filing of the request for hearing.

(3) Notice of Hearing Date. In the event a request for hearing is filed with the Court of Central Jurisdiction, the Court Clerk shall mail a notice of the date, time, place and subject of the hearing to the owner, tenant and/or known responsible parties. The Court Clerk shall also mail the notice to the District Community Center where the nuisance is located requesting that it be posted. The Court Clerk shall also notify the Enforcement Officer and the Solicitor General's Office.

(4) Hearing. If the Court ruling requires abatement, an Order shall be issued to fix a time when the nuisance must be abated and shall provide that, if the nuisance is not abated within the time specified, the Mille Lacs Band may abate the nuisance and assess the costs of the abatement to the person found responsible for the nuisance.

(5) Abatement. If the remedial action is not taken nor an appeal filed within the time specified, the Mille Lacs Band may abate the nuisance.

(6) Fines. Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance within the meaning of this Ordinance shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00.

§ 305. Emergency Abatement Procedure. When an Enforcement Officer determines that a dangerous structure, an attractive nuisance, or any other nuisance as defined in this Ordinance exists on Band Lands and constitutes an immediate danger or hazard which, if

not immediately abated, will endanger the health or safety of the public, and such danger cannot be removed in a timely manner by following the procedures of Section 304 of this Ordinance, the Mille Lacs Band may abate the nuisance by the procedure described below:

(1) Order. The Mille Lacs Band may order emergency abatement by an administrative order to be signed by the Mille Lacs Band Commissioner of Community Development, Housing Authority Executive Director, Chief of Tribal Police, Commissioner of Health & Human Services, Commissioner of Administration, Assistant Commissioner of Administration, or their officially designated representative (“Responsible Official”). The Order must describe the nuisance, identify its location, summarize the bases on which the Enforcement Officer determined that an emergency abatement was appropriate under this section, and set forth the concurrence of the Responsible Official in that determination. Upon issuance of the Order, the Band will abate the nuisance in accordance with the Order, and an Enforcement Officer will serve a copy of the Order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance).

(2) Notice of Abatement. Following an emergency abatement, the Responsible Official shall file the administrative order with the Court of Central Jurisdiction and request that a hearing be scheduled before the Court following notice to the party believed to be responsible for the creation of the nuisance, if known, and to the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The notice shall attach a copy of the administrative order and shall contain:

- a. a description of the nuisance;
- b. the action taken;
- c. the reasons for immediate action;
- d. the costs incurred in abating the nuisance; and
- e. the date, time and place of the hearing.

(3) Hearing. At the time of the hearing, the Court shall hear from the Enforcement Officer, the Responsible Official, and Commissioner or any other person who wishes to be heard regarding their personal knowledge of the nuisance.

(4) Fines and Assessments. Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance abated under this section shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00. In addition, if the Band proves by a preponderance of the evidence that the emergency abatement was appropriate under this section, the Court of Central Jurisdiction may levy an assessment for costs incurred by the Band in abating the nuisance.

§ 306. Sovereign Immunity.

Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

§ 307 Severability.

If the Court of Central Jurisdiction adjudges any provision of this Ordinance to be invalid, such judgment shall not affect any other provision of this Ordinance not specifically included in the judgment.

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Introduced to the Band Assembly on this
Eleventh day of June in the year
Two Thousand Three.

Passed by the Band Assembly on this
Eleventh day of June in the year
Two Thousand Three.

Herb Weyaus
Herb Weyaus, Speaker of the Assembly

APPROVED

Date: June 6, 2003

Melanie Benjamin
Melanie Benjamin, Chief Executive

Date: _____

Vetoed

FILED

Date: June 23, 2003

John Swimmer
John Swimmer, Solicitor General

OFFICIAL SEAL OF THE BAND