

Ordinance 29-03

An Ordinance providing for the ban on Graffiti on Band Lands through the amendment of the Offenses Against Property Act.

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

24 MLBSA, Subchapter IV OFFENSES AGAINST PROPERTY

§ 1161. Graffiti

1. Any person subject to the jurisdiction of the Mille Lacs Band who is found, by a preponderance of the evidence, to have knowingly placed graffiti on any real or personal property on Band Lands, without the permission of the owner of the property or other legal authorization, is guilty of vandalism, which is a civil misdemeanor, and is subject to a fine and other penalties as set forth in this section. As used in this section 1161:

“Graffiti” means 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 on a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure.

“Band Lands” means lands owned 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.

“Juvenile” means any person who is less than eighteen (18) years of age.

2. In any case arising under this section, it shall be presumed that the Mille Lacs Band and its entities did not give permission to any person to place graffiti on any property, vehicles, signs, fixtures, or furnishings belonging to the Mille Lacs Band or its entities unless such permission was in writing.
3. Upon conviction of any person under this section for vandalism, the Court may, in addition to any fine and other penalties imposed, order the defendant to clean up, repair, or replace the damaged property. The Court may also order the defendant, and his or her parents or guardians if the defendant is a juvenile, to keep the damaged property or another specified property free of graffiti for up to one year.
4. If a juvenile is personally unable to pay a fine imposed under this section, the parent(s) or guardian(s) of that juvenile shall be liable for payment of the fine.

5. The Court may order any person ordered to perform community service or graffiti removal under this section to undergo counseling. If the person was under the influence of alcohol or other illegal substance, the Court may also require a drug and alcohol assessment and drug or alcohol treatment.

6. Penalties.

(a) The maximum penalty for a first offense of vandalism under this section 1161 shall be a fine of \$250.00 and 80 hours of community service, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.

(b) The maximum penalty for a second offense shall be a fine of \$500.00 per offense and 160 hours of community service, plus full restitution to the victim. If the offender is a juvenile, then the penalty may be taken from the parent or legal guardian.

(c) The maximum penalty for a third and any subsequent offense of vandalism under this section 1161 is a \$1,000.00 fine and 200 hours of community service per offense, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.

(d) Upon a third or subsequent conviction for vandalism under this section 1161, the defendant may be banned from entering all Mille Lacs Band Government buildings, except for employment, to conduct business at the District Government Centers, or to obtain medical treatment at Band medical facilities. The Court may suspend or modify this sentence for good cause shown by defendant.

7. Prohibition against Selling or Furnishing Aerosol Paint to Minors.

(a) It shall be unlawful for any person, firm, or corporation subject to the jurisdiction of the Mille Lacs Band, except a parent, legal guardian, or supervising adult, to provide to any person any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence in the form of a Band identity card or State driver's license that the person to whom the aerosol container is provided is 18 years of age or older.

(b) It shall be unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(c) Every Mille Lacs Band entity, and every retailer licensed by the Corporate Commission to do business with the Mille Lacs Band, which sells or offers for sale on or near Band Lands aerosol containers of paint, shall post a sign stating:

“Any person subject to the jurisdiction of the Mille Lacs Band who knowingly or intentionally defaces real or personal property with paint on Band Lands is guilty of vandalism under Band law and shall be prosecuted to the full extent of the law.”

(d) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band to carry on his or her person and in plain view to the public an aerosol container of paint into any posted Band facility, park, playground, swimming pool, beach, or recreational area without valid written authorization from the Band.

(e) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to possess an aerosol container of paint while on any public highway, street, alley, way, or other public place on Band Lands, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(f) Any person who is found guilty, by a preponderance of the evidence, of violating subparagraphs (a), (b), (d) or (e) of this paragraph 8 shall be guilty of a civil misdemeanor and subject to a maximum fine in the amount of \$250 per offense. The Corporate Commission shall revoke the license to do business with the Band of any retailer who fails to post the sign required by subparagraph (c) of this paragraph after providing fourteen (14) days written notice of such requirement to such retailer.

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

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

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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 12, 2003

Melanie Benjamin
Melanie Benjamin, Chief Executive

Date: _____

Vetoed

FILED

Date: June 23, 2003

John J. Swimmer
John Swimmer, Solicitor General

OFFICIAL SEAL OF THE BAND