

Ordinance 41-16

An Ordinance establishing the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery under Mille Lacs Band Statute, Chapter 4 §§ 3001-3012 of Title 10 – Cemeteries, pursuant to legislative process articulated in 3 MLBSA §16.

The District I Representative introduced the following bill on the 16th day of June, 2016.

Preamble

Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adding Chapter 4 §§ 3001-3012 of Title 10 entitled “Cemeteries” to establish the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery.

Mille Lacs Band Cemetery Association and Regulation of Cemetery Establishment

The Band Assembly adds Chapter 4 §§ 3001-3012 by adding the following new language:

§ 3001. Establishment of the Mille Lacs Band Cemetery Association. The Mille Lacs Band of Ojibwe Indians (“Band”) hereby establishes the Mille Lacs Band Cemetery Association (“Association”). The Association shall be a distinct, non-profit legal entity that is separate and apart from the Band.

§ 3002. Purposes. The purposes of the Association are: (a) to acquire the existing Lake View Cemetery (“Cemetery”), including all real and personal property appurtenant thereto, from Kathio Township; (b) to hold and manage the Cemetery and all such property appurtenant thereto, unless such property is not needed for cemetery purposes; and (c) to protect, preserve, and improve the burying grounds within the Cemetery.

§ 3003. Powers and Responsibilities. Except as otherwise provided in this Ordinance, the Association shall have all of the powers and responsibilities of a cemetery association under Band law, provided that the Association shall not dispose of any real property it acquires without the prior written approval of the Chief Executive and Band Assembly, and provided further that the Association shall not dispose of any real property needed or being used for cemetery purposes except to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under law. Upon its acquisition of the Cemetery and all property appurtenant thereto, the powers and responsibilities of the Association shall include, but not be limited to, the following:

- (a) to set walkways and, if necessary, relocate gravestones on or near graves so as to preserve the alignment of walkways, provided that any unmarked graves shall be preserved as completely as possible, without removing the bodies interred therein;

(b) to make regulations governing the location of future graves and the opening of graves;

(c) to set and charge a uniform fee for the privilege of burial in the cemetery, which may be adjusted from time to time;

(d) to provide for the upkeep and maintenance of the Cemetery;

(e) to assist in locating gravesites, with the understanding that records of burials in the Cemetery are not always accurate or available; and

(f) to remove shrubs or trees that have overgrown a gravesite or that have otherwise become unsightly or a nuisance, provided that the Association will make reasonable efforts to inform known living descendants of an individual buried in an affected gravesite before removing such shrubs or trees.

§ 3004. Membership. The membership of the Association shall consist of: (a) all enrolled members of the Band; (b) all other persons who have an ancestor or relative buried in the Cemetery and who choose to become members of the Association; and (c) any other person who chooses to become a member of the Association, upon approval of the Association's Board of Trustees. The Association will charge a one-time membership fee to all Association members except enrolled members of the Mille Lacs Band. The Association will not collect dues from its members, but may request voluntary contributions from them.

§ 3005. Duration. The duration of the Association shall be perpetual unless the Association, with the approval of the Chief Executive and Band Assembly, transfers the Cemetery and all property appurtenant thereto to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under Band law.

§ 3006. Authorized Activities. The Association is authorized to engage in any lawful activity that is reasonable and necessary to achieve its purposes or to exercise its powers and fulfill its responsibilities, including but not limited to:

(a) entering into and performing contracts;

(b) employing personnel and retaining independent contractors, including accountants and attorneys;

(c) establishing, maintaining, and carrying out employee benefit plans, either on its own or through the Band;

(d) compromising or otherwise settling disputes; and

(e) suing or being sued, but only in the Mille Lacs Band Court of Central Jurisdiction.

§ 3007. Board of Trustees. The activities of the Association shall be managed by a Board of Trustees (“Board”) in accordance with the following provisions:

(a) Composition, Appointment and Election. There shall be five positions on the Board. Two of the positions on the Board will be filled by the Band’s Commissioner of Natural Resources and its Historic Preservation Officer, each of whom shall serve on the Board during their terms in office. Such service shall be a part of their respective job responsibilities, and shall not entitle them to additional compensation or remuneration. The other three positions on the Board shall be appointed in the following manner:

(1) One (1) position shall be filled by appointment of the Chief Executive subject to ratification by the Band Assembly. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of a term, shall be two (2) years.

(2) One (1) position shall be filled by appointment of the Secretary-Treasurer subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(3) One (1) position shall be filled by the District I Representative subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(b) Vacancies. A Board seat shall be considered vacant under the following circumstances: (i) if there is a vacancy in the position of Band Commissioner of Natural Resources or Band Historic Preservation Officer, in which case the corresponding Board seat shall be considered vacant; (ii) in the event of the death or resignation of a Trustee; or (iii) if the Board finds that a Trustee is unable or unwilling to serve. If a Board seat is considered vacant, the vacancy shall be filled as follows: (i) by appointment of the Chief Executive and ratified by the Band Assembly, in the case of a vacancy in the position held by the Band’s Commissioner of Natural Resources or its Historic Preservation Officer, until such time as a new Commissioner of Natural Resources or Historic Preservation Officer takes office; (ii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy in the position held by one of the other three initial appointees, until the end of such appointee’s term; and (iii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy held by one of the other three positions of the Board subsequently appointed, until the end of such member’s term.

(c) Meetings.

(1) Association's Annual Membership Meeting. The Association will hold an annual membership meeting, in which officers of the Association shall make a full report of the activities of the Association, including a financial report. The date and time of the meeting will be set by the Board.

(2) Board Meetings. The Board shall hold an annual Board meeting following the Association's annual membership meeting for the appointment of officers of the Association. The Board may establish a schedule for regular Board meetings by resolution setting the date and time for such meetings. Special meetings of the Board may be called by the Board's Chairperson on his or her own initiative or at the request of any two Trustees, to be held at a convenient date and time determined by the person or persons calling the meeting.

(3) Meeting Locations. All meetings of the Association and the Board shall be held in the Band's Government Center or in another Band facility made available to the Association and the Board at no charge.

(4) Notice of Meetings. Notice of the Association's annual membership meeting shall be published at least seven calendar days before the meeting in the Mille Lacs Band newspaper, Government Center and District Community Centers bulletin boards, and upon the Band website. No notice is required for annual or regular Board meetings. Notice of special Board meetings shall be given at least three business days in advance of the meeting by written notice delivered personally or by mail, telefax, electronic mail, or other similar means to each Trustee at his or her business or home address or to an electronic mail address designated by such Trustee in writing. If mailed, the notice shall be deemed to be given three calendar days after being deposited in the United States mail properly addressed with postage prepaid. Notice need not be given to a Trustee who waives notice either before or after the meeting or who participates in the meeting without timely objection as to notice. Notice also need not be given to a meeting resumed after adjournment. Neither the business to be transacted at nor the purpose of any special Board meeting need be specified in the notice or waiver of notice.

(d) Quorum. Except as otherwise provided in this Ordinance, three Trustees shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a quorum is present, a majority of the Trustees present may adjourn the meeting from time to time without further notice.

(e) Manner of Acting. Except as otherwise provided in this Ordinance, the act of a majority of the Trustees present at a Board meeting at which a quorum is present shall be the act of the Board.

(f) Presumption of Assent. A Trustee present at a Board meeting, who neither casts a vote nor expressly abstains from voting on a Board action taken at the meeting, shall be presumed to have assented to the action unless his or her dissent is

entered in the minutes of the meeting or he or she files a written dissent to the action with the person acting as the Secretary of the meeting before the adjournment thereof or forwards such dissent by certified or registered mail to the Secretary of the Association immediately after the adjournment of the meeting.

(g) Committees. The Board, by affirmative vote of three Trustees, may delegate specific authority possessed by the Board to a committee of at least two Trustees (“Committee”), provided such delegation shall not operate to relieve the Board or any Trustee of any responsibility imposed by this Ordinance or other applicable law.

(h) Telephone Meetings. The Trustees may participate in any meeting of the Board or a Committee by means of a telephone conference call or similar communications system by which all persons participating in the meeting can hear each other, and such participation shall constitute presence at the meeting.

(i) Action without a Meeting. Any Board or Committee action may be taken without a meeting if consent is expressed in writing, setting forth the action taken, and signed by all Trustees or Committee members, as the case may be. Such written consent shall have the effect of a unanimous vote at a meeting.

(j) Compensation. There shall be compensation for service as a member of the Board of Trustees as provided by the Association’s By-laws.

(k) Limited liability and indemnification. The Association shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the Association, or is or was serving at the request of the Association as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The Association shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

§ 3008. Officers. The officers of the Association shall consist of a Chairman of the Board, a Vice Chairman of the Board, a Secretary, a Treasurer, and such other officers as the Board may deem necessary or appropriate, all of whom shall be appointed and hold office as follows:

(a) Appointment and Term. Officers shall be appointed by the Board at the annual Board meeting. Unless the Board specifies a shorter term, each Officer shall hold office until the next annual Board meeting and until his or her successor is appointed and

assumes office. Any two or more Offices may be held by the same person except Chairman and Vice Chairman or Chairman and Secretary.

(b) Resignation, Removal and Vacancies.

(1) Any Officer may resign by giving written notice to the Association. The resignation shall be effective when given, unless a later effective date is specified in the notice.

(2) The Board may remove any officer with or without cause.

(3) The resignation or removal of an Officer who also serves as a Trustee shall not also terminate that person's status as a Trustee, unless the resignation so states or that person's position on the Board is considered vacant under paragraph 7(b) above.

(4) As provided below, the Chairman and Vice Chairman of the Board must also be Trustees. Accordingly, upon termination of either Officer's status as a Trustee, his or her status as Officer shall also terminate.

(5) If a vacancy occurs in any Office of the Association for any reason, the Board shall appoint a successor to fill the vacancy for the remainder of the unexpired term.

(c) Chairman of the Board. The Chairman of the Board ("Chairman") shall be appointed from among the Trustees and shall preside at all Board meetings and have such other powers and duties as the Board may prescribe.

(d) Vice Chairman of the Board. The Vice Chairman of the Board ("Vice Chairman") shall be appointed from among the Trustees. In case of the absence, disability or death of the Chairman, the Vice Chairman shall exercise and perform all powers and duties of the Chairman. The Vice Chairman shall have such other powers and duties as the Board may prescribe.

(e) Secretary. The Secretary shall:

(1) take minutes of all Board and Committee meetings, and maintain a book thereof at the Band Government Center, reporting the time and place of the meeting, how it was authorized, the notice given, the names of those present at the meeting, and the actions taken;

(2) keep at the Band Government Center a book containing a copy of this Ordinance and all subsequent actions of the Chief Executive and Band Assembly with respect to the Association and Cemetery;

(3) keep at the Band Government Center copies of any By-Laws adopted by the Board in accordance with this Ordinance;

(4) keep at the Band Government Center annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations; and

(5) make the foregoing books and records available at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees.

(f) Treasurer. The Treasurer shall:

(1) supervise and control the maintenance of fiscally responsible accounts for the Association's assets, liabilities, receipts, disbursements, and other financial affairs;

(2) cause the books of these accounts to be open at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees;

(3) prepare or oversee the preparation of annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations, and cooperate with the Secretary of the Association in making such statements available in accordance with paragraph 8(3)(iv) above;

(4) deposit all funds and other financial assets of the Association with the Band's Office of Management and Budget;

(5) receive or cause to be received, and give or cause to be given, receipts for moneys paid to or on behalf of the account of the Association;

(6) request the Commissioner of Finance to disburse, or cause to be disbursed, all funds of the Association as may be directed by the Board, taking proper vouchers for such disbursements;

(7) render to the Trustees, whenever they may require, accounts of all transactions engaged in as Treasurer and accounts showing the financial condition of the Association; and

(8) have such other powers and duties as the Board may prescribe.

(g) Other Officers; Delegation. The Board may appoint other Officers as it considers necessary or appropriate. These Officers shall have powers and duties as the Board may prescribe. In case of the unavailability or disability of any Officer, the Board

may from time to time temporarily delegate his or her powers or duties to another Officer or Trustee.

(h) Compensation. The Officers shall serve with compensation as provided by the Association's By-laws.

§ 3009. Employees.

(a) Management of Cemetery. Employees of the Band's Community Development Public Works Department ("Public Works") shall oversee the operation of the Cemetery, however, the Board may hire a Cemetery Manager to oversee the operation of the Cemetery in accordance with this Ordinance. The Cemetery Manager may be hired for such term, and on particular terms and conditions, as the Board considers necessary or appropriate to serve the best interests of the Association. Public Works or the Cemetery Manager shall not be a member of the Board. Public Works or the Cemetery Manager shall report to the members of the Association at the Association's annual membership meeting, and shall report to the Board at each regular and special meeting of the Board.

(b) Other Employees. The Board may hire other employees as it considers necessary or appropriate to serve the best interests of the Association, on terms and conditions it considers appropriate.

(c) Right to Terminate. The Board may terminate an employee who is not an employee of Public Works, with or without cause, but the termination shall be without prejudice to the contract rights, if any, of the person so terminated.

§ 3010. Operations.

(a) Source of Funds. The Association shall have three sources of funds:

- (1) burial fees collected under paragraph 3(c) above;
- (2) gifts and donations, which shall be tax deductible to the maximum extent permitted by law; and
- (3) membership fees collected from non-Band Member Association members under paragraph 4 above.

(b) Deposit and Expenditure of Funds. All funds of the Association shall be deposited with the Office of Management and Budget and maintained in a separate, earmarked account for the Association. The Association, in consultation with the Commissioner of Finance, shall use a portion of its funds to establish a permanent trust fund for the benefit of the Association, which shall also be managed by the Office of Management and Budget and held in a separate, earmarked account for the Association. The Commissioner of Finance will disburse the Association's funds on behalf of the Association when requested to do so in accordance with paragraph 8(g)(vi) above,

provided that no funds will be disbursed for any purpose other than the authorized purposes of the Association under this Ordinance. The Association's funds shall not be used or obligated by the Band or any other person or entity for any other purpose.

(c) Authority to Sign or Endorse Written Instruments. All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness, and securities or other valuable instruments, issued in the name of or payable to the Association, and all written contracts of the Association, shall be signed or endorsed on behalf of the Association by the Officer(s) and employee(s) the Board may designate by written resolution. No Officer or employee of the Association shall have power to bind the Association by contract or otherwise unless authorized to do so by this Ordinance or by the Board.

(d) Fiscal Year. The Board shall determine the fiscal year of the Association.

§ 3011. By-Laws. The Board may adopt, amend, or repeal by-laws of the Association, provided that the by-laws may not contain provisions inconsistent with the provisions of this Ordinance or applicable law.

§ 3012. Regulation of the Cemetery.

(a) Upon its acquisition by the Association, the use of the Cemetery shall be subject to the regulations in this section.

(b) The Cemetery shall be open to the public from two hours before sunrise until two hours after sunset, provided that these hours may be modified by the Association. With the exception of officers or employees of the Association, who the Association has authorized to be on the premises during closed hours, it shall be unlawful to be on the premises of the Cemetery except when it is open to the public. It shall also be unlawful to engage in any activities on the premises of the Association other than those normally associated with burials, visitation of grave sites, memorial services, or upkeep and maintenance of the Cemetery. The Association shall post notice of these provisions in a conspicuous place at or near the entrance to the Cemetery. A person who violates a provision of this paragraph shall be guilty of a civil and criminal trespass under Band law.

(c) No person shall open a grave without first obtaining permission from the Association. A person applying for permission to open a grave shall submit an application to the Association at least twenty-four hours before the opening. A person in charge of opening a grave shall be responsible for closing the grave and leaving the gravesite in good condition.

(d) Headstones and other markers must be placed inside gravesites and in accordance with any directives of the Association regarding such placement.

(e) Flowers placed in the Cemetery must be placed in non-breakable containers within a gravesite.

(f) No hedges, fences, walls, curbing, railings, or other similar structures may be placed around a gravesite or elsewhere within the Cemetery without approval in writing from the Association.

(g) Any person who violates any provision in paragraphs c, d, e, or f above shall be guilty of a civil offense, punishable by a civil penalty of not less than \$100 and not more than \$500, and shall be liable to the Association for the costs of removing or relocating any offending item and any damages caused by such item, together with the Association's reasonable attorneys' fees, all as determined by the Mille Lacs Band Court of Central Jurisdiction.

The above addition 10 MLBSA Chapter 4 §§ 3001-3012 shall become effective upon signature approval, or non-action, by the Chief Executive in accordance with 3 MLBSA §16(c).

Ordinance 41-16
(Band Assembly Bill 17-01-41-16)

Introduced to the Band Assembly on this
Sixteenth day of June in the year
Two thousand sixteen.

Passed by the Band Assembly on this
Twenty-sixth day of July in the year
Two thousand sixteen.

Carolyn Beaulieu
Carolyn Beaulieu, Speaker of the Assembly

APPROVED

Date: August 31, 2016

Melanie Benjamin
Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND