

Spirit Lake Tribe Gang Code
Title 3: Criminal Code
Gang and Violence Prevention Ordinance

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CHAPTER 1: GENERAL PROVISIONS

1.1 PURPOSE

The purpose of this ordinance is to provide for the health, safety, and welfare of the Spirit Lake Tribe, residents and visitors of the territory.

1.2 AUTHORITY

This ordinance is adopted pursuant to Article VI, Section 4 of the Spirit Lake Tribal Constitution.

1.3 EFFECTIVE DATE

This ordinance shall take effect upon approval by the Secretary of the Interior as provided in Article VI, Section 4 of the Spirit Lake Tribal Constitution.

CHAPTER 2: ABROGATION AND GREATER RESTRICTIONS

When this ordinance imposes greater restrictions than those contained in other tribal ordinances, codes, or resolutions, the provisions of this ordinance shall govern.

2.1 INTERPRETATION

In its interpretation and application the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Spirit Lake Tribe and shall not be deemed as a limitation upon or repeal of any other tribal power or authority.

2.2 SEVERABILITY AND NONLIABILITY

- (1) If any section, provision or portion of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

- (2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents or employees for any damages which may occur as a result of reliance upon or conformance with this ordinance. The tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

2.3 APPLICABILITY

- (1) This ordinance shall apply to the activities of Tribal members, Tribal children and non-member Indians within the territory of the Spirit Lake Tribe.

CHAPTER 3: IMPLIED CONSENT

Entry within tribal territory and upon tribal land without the permission of the Tribe is prohibited. Such permission, when given, is expressly conditioned upon the consent of the person so entering the jurisdiction of the tribe for purposes of enforcing this ordinance. Entry made not in conformity with the provisions of this ordinance is made without consent. Any person who enters upon tribal land shall be deemed to have given consent to the jurisdiction of the Tribe for purpose of enforcing this ordinance.

CHAPTER 4: DEFINITIONS

- (1) **“Street Gang”**: means any ongoing formal or informal association of three or more persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of a criminal act, or any act that would be a criminal act if the youth were an adult, and who has at least one individual who is an identified gang member.
- (2) **“Gang loitering”**: means one or more persons loitering in any areas within the territory and lands of the Spirit Lake Tribe that would warrant a reasonable person to believe the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, including use of lookalike weapons, or to conceal or facilitate illegal activities.
- (3) **“Gang member”**: shall mean an individual to whom two or more of the following criteria that indicate gang membership apply:

- I. Self-proclamation.
- II. Witness testimony or official statement.
- III. Written or electronic correspondence.
- IV. Paraphernalia or photographs.
- V. Gang related tattoos.
- VI. Clothing or colors
- VII. Any other indication of gang membership.

(4) “Gang-Related Offense”: Means any offense identified under Spirit Lake Tribe (Gang Code Chapter) committed by a youth or any individual with the intent to promote or further the objectives of a gang.

(5) “Public Place”: means the public way and any other location open to the public, whether publicly or privately owned.

4.1 PARTICIPATING IN A CRIMINAL STREET GANG

(1) A person violates the crime of participating in a criminal gang by:

- I. Intentionally organizing, managing, directing or supervising a criminal street gang with the intent to promote or further the criminal objectives of the criminal street gang; or
- II. Knowingly enticing or inducing others to engage in violence or intimidation to promote or further the criminal objectives of the criminal street gang; or
- III. Furnishing advice or direction in the conduct, financing or management of a criminal street gang’s affairs with the intent to promote or further the objectives of a criminal street gang; or
- IV. Hiring, engaging, employing or exchanging goods for services, or using a minor for any conduct preparatory to or in continuation of any offense in this section; or
- V. Committing, attempting to commit, or soliciting one or more criminal offenses proscribed by this Ordinance or the Spirit Lake Tribe Law and Order Code with the intent of promoting or advancing the objectives of a criminal street gang.

(2) Any person guilty of this offense may be sentenced to imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000, or both.

(3) Evidence of gang membership: evidence concerning indicia of gang membership including, but not limited to, possession of gang-related paraphernalia, gang-related tattoos, or gang-related clothing may be admitted, with proper foundation therefore, for submission into evidence in any case brought under this Section.

4.2 GANG LOITERING AND RELATED CONGREGATIONS

- (1) Whenever a community resource officer, security officer or law enforcement officer observes a gang member engaged in gang loitering with one or more other persons in any public place, the community resource officer, security officer or law enforcement officer shall, subject to all applicable procedures promulgated by the chief of police:
 - I. Inform all such persons that they are engaged in gang loitering in a public place;
 - II. Order all such persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and
 - III. Inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next eight hours.
- (2) Any person who fails to obey promptly an order issued under subsection 4.2 (1), or who engages in further gang loitering within sight or hearing of the place at which such an order was issued during the eight-hour period following the time the order was issued, is subject to a fine of not less than \$100.00 and not more than \$5,000.00 for each offense, or imprisonment for not more than twelve (12) months for each offense, or both. In addition, any person who violates this subsection may be required to perform community service at the discretion of the Tribal Court. A second or subsequent offense shall be punishable by a mandatory minimum sentence of not less than five (5) days imprisonment.

4.3 JUVENILE GATHERINGS

- (1) Any private or public place or premises within territory of the Spirit Lake Tribe that is used as the site of a juvenile gathering is hereby declared to be a public nuisance. No person shall maintain such a nuisance. Whenever such a nuisance is found to exist within the territory of the Spirit Lake Tribe, the community resource officer, security officer, or law enforcement services of the Spirit Lake Tribe shall give the person(s) responsible for the gathering notice to abate the nuisance.

The definitions in this section govern the construction of this article unless the context otherwise requires. In the case of any conflict and any other section of this code, this section's definitions shall control.

1. **Juvenile gathering.** A juvenile gathering is any assemblage where three or more persons under the age of 21 are present for a social occasion or a social activity and controlled substances or alcoholic beverages or possessed or consumed by any person under the age of 21.

2. **Person(s) responsible for a gathering.** The person(s) responsible for a juvenile gathering is the person(s) who owns, rents, leases, or otherwise controls the premises at which the juvenile gathering takes place, the person(s) in charge of the premises, and/or the person(s) who organized the gathering. When the person who controls the property or organized the juvenile gathering rents or leases the premises on shall not be the person responsible for the juvenile gathering unless the juvenile gathering occurred with the owner's knowledge.

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