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**DEVILS LAKE SIOUX LAW AND ORDER CODE**

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**TITLE 13: EXCLUSION**

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DEVILS LAKE SIOUX TRIBE

Resolution No: A05-90-245

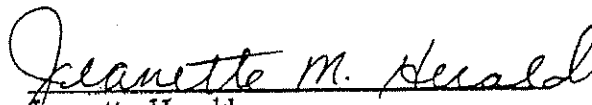
- WHEREAS, the Devils Lake Tribe of Indians is a federally-recognized Indian tribe acting under a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961 and subsequently amended July 17, 1969, May 4, 1974, April 16, 1976 and May 3, 1981; and
- WHEREAS, the Tribal Law & Order Code was revised and codified on October 13, 1988, by Resolution No. A05-89-030; and
- WHEREAS, the Supreme Court in Duro v. Reina, 109 L.Ed.2d. 693 (1990), recognized the continuing inherent sovereign power of tribes to exclude non-members from their reservations; and
- WHEREAS, the Tribal Council has determined that the exclusion power is more appropriately exercised by the Tribal Council and not by the Tribal Court, and therefore Title 13 should be revised accordingly,

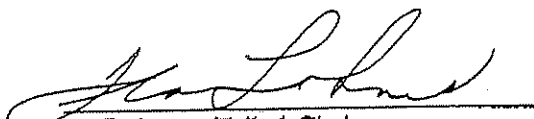
NOW THEREFORE, BE IT RESOLVED that the revised Title 13 attached hereto is hereby approved.

CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Devils Lake Sioux Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members of whom 5 (5) were present, consisting of a quorum for a Special Meeting, which was duly called and convened this 25<sup>th</sup> day of September, 1990, and approved this Resolution (A05-90-245) by an affirmative vote of 3 (3) in favor, 6 (6) opposing, and 1 (1) absent.

(The Secretary-Treasurer does not vote and the Chairman votes only in case of ties.)

  
Jeanette Herold  
Secretary-Treasurer

  
Ila Lohnes, Tribal Chairwoman

**DEVILS LAKE SIOUX LAW AND ORDER CODE**

**TITLE 13: EXCLUSION**

**§13-1-101. Title.**

This Title shall be known as the Devils Lake Sioux Exclusion Law.

**§13-1-102. Authority.**

This Title is adopted pursuant to Article VI, Sections 3, 4, 9, and 12 of the Constitution of the Devils Lake Sioux Tribe, approved by the Secretary of the Interior on February 14, 1946 and amended from time to time. Sections 9 and 12 grant to the Tribal Council authority to manage tribal land regardless of whether that land is located inside or outside the Devils Lake Sioux Reservation. Taken altogether, the cited Sections grant to the Tribal Council the power to exclude from restricted land (i.e. tribal or allotted land held in trust or subject to federal restrictions on alienation) inside the Reservation any person not legally entitled to reside therein.

**§13-1-103. Definition of Devils Lake Sioux Land.**

As used in this Title, "Devils Lake Sioux land" means: (a) land owned by or held in trust for the Tribe or any tribal entity, regardless of whether such land is located inside or outside the Reservation, and (b) allotments inside the Reservation which are either held in trust by the United States for an individual Indian or Indians, or owned by an individual Indian or Indians and subject to restrictions upon alienation imposed by the United States; provided, that the term does not include public highways on such land.

**§13-1-104. Who May Be Excluded; Extent of Exclusion.**

Any non-member of the Tribe, except a person authorized by federal law to be present on Devils Lake Sioux land, may be temporarily or permanently excluded and removed from all or any portion of Devils Lake Sioux land.

**§13-1-105. Grounds for Exclusion. (Amended 8-22-89 by Res. A05-89-182.)**

Any non-member may be excluded and removed from Devils Lake Sioux land as provided in §13-1-104 for commission of one or more of the following acts inside the Reservation or on Devils Lake Sioux land outside the Reservation:

- (1) Disorderly conduct.
- (2) Repeated public drunkenness.
- (3) Entering an area in violation of any order of the Tribal Council designating such area as closed because of fire hazard or for any other reason.
- (4) Failing or refusing to pay any taxes, rents or other charges justly due the Tribe or any tribal entity, after reasonable notice and an opportunity to pay.

- (5) ~~Mining, cutting timber or vegetation or other use, abuse or damage to tribal property without authorization from the Tribe or the Secretary of the Interior.~~
- (6) Any act causing physical loss or damage of any nature to the property of the Tribe, its enrolled members, or the other residents of the Reservation or off-Reservation Devils Lake Sioux land.
- (7) Committing a crime, as defined by North Dakota, federal or tribal law, or any act which, if committed by a member of the Tribe, would be a crime under tribal law.
- (8) Violating any law of the Tribe, including any provision of the Tribal Tax Code or any rule or regulation of the Tribal Tax Commission.
- (9) Forcing entry into any home inside the Reservation or on off-Reservation Devils Lake Sioux land without the consent of the occupant.
- (10) Unauthorized prospecting.
- (11) Committing a fraud, a confidence game, or usury against any tribal member or any other resident of the Reservation or off-Reservation Devils Lake Sioux land.
- (12) Inducing any tribal member or other resident of the Reservation or off-Reservation Devils Lake Sioux land to enter into an unconscionable or grossly unfair contract of any nature.
- (13) Trading or conducting business inside the Reservation in violation of tribal or federal law.
- (14) Defrauding any tribal member of just compensation for his labor or service of any nature done at the request of the non-member.
- (15) Hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law.
- (16) Entering or remaining upon the Reservation or upon off-Reservation Devils Lake Sioux land while afflicted by a communicable or contagious disease.
- (17) Unauthorized taking of any property from the Reservation or from off-Reservation Devils Lake Sioux land.
- (18) Using, possessing or selling of any narcotic drug or controlled substance in violation of tribal, North Dakota or federal law.
- (19) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Tribe or in violation of tribal or federal law.
- (20) Violating tribal customs.

(21) Threatening to cause disturbances or riots or to conduct any activity prohibited by the Tribe.

(22) Failing to obey an order of the Tribal Court.

**§13-1-106. Complaint for Exclusion. (Amended 9-25-90 by Res. A05-90-245.)**

Any person may make a complaint for exclusion. Forms for such complaints shall be kept by the Secretary of the Tribe at the tribal headquarters. A complaint for exclusion shall be valid only if it bears the signature of the complaining witness and is witnessed by a police officer, a police employe, the Secretary of the Tribe, or if it is duly executed by the Tribal Tax Commission.

After the complaint has been duly signed and witnessed, it shall be delivered to the Secretary of the Tribe. The Tribal Council may then, in its sole discretion, initiate exclusion proceedings by signing the complaint and returning it to the Secretary for the issuance of notice of the proposed exclusion to the person sought to be excluded.

**§13-1-107. Notice of Proposed Exclusion. (Amended 9-25-90 by Res. A05-90-245.)**

Upon receipt of a complaint for exclusion, duly signed by the Tribal Council, or duly executed by the Tribal Tax Commission, the Tribal Secretary shall then promptly cause notice to be served personally or by registered mail upon the non-member involved. The notice shall state the reason for the proposed exclusion and shall state a time and place at which the non-member may appear before the Tribal Council to show cause why he should not be excluded from Devils Lake Sioux land.

The hearing shall not be less than ten days after the time of service or mailing; provided, that if the Tribal Council shall have reasonable cause to believe that an emergency exists, and the notice so states, the hearing may be held after 24 hours after the time of service.

**§13-1-108. Exclusion Hearing Before Tribal Council. (Amended 9-25-90 by Res. A05-90-245.)**

After notice to the non-member proposed for exclusion, the Tribal Council shall hold a hearing to decide whether the non-member shall be excluded from Devils Lake Sioux land. The non-member shall be given an opportunity to present his defense at the hearing, and may be represented by counsel at his own expense. The Tribal Council may, in its discretion, grant a continuance of the hearing on request by the non-member or upon its own motion. The standard of proof applied by the Tribal Council shall be a preponderance of the evidence. After the hearing, or at the time set for the hearing if the non-member does not appear, the Tribal Council may order him temporarily or permanently excluded from Devils Lake Sioux land in accordance with §13-1-104 or may permit him to remain upon Devils Lake Sioux land on such conditions as the Tribal Council sees fit to impose.

Conditions which the Tribal Council may impose in an Order of Exclusion may include, but shall not be limited to, payment of taxes, interest and penalties owed to the Tribe, as determined by the Tribal Tax Commission; payment of restitution to any person or to the Tribe for damage caused by the non-member; performance of labor; and payment of a civil penalty. The civil penalty levied and paid under any Order of Exclusion shall not be a criminal fine and

shall be for the purpose of defraying costs of enforcement of this Title and protecting lives and property on the Reservation.

An Order of Exclusion shall remain in force until revoked by the Tribal Council unless the Order specifically provides otherwise.

**§13-1-109. Enforcement Proceedings.** (Amended 9-25-90 by Res. A05-90-245.)

If any non-member ordered excluded from Devils Lake Sioux land by the Council does not promptly obey the Order of Exclusion the Tribal Council may issue a Writ of Exclusion which shall order any police officer to:

- (1) Remove the non-member and any of his property from all Devils Lake Sioux land covered by the Order of Exclusion, at the non-member's expense, and
- (2) Prevent the reentry of the non-member onto any Devils Lake Sioux land covered by the Order of Exclusion. The police officer executing the Writ shall use only so much force as is necessary to effect removal or prevent reentry. The Tribal Council may also refer the matter to the United States Attorney for prosecution of any federal crime committed.

**§13-1-110. Physical Removal--Emergency.** (Amended 9-25-90 by Res. A05-90-245.)

In cases involving immediate danger to the life, health, morals or property of the Tribe or any of its members or the non-member proposed for exclusion, or where delay would result in irreparable damage, the Tribal Council may issue an Emergency Writ of Exclusion which shall order any police officer to remove the non-member and any of his property from Devils Lake Sioux land, either before or after the hearing provided for in §13-1-108. The police officer executing the Writ shall use only so much force as is necessary to effect the removal. If the service of the notice provided for in §13-1-107 has not already been made on the non-member, the Tribal Council shall cause the police officer to serve the notice upon the non-member at the time of removal or as soon after the removal as possible. An Emergency Writ of Exclusion shall remain in force until revoked by the Tribal Council or until the hearing provided for in §13-1-108 if such hearing has not already been held.

**§13-1-111. Finality of Exclusion Order.** (Amended 9-25-90 by Res. A05-90-245.)

An Order of Exclusion by the Tribal Council shall be final and the Tribal Court shall have no jurisdiction whatsoever with respect to any exclusion procedure. Any person excluded by an order of the Tribal Council may apply to the Tribal Council to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one year.

**§13-1-112. Separability.**

If any provision of the Title, or its application to any person or circumstances is held invalid, the remainder of this Title, or the application of the provision to other persons or circumstances is not affected.