

LOWER SIOUX INDIAN COMMUNITY IN MINNESOTA

PUBLIC NUISANCE ORDINANCE

[Enacted August 14, 2008. Effective August 14, 2008. Resolution 08-142 Revised May 17th, 2021. Resolution 21-103.]

This Public Nuisance Ordinance represents the law pertaining to nuisance on Community Lands.

Policy. The Lower Sioux Indian Community in Minnesota (“Community”) believes every person has the right to live a quiet and peaceful life. The Community 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 within the jurisdiction of the Lower Sioux Indian Community and to preserve the peace and tranquility of Community.

§ 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 within the jurisdiction of the Lower Sioux Indian Community, and which creates a dangerous or unhealthy condition on, or which threatens the public peace on or the health, safety or sanitary condition of lands within the jurisdiction, or which is offensive to or has a blighting influence on the Community. 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) Signage or graffiti. Any signage that is derogatory, offensive, indecent, slanderous or libelous towards employees, Community Council, Community members, or others whether posted on public or private land.

- (5) 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.
- (6) Grass and Weeds. Grass or weeds in a yard surrounding a residence, which have grown to a height of twelve (12) or more inches.
- (7) 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.
- (8) Health Hazards. Any thing or condition which creates a health hazard or which is a violation of any health or sanitation law.
- (9) 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.
- (10) 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.
- (11) 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 or other applicable law.
 - b. Compost piles established and maintained for gardening purposes.
- (12) 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) Enforcement Officer means any officially designated Lower Sioux Housing Authority representative, Community Development representative, Health & Human Services representative, Director of Public Safety, Tribal Police Officer or Department of Natural Resources warden or official.

- (3) Responsible Official means the Director of Public Safety or any Community Government Administration Director the Community Council may identify from time to time.

§ 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 or 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 shall also serve the written order upon any other parties responsible for creation of 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 Tribal Court 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 Lower Sioux Community 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 next scheduled court date.
- (3) Notice of Hearing Date. In the event a request for hearing is filed with the Court, 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 notify the Enforcement Officer.
- (4) Hearing. If the Court rules for abatement of the nuisance, it shall issue an order to fix a time when the nuisance must be abated. The order shall advise the responsible party that if the nuisance is not abated, the Community may abate the nuisance and assess the costs to the responsible party.
- (5) Abatement. If the remedial action is not taken nor an appeal filed within the time specified, the Lower Sioux Community may abate the nuisance.

- (6) Fines. Any person subject to the jurisdiction of the Lower Sioux Indian Community who creates, allows or is responsible for a nuisance within the meaning of this Ordinance shall be in violation of this Ordinance. 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 within the jurisdiction of the Lower Sioux Indian Community 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 Lower Sioux Community may abate the nuisance by the procedure described below:

- (1) Order. The Lower Sioux Responsible Official may order emergency abatement by an signing an administrative order . 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 Community 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 or 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 Clerk of Tribal Court 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 or Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance) to assess costs and fines. 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 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 Lower Sioux Community who creates, allows or is responsible for a nuisance abated under this section a fine may be imposed up to a maximum amount of \$1,000.00. In addition, if the Community proves by a preponderance of the evidence that the emergency abatement was appropriate under this section, the Tribal Court may levy an assessment for costs incurred by the Community in abating the nuisance.

§ 306. Sovereign Immunity. Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Lower Sioux Indian Community in the State of Minnesota.

§ 307 Severability. If the Tribal Court 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.

§ 308. Effective date. This Ordinance is effective on the date of enactment.

[Enacted August 14, 2008.]

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[Resolution 08-142.]

[Revised May 17th, 2021; Resolution 21-103]