

ORDINANCE NO. 3

CODE OF CONDUCT AND POWER TO EXCLUDE NON-MEMBERS

STATEMENT OF PURPOSE:

An Ordinance to regulate anti-social conduct or conduct that threatens the political integrity, economic security or the health and welfare of the Tribe occurring within the jurisdiction of the Tribe.

BE IT ENACTED, by the Saginaw Chippewa Tribal Council as follows:

Section 1. Rescinding of Previous Ordinance. The language of the previous ordinance, entitled Conduct of Members, enacted in 1940, is hereby rescinded and superseded by this revision.

Section 2. Short Title. This ordinance by cited as the Exclusion Ordinance of the Saginaw Chippewa Indian Tribe of Michigan.

Section 3. Declaration of Need.

- a. It shall be the civic responsibility of all individuals on Tribally held land to uphold the Constitution, Tribal Code and Ordinances of the Saginaw Chippewa Indian Tribe of Michigan.
- b. It shall be the duty of all individuals on Tribal land to abide by all Federal and State Laws.

Section 4. Code Violations.

Any individual who is not a member of the Saginaw Chippewa Indian Tribe of Michigan and enters, works, or resides thereon, does so only as a guest upon invitation of the Tribe. Wherefore, the Tribe shall have a right to exclude such individuals for any of the following violation:

- a. Of the Tribal Constitution;
- b. The Tribal Code;
- c. Any Tribal Ordinance;
- d. Introductions of deleterious drugs;
- e. To be publically intoxicated upon the reservation;

- f. To engage in: 1) Rowdyism; 2) Brawling; or 3) Indecency upon the reservation; or
- g. Violation of Federal or State Law.
- h. Conduct that threatens the political integrity, economic security or the health and welfare of the Tribe occurring within the jurisdiction of the Tribe.

Section 5. Office of Hearings. An Office of Hearings (“Hearings Office”) is hereby established by the Tribal Council. The Hearings Office shall be and shall function as an independent administrative hearings agency of the Tribe and its Hearing Officers and staff shall enjoy the same sovereign immunity as accorded other tribal officials and staff pursuant to tribal and federal law.

Section 6. Hearings Officer. Hearings to show cause shall be conducted by a Hearings Officer duly appointed by the Tribal Council. Such appointments shall be deemed effective for all subsequent Hearings conducted pursuant to this Ordinance unless otherwise provided by Tribal Council or until resignation by the Hearings Officer. The Hearings Officer shall perform the duties described in this Ordinance for the conduct of hearings. The Hearings Officer shall have a thorough understanding of this Ordinance and applicable Tribal and federal laws. The Hearings Officer shall be a member in good standing of a state bar association. Persons holding office in the Tribal Government or Tribal enterprises and immediate family members of such officeholders shall be ineligible to serve as a Hearings Officer. All other qualifications and compensation of the Hearings Officer shall be left to the discretion of the Tribal Council.

Section 7. Exclusion Proceedings. Tribal Council may issue a Notice of Exclusion Proceedings to any non-member upon a determination by the Tribal Council that cause may exist for the exclusion of such person from Tribal lands. The person who is the subject of Exclusion Proceedings pursuant to this Ordinance shall be referred to as the Respondent. Hearings shall be recorded. The Respondent may be represented by an attorney at the hearing, provided that the Respondent notifies the Hearings Officer and the Tribal Council in writing at least 5 calendar days prior to the date of the hearing of the name, address and telephone number of such attorney. The Tribal Council shall cause notice to be given to Respondent stating that proceedings have been initiated to exclude Respondent from Tribal lands pursuant to this Ordinance.

- a. Notice. Notice under this subsection shall:
 - i. Be made in writing by the Tribal Council or its authorized representative of Exclusion Proceedings and served by certified mail upon such person at their last known address.

- ii. If service is attempted but fails at the person's last known address, or if there is no last known address for the person, service may be made by publication in the Tribal newspaper and a circulating newspaper in the county the respondent was last known to reside, if known and if such publication is available.
 - iii. Notice shall state the reason(s) in support of exclusion and shall name a time not less than 30 calendar days when the Respondent may appear before the Hearings Officer to show cause why the Respondent should not be excluded from Tribal lands. The Notice shall also require a written affirmation that the Respondent will attend the scheduled hearing or such hearing will be deemed to have been waived by the Respondent as provided by Subsection c.1.
 - iv. After notice to the Respondent, the Hearings Officer appointed pursuant to this Ordinance shall hold a hearing as required by subsection 7.b.
 - v. A Notice of Exclusion Proceedings by the Tribal Council in cases involving immediate danger to the life or property of Tribal members, their families or staff, residents and employees of the Tribal government shall include an order that the Respondent be immediately excluded from Tribal lands except for the sole limited purpose of attending the hearing established under subsection 7. c. of this Ordinance. The final disposition of the Respondent shall be decided by the Tribal Council at the conclusion of the Hearing and upon Council's review of the Hearing Officer's recommendation.
- b. Standards Regarding Exclusion Proceedings. All Exclusion Proceedings shall be subject to a rebuttable presumption that the exclusion is proper and in accordance with applicable law. The Respondent bears the full burden of proof to rebut the presumption and to show cause why the exclusion should not issue against him or her.
- c. Hearings Procedure. After notice has been served as provided by this Ordinance, the Hearings Officer shall hold a hearing to make findings and recommendations to the Tribal Council whether the Respondent should be excluded from Tribal lands. If notice is made by publication then such hearing shall be scheduled no sooner than 30 calendar days after publication. The following procedures shall apply to Exclusion Hearings:
- i. If the Respondent fails to provide written confirmation within 10 calendar days from the date such Notice was mailed that he or she will attend the scheduled hearing or if the Respondent fails to

request a continuance of the hearing date then he will be deemed to have forfeited such right to a hearing and the Tribal Council shall issue a default Order of Exclusion, a copy of which shall be sent to the Respondent at their last known address and to the Tribal Council. If service is made by publication, a copy of the Order of Exclusion shall be published in the same manner as provided for in Section 7.a.ii. of this Ordinance.

- ii. The right of the Respondent to obtain documents or other evidence shall be determined in the sole discretion of the Hearings Officer following a showing by the Respondent that such documents support the reasons by the Respondent to show cause why he or she should not be excluded and that the presentation of such evidence to the Hearings Officer will materially assist in the rendering of a recommendation. The Hearings Officer shall consider appropriate restrictions and limit discovery where confidential or privileged information is involved.
- iii. The Hearings Officer shall maintain order and decorum during the hearing and shall have authority to eject from the hearing any person that shows disrespect for the proceeding, or the Hearings Officer.
- iv. No formal rules of evidence shall apply to the proceeding; however, the Hearings Officer shall have authority to restrict the scope of testimony or the introduction of evidence which is irrelevant or excessively cumulative.
- v. The Respondent shall proceed first in any hearing to present evidence and arguments. To the extent that the Tribe deems necessary or helpful, the Tribe shall respond to the evidence and arguments presented by the Respondent by presenting evidence and calling witnesses. All witnesses shall be sworn in prior to testifying.
- vi. The Hearing Officer shall issue proposed findings and proposed recommendation to the Tribal Council no later than 10 calendar days after conclusion of the hearing. The Hearings Officer shall transfer the entire record of the proceedings before him or her to the Tribal Council with his or her recommendation.
- vii. The Tribal Council shall meet in closed special session for deliberation and shall render a decision by formal vote of the Tribal Council and may after full consideration of the record, either:

- (1) Adopt the findings and recommendations of the Hearings Officer; or
 - (2) Remand the case to the Hearings Officer for further testimony or consideration; or
 - (3) If substantial basis exists, refuse to follow the recommendation of the Hearings Officer and make the order that it deems appropriate.
- viii. Tribal Council shall either issue an Order of Exclusion, excluding the Respondent from Tribal lands or a Notice of Dismissal if in its judgment exclusion is not supported by the facts and the law. Notices shall be sent to the Respondent via certified mail at his or her last known address and shall be effective on the date so mailed. If service is attempted but fails at the Respondent's last known address, or if there is no last known address for the Respondent, service may be made by publication in the Tribal newspaper and a circulating newspaper from the county the Respondent was last known to reside, if available. Any Order of Exclusion shall contain, at a minimum, the findings of Tribal Council and the duration of the exclusion. Decisions by the Tribal Council shall be final for the Tribe and shall not be subject to appeal by any court of any jurisdiction.
- ix. Exclusion Orders shall exclude non-members under this Ordinance for whatever period of time that in Tribal Council's judgment is warranted and in the best interests of the Tribe.
- x. The Tribal Clerk shall maintain all records of proceedings and hearings on Exclusion Hearings for a period ten years from the date a final decision is rendered.
- d. **Enforcement.** Saginaw Chippewa Tribal Police Officers shall have authority to enforce Exclusion Orders issued under this Ordinance.

Legislative History

Modified by Resolution 03-022 on October 22, 2003. Sections 5 and 6 amended and Section 7 added by Resolution 08-043 approved November 28, 2007. Section 7.A(2) amended by Resolution 08-058 approved on December 14, 2007. Section 7 revised by Resolution 11-123 approved on August 31, 2011.