

TRIBAL CODE

Chapter 65

EMERGENCY MANAGEMENT ORDINANCE

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HISTORY NOTE:

Current Ordinance:

Referendum, Resolution No. 178(11) enacted on August 18, 2011 and adopted September 7, 2016,
Resolution No. 253(16).

Tribal Code

Chapter 65

EMERGENCY MANAGEMENT ORDINANCE

CHAPTER I: GENERAL PROVISIONS

65.101 Purpose.

The purpose of this ordinance is to provide for the health, safety, and welfare of reservation residents, visitors and emergency responders by providing for the development and execution of emergency planning and response. This ordinance incorporates protection of property and the environment in the event of natural or man-made disasters or enemy action. This ordinance provides direction for emergency management to effectively and efficiently respond to and recover from events regardless of cause, size, or complexity.

65.102 Authority.

This ordinance is adopted pursuant to Article III, Section 1, of the Tribal Constitution, the governing body of the Tribe is the Tribal Council.

65.103 Effective Date.

This ordinance shall take effect upon adoption by the Lac du Flambeau Tribal Council and upon approval by the Secretary of the Interior as provided in Article VI, Section 2 of the Tribal Constitution.

65.104 Abrogation, and Greater Restrictions; Amendment or Repeal.

- (1) When this ordinance conflicts with or imposes greater restrictions than those contained in other Tribal ordinances, codes, resolutions, the provisions of this ordinance shall govern.
- (2) This ordinance may be amended or repealed only by a majority vote of the Lac du Flambeau Tribal Council.

65.105 Interpretation.

In this “Emergency Management Ordinance” interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, and shall be liberally construed in favor of the Tribe and not be deemed as limitation upon or a repeal of any other Tribal power or authority.

65.106 Severability, Non-Liability and Sovereign Immunity.

- (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, agencies, agents or employees for any damages that may occur as a result of reliance, or conformance with

this ordinance.

- (3) The Tribe, by adoption of this ordinance, does not waive its sovereign immunity in any respect, including the execution of mutual aid and service agreements.

65.107 Applicability

This ordinance applies to the activities undertaken upon the Tribe's Reservation by members and nonmembers within the exterior boundaries of the Lac du Flambeau Reservation. The Emergency Management network within the Lac du Flambeau Reservation shall be specified in the Emergency Operations Plan as adopted by the Tribal Council.

65.108 Amendments

Amendments to this ordinance shall be done at the recommendation of the Tribal Emergency Preparedness Committee (TEPC) to the Tribal Council in accordance with standard Tribal ordinance or code revision procedures. In the event TEPC is unable to meet in a timely manner or can no longer function in accordance with its delegated authority, the Tribal Council reserves the authority to amend this ordinance and act as TEPC.

65.109 Definitions.

As used in this ordinance:

- (1) "Coordinator" means the Tribal Emergency Management Coordinator.
- (2) "Civil Defense" means all action taken by or on behalf of the Lac du Flambeau Tribe to minimize the effect of hostile action(s) against Lac du Flambeau residents.
- (3) "Declare" means to announce publicly or officially, to proclaim.
"Emergency" or "State of Emergency" is the occurrence or situation of any natural or man-made disaster, which means all other catastrophic and/or extraordinary events effecting reservation life, property or natural or man-made environments. These include, but are not limited to fire, high wind, storm, tornado, flood, winter blizzard, fluid spill (i.e. oil based, transmission, anti-freeze), health epidemic, air or water contamination, insect infestation or explosion.
- (4) "Emergency Operations Plan" (EOP) means the Tribal plan established to coordinate civil defense (i.e. fire rescue, law enforcement, EMS), mitigation, preparedness, response, and recovery activities for all emergency or disaster situations resulting from natural or man-made disasters or enemy or hostile action.
"Emergency Planning" means all actions taken by or on behalf of the Tribe to prepare for and minimize the effect of natural or man-made disasters, including enemy or hostile action upon the reservation population. Emergency Planning includes dealing with immediate emergency conditions that could be created by said disasters and/or actions. Planning initiates emergency restoration of critical public utilities, facilities and infrastructure disrupted or destroyed by such actions or events.
- (5) "Enemy or Hostile Action" means an action taken against the Lac du Flambeau Tribe by nontribal or Tribal persons or group, resulting in the destruction of or damage to residents' or properties within the Lac du Flambeau Reservation.
"Fair Market Value" means the everyday costs of a product in an ordinary market, absent of a disaster.

(6) “Incident Command System – ICS” means a standard, on-scene, all-hazard incident Management system established within the National Incident Management System-NIMS to control, direct, and manage the roles, responsibilities and operations of all the agencies involved in a multi-jurisdictional or multi-agency emergency response.

(7) “Lac du Flambeau Tribal Emergency Preparedness Committee” (TEPC) performs all actions and responsibilities, *including but not limited to amendments to the emergency ordinance* pertaining to emergency planning in accordance with the TEPC bylaws.

“National Incident Management System” (NIMS) means the system mandated by Homeland Security Presidential Directive #5 (HSPD 5) that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond, and recover from domestic incidents, regardless of cause, size, or complexity.

(8) “Reservation” means the geographical area within the exterior boundaries of the Lac du

Flambeau Band of Lake Superior Chippewa Reservation, as surveyed and reserved pursuant to Article I, Clause 3d, of the Treaty of September 30, 1854, 10 Stat. 1109.

(9) “Riot” is a group of three or more persons assembled together and acting with a common criminal intent that is commonly violent.

(10) “Tribe or Tribal” refers to the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(11) “Terrorism or Terrorist” is defined as acts to disrupt the activities of daily life of the people on the reservation; and the disruption of business or government operations. These acts may cause significant human suffering; injury, death, and/or public and private property damage; and/or environmental degradation; and/or loss of essential services; and/or economic hardship to businesses, industry, government, families, and individuals; and/or the disruption of local, state, Tribal, and other governmental entities.

(12) “Vital Resources” means personnel, equipment, wood, sand, fuel, and other materials obtained for the protection of life, property, and the environment during a declared state of emergency.

CHAPTER II: ADMINISTRATION OF EMERGENCY MANAGEMENT

Declaring an Emergency

(1) In the event that a natural, technological or man-made disaster occurs within the reservation boundaries, the Lac du Flambeau Tribal Council is responsible for declaring or ratifying the existence of an Emergency by resolution and may request a State of Wisconsin or United States Presidential declaration.

(2) In the event when circumstances warrant a State of Emergency action, contact will be made with the Tribal President. The Tribal Council President, Coordinator or designee; or Tribal Chief of Police may request the Tribal Council declare a State of an Emergency. In the event the Tribal Council is unable to declare or ratify the existence of a State of Emergency, the Tribal Council President, Coordinator or designee; or the Tribal Chief of Police may declare an emergency. The declaration remains in effect until the Tribal Council can officially act on this declaration; or, the emergency is resolved. The determination of a State of Emergency situation is made by the Coordinator or designee; or Tribal Chief of Police in accordance with the Tribe’s EOP. Such determination shall be confirmed or rescinded by resolution of the Tribal Council

at the next scheduled or special meeting. The Tribal Council reserves the authority to declare a State of Emergency without the request of the Tribal Council President, Coordinator or designee; or Tribal Chief of Police, if warranted.

- (3) A declaration of a State of Emergency issued by the Tribal President, Tribal Council, Coordinator or designee; or Tribal Chief of Police shall not extend beyond 30 days. If a natural or man-made disaster lasts longer than 30 days, additional legislative action is required by Tribal Council.

65.202 Use of Existing Services and Facilities; Fallout Shelter Properties

(1) In preparing and executing the Emergency Management Program; the services, equipment, supplies and facilities of existing Tribal departments and programs shall be used to the maximum extent possible to protect reservation residents, property and the environment. The officers and personnel of all Tribal departments and programs are directed to cooperate and extend services and facilities as needed or required. The Coordinator will assist required departments and programs in organizing and planning for the expansion of the departments prior to and during an emergency and properties loaned, given, donated to the Tribe.

(a) The Coordinator, with assistance from the property manager, program managers of requested property shall be responsible for such properties and may perform reasonable acts that are necessary to protect and conserve such properties.

(b) Damaging, defacing, destroying or stealing any of the aforementioned properties is unlawful. Whoever shall unlawfully or willfully trespass in or on any fallout shelter where properties have been stored, kept or maintained for Civil Defense purposes is unlawful.

65.203 Emergency Management Department

The Tribal Emergency Management Department will assist with planning, implementing, and overseeing the Tribe's Emergency Operations Plans. Tribal Emergency Management Department will assure protection of the residents, property and environment of the Lac du Flambeau Reservation in a state of emergency. The Coordinator will carry out the duties designated in the job description and duties defined in this ordinance.

65.204 Emergency Management Coordinator

The Tribal Emergency Management Coordinator is a Tribal employee under and in accordance with current employee policies and procedures. The Emergency Management Coordinator works under the direction of the Tribal Council and Tribal Administrators; and be subject to the oversight and advice of the Tribal Emergency Preparedness Committee (TEPC).

- (1) The Coordinator shall be responsible for coordinating, planning, and implementing the operational response and recovery of an emergency and is empowered:

- (a) To develop and promulgate emergency plans for the Tribe, including planning consistent with State and County Emergency Operations Plans unless plans interfere with Tribal sovereignty.
- (b) To organize, coordinate efforts, and facilitate cooperation of the emergency management network of the Tribe. This assures that departments and staff implement the Emergency Operations Plan as adopted by the Tribe. This includes establishing the line of authority as recorded in the Emergency Operations Plan in accordance with the approved organization chart.
- (c) To facilitate coordination and cooperation between local, county, state, federal and other Tribal governments prior to, during and after emergency response.
- (d) To direct Tribal-wide emergency management training programs and exercises for applicable personnel in accordance with the Emergency Operations Plan.
- (e) To incorporate Homeland Security Presidential Directive #5 (HSPD 5), issued on February 28, 2003, which requires all federal, state, county, local, and Tribal governments to comply with NIMS in all phases (i.e. preparedness, response, recovery) of an emergency management program in order to facilitate an effective and coordinated emergency management system and remain eligible for funding.
- (f) To coordinate and implement NIMS and ICS within the Tribe for use in all emergency operations.
- (g) To ensure that the following occurs:
 - 1. An emergency operations plan is developed and maintained.
 - 2. Emergency resources, equipment and communications systems are developed, procured, maintained, inventoried, and accounted.
 - 3. Development and distribution of emergency preparedness information to the public, to alleviate or lessen the potential for life threatening injury; damage to personnel property in the event of natural or man-made disasters; or enemy or hostile action.
 - 4. Fallout Shelter properties are designated and identified for its intended use.
- (2) In the event of a Declaration of an Emergency within the reservation boundaries, the Coordinator is hereby empowered to:
 - (a) Pay fair market value for vital resources obtained during a state of emergency. Furthermore, if a person or business refuses to provide the resource(s) required, the Coordinator is allowed to commandeer these vital resources for public use and to bind the Tribe to the fair market value.
 - (b) To require or request emergency activities of as many trained Tribal member volunteers and Tribal employees as deemed necessary.

(c) To execute all of the ordinary duties conferred by this ordinance and resolutions of this ordinance and all duties conferred on the Coordinator by any written agreement approved by the Tribal Council.

(d) To coordinate with other Tribal, Federal, State, and Local authorities during a declared emergency.

(3) To coordinate, develop and present to Tribal Council, all emergency mutual aid and/or service agreements with other Tribal governments, Federal, State, and Local authorities and/or private businesses. All agreements are subject to Tribal Council approval.

CHAPTER III EMERGENCY PREPAREDNESS COMMITTEE

65.301 Lac du Flambeau Tribal Emergency Preparedness Committee (TEPC)

The TEPC shall serve as the reservation oversight and advisory committee with regard to emergency management issues. The TEPC shall advise the Emergency Management Coordinator and the Tribal Council on all matters pertaining to emergency management. The TEPC shall assist with implementing this ordinance and executing other duties as assigned by the Tribal Council, including the following:

- (1) The TEPC shall include, but not limited, to representatives from Tribal Programs, Departments, or businesses. Tribal Department/Program representatives from each of the following areas include, but not limited to Tribal Police, Tribal Roads, Community Health/Peter Christensen Health Center, Casino, Natural Resources/Conservation Law, Environmental/Brownfield's, Water & Sewer, Chippewa Housing Authority, Family Resource Center; representatives from the Town of Lac du Flambeau departments/Programs include, but not limited to, Fire/Ambulance, and the LDF Grade School. It may be necessary to access resources from Departments or Programs from Vilas County and FEMA. The TEPC shall also include two community Tribal representatives identified in the TEPC by-laws as approved by the Tribal Council.
- (2) The TEPC shall meet upon the call of the Chairperson of the Committee according to the bylaws.
- (3) The TEPC shall meet as required to assist the Coordinator in drafting and maintaining the Emergency Operations Plan.
- (4) At the request of the Coordinator, TEPC shall provide assistance to the Coordinator in the implementation of the provisions of this ordinance and any plan issued thereunder.
- (5) Tribal Emergency Preparedness Committee members shall not disclose confidential information that TEPC members know as a result of their position on the TEPC that is not available to the general public.

CHAPTER IV ENFORCEMENT, VIOLATIONS AND PENALTIES

65.401 Enforcement by Officers

- (1) Any Tribal Law Enforcement Officer or Tribal Conservation Officer may enforce the provisions of this ordinance. In addition, any law enforcement officer empowered to enforce the laws of the State of Wisconsin whose assistance has been requested by any Tribal Officer is hereby empowered to enforce the provisions of this ordinance.
- (2) Any person authorized to enforce the provisions of this ordinance may execute and serve warrants and other processes issued by Tribal Court in the same manner as any law enforcement officer of the State of Wisconsin may serve and execute warrants and other process under state law.
- (3) Any person authorized to enforce the provisions of this ordinance may stop and question any person upon reasonable belief that there is a violation of this ordinance. Any person authorized to enforce the provisions of this ordinance may seize and hold any property needed as evidence or any property authorized to be seized pursuant to the remedial provisions of this ordinance
- (4) No person(s) shall obstruct or interfere with any officer authorized to enforce the provisions of this ordinance.

65.402 Violations

(1) No person shall willfully or intentionally obstruct, hinder, or delay any member of the Tribe's emergency management network, which include the Coordinator or designee, department or program employees, response teams or volunteers in the enforcement of any order, rule, regulation or plan issued pursuant to this chapter or commit any act forbidden by any order, rule, regulation or plan issued pursuant to the authority contained in this ordinance.

65.403 Parties to a Violation

(1) Whoever is concerned in the commission of a violation of this ordinance is a principle and may be charged with the violation even though he or she did not directly commit a violation even though the person who directly committed a violation has not been convicted of a violation.

(2) A person is concerned in the commission of a violation if the person:

- (a) Directly commits the violation; or

(b) Aids and abets the commission of a violation; or

(c) Is a party to a conspiracy with another to commit a violation or advises, hires, counsels or otherwise procures another to commit a violation.

65.404 Penalties

- (1) Any person who violates any provision of this ordinance shall be subject to a minimum forfeiture of \$50 up to a maximum forfeiture of \$500; or up to one (1) year in jail for each violation. Each day a violation of this ordinance exists, a separate charge for said violation may be brought against the violator.
- (2) In addition, the Tribe is authorized to seek civil remedial damages for any injury or death as a result of a violation of this ordinance and seek damages resulting in property loss or environmental damage resulting in a violation of this ordinance. The Tribe may also seek reimbursement or recovery for any Tribal Funds expended, such as, but not limited to equipment usage/loss, employee wages and supplies from any person that knowingly or intentionally violates any provision of this ordinance.
- (3) Court costs shall be assessed for each violation.

65.405 Enforcement Procedure

- (1) Jurisdiction is hereby conferred upon the Tribal court over matters related to the enforcement of this ordinance.
- (2) Citations and summons issued under this ordinance may be served by ordinary mail.