

**TRIBAL COURT CODE OF THE
BAD RIVER BAND OF THE
LAKE SUPERIOR TRIBE OF CHIPPEWA
INDIANS**

PREAMBLE

We, the people of the Bad River Band of the Lake Superior Tribe of Chippewa Indians establish this Tribal Court Code of the Band, (1) to protect the peace and order of all persons within the territorial boundaries of the Bad River Reservation; (2) to protect the natural resources and beauty of the Reservation; (3) to protect the cultural traditions, customs, land base and human resources of the Band; and (4) to preserve the life ways and natural resources of the Band for future generations so that they may have the benefits that are rightfully theirs to enjoy and keep; (5) to assure the perpetual existence of the Band; and (6) to exercise the inherent sovereign powers of the Band.

To accomplish these goals it is necessary that those that violate the code of the Band be punished as necessary and that disputes arising within the jurisdiction of the Band be resolved both according to the customs, laws and process of the Band itself.

Further, the Bad River Band of Lake Superior Tribe of Chippewa Indians intend with this code to set out a structure and procedures for the establishment and maintenance of a comprehensive judicial system; to deal fairly and equitably with all individuals; to justly administer all applicable laws, ordinances and regulations.

CHAPTER 101 - GENERAL PROVISIONS

Section 101.1 - Authority

This Tribal Court Code shall become effective when adopted by resolution of the Bad River Tribal Council pursuant to the inherent authority vested in the Bad River Band of the Lake Superior Tribe of Chippewa Indians, retained and acknowledged by the Constitution of the Band adopted pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended and shall apply to all members, and provided herein to non-members who, through either their residence, presence, business dealings, other actions or contact with the Band or other significant contracts with the Band and or its residents, commit criminal offenses in violation of the laws of the Band or incur civil obligations to persons or entities entitled to the protection of laws of the Band.

Section 101.2 - Repeal of Prior Inconsistent Ordinances

Any and all ordinances or portions thereof heretofore enacted by the Tribal Council which are in any way conflict with the provisions of this Civil and Criminal Code are hereby repealed.

Section 101.3 - Interpretation of This Code

This Code shall be interpreted pursuant to the customs and traditions of the Bad River Band of Lake Superior Tribe of Chippewa Indians. Where any doubt arises as to these customs and traditions, the Court may request the advice of counselors familiar with these customs and traditions. If none such exist, then the Court may use appropriate Federal or State law as guidelines.

Section 101.4 - Severability Clause

Should any section of this Civil and Criminal Code be determined as unconstitutional by any court of proper jurisdiction, that determination shall not affect any other provisions of this Civil and Criminal Code.

Section 101.5 - Future Amendments of the Court Code

This Court Code may be amended by ordinance of the Tribal Council and any amendments adopted shall be effective and become part of this Code as provided in the amending ordinance, subject however to review by the Secretary of the Interior as provided in Article VI, Sec. 1(g) of the Bad River Tribal Constitution.

CHAPTER 102 - DEFINITIONS

Section 102.1

As used in this code, the following terms shall have the meanings given to them in this section.

(a) "Bad River Reservation" shall mean all lands and waters regardless of ownership within the exterior boundaries of the reservation as designated in the Treaty of 1854 between the Chippewa Indians of Lake Superior and the Mississippi, and the United States, 10 Stat. 1109, and any lands or water or interests therein which may be held or acquired outside the reservation by or on behalf of the Band.

(b) "Tribal Council" shall be the duly constituted Tribal Council of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(c) "Members of the Bad River Band" shall mean those persons currently enrolled in the Tribe.

(d) "Bad River Tribal Court" shall mean the duly constituted court of the Tribe.

(e) "Jury" shall mean six (6) persons drawn from the list of eligible jurors empowered to decide matters of fact and to give a verdict according to the evidence.

(f) "Juror" shall mean a tribal member at least eighteen (18) years of age who served upon a jury.

(g) "Clerk of Court" shall mean an officer of the Tribal Court who has charge of the clerical part of its business.

(h) "Prosecutor" shall be an official or officials appointed by the Tribal Council to investigate and initiate complaints and prosecute individuals when good reason exists to believe they have committed infractions of Tribal Codes or ordinances.

(i) "Complaint" shall mean a formal, written allegation against a party.

(j) "Subpoena" shall mean a writ commanding the designated person to appear and testify and/or produce physical evidence.

(k) "Search Warrant" shall mean an order in writing issued by a tribal judge directing authorized tribal enforcement personnel to search specific persons and/or property.

(l) "Appellate Court" or "Court of Appeals" shall mean the Court established by Section 103.9, with procedures established by Chapter 121.

(m) "Juvenile" shall mean any individual who has not yet had his or her eighteenth birthday.

(n) "Tribe" shall mean the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(o) "Person" means any natural or legal person, including corporations, governmental units, and agencies thereof.

(p) "Tribal Holiday" means New Year's Day, day after New Year's Day, Martin Luther King Day, President's Day, Good Friday from 12:00 noon to 4:30 p.m., Easter Monday, Memorial Day, Independence Day, Treaty Day, Labor Day, Indian Day (last Friday in September), Veteran's Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas Eve from 12:00 noon until 4:30 p.m., Christmas Day, and the day after Christmas Day, provided that when a holiday falls on a Sunday it is observed on the following Monday and when it falls on a Saturday it is observed on the following Monday and when it falls on a Saturday it is observed on the preceding Friday.

CHAPTER 103 - ESTABLISHMENT AND DUTIES

Section 103.1

The Tribal Council hereby establishes a Tribal Court which shall have jurisdiction as provided by Section 106 or other applicable tribal law.

Section 103.2

Anyone entering the Bad River Reservation consents to the jurisdiction of the Bad River Tribal Court.

Section 103.3

The Court shall consist of one chief judge to be selected by the Tribal Council and such associate judges as the Council may deem necessary.

Section 103.4

All penalties and forfeitures assessed shall be in accordance with the provisions adopted in this code. In no case, however, shall a fine exceed \$5,000.00 or a term of incarceration exceed one year for each violation.

Section 103.5

The Court will convene at such location and at such times as shall be designated by the Court.

Section 103.6

The Court shall collect all fines, forfeitures and other monies generated through enforcement of Tribal Ordinances.

Section 103.7

All receipts shall be disposed of as prescribed by Tribal Council.

Section 103.8

Court personnel shall be selected under standards established by the Tribal Council.

Section 103.9

A Court of Appeals is hereby established, consisting of the judges of other tribal courts who from time to time consent to sit on a panel of three judges to hear appeals cases.

Section 103.10

A Court of Appeals panel, consisting of three judges, shall be selected by the Clerk of the Court of Appeals upon the proper filing of appeal.

CHAPTER 104 - JUDGES

Section 104.1

Any person over the age of 30 who is generally knowledgeable in the laws applicable upon the Bad River Reservation shall be eligible for appointment as judge.

Section 104.2

Any judge of the Bad River Tribal Court may be suspended, dismissed, or removed after

written notice and fair hearing in executive session, by a two-thirds vote of the Tribal Council for just cause. Each judge shall be appointed for a term of six (6) years, unless sooner removed for cause, or unless elected to the Tribal Council, and shall be eligible for reappointment.

Section 104.3

No individual shall serve as judge while serving as a member of the Tribal Council or as a tribal law enforcement officer. The duties of any judge who is nominated for election to the Tribal Council shall be transferred to other judges of the court pending the election. If the judge shall be elected to the Tribal Council, his term of judge shall terminate at 12:01 midnight the day prior to the commencement of his term on the Tribal Council.

Section 104.4

No judge shall be qualified to act in any case wherein he or she has any direct interest. A tribal judge shall not, unless his service is agreeable with all parties, sit on any case wherein his or her spouse, mother, father, sister, brother, son, daughter, grandfather, or grandmother, is a party.

Section 104.5

In case of a vacancy, the judgeship will be filled by an appointment through a majority vote of the Bad River Tribal Council.

Section 104.6

It shall be the duty of the court to judge all cases brought before it.

CHAPTER 105 - CIVIL PROCEDURES

Section 105.1

Sessions of the Bad River Tribal Court shall be before the chief judge or an associate judge.

Section 105.2

All actions for violations of Tribal Ordinances shall be brought in the name of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 105.3

Any person appearing as a defendant in a civil case or action in the Bad River Tribal Court shall have the right to be represented by a spokesman or an attorney at his own expense provided that such spokesman or attorney has made proper application to this court for admission to practice before it. Such application procedures shall be established by the Tribal Court.

Section 105.4

All trials shall be conducted in a manner so as to afford all those who appear before it all rights guaranteed by the Indian Civil Rights Act of 1968, 25 U.S.C. Secs. 1301, 1302, and 1303, as amended.

Section 105.5

The court in its discretion may assess court costs against a defendant found to have violated a tribal ordinance.

Section 105.6

The court in its discretion may apportion and assess court costs, against the parties to a civil action. In any case in which the court has appointed a guardian ad litem, psychologist or

other witness, or ordered a social services study, the costs therefore may be assessed against the parties.

Section 105.7

Except as specified herein, all records and files of the Bad River Tribal Court shall be available for public inspection during regular office hours of the Clerk of Court.

Section 105.8

All juvenile files shall be closed. The Court may, in its discretion and in the interest of privacy, deem other court files as closed files. All closed files shall be unavailable for public inspection without a court order.

Section 105.9

Individuals securing documents from tribal court files or transcripts of tribal court proceedings, if available, shall, unless otherwise ordered by the court, pay the actual cost of reproduction or preparation of such material.

Section 105.10 - Time

(a) In computing any period of time prescribed or allowed by tribal law or by an order of the Tribal Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a tribal holiday. When the period of time to be computed is less than 11 days, Saturdays, Sundays, and tribal holidays shall be excluded in the computation.

(b) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon the party,

and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

(c) When an act is required to be done at or within a specified time, the court may order the period enlarged upon motion for cause shown and upon just terms. If the action is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect.

Section 105.11 - Judicial Rules

The Tribal Court may adopt such procedural rules for the operation of Tribal Court and the regulation of the Bar as it deems proper.

CHAPTER 106 - JURISDICTION

Section 106.1

(a) The Bad River Tribal Court shall have jurisdiction over all matters in the following categories:

(1) All actions arising between persons situated on the Bad River Reservation in relation to property or events upon the reservation.

(2) All actions arising out of events or occurrences on the Bad River Reservation, regardless of whether the individuals who are parties thereto reside on or off the reservation or are members or non-members of the Tribe.

(3) All alleged violations of ordinances duly in effect upon the Bad River Reservation whether the alleged violator is a member or non-member of the Bad River Band or resides on or off the Bad River Reservation.

(4) All alleged violations of ordinances duly in effect pertaining to hunting, fishing, trapping or gathering by members in the territory described in Article I, Section 2 of the

Bad River Constitution.

(5) Any other case otherwise provided by tribal ordinance.

(b) If any court of competent jurisdiction determines that the Tribal Court cannot lawfully assert jurisdiction over any class of individuals or claims as described in para. (a), above, the assertion of jurisdiction over all remaining classes of individuals or claims shall not be effected thereto.

CHAPTER 107 - CLERK OF COURT

Section 107.1

The Bad River Tribal Council shall appoint a Clerk of Court for the Tribal Court. The Clerk shall render assistance to the court, to the enforcement personnel, and to all persons having business with the court. It shall further be the duty of the Clerk to attend and keep a written record of all proceedings of the court, to administer oaths to witnesses, to receive the transcript of cases and other papers on appeal and make a permanent record properly filed, to collect all penalties, forfeitures and other receipts and to pay out fees authorized by court and Tribal ordinances. The Clerk shall make periodic accountings to the Tribal Council and to the Tribal Court of all funds received and disbursed. Such accounting shall be made at least quarterly, and upon request by either the Tribal Council or the Tribal Court.

Section 107.2

The salary and term of office of the Clerk of Court shall be determined by the Tribal Council.

Section 107.3

The Clerk of Court shall also serve as the Clerk of the Court of Appeals.

CHAPTER 108 - PROSECUTOR

Section 108.1

One or more persons shall be appointed by the Tribal Council to serve as prosecutor or prosecutors for such term and for such compensation as shall be specified. Unless otherwise specified the Tribal Attorney shall be deemed appointed prosecutor.

Section 108.2

Prosecutors shall receive complaints from members and non-members and shall have the power to file complaints on his or her own authority. It shall be the responsibility of the prosecutor to present cases on behalf of the Tribe to the Tribal Court, but a prosecutor shall present only those cases in which he or she finds, upon investigation, that there is reasonable justification for the complaint.

CHAPTER 109 - COURT RECORDS

Section 109.1

The Tribal Court shall keep a record of proceedings of the court, which record shall reflect the title of the case, the names of the parties, the name of the judge assigned, the substance of the complaint, the date, the nature and appearances at all proceedings, the findings, conclusions, and judgment of the court, together with any other facts or circumstances deemed pertinent to the case.

CHAPTER 110 - COMPLAINTS AND ANSWERS

Section 110.1

(a) No complaint filed in the Tribal Court shall be valid unless it shall bear the signature of the plaintiff, plaintiff's counsel, or complainant. Upon the filing of the complaint, the Clerk shall issue a summons to which shall be attached a copy of the complaint directing the defendant to appear before the court to answer the complaint at the time and place specified. Any summons in a civil case, other than an action filed by the Tribe for violation of an ordinance, and seeking either damages or injunctive relief, or both, shall require that a written answer be served on the complainant and the court within not more than thirty (30) days from the date of service of the summons and copy of complaint.

(b) At the time and place, and in the manner properly specified by the summons, the defendant shall answer the complaint. Such answer, in the case of an action filed by the Tribe for the violation of an ordinance shall admit or deny the charge, or the defendant shall stand mute or plead no contest. In all other cases the answer shall admit or deny each of the allegations of the complaint, and shall assert any grounds for dismissal, any permitted affirmative defense, any counter claims, and any third-party claims.

(c) Any case charging a defendant with violation of a tribal conservation ordinance may be commenced by filing of a citation containing the time, date, and place of the alleged violation, the name (if known) of the alleged violator, the date of birth and address (if known) of the alleged violator, the section alleged to have been violated, a brief summary statement of the facts constituting the violation, a notification to the alleged violator of the date he or she is required to appear in Tribal Court, and the sworn signature and date of issuing officer.

(d) Any other type of case may be commenced as otherwise provided for by

ordinance.

(CHAPTER 110 AMENDED BY RESOLUTION #2-6-91-167)

CHAPTER 111 - SERVICE

Section 111.1

A summons and complaint shall, whenever possible, be served on a defendant by personal service. Personal service shall consist of delivery of the summons and complaint to the defendant in person or to any person of apparent normal understanding residing within the residence of the defendant. Any person over eighteen (18) years of age, not a party to the action, may make personal service. In the case of personal service, an affidavit of service shall be returned to the Clerk and filed in the docket and shall constitute proof of personal service.

Section 111.2

When the summons and complaint cannot by reasonable diligence be personally served on the defendant in the manner specified in Article XI, Section 1, service may be made either by mail or publication. In the case of service by mail, true copies of the summons and complaint shall be sent by registered or certified mail to the defendant's last known address. A return receipt for mail delivery signed by the defendant shall be returned to the Clerk and filed in the docket and shall constitute proof of service by mail.

Section 111.3

In the event the defendant cannot be served with summons and complaint either personally or by mail in accordance with sections 111.1 or 111.2, service may be made by publication. Service by publication shall mean publication of the summons once in each of two consecutive weeks in a newspaper of general circulation whose readership is primarily located in

the vicinity of the Bad River Reservation. The published summons shall state the address at which the complaint may be obtained. Proof of publication of the summons shall be returned to the Clerk and filed in the docket and shall constitute proof of service by publication.

Section 111.4

Service of all papers filed in action subsequent to the summons and complaint may be in person or by first class mail. The filing of a paper with the court is the filer's certificate that a copy thereof has been properly served on the other parties.

Section 111.5

The court may provide notice to any party appearing in open court of any subsequent proceeding by orally so informing the party in which case the minutes shall reflect such notice or by causing written notice to be hard served upon the party in open court.

CHAPTER 111 AMENDED BY RESOLUTION #2-6-91-167

CHAPTER 112 - JUDGMENT

Section 112.1

All judgments shall be ordered in writing. All judgments shall be accompanied by findings of fact and conclusions of law which shall be made in writing or on the record in open court.

Section 112.2

Upon failure of a defendant to appear at the time stated in the summons, the plaintiff may proceed to offer evidence including proof that the defendant was served with summons and the court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing to reopen the case within twenty (20) days of a default

judgment upon showing good cause for his failure to answer the summons. Upon failure of the plaintiff without just cause to appear at the time set by the summons for hearing, the court may dismiss the action with or without prejudice.

Section 112.3

In addition to, or in lieu of, a penalty or forfeiture provided for violation of a tribal ordinance, the Court may order any defendant found to have violated a tribal ordinance to perform community service a specified nature and duration. The number of hours of community service ordered by the court may not exceed the maximum penalty or forfeiture provided for the violation divided by the current federal minimum wage.

CHAPTER 113 - INITIAL APPEARANCE

Section 113.1

This Chapter applies to initial appearance in civil actions brought by the Tribe of violations of ordinances.

Section 113.2

At the initial appearance the judge shall read to the defendant the charge against him or her and inform him or her of the maximum forfeiture and other penalties that can be imposed.

Section 113.3

The judge shall inform the defendant of the following rights:

- (a) To be represented by counsel at his or her own expense.
- (b) To admit or deny the charges to stand mute, or plead to no contest.
- (c) That he or she has the right to a trial before the court.
- (d) To subpoena witnesses.

Section 113.4

(a) If the defendant appears unrepresented by counsel and states his or her intent to retain counsel, the court shall adjourn the initial appearance in order to enable defendant to retain counsel. No defendant shall be entitled to more than one adjournment.

(b) If the defendant admits the charge, the court shall find him or her guilty. Penalty may be imposed immediately or at a later time set by the court.

(c) If the defendant pleads no contest to the court shall find him or her guilty. Penalty may be imposed immediately or at a later time set by the court.

(d) If the defendant denies the charge a trial date shall be set.

(e) If the defendant stands mute, the court shall enter a denial and set a date for trial.

CHAPTER 113 AMENDED BY RESOLUTION #2-6-91-67

CHAPTER 114 - ENFORCEMENT OF COURT ORDERS

Section 114.1

Any party or the court of its own motion may seek enforcement of any order by any lawful process or through any competent court of any jurisdiction.

Section 114.2

(a) For failure of any defendant to pay a forfeiture or any ordered costs in any hunting or fishing, trapping, or gathering action, the court may order suspensions of any of the defendant's hunting, fishing, trapping or gathering rights until such forfeiture or costs are paid.

(b) Such suspension shall be effected by the Clerk of Court, without further order of the court, if the defendant was advised in open court of the date upon which final payment was due and that the specific suspension ordered would follow nonpayment.

(c) If the defendant was not so advised in open court, the court shall schedule and notice a hearing at which defendant shall be ordered to show cause why suspension should not be ordered. After such hearing, or upon defendant's failure to appear at such hearing, the court may order the suspension.

(d) All forfeitures not paid. When due shall accrue interest at the rate of 1% percent per month on the unpaid balance, the first month's interest to be due on the day following the initial due date, and each subsequent month's interest accruing on the same day of each month thereafter.

Section 114.3 - Contempt of Court

(a) The Tribal Court may impose a sanction for contempt of court.

(b) "Contempt of Court" means intentional:

(1) Misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court;

(2) Disobedience, resistance or obstruction of the authority, process or order of a court;

(3) Refusal as a witness to appear, be sworn or answer a question.

(c) Procedure

(1) A party aggrieved by a contempt of court may move for, or the court on its own motion may impose a contempt sanction. The court, after notice and hearing may impose sanction.

(2) The judge presiding in an action may impose a sanction upon a person who commits a contempt of court in the open court. The judge shall impose the sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.

(3) A court may impose one or more of the following sanctions.

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as a result of the contempt of court.

(b) A forfeiture not to exceed \$1,000 for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) If the contempt arises in an action involving the exercise of off-reservation hunting, fishing, trapping, or gathering rights, a suspension of any such right.

(e) A sanction other than those specified in par. (a) through (e) if the court expressly finds that those sanctions would ineffectual to terminate a continuing contempt of court.

Section 114.4 - Wage Withholding

(a) For any monetary obligation incurred by virtue of any order of the court the court may order the obligator's employer, or any person owing the money, to withhold from the amount owing to the obligator an amount certain, or a percentage of the amount owed to the obligator, and to submit it to the Clerk of Court who shall disburse it to the person to whom due under the court order.

(b) Any person ordered to make a withholding under this section may subtract and retain from other funds due the obligator other sum of \$3.00 for each withholding made.

(c) Exempt from wage withholding shall be, for each one week period, 30 times the current minimum wage plus \$20.00 for each dependent.

CHAPTER 115 - SUBPOENAS

Section 115.1

The judges of the Tribal Court shall have the power to issue subpoenas for the attendance of witnesses and/or production of documents or physical evidence on the request of any party to an action or on the court's own initiative, which subpoena shall bear the signature of the judge issuing it. Service of subpoenas shall be by any person not a party at least 18 years of age.

Section 115.2

Service of subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person sixteen (16) years of age or older who also resides there.

Section 115.3

Proof of service of the subpoena shall be filed with the clerk of court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

Section 115.4

In the absence of justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

CHAPTER 116 - CRIMINAL PROCEDURE

SUBCHAPTER A - SEARCH WARRANTS

Section 116.1

Every tribal judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.

Section 116.2

No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and describes the articles or property to be seized and bears the signature of a duly qualified judge of the Bad River Tribal Court.

Section 116.3

No warrant of search and seizure shall be issued except upon probable cause that a search will discover: stolen, embezzled, contraband, or otherwise criminally possessed property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a written and sworn statement based upon reliable information.

Section 116.4

Warrants of search and seizure shall be executed by authorized tribal enforcement personnel. The warrant shall be returned within the time limit shown on the face of the warrant, which in no case shall be longer than three (3) days from the date of issuance. Warrants not returned within such time limit shall be void.

Section 116.5

No enforcement official may conduct any search without a valid warrant unless

(a) Incident to making a lawful arrest; or

(b) With the knowing, voluntary consent of the person being searched; or

(c) When he has probable cause to believe that the person searched may be armed and dangerous, and then only to the extent necessary to detect the presence of a weapon;

(d) When the search is of a motor vehicle capable of being driven away before a warrant can be obtained, and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

Section 116.6

Anyone interfering with the execution of a search warrant may be found in contempt of court.

SUBCHAPTER B - ARREST

Section 116.7

No tribal enforcement officer shall arrest any person for any offense set out in the Tribal ordinances except when:

(a) The officer shall have a warrant signed by a tribal judge commanding the arrest of such person; or

(b) The criminal offense shall occur in the presence of the arresting officer; or

(c) The officer shall have probable cause to believe that the person to be arrested has committed a criminal offense.

SUBCHAPTER C - ARREST WARRANTS

Section 116.8

Every judge of the Bad River Tribal Court shall have the authority to issue warrants to arrest and such warrants shall be issued, the at the discretion of the court, only after a written

complaint shall have been filed.

Section 116.9

The arrest warrant shall contain the following information:

- (a) Name or description and address, if known, of the person to be arrested.
- (b) Date of issuance of the warrant.
- (c) Description of the offense charged.
- (d) Signature of the issuing judge.

Section 116.10

Law enforcement officials shall be empowered to seek the cooperation of other agencies outside the reservation to secure the arrest of individuals under tribal arrest warrant.

SUBCHAPTER D - ARRAIGNMENT

Section 116.11

Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regularly scheduled session of court.

Section 116.12

Before an accused is required to plead to any criminal charge, the judge shall:

(a) Read to the accused and determine that he understands the complaint and the tribal ordinance which he is charged with violating, including the maximum authorized penalty; and

(b) Advise the accused that he has the right to remain silent, to be tried by a jury; and to be represented by counsel at his own expense and that arraignment will be postponed should

he desire to consult with counsel.

Section 116.13

If the accused pleads "not guilty" to the charge, a trial date shall then be set and the judge shall then set the conditions for bail prior to trial.

Section 116.14

If the accused pleads "guilty" to the charge, the judge shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded the opportunity to present any information he deems useful in determining the setting of bail. The court shall then upon consideration of such information and all other facts set bail at an appropriate amount.

Section 116.15

If the accused refuses to plead, the judge shall enter a plea of not guilty on his or her behalf.

Section 116.16

For purposes of alleged violations by corporate entities, any officer of the corporation may appear on behalf of said corporation. Any arrest warrants on behalf of the corporations are executable against any officer or executive official of said corporation.

SUBCHAPTER E - BAIL

Section 116.17

A schedule of bail monies shall be established by the Tribal Court and made available to

an individual charged with a criminal offense. The Clerk of Court or an enforcement official is authorized to accept bail in such specified amounts and to post this bail. Such bail shall only be accepted from individuals who also produce a signed agreement to appear bearing either his or her signature or mark.

Section 116.18

The aforementioned bail schedule shall be utilized by the Clerk of Court and/or law enforcement officials. The Tribal Court itself may set bail in whatever amount it deems appropriate.

Section 116.19

Should the Tribal Court feel any of the following will reasonably assure the appearance of the individual at any time lawfully required, the court may impose one or more of the following conditions for release from custody pending trial:

(a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.

(c) Release with reasonable restrictions on travel, association, or place of residence of the accused during the period of release.

(d) Release after deposition by the accused or a bondsman of bond in either cash or other sufficient collateral in an amount specified by the judge or a bail schedule.

SUBCHAPTER F - NOTIFICATION OF RIGHTS AT TIME OF ARREST

Section 116.20

Upon arrest, the suspect shall be advised of the following rights:

- (a) The right to remain silent.
- (b) That any statements made by the suspect may be used against him or her in court.
- (c) The right obtain counsel at his or her own expense.

CHAPTER 117 - PARTIES TO A VIOLATION

Section 117.1

Any person who is concerned in the commission of a violation of a tribal ordinance is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subject to an act or in Tribal Court. A person is concerned in the commission of a violation if such person:

- (a) Directly violates; or
- (b) Aids and abets the violation; or
- (c) Is party to a conspiracy with one or more others to violate or advises, hires, counsels, or otherwise procures another to commit the violation.

CHAPTER 118 - JUVENILES

Section 118.1

The class juveniles shall include all individuals who have not achieved their respective eighteenth (18) birthday.

Section 118.2

Court processing of, and proceedings concerning juveniles shall be as provided in Chapter 125, Bad River Ordinance.

CHAPTER 119 - RESERVED

CHAPTER 120 - SEIZURES

Section 120.1

In any case where tribal ordinance authorizes the seizure of any perishable resource or product, the Conservation Department may hold such resource product until the Tribal Court has ruled on its ultimate disposition, or may sell such resource or product if

- (a) it is not needed as evidence, and
- (b) it will spoil or lose substantial part of its value if retained until ultimate disposition.

Section 120.2

If the Conservation Department chooses to sell the resource or product it may do so by auction or privately to a tribal program, and shall retain the proceeds of such sale until ultimate disposition of the case, at which time the proceeds shall be disposed of as the court orders.

Section 120.3

Under no circumstance where the conservation department had reasonable cause to believe that violation of a tribal ordinance providing for seizure and forfeiture of a resource or product had been committed shall the department be liable for any difference between the proceeds actually received by the conservation department and any amount claimed as the fair market value of the resource or product.

CHAPTER 121 - APPEAL PROCEDURE

Section 121.1- Purpose

The purpose of this chapter is to establish the procedures by which appeals are taken from the decisions of the Tribal Court.

Comment

This chapter does not establish the structure of the Tribe's Court of Appeals. The appellate court is established and structured by other tribal law. See. Sec. 121.4(b), below.

Comments such as this one follow many sections of this chapter. They are not part of the chapter but are furnished as guides to understanding the chapter. The Tribal Court and the Court of Appeals may use these comments to the extent they deem appropriate.

Section 121.2 - Authority

This chapter is adopted pursuant to Art. VI, Sec. 1(q), of the Constitution of the Tribe.

Section - 121.3 - Repeal of Inconsistent Ordinances

All ordinances or parts thereof which are inconsistent with this chapter are hereby repealed.

Section 121.4 - Definitions

- (a) "Appellant" means the party filing an appeal.
- (b) "Court of Appeals" means the Tribe's appellate court as established by Chapter 119, Bad River Ordinances.
- (c) "Respondent" means the party responding to another party's appeal.
- (d) "Tribal Council" means the tribal council of the Tribe.
- (e) "Tribal Court" means the trial level court of the Tribe.
- (f) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 121.5 - Exclusive Jurisdiction

(a) The Court of Appeals shall have exclusive jurisdiction to review all decisions of the Tribal Court as provided herein. The decision of the Court of Appeals shall be final as to all such review.

(b) The jurisdiction of the Court of Appeals shall include the authority to determine the constitutionality of acts of the Tribal Council.

Comment

Subsection (a) safeguards the authority of the Court of Appeals to perform its review function without interference from other governmental agencies either before or after it has acted.

Subsection (b) establishes the authority of the Court of Appeals to review the constitutionality of Tribal Council acts of whatever nature. Because tribal constitutions do not typically provide for a separation of powers between the judiciary and the other functions of the government, some question may be raised as to the implicit authority of the courts to review the acts of tribal government. Whatever the correct answer is to that question, this subsection delegates whatever authority is necessary to perform such review.

Section 121.6 - One Form of Review

There shall be one form of review in the Court of Appeals, to be designated an appeal.

Comment

This ordinance provides the only method of obtaining review in the Court of Appeals. This section eliminates any argument that any Anglo-American common law writs may be pursued for extraordinary relief

Section 121.7 - Who May Appeal

Any party aggrieved by a decision of the Tribal Court may initiate an appeal.

Comment

Only a party in the case below, who is in some way harmed by the decision below, may appeal.

Section 121.8 - What May Be Appealed

Any final judgment or order of the Tribal Court may be appealed to the Court of Appeals.

A final judgment or order is one which disposes of all issues in litigation between at least two parties to a case.

Comment

All final judgments and orders may be appealed. Nothing but a final judgment or order may be appealed. If an order in a case leaves other matters to be decided, and does not completely settle all disputed issues between the parties, so that the Tribal Court still has work to do, then the order is not final and an appeal cannot be filed. In cases involving multiple parties, an order or judgment may dispose of all issues between two or more of the parties, and would therefore be appealable. In cases involving multiple issues, an order disposing of one or more issues may leave others as yet unresolved and would therefore not be appealable.

Section 121.9 - When An Appeal May Be Taken.

(a) Notice of appeal must be filed with the Clerk of the Tribal Court, and served on all other parties, no later than 30 days after the entry of the judgment or order from which the appeal is taken. If one party has timely and properly filed a notice of appeal, any other party may file a notice of appeal within 15 days of service of the initial party's notice of appeal.

(b) A judgment or order is entered when it is filed with the Clerk of Court.

(c) Failure to file a notice of appeal as provided in this section deprives the Court of Appeals of subject matter jurisdiction in the appeal.

Comment

The appeal is started by filing the notice of appeal, a simple form for which a model is provided as Official Form no. 1. A party other than the initial appellant may decide to appeal in light of the initial appellant's appeal and is therefor allowed additional time to do so after service of the first notice of appeal. The interest of parties in the security of judgments entered by the court requires that an appeal must be filed within the time prescribed or be forever waived. Calculation of time is prescribed by Sec. 121.17. Proper methods of service are prescribed by Sec. 121.18.

Section 121.10 - How An Appeal May Be Taken

(a) A notice of appeal shall be filed by any party seeking review of a final judgment or order of the Tribal Court. The notice of appeal shall be filed and served, together with the request for transcript required by section 121.10(c), within the time prescribed by sec. 121.9 of this ordinance. The notice of appeal shall bear the caption and case number of the case in the Tribal Court and shall be labeled "Notice of Appeal." The notice of appeal shall identify by date, judge, and case number the judgment or order appealed, and shall state the substance of the judgment or order and whether the appellant appeals from the entirety of the judgment or order or from only part thereof. and if the latter, shall specify the part thereof. The notice of appeal shall also include a brief statement of the grounds for appeal and shall specify the precise relief sought. No appeal shall be dismissed for any formal defects in the notice of appeal as long as the matter appealed is clearly identified and filing and service are timely and properly made. If a notice of appeal does not contain every item required by this subsection , the Court of Appeals may make such orders as the interests of justice require.

Comment

The essence of the notice of appeal is to give fair notice to the other parties that what would otherwise be a final disposition of a case will not be final, and to allow the other parties to begin preparation for responding to the appeal or for filing a cross-appeal. The notice of appeal provided for in this section also requires a statement of the grounds for appeal and the relief sought, in the event an appellant appearing pro Se elects not to file a brief. Any party including in the notice of appeal the items listed in this subsection will be deemed to have clearly identified the matter appealed. A notice of appeal that fails to include all of the items listed in this subsection, may cause the Court to expand the time for response, dismiss the appeal, or make other appropriate orders.

(b) Unless waived, the filing fee prescribed by Sec. 121.19 shall be paid to the Clerk of the Tribal Court at the same time the notice of appeal is filed. The Clerk of Court shall not accept for filing a notice of appeal that is not accompanied by the filing fee or an order waiving fees. No filing fee shall be required in an appeal filed by the Tribe.

(c) A request for transcript shall be filed with the Clerk of the Tribal Court at the same time the notice of appeal is filed. The request for transcript shall specify those proceedings, or parts thereof, to which any reference will be made in the appeal proceedings and for which the official transcript will be required by the Court of Appeals for its review. Any other party may request transcription of additional proceedings or parts thereof by filing a request no later than 15 days after service of the appellant's notice of appeal and request for transcript. No fee shall be required for any transcript requested by the Tribe.

(d) The filing of an appeal does not constitute an automatic stay of the tribal court's judgment or order. A motion seeking a stay may be addressed to the tribal court before or after the filing of the notice of appeal.

Section 121.11 - Clerical Functions Upon Filing of Appeal

(a) Upon receipt of the notice of appeal, filing fee, and request for transcript, the Clerk of the Tribal Court shall forward to the Clerk of the Court of Appeals the notice of appeal and filing fee and shall prepare the record on appeal. The record on appeal shall consist of all papers filed by the parties or the court, and the transcript requested by appellant or any other party, unless limited by stipulation of the parties.

Comment

The Court of Appeals will receive the entire Tribal Court written record, and a transcript of the trial or hearings that pertain to the appeal, unless the parties agree that the Court need not have the entire record.

Any party requesting a transcript may be charged the per page rate provided at Sec. 121.19.

(b) Upon receipt of the notice of appeal and the filing fee, the Clerk of the Court of

Appeals shall docket the appeal and shall notify the judges of the Court of Appeals of the pending appeal.

(c) The Clerk of the Tribal Court shall file the completed record on appeal with the Clerk of the Court of Appeals, and shall serve notice thereof, together with a copy of any transcript included in the record, on each of the parties.

Section 121.12 - Briefing and Oral Argument

(a) If the appellant intends to submit a brief, he or she shall file and serve a brief within 45 days of the filing of the record on appeal.

(b) If the respondent intends to submit a brief, he or she shall file and serve a response brief within 30 days of service of appellant's brief, or within 75 days of the filing of the record on appeal, whichever occurs first.

(c) The appellant may file and serve a reply brief within 15 days of service of respondent's brief.

(d) Briefs shall contain an argument and conclusion specifying the precise relief sought. The initial brief filed shall also include a statement of the case and statement of the issues presented on appeal and how the Tribal Court decided them.

(e) Briefs shall be typewritten, double-spaced, on white 8 x by 11 inch paper, and shall not exceed 50 pages in length, except that reply briefs shall not exceed 15 pages in length, exclusive of any table of contents and table of authorities included. The original and three copies of each brief shall be filed with the Clerk of the Court of Appeals.

(f) Oral argument may be permitted in the discretion of the Court. Whether argument is allowed, and if so the length of argument allowed, shall be set by the panel of the

Court of Appeals hearing the appeal.

Comment

The above rules are considered the minimum necessary for allowing the Court of Appeals to conduct its business in an efficient and just fashion. Briefing rules are purposely looser than in other jurisdictions to allow non-lawyers to represent themselves, or if otherwise permitted by the rules of the Tribal Court (see sec. 121.20), to represent others. Briefs are made optional, in recognition that some parties appearing pro Se may not wish to file briefs but may rather wish to present their cases solely in oral argument. The notice of appeal (see Sec. 121.10(a)) accordingly requires a short statement of the grounds for appeal and of the relief sought. A party may or may not be disadvantaged by failure to file a brief.

Section 121.13 - Decisions

(a) All decisions of the Court of Appeals shall be in writing, shall specify the relief granted, if any, and the Court's rationale therefore. The Clerk of Court of Appeals shall, within two days of their filing, furnish copies of the decision and any order of the Court of Appeals to the Tribal Court, the parties, and, for publication and distribution, to the Indian Law Reporter and the Great Lakes Indian Fish and Wildlife Commission.

(b) All decisions and dissents shall be written by the most senior judge voting with the majority or dissent, unless assigned by that judge to another judge. Any judge dissenting or concurring shall file a written opinion, or join in a written opinion filed by another judge. The most senior judge is the judge having the longest term of continuous service as a judge at the time.

(c) A petition for reconsideration may be filed by an aggrieved party within 15 days of the filing of any decision or order of the Court of Appeals. The petition for reconsideration shall state the specific change in the decision sought, and all reasons, and the authority therefor, for the change. Any non-petitioning party shall have 15 days from the date of service of the petition to respond. Oral argument on a petition for reconsideration is discretionary with the

Court.

(d) The Tribal Court shall in all respects be bound by the decisions and orders of the Court of Appeals.

(e) The Indian Law Reporter is designated the official reporter of the decisions of the Court of Appeals.

Section 121.14 - Standard of Review

The Court of Appeals shall apply the following standards of review.

(a) A finding of fact by a judge shall be sustained unless it is clearly erroneous.

(b) A finding of fact by a jury shall be sustained if there is any credible evidence to support it.

(c) A factual inference drawn by a judge or jury shall be reviewed as a finding of fact as long as more than one reasonable inference can be drawn from the facts.

(d) A finding, explicit or implicit, of witness credibility shall be reviewed as a finding of fact.

(e) Conclusions of law are review DE novo by the Court of Appeals.

(f) A stipulated, uncontested, or documentary fact is reviewed as conclusion of law.

(g) The meaning of an unambiguous contract is reviewed as a conclusion of law.

(h) A mixed issue of fact and law is reviewed according to the appropriate standard for each part.

(i) Whether a finding of fact or a conclusion of law has been properly labeled as such by the Tribal Court is reviewed as a conclusion of law.

(j) A discretionary determination shall be sustained if the record reflects that the

Tribal Court exercised discretion and applied the appropriate legal standard to the admissible facts of record.

(k) Sentencing and the imposition of fines, forfeitures and other penalties or remedial measures, not including the assessment of damages, shall be reviewed as a discretionary determination.

(l) The Court of Appeals shall not substitute its judgment for that of the Tribal Court on a matter committed to the discretion of the Tribal Court.

Comment

The standard of review defines the relationship between the trial court and the appeals court. The standard of review seeks to allocate to each court that part of the judicial work which it can best do. The trial court is in the best position to weigh the evidence and assess witness credibility and is therefore sustained on such matters unless its findings are clearly erroneous. The trial court is in no better position to interpret the law than the appeals court; in fact, the appeals court has the luxury of being able to analyze the law away from the heat of trial and can better perform this task itself. The appeals court can therefore look at questions of law afresh and need not defer at all to the trial court. Discretionary questions by their nature, can result in different decisions when put to different decision makers. The function of the appeals court in reviewing a discretionary decision is not to itself decide the result it would choose, but to determine whether the trial court in fact exercised discretion and made a decision based on the applicable facts and law. The exercise of discretion is more than bald decision making and it is the task of the appeals court to see that the appropriate process was followed.

Specific instances of common standard of review problems are listed in this section; for instance the definition of sentencing as a discretionary determination. These instances are not exclusive. The Tribal Council may provide by ordinance and the courts by decision the classification of other matters as factual, legal, or discretionary.

Section 121.15 - Obligations of the Tribal Court

(a) In all matters tried to a judge without a jury, the judge shall make separate findings of fact and conclusions of law. It is sufficient if the findings and conclusions are made orally on the record in open court, or if they are contained in a written opinion.

(b) In all civil matters tried to a jury, the jury shall return a special verdict on each issue of fact placed before it.

(c) If the Tribal Court fails to make findings of fact, the Court of Appeals may affirm the judgment if the record supports it, reverse if the record does not support it, or remand for

findings and conclusions.

Comment

In order for the appeals court to properly perform its review function, it must have an adequate basis for understanding the trial court's decision.

Section 121.16 - Preservation of Issues For Appeal

(a) Absent a compelling reason, issues not raised before the Tribal Court will not be heard before the Court of Appeals.

(b) An issue raised but not argued orally or by brief is deemed abandoned.

(c) A moot issue will not be reviewed unless it is capable of repetition yet due to its nature is likely to evade appellate review.

(d) No facts not in the trial record may be presented in any manner to the Court of Appeals.

Comment

Subsections (a) and (d) preserve the basic function of the appeals court as a court of review, not a court of initial determination. The trial court should have the first opportunity to consider all issues in litigation and to see as only it can do that the record is fully developed.

Subsection (b) protects the court and parties from expending energy on issues that an appellant has no intention of pursuing.

Subsection (c) states the principle that a court will not decide issues over which there is no current controversy. The controversy that existed during trial may be dispelled by the time of appeal. The exception to this rule is the type of case that may occur again but is likely never to survive long enough to receive appellate review. For instance, an individual may wish to challenge a court's suspension of his hunting and fishing rights for a period of three months, but by the completion of the appellate briefing schedule the suspension would be ended and the case moot. Since the issue could recur, but would always become moot before it was ready for decision, the mootness doctrine would be set aside.

Section 121.17 - Time

(a) In computing any period of time prescribed or allowed by this ordinance or by order of the Court of Appeals, the day of the act, event, or default from which the period of time begins to run is not included. The last day of the period is computed unless it is a Saturday, Sunday, legal holiday, or day upon which the office of the Clerk of Tribal court is not open for

business. When the period of time is less than 11 days, Saturdays, Sundays, legal holidays, or days upon which the office of the Clerk of Tribal Court is not open for business shall not be included in the period.

(b) Whenever a party has a right or is required to do some act within a prescribed period of time following service of a notice or paper on the party, and when that notice or paper is served by mail, 3 days shall be added to the prescribed period.

Section 121.18 - Service

(a) Any paper filed with the Clerk of Tribal Court or the Clerk of the Court of Appeals shall be served upon each other party. Filing constitutes the certification of the party or the party's attorney that service has been properly made.

(b) Service shall be made upon a party's attorney, if any, or if the party is not represented by counsel upon the party.

(c) Service may be made personally or by first class mail. Service made by mail is complete upon mailing.

Section 121.19 - Fees

The Clerk of the Tribal Court shall collect the following fees:

(a) For filing of the notice of appeal, \$25.00.

(b) For the preparation of a transcript, \$2.50 per page, for the original, to be filed with the Court, and the first copy. Subsequent copies may be ordered for 50 cents per page.

(c) The Tribal Court may order the waiver of the fees provided for in this section, upon the filing of a sufficient affidavit of indigency.

Comment

Fees are necessary to partially defray the costs of court operations and to discourage frivolous appeals. Fees should not however prevent an appellant who cannot afford them from filing an arguably meritorious appeal. Official Forms 2 and 3 prescribe the substance of a sufficient affidavit of indigency and an order waiving fees.

Section 121.20 - Practice Before the Court of Appeals

Any individual authorized to practice before the Tribal Court shall be authorized to practice before the Court of Appeals.

Section 121.21 - Motions Before the Court of Appeals

Any party to an appeal may file such motions as appear necessary, together with supporting briefs and affidavits, as appropriate. Such motions shall be filed with the Clerk of the Court of Appeals. All motions before the Court of Appeals shall be placed on a briefing schedule by the chief judge, who may order oral argument at his or her discretion.

Section 121.22 - Frivolous Appeals

The Court of Appeals may in its discretion order a party, his or her attorney, or both, filing or pursuing a frivolous appeal, to pay the costs and reasonable attorney fees incurred by the other party or parties in responding to the appeal.

Comment

Law is developed by appeals cases which push against the limits of previously accepted doctrine. This section should not be lightly applied, or used in such a way that arguably meritorious appeals are discouraged. Frivolousness may be found, however, when an appeal is grounded neither on existing law nor on a good faith argument for extension, modification, or reversal of existing law.

CHAPTER 121 AMENDED BY RESOLUTION #4-22-88-88-148/2-24-89-24

CHAPTER 122- SMALL CLAIMS PROCEDURE

Section 122.1 - Purpose

The purpose of this chapter is to establish simplified procedures for the resolution of disputes involving claims of \$3,000.00 or less.

Section 122.2 - Authority

This chapter is adopted pursuant to Art. VI, sec. 1(q), of the Constitution of the Tribe.

Section 122.3 - Definitions

- (a) "Clerk of Court" or "Clerk" means the Clerk of Tribal Court.
- (b) "Tribal Court" means the court of the Tribe.
- (c) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa

Indians.

Section 122.4 - Relationship to Other Chapters

The procedures set forth in this chapter are the exclusive procedures for litigation of claims as described in Section 122.5. Chapter 121 (Appeals) shall apply to proceedings under this chapter. Chapter 150-156 (Evidence) shall only apply as provided in Section 122.9. All provisions of chapters 101-120 not inconsistent with this chapter shall apply to proceedings under this chapter.

Section 122.5 - Applicability of Chapter

- (a) The procedures set forth in this chapter shall apply to all claims for \$3,000.00 or less, or for property valued at \$3,000.00 or less.
- (b) If a counterclaim or cross complaint for more than \$3,000.00 is filed which arises out of the same transaction or occurrence that is the subject of the original claim the entire action

shall not proceed under this chapter but under chapters 101-120.

(c) If a counterclaim or cross complaint for more than \$3,000.00 is filed which does not arise out the same transaction or occurrence that is the subject of the original claim the court shall dismiss without prejudice the counterclaim or cross complaint and the action shall proceed under this chapter.

(d) If a counterclaim or cross complaint for more than \$3,000.00 is filed which the court, after hearing, finds may reasonably be valued at \$3,000.00 or less, the action shall proceed under this chapter. Any finding made under this subparagraph shall not preclude a verdict on the merits of the counterclaim or cross complaint exceeding \$3,000.00.

Section 122.6 - Starting an Action

(a) An action under this chapter is commenced by the filing of a summons and complaint as prescribed by this section.

(b) The summons and complaint shall be a single document setting forth the following:

- (1) The names and addresses of the parties.
- (2) The case number assigned by the Clerk of Court.
- (3) A command to the defendant to appear at tribal court at a date, time and place specified.
- (4) A brief statement, including approximate date and place, of the transaction or occurrence giving rise to the action.
- (5) The relief requested.
- (6) A statement that failure to appear may result in a judgment taken against

defendant for the relief requested, plus costs and attorney fees.

(7) The dated signature of the Clerk of Court and of the plaintiff or plaintiff's attorney.

(c) The Clerk of Court shall make available forms of the summons and complaint.

(d) The return date specified under sec. 122.6(b)(3) shall be no less than eight days and no more than 45 days from the date of issuance of the summons and complaint. Service, if by mail, shall be made no less than eight days prior to the return date. Service, if personal, shall be made no less than five days prior to the return date.

(e) The Clerk of Court may not accept for filing any summons and complaint that does not bear the dated signature of the plaintiff or plaintiff's attorney, or that is not accompanied by the filing fee and, if applicable, the mailing fee, as required by sec. 122.12.

Section 122.7 - Service of the Summons and Complaint

Service of the summons and complaint may be by the following methods:

(a) **Personal Service.** The plaintiff may cause personal service to be made upon the defendant by hand delivery to the defendant in person or to any person of apparent normal understanding no less than 16 years old residing within the residence of the defendant. Any person over eighteen years of age, not a party to the action, may make personal service. In the case of personal service, an affidavit of service shall be returned to the Clerk of court and shall constitute proof of service.

(b) **Service by Certified Mail.** A plaintiff may request the Clerk of Court to make service by certified mail, in which case the Clerk of Court shall mail a copy of the summons and complaint to each defendant. Mail shall be certified, return receipt requested, return requested if

not claimed within five days. The Clerk shall charge the plaintiff the fees provided by sec. 122.12 for service by certified mail, receipt requested, return postage guaranteed. Service by mail shall be complete upon mailing unless the envelope enclosing the summons and complaint is returned unopened by the post office to the Clerk of Court prior to the return date.

(c) If service cannot reasonably be made under subparagraphs (a) or (b), service by publication pursuant to section 111.3 may be made.

Section 122.8 - Answers, Counterclaims, and Cross-Complaints

(a) All parties shall appear on the return date specified in the summons and complaint. All answers, counterclaims and cross complaints may be made orally or in writing. If made in writing, any such pleading shall be filed with the Clerk of Court with copies served on all parties.

(b) Written pleadings shall not substitute for personal appearance or appearance by attorney on the return date. Failure of any party to appear may result in judgment as provided in Section 122.10.

(c) Upon the return date, the court shall determine whether the defendant wishes to make a defense to the complaint. If the defendant does not wish to make a defense or raise a counterclaim, judgment may be entered in favor of the plaintiff. If the defendant does wish to make a defense, the court shall determine whether the parties wish to settle their differences without trial. If such settlement is made, the court shall enter judgment, or dismiss the complaint, as called for by the settlement. If the parties do not make such settlement a trial date shall be set. Trial may be had on the returned date if all parties and the court consent.

(d) Any party may request a substitution of judge for cause by making such request

at the hearing on the return date.

(e) The court may in its discretion adjourn the return date as the interests of justice require.

Section 122.9 - Trial

(a) All trials under this chapter shall be to the court without a jury.

(b) A trial under this chapter shall be conducted informally, with each party being allowed to present evidence and argument and to examine witnesses to the extent reasonably required for full disclosure of the pertinent facts.

(c) Proceedings under this chapter shall not be governed by the rules of evidence except those related to privilege under chapter 152. The court shall admit all evidence having reasonable probative value but may exclude irrelevant or repetitious evidence or argument. An essential finding of fact may not be based on oral hearsay unless it would be admissible under chapter 155.

(d) The judge may question witnesses.

(e) The judge shall establish the order of proof and argument consistent with the fair and prompt resolution of the dispute.

Section 122.10 - Judgment

(a) If plaintiff fails to appear on the return date or at trial, the court may dismiss the complaint. Dismissal shall be without prejudice unless a complaint filed by the plaintiff arising from the same transaction or occurrence has been dismissed on the same grounds once before.

(b) If the defendant fails to appear on the return date or at trial, the court may enter judgment for plaintiff upon due proof of facts which show the plaintiff is entitled to judgment.

(c) After trial, the court may give its decision orally immediately, or it may file written findings of fact, conclusions of law, and judgment, no later than 30 days following trial.

(d) Judgment may be reopened at any time within one year of judgment in any case where service was by mail or publication, the defendant did not receive actual notice of the action and did not appear in the action or otherwise submit to the jurisdiction of the court, and the defendant petitions the court to reopen the judgment within 15 days of receiving actual notice of the action or judgment. Such petition shall be verified and shall state the facts upon which the petitioner bases the claim the reopen under this subparagraph. After hearing, the court may grant the petition to reopen, in which case a trial date shall be set.

(e) Default judgment may be reopened on all grounds other than failure of actual notice, by petition for good cause shown within six months of entry of judgment.

(f) Judgment shall be entered by the Clerk within 20 days of the court's oral announcement or the court's filing of written findings, conclusions, and judgment. A notice of entry of judgment shall thereupon be prepared by the Clerk who shall mail a copy thereof to each party.

Section 122.11 - Disclosure of Assets

When a judgment for money damages is entered under this chapter, the court shall order that the judgment debtor execute, under penalty of contempt, within 15 days of the entry of judgment unless the judgment is satisfied sooner, a statement, on forms provided by the Clerk of Court, disclosing, as of the date of judgment, the debtor's name, residence address, employers and their addresses, frequency of pay periods and gross and net pay per period, any non-USA trust real property interests, cash on hand, financial institutions in which the debtor has any funds

and the amount of funds in each institution, the names and addresses of all persons who hold any property belonging to the debtor or who owe any money or property to the debtor, and all items and property worth more than \$100.00.

Section 122.12 - Fees

(a) Filing fee. For filing of a summons and complaint, the Clerk shall collect \$10.00.

(b) Mailing fee. For service by mail the Clerk shall collect \$3.00 plus the actual cost of certified mail, return receipt requested, return postage guaranteed, for each defendant to be so served.

(c) In actions filed by the Tribe, no fee shall be required under subparagraph (a) and only the actual cost of mailing shall be required under subparagraph (b).

(d) In actions filed by an indigent person, whose indigency is established by the filing of a verified petition, no fee shall be required under subparagraph (a) and only the actual cost of mailing shall be required under subparagraph (b).

Section 122.13 - Costs Recoverable

(a) The prevailing party in an action under this chapter may recover the following costs, which shall be added to the judgment.

- (1) All fees paid under sec. 122.12.
- (2) Actual attorney fees not to exceed \$150.00.
- (3) Costs of Service.
- (4) Witness fees and mileage.
- (5) Post-judgment interest of 1% per month.

(b) The prevailing party shall within ten days of the announcement of judgment file a

certified statement of costs with the Clerk to be taxed to the other party. The other party shall have five days to object in writing to the taxation of the costs submitted. Any such conflict may be resolved by the court with or without hearing the court's discretion.

CHAPTER 123A - CIVIL REMEDIAL MONEY PENALTIES

Section 123A.1

Whenever any ordinance of the tribe shall provide for a civil remedial money penalty for the breach of such ordinance by any person, the tribe shall proceed against such person according to the procedure set forth in this subchapter. The provisions of the other chapters of the Tribal Court Code shall apply to proceedings instituted pursuant to this subchapter to the extent not inconsistent herewith. Unless an ordinance specified that a breach thereof shall subject the person breaching to a civil remedial money penalty. The other provisions of the Tribal Court Code shall apply.

Section 123A.2

Proceedings for the recovery of a civil remedial money penalty shall be instituted by the issuance of a citation by an enforcing officer. Whenever an enforcing officer has reasonable basis to believe that a person subject to tribal authority has committed a breach of a tribal ordinance which provides for a civil remedial money penalty, such officer shall issue a citation to such person, serve a copy of same as provided in Chapter 111 hereof, and file a copy with the tribal court. The issuance of a citation by an enforcing officer in connection with a breach of an ordinance is adequate process to give the tribal court jurisdiction over the person upon the filing with the court of such citation.

Section 123A.3

The citation shall contain a complaint, a case history, and a report of court action on the case. It must appear on the face of the citation that there is a reasonable basis to believe that a breach of an ordinance has been committed. The citation form shall provide the following:

- (a) The name of the person to whom the citation was issued, together with the person's age and address, if available;
- (b) The tribal permit or license number of the defendant, if applicable;
- (c) The breach alleged, the time and place of occurrence, a statement that the defendant committed the breach, the ordinance provision charged, and a description of the breach in language which can be readily understood;
- (d) The name and tribal department of the issuing officer;
- (e) The maximum civil remedial money penalty for which the defendant might be found liable;
- (f) A date, time and place for the tribal court appearance, and a notice to appear;
- (g) Provision for a deposit and stipulation or default in lieu of court appearance;
- (h) Notice that if the defendant fails to appear at the time fixed in the citation, the defendant will be defaulted and judgment entered against him in an amount up to the maximum penalty;
- (i) Notice that if the defendant makes a deposit and stipulation of default, judgment will be entered against him in the amount of the deposit;
- (j) Any other information.

Section 123A.4

A defendant to whom a citation is issued may make a deposit and stipulation of default in

lieu of a court appearance at any time prior to the court appearance date. The amount of the deposit shall be determined by an enforcing officer, up to the maximum penalty set in the ordinance charged. By Signing the stipulation, the defendant consents to the entry of judgment against him for a penalty not to exceed the amount of the deposit. The person accepting the deposit and stipulation of default shall prepare a receipt showing the purpose for which the deposit was made and shall file the deposit and stipulation of default, together with a copy of the receipt, with the tribal court.

Section 123A.5

Upon return of the citation, the defendant shall enter a plea. If the defendant denies the allegations of the complaint a date for trial shall be set.

Section 123A.6

In all actions under this subchapter, the tribe shall have the burden of showing by a preponderance of the evidence that defendant breached the ordinance charged in the citation. The tribe shall not, however, be required to show that defendant intended to breach the ordinance charged.

Section 123A.7

If the defendant is found to have breached the ordinance charged, the tribal court shall enter judgment against the defendant and in favor of the tribe for a monetary amount not to exceed the maximum civil remedial money penalty provided for the breach, together with court costs, or in cases where a deposit and stipulation of default has been made by the defendant, for an amount up to the amount of the deposit. If the judgment is for an amount of the deposit, the balance shall be returned to the defendant.

Section 123A.8

All civil remedies are available in order to enforce the judgment of the tribal court, including the power of civil contempt. A judgment shall become a lien upon any available property of the defendant located within the Bad River Reservation or within the jurisdiction of the tribal court. When necessary, the tribe may bring suit in any court on the judgment against the defendant or property of the defendant located beyond the jurisdiction of the tribal court.

Section 123A.9

Deposits and money paid on judgments rendered pursuant to this subchapter shall be tendered to the tribal Clerk of court. Within 20 days after judgment on a deposit or receipt of funds in payment of a judgment the tribal Clerk of Court shall tender such sums to the tribal treasurer, who shall place such sums in the general account of the tribe such disposition as the Tribal Council shall make.

SUBCHAPTER 123 - B- CIVIL REMEDIAL FORFEITURE OF PROPERTY

Section 123B.1

Whenever any ordinance of the tribe shall provide for the civil remedial forfeiture of any property for breach of such ordinance by any person, the tribe shall proceed against the property according to the procedures set forth in this subchapter. The provisions of other chapters of the Tribal Court Code shall apply to proceedings instituted pursuant to this subchapter to the extent not inconsistent herewith.

Section 123B.2

Proceedings for civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in tribal court by an enforcing officer. A complaint shall

be filed whenever an enforcing officer has a reasonable basis to believe that a tribal ordinance has been breached and the property is forfeitable under the tribal ordinance.

Section 123B.3

It must appear on the face of the complaint that there is a reasonable basis to believe that tribal ordinance has been breached and the property is forfeitable under that ordinance. The complaint shall contain:

- (a) A description of the property against which proceedings are instituted;
- (b) The ordinance provision allegedly breached;
- (c) A description of the breach in language which can be readily understood;
- (d) The name, address and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;
- (e) A request for an order to seize the property; and
- (f) The name and attestation of the complaining enforcing officer.

Section 123B.4

If the owner of the property is known, the summons, complaint and notice of hearing on an order to seize shall be served on the owner as provided in Chapter 111 hereof. If the owner of the property is unknown or cannot be located, service shall be made by posting in the central tribal office and the Tribal Rights Protection office and by publication once in a newspaper of general circulation in Ashland County. An affidavit of publication and posting shall be filed with the tribal court.

Section 123B.5

All property alleged to be subject to civil remedial forfeiture may be seized pursuant to

an order to seize issued by the tribal court and held by the tribal court pending disposition of the complaint or until a bond has been posted with the tribal court. Property may be seized by an enforcing officer prior to filing a complaint and issuance of an order to seize if:

- (a) A tribal ordinance authorizes the immediate seizure of the property; or
- (b) The property seized presents a danger to persons, property or a natural resource of the Bad River Reservation; or
- (c) An enforcing officer has a reasonable basis to believe that without immediate seizure the property will be removed from the jurisdiction of the tribe.

A receipt describing the property at the time of seizure, if such person is present.

Section 123B.6

The hearing on the order to seize shall be heard within 30 days of the filing of the complaint. The tribe shall use its best efforts to attempt to provide actual notice of the hearing to the owner of the property.

Section 123B.7

At the hearing on the order to seize the tribe shall have the burden of showing that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged and that the property is within the jurisdiction of the tribal court. The tribe may present evidence by testimony or affidavit. Any person alleging ownership of the property may appear and present argument and evidence by testimony or affidavit.

Section 123B.8

If after hearing the tribal court finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the tribal ordinance alleged and that the

property is within the jurisdiction of the court, it shall issue an order to seize directing the enforcing officer to seize the property and hold it pending disposition of the complaint. If the tribal court finds to the contrary, it shall dismiss the complaint and, if property was seized prior to the hearing, order the property released immediately.

Section 123B.9

An order to seize shall contain the following:

- (a) A description of the property subject to the order;
- (b) The date of filing of a property complaint for the forfeiture and the name and department of the complaining officer;
- (c) A finding that the property is within the jurisdiction of the court;
- (d) A finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the ground for finding, and citation to the ordinance allegedly breached;
- (e) Notice of the date and place of trial;
- (f) Notice that the property may be released by the posting of a property bond.

The order to seize shall be served as provided in Section 123B.4.

Section 123B.10

The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property, and if one exists shall give notice to the secured party of any hearing in the case and shall also give the secured party at least 15 days notice of the time and place of any sale conducted pursuant to Section 123B.13.

Section 123B.11

The person determined by the tribal court to be the lawful owner of the property seized may be allowed to post a bond in the amount of the value of the seized property as determined by the tribal court. When a proper bond has been posted with the court, the property shall be returned to the owner. The bond shall be available to be levied against if the owner does not return the property to the custody of the tribal court in proper condition or if the court determines after trial that the property should be forfeited.

Section 123B.12

At trial the tribe shall have the burden of showing by a preponderance of the evidence that the property is forfeitable under the ordinance charged. If the tribe fails to meet this burden, the tribal court shall dissolve the order to seize, enter judgment awarding title to the property to the owner, and order the immediate release of the property or discharge of the bond. If the tribe meets its burden, the court shall dissolve the order to seize, enter judgment awarding title to the property to the tribe, together with court costs, and place the property in the hands of the tribe for disposition or, if bond was posted, order the bond forfeited to the tribe.

Section 123B.13

Within 30 days after entry of a judgment forfeiting property to the tribe, the tribe shall sell the property at the highest obtainable price. The net proceeds of such sale, shall be remitted to the tribal treasurer, who shall place such sums in the general account of the tribe for such disposition as the Tribal Council shall make. If there is a perfected security interest in the property forfeited, and the breach which occasioned the forfeiture was not committed with the knowledge, consent, or connivance of the secured party, but if a sufficient amount does not

remain for such purpose after the other deductions, then the amount remaining shall be paid over.

Section 123B.14

Any perishable property seized pursuant to this subchapter may be sold by an enforcing officer at the highest available price and the proceeds of the sale shall be tendered into tribal court to await such disposition of the proceeds as the tribal court shall direct.

SUBCHAPTER - C - MISCELLANEOUS PROVISIONS

Section 123C.1

No person in a suit brought pursuant to this chapter shall be required to answer questions which would tend to show that such person breached the ordinance under which the suit was brought.

Section 123C.2

Any person who is concerned in the commission of a breach remediable under this chapter is a principal and may be adjudged to have committed the breach although such person did not directly commit it and although the person who did directly do so has not been subject to the remedial provisions of this chapter. A person is concerned in the commission of a breach if such person:

- (a) Directly commits the breach;
- (b) Aids and abets the commission of the breach; or
- (c) Is party to a conspiracy with one or more others to commit the breach or advises, hires, counsels, or otherwise procures another to commit the breach.

Section 123C.3

The civil remedial forfeiture remedies governed by this chapter are not mutually exclusive, nor shall they be the sole and exclusive remedies of the tribe for breach of its ordinances. Nothing in this chapter shall restrict or curtail the right of the tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this chapter, the tribal court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the tribe, its members, its property, or its natural resources. The tribal court may order abatement of a nuisance, restoration of natural resource, or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner. The tribal court may, where provided by ordinance, revoke or suspend any or all tribal permits, licenses or privileges.

CHAPTER 124 - LANDLORD - TENANT RELATIONS

Section 124.1 - Purpose

The purpose of this chapter is to define the rights of landlords and tenants and to establish procedures for the enforcement of landlord and tenant rights and obligations.

Section 124.2. - Authority

This chapter is adopted pursuant to Art. VI, Sec. 1(q) of the Tribe's constitution.

Section 124.3 - Definitions

(a) "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event such as completion of a building. An agreement for transfer of possession of only personal property is not a lease.

(b) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent.

(c) "Premises" mean the property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

(d) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

(e) "Tenant at will" means any tenant holding the permission of his landlord without

a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

(f) "Tribal Court" means the Tribe's Tribal Court.

(g) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 124.4 - Relationship to Other Laws

This chapter provides minimum rights, obligations, remedies, and procedures. Other rights, obligations, remedies and procedures may be provided by oral or written agreement of parties, or by applicable federal law. Proceedings under this chapter shall not be governed by Chapters 150 - 156 (Evidence) except as provided by Section 122.9.

Section 124.5 Requirement of Writing for Rental Agreements and Termination

(a) A lease for more than a year, or a contract to make such a lease or the assignment of any leasehold interest of more than a year, is not enforceable unless it is in writing and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 124.6 and 124.8 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

(b) Possession under unenforceable lease. If a tenant enters into possession under a

lease for more than one year which does not meet the requirements of sub. (a), and the tenant pays rent on a periodic basis, he becomes a periodic tenant. Except for duration of the tenancy and matters within the scope of Section 124.6 and 124.8, the tenancy is governed by the terms and conditions agreed upon.

(c) Termination of written lease prior to normal expiration date. An agreement to terminate a tenancy more than one year prior to the expiration date specified in a valid written lease is not enforceable unless it is in writing signed by both parties. Any other agreement between the landlord and tenant to terminate a lease prior to its normal expiration date or to terminate a periodic tenancy or tenancy at will without the notice required by Section 124.12 may be either oral or written. Nothing herein prevents surrender by operation of law.

(d) Proof. In any case where a lease or agreement is not in writing signed by both parties but is enforceable under this section, the lease or agreement must be proved by clear and convincing evidence.

Section 124.6 - Rights and Duties of Landlord and Tenant in Absence of Written Agreement to Contrary

(a) When section applicable. So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. This section applies to any tenancy.

(b) Possession of tenant and access by landlord. Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the premises,

make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that the entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

(c) Use of premises, additions or alterations by tenant. The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such a manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

(d) Tenant's Fixtures. At the termination of the tenancy, the tenant may remove any fixtures installed by him if he either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by him only if he replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for his convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

(e) Storage or disposition of personalty left by tenant.

(1) If a tenant removes from the premises and leaves personal property of an

apparent total value of less than \$100, the landlord may:

(A) Store such personalty, with or without notice to the tenant, on or off the premises, with a lien on the personalty for actual cost of removal and storage or, if stored by the landlord, for the reasonable value of storage;

(B) Give the tenant notice, personally or by ordinary mail addressed to the tenant at his last-known address, of the landlord's intent to dispose of the personalty by sale or other appropriate means if the property is not repossessed by the tenant within 5 days of such personal service or 8 days of the date of mailing. If the tenant fails to repossess within the time specified, the landlord may proceed to dispose of such property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if he has first stored the personalty under sub d. A, and send the balance of the proceeds to the tenant by registered mail addressed to his last known address; if such proceeds are returned to the landlord and are not claimed within five months after the date on which they were mailed, the proceeds shall belong to the landlord.

(2) Rights of third persons. The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by him or by others. Such lien has priority over any ownership or security interest and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. Notice of intended disposition need to be given only to the tenant. The tenant or any secured party shall have the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges for removal, storage, disposition, arranging for the sale and

reasonable attorney's fees and legal expenses.

(3) Other procedure. The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.

Section 124.7 - Water Heater Thermostat Settings

A landlord of premises which are subject to a residential tenancy and served by water heater serving only that premises shall set the thermostat of that water heater at no higher than 125 degrees Fahrenheit before any new tenant occupies that premises or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

Section 124.8 - Repairs, Untenantability

(a) Application of section. This section applies only to residential tenancies. An agreement to waive the requirements of this section is void. Nothing in this section is intended to affect rights and duties arising under other law.

(b) Duty of Landlord.

(1) Unless the repair was made necessary by the negligence or improper use of the premises by the tenant, the landlord is under a duty to:

(A) Keep in a reasonable state of repair portions of the premises over which he maintains control;

(B) Keep in a reasonable state of repair all equipment under his control necessary to supply services which he has expressly or implied agreed to furnish to the tenant, such as heat, water, elevator or air-conditioning.

(C) Make all necessary structural repairs;

(D) Repair or replace any plumbing, electrical wiring, machinery or

equipment furnished with the premises and no longer in reasonable working condition, except as provided in sub. (c)(2).

(E) Comply with applicable housing code.

(2) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from his duty as to the other tenants to make repairs as provided in par. (1).

(3) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either sub. (2) or (d) governs.

(c) Duty of Tenant.

(1) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(2) The tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

(3) A tenant shall comply with an applicable housing code.

(d) Untenantability.

If the premises becomes untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial

violation of sub. (b) materially affecting the health or safety of the tenant, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard or the substantial violation of sub. (b) materially affecting the health or safety of the tenant; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on him. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

Section 124.9 - Transferability; Assignment of Interest

(a) Unless specifically permitted by a written lease, no interest in any tenancy may be transferred or assigned by any tenant to any one else, unless the landlord specifically consents.

(b) Effect of transfer on liability or transferor. In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of his contractual obligations under the lease, except in the special situation governed by Section. 124.16(e).

(c) Covenants Which Apply to Transferee. All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach

which occurs during the period when such successor holds his interest, unless he has by contract assumed greater liability; a personal representative may also recover damages for a breach for which his decedent could have recovered.

(d) Same Procedural Remedies. The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

(e) Consent as Affecting Subsequent Transfers. If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers.

Section 124.10 - Lien of Landlord

If any tenant abandons a premises while owing rent or other sums to the landlord, the landlord may seize any personalty left on the premises by the tenant and sell it, publicly or privately, and may retain such of the proceeds as are necessary to offset the sum due. The landlord shall send an overage by registered mail to the last known address of the tenant; if such proceeds are returned to the landlord and are not claimed within five months after the date on which they were mailed, the proceeds shall belong to the landlord.

Section 124.11 - Requirement That Landlord Notify Tenant of Automatic Renewal Clause

A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least 15 days more than 30 days prior to the time specified for the giving of such notice to him, gives to the tenant written notice in the same manner as specified in Section 124.15 calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

Section 124.12 - Notice Terminating Tenancy, No Fault by Either Party

(a) Unless otherwise provided by written agreement of the parties, notice terminating tenancy by either the landlord or the tenant, where no fault by the recipient of the notice is alleged, shall be given as provided by this section.

(b) A tenancy at will may be terminated by notice, terminating the tenancy 28 days after the date of notice.

(c) A periodic tenancy may be terminated by notice with an effective date of termination to be determined as follows:

(1) If notice is given on the first day of a period, then the tenancy is terminated as of the last day of a period, then the tenancy is terminated as of the last day of the same period.

(2) If notice is given on any day other than the first day of a period, then the tenancy is terminated as of the last day of the period immediately following the period in which notice is given.

(d) A lease that does not include an oral or written agreement as to notice terminating tenancy may be terminated by notice within an effective date of termination to be determined as follows:

(1) If notice is given on a date rent is due, then the tenancy is terminated 28 days after the date of notice.

(2) If notice given on any day other than a date rent is due, then the tenancy is terminated 28 days after the next date rent is due.

(e) If the periodicity of a tenancy, or the due date of rent, cannot be determined,

tenancy may be terminated by notice terminating the tenancy 28 days after the date of notice.

(f) In calculating the number of days notice, the day on which notice is given shall not be counted. All subsequent days, including weekends and holidays, shall be counted.

(g) Notice is considered given on the date specified in Section 124.13.

Section 124.13 - Notice Terminating Tenancy For Failure to Pay Rent or Other Breach by Tenant

(a) Failure to pay rent.

(1) Periodic tenancies of a period of one year or less; leases for one year less.

(A) If a tenant has failed to pay rent under a periodic tenancy of a week to week, month-to-month, or other period less than and including year-to-year, the landlord may terminate the tenancy if the landlord gives the tenant notice that tenant must pay rent or vacate the premises within ten days of the date of the notice, and if the tenant fails to pay accordingly.

(B) If notice has been given by a landlord to a tenant under sub. A, above, and tenant has paid rent or otherwise been permitted to remain in possession on the premises, and within one year of the notice again is in default on rent, the landlord may terminate the tenancy by giving tenant notice that tenant must vacate the premises within 14 days of the date of the notice.

(2) Leases for more than a year. If a tenant has failed to pay rent under a lease of more than a year, a landlord may terminate the tenancy as provided in, sub. 1, above, except that the time given to vacate the premises or pay rent under sub. 1(A) and the time given to vacate under sub. 1(B) shall be 30 days from the date notice is given.

(b) Default other than failure to pay rent.

(1) Periodic tenancies of a period of one year or less; leases for one year or less.

(A) If a tenant commits waste or a material violation of sec. 124.8(c) or breaches any covenant or condition of the rental agreement (other than for the payment of rent), the landlord may terminate the tenancy if the landlord gives the tenant notice that the tenant must remedy the breach or vacate the premises within ten days of the notice, and if the tenant fails to remedy the breach.

(B) A tenant is deemed to be complying with a notice under sub. A, above if promptly upon receipt of such notice he takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bonafide and reasonable offer to pay the landlord all damages for his breach.

(C) If within one year from the giving of notice under sub. A, above, the tenant again commits waste or breaches the same or any other covenant or condition of his lease (other than for payment of rent), his tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(2) Leases for more than a year. If a tenant commits waste, or a material violation of Section 124.8(c), or breaches any covenant or condition of the rental agreement (other than for the payment of rent) the landlord may terminate the tenancy as provided in sub. 1, above, except that the time given to remedy the breach or vacate under sub. 1(A), and the time given to vacate under sub. 1(c), shall be 30 days.

Section 124.14 - Removal of Tenant on Termination of Tenancy

If a tenant remains in possession without consent of the landlord after termination of his tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

Section 124.15 - Manner of Giving Notice

(a) Notice must be in writing, formal or informal, and substantially inform the other party to the landlord-tenant relation of the intent to terminate the tenancy and the date of termination. A notice is not invalid because of errors in the notice which do not mislead, including omission of the name of one of several landlords or tenants.

(b) Notice terminating a tenancy may be given in any of the following manners.

(1) By giving a copy of the notice personally to the other party, or by leaving a copy at the party's usual place of abode in the presence of some competent member of the family at least 14 years of age, who is informed of the contents of the notice. Notice is given under this subsection on the day the notice is given or left.

(2) By leaving a copy with any competent person apparently in charge of or occupying the tenants rented premises, or the landlord's place of business, and by mailing a copy to the party at the party's last known address. Notice is given under this subsection on the day the notice is given or left.

(3) By mailing a copy the registered or certified mail to the party's last known address. Notice is given under this subsection 3 days after it is mailed.

(c) Any notice to a landlord may be given to the landlord or to a person who has been managing the property or receiving rent as the landlord's agent.

(d) Any notice to a corporation, partnership, or other business association, may be

given to any corporate director, general partner, manager, or agent who has made or received rental payments on behalf of the party.

(e) If notice is not properly given under this section but is actually received by the other party, the notice is deemed to be properly given, but the burden is on the party alleging actual receipt to prove that fact by clear and convincing evidence. Notice is given under this subsection on the day it is actually received.

(f) If a tenant vacates the premises without giving notice to the landlord, notice is deemed to have been given to the landlord as of the date of the tenant's vacation of the premises or, if such date cannot be ascertained, the date landlord had actual notice of the vacation.

Section 124.16 - Effect of Holding Over After Expiration of Lease; Removal of Tenant

(a) Removal and recovery of damages.

If a tenant holds over after expiration of a lease, the landlord may in every proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

(b) Creation of periodic tenancy by holding over.

(1) Nonresidential leases for a year or longer. If premises leased for a year or longer primarily for other than private residential purposes, and the tenant hold over after expiration of the lease, the landlord may elect to hold the tenant on a month-to-month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(2) All other leases.

If premises are leased for less than a year for any use, or if leased for any

period primarily for private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a month-to-month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(3) When election takes place.

Acceptance of rent for any period after expiration of a lease, the landlord may elect to hold the tenant on a month-to-month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(c) Terms of tenancy created by holding over.

A periodic tenancy arising under this section is upon the same terms and conditions as those of the original lease except that any right of the tenant to renew or extend the lease, or to purchase the premises, or any restriction on the power of the landlord to sell without first offering to sell the premises to the tenant, does not carry over to such a tenancy.

(d) Effect of contrary agreement.

This section governs except as the parties agree otherwise either by the terms of the lease itself or by an agreement at any subsequent time.

(e) Holdover by assignee or subtenant.

If an assignee or subtenant holds over after the expiration of the lease, the landlord may either elect to:

(1) Hold the assignee or subtenant or, if he or she participated in the holding over, the original tenant as a periodic tenant under sub. (b); or

(2) Remove any person in possession and recover damages from the assignee or subtenant or, if the landlord has not been accepting rent directly from the assignee or subtenant, from the original tenant.

(f) Notice terminating a tenancy created by holding over.

Any tenancy created pursuant to this section is terminable under Section 124.12.

Section 124.17 - Damages for Failure of Tenant to Vacate at End of Lease or After Notice

If a tenant remains in possession without consent of his landlord after expiration of a lease or termination of a tenancy by notice given either landlord or the tenant, or after termination by valid agreement of the parties, the landlord may recover from the tenant damages suffered by the landlord because of the failure of the tenant to vacate within the time required. In absence of proof of greater damages, the landlord may recover as minimum damages twice the rental value apportioned on a daily basis for the time the tenant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the tenant for the prior rental period, and includes the money equivalent of any obligations undertaken by the tenant as part of the rental agreement, such as payment of taxes, insurance and repairs.

Section 124.18 - Recovery of Rent and Damages by Landlord; Mitigation

(a) Scope of section. If a tenant unjustifiably removes from the premises prior to the effective date for termination of his tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord can recover rent and

damages except amounts which he could mitigate in accordance with this section, unless he has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease, a periodic tenant, or an assignee of either.

(b) Measure of recovery. In any claim against a tenant for rent and damages, or for either, the amount of recovery is reduced by the net rent obtainable by reasonable efforts to re-rent the premises. Reasonable efforts mean those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that such steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to re-rent the premises, the tenant is credited with rent actually received under a re-rental agreement minus expenses incurred as a reasonable incident of acts under sub. (d), including a fair proportion of any cost of remodeling or other capital improvements. In any case the landlord can recover, in addition to rent other elements of damage, all reasonable expenses of listing and advertising incurred in re-renting and attempting to re-rent (except as taken into account in computing the net rent under preceding sentence). If the landlord has used the premises as part of reasonable efforts to re-rent, under sub.(4)(c), the tenant is credited with the reasonable value of the use of the premises, which is presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it is reasonable for the landlord to rent the other premises for his own account in preference to those vacated by the defaulting tenant.

(c) Burden of proof. The landlord must allege and prove that he has made efforts to

comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part thereof was not reasonable, that any terms and conditions upon which the landlord has in fact re-rented were not reasonable, and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with sub. (d)(3); the tenant also has the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by re-renting.

(d) Acts privileged in mitigation of rent or damages. The following acts by the landlord do not defeat his right to recover rent and damages and do not constitute an acceptance of surrender of the premises:

- (1) Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;
- (2) Re-renting the premises or a part thereof, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;
- (3) Use of the premises by the landlord until such time as re-renting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period;
- (4) Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

Section 124.19 - Retaliatory Conduct in Residential Tenancies Prohibited

(a) Except as provided in sub. (b), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:

(1) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(2) Complaining to the landlord about a violation of Section 124.8 or a local housing code applicable to the premises.

(3) Exercising a legal right relating to residential tenancies.

(b) Notwithstanding sub. (a), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (a).

(c) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

Section 124.20 - Eviction Actions - Commencement

(a) An eviction action is commenced by the filing of a summons and complaint. The summons and complaint shall conform to the requirements of Section 122.6. In addition to the requirements of Section 122.6, the complaint shall allege the type of tenancy to be terminated, the breach, and the date of notice to vacate given by the landlord. The landlord may join in the eviction action other claims arising out of the tenancy. If the landlord joins a claim for lost rent, the landlord must allege that an attempt at mitigation was undertaken.

(b) The Clerk of Court shall make available forms of the summons and complaint.

(c) The requirements for return dates and service shall be as provided under Section 122(d) and (e).

Section 124.21 - Service of Summons and Complaint

(a) Service shall be made upon defendant pursuant to Section 122.7.

(b) When the defendant has been served pursuant to Section 122.7 and does not waive lack of personal jurisdiction as a defense, service may be made as follows:

(1) If the summons is returned more than 7 days prior to the return date with proof that the defendant cannot be served under Section 122.7(1), the plaintiff may, at least 7 days prior to the return date, affix a copy of the summons and complaint onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date an additional copy of the summons and complaint shall also be mailed to the defendant at the last-known address, even if it is the premises which are the subject of the action.

(2) In all other cases where the summons and complaint are returned with proof that the defendant cannot be served under Section 122.7, the court shall, on the return date, adjourn the case to a day certain not less than 7 days from the return date, and the plaintiff shall affix a notice in substantial conformity with sub. (c) onto some part of the premises where it may be conveniently read. At least 5 days prior to the return date, an additional copy of said notice, together with a copy of the summons and complaint, shall be mailed to the defendant at the last-known address, even if it is the premises which are the subject of the action.

(3) Before judgment is entered after service is made under this section, the plaintiff shall file proof of compliance with this section.

(c) The notice required under sub. (b)(2), above, shall be substantially as follows:

BAD RIVER TRIBAL COURT

Case No. _____

Take notice that an eviction action has been commenced against you to recover the possession of the following described premises....., of which, I the plaintiff, am entitled to possession, but which you have unlawfully detained from me.

Unless you appear and defend on the _____ day of _____, _____, at _____ o'clock _____m., in the Bad River Tribal Court, located at the Tribal Administration Building (Chief Blackbird Center), Odanah, WI judgment may be rendered against you for the restitution of said premises and for costs.

DATED: _____, _____

Plaintiff or Plaintiff's Attorney

Section 124.22 - Answers, Counterclaims, and Cross-Complaints

All pleadings in response to the summons and complaint shall be made as provided in Section 122.8.

Section 124.23 - Trial

Trials under this chapter shall be conducted as provided in Section 122.9.

Section 124.24 - Judgment; Writ of Restitution

(a) Judgment. If the court finds that the plaintiff is entitled to possession of the premises, the order for judgment shall be for the restitution of the premises to the plaintiff and if an additional cause of action is joined under Section 124.20 and plaintiff prevails thereon, for such other relief as the court orders. Judgment shall be entered accordingly as provided in

Section 122.10.

(b) Writ of restitution. At the time of ordering judgment for the restitution of premises, the court shall order that a writ of restitution be issued, and the writ may be delivered to any general law enforcement officer or other officer specifically empowered to carry out such writ.

(c) Stay of writ of restitution. At the time of ordering judgment, upon application of the defendant with notice to the plaintiff, the court may in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed 30 days from the date of the order for judgment. Any such stay shall be conditioned upon the defendant paying all rent or other charges due and unpaid at the entry of judgment and upon the defendant paying the reasonable value of the occupancy of the premises, including reasonable charges, during the period of the stay upon such terms and at such times as the court directs. The court may further require the defendant, as a condition of such stay, to give a bond in such amount and with such sureties as the court directs, conditioned upon the defendant's faithful performance of the conditions of the stay. Upon the failure of the defendant to perform any of the conditions of stay, the plaintiff may file an affidavit executed by the plaintiff or attorney, stating the facts of such default, and the writ of restitution may forthwith be issued.

(d) Writ of restitution; form and contents. The writ of restitution shall be in the name of the court, sealed with its seal, signed by its clerk, directed to any authorized law enforcement officer and in substantially the following form:

BAD RIVER TRIBAL COURT

THE BAD RIVER TRIBE To any law enforcement officer:

The plaintiff, _____, of _____
recovered a judgment against the defendant, _____
of _____, in an eviction action in the Bad River Tribal Court, on the
_____ day of _____, _____, to have restitution of the following
described premises:

_____ (description as in complaint), located on the Bad River
Reservation, in Ashland County, Wisconsin.

YOU ARE HEREBY COMMANDED To immediately remove the
defendant, _____, from the said premises and to restore the
plaintiff, _____, to the possession thereof. You are further
commanded to remove from said premises all personal property not the property of the plaintiff,
and to store and dispose of the same according to law, and to make due return of this writ within
ten days.

Witness the Honorable _____, Judge of the Bad River
Tribal Court this _____ day of _____, _____.

Section 124.25 - Appeal

Appeals may be taken only as provided under Chapter 121, except that notice of appeal
under Section 121.9 must be filed within 15 days of the entry of judgment or order for writ of
restitution appealed from. No stay of the judgment or writ of restitution may be granted to the
defendant under Section 121.10(d) unless security for all rents, costs, and fees due, and all rent to
be due during the pendency of the appeal is provided upon terms acceptable to the court.

Section 124.26 - Execution of Writ of Restitution

(a) All writs executed by a county sheriff shall be performed pursuant to sec. 799.45, Wis. Stats.

(b) In all writs executed by an officer action under tribal authority the officer shall:

(1) (A) Remove from the premises described in the writ the person of the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

(B) Remove from the premises described in the writ, using such reasonable force as may be necessary, all personal property found therein not the property of the plaintiff.

(C) Exercise ordinary care in the removal of all persons and property from the premises and in the handling and storage of all property removed therefrom.

(2) In accomplishing the removal of property from the premises described in the writ, the officer is authorized to engage the services of a mover or trucker.

(A) Except as provided in par. (B), the property removed from such premises shall be taken to some place of safekeeping within the county selected by the officer. Within 3 days of the removal of the goods, the officer shall mail a notice to the defendant as specified in sub. (3) stating the place where the goods are kept and shall deliver to the defendant any receipt or other document required to obtain possession of the goods. Warehouse or other similar receipts issued with respect to goods stored by the officer under this subsection shall be taken in the name of the defendant. All expenses incurred for storage and other like charges after delivery by the officer to a place of safekeeping shall be the responsibility of the defendant, and any person accepting goods from the officer for storage under this subsection shall have all of the

rights and remedies accorded by law against the defendant personally and against the property stored for the collection of such charges. Risk of damages to or loss of such property shall be borne by the defendant after delivery by the officer to the place of safekeeping.

(B) When, in the exercise of ordinary care, the officer determines that property removed from premises described in the writ is without monetary value, he may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case he shall notify the defendant as specified in sub. (3) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the officer under this subsection does not include searching apparently valueless property for hidden or secreted articles of value.

(3) Manner of giving notice to defendant. All notices required by sub. (2) to be given to the defendant by the officer shall be in writing and shall be personally served upon the defendant or mailed to the defendant at the last-known address, even if such address be the premises which are the subject of the eviction action.

(4) Return of writ; taxation of additional costs.

(A) Within 10 days of the receipt of the writ, the officer shall execute the writ and perform all of the duties required by this section and return the same to the court with the officer's statement of the expenses and charges incurred in the execution of the writ and paid by the plaintiff.

(B) Upon receipt of the returned writ and statement from the sheriff, the clerk shall tax and insert the judgment as prescribed by Section 122.13 the additional costs incurred by the plaintiff.

(5) Prior to executing a writ of restitution, the officer may require that the plaintiff deposit a reasonable sum representing the probable cost of removing defendant's property, based upon the reasonable removal and storage expenses of personal property and an officer's fee of \$10.00 per hour spent on the execution of the writ.

Section 124.27 - Costs Recoverable

Costs shall be taxed and recovered as set forth in Section 122.13, plus fees charged to plaintiff by sheriff or other officer under Section 124.25(5).

Section 124.28 - Disclosure of Assets

In any eviction action in which a claim, counterclaim or cross claim for damages is included and upon which judgment is entered awarding damages, the requirements of Section 122.11 for disclosure of assets shall apply.

CHAPTER 125 - CHILDREN'S CODE

Section 125.01 - Purpose

Children are the most important asset of the Bad River Tribe. In them lie the Tribe's future, and in their retention of Chippewa culture lies the preservation of the Tribe's past. Their health, safety, and welfare are paramount to the Tribe. It is the policy of the Tribe to strengthen family structures, to prevent family breakups, and to foster conditions favorable to the growth, spirit, culture, and individuality of each child. A child without knowledge of the past is directionless in the path forward; a child without a nurturing present is denied the strengths that lead to the future. It is the Tribe's policy to favor preventive action over belated reaction, mediation over confrontation, counseling over lecturing, conciliation over punishment - but in all decisions made under this code the welfare of the child shall be the ultimate touchstone.

Section 125.02 - Authority

This chapter is created under art. VI, sec. (1), Bad River Constitution.

Section 125.03 - Construction

- (a) This Chapter shall be liberally construed to effect the purposes stated in Section 125.01.
- (b) This chapter shall be interpreted to comport with the customs and traditions of the Bad River Tribe. If the customs and traditions of the Bad River Tribe are inconclusive in any matter, federal law and law of the State of Wisconsin may be used for guidance.
- (c) Except as inconsistent with any provision of this chapter, the provisions of chapters 101 through 123 shall apply to any proceeding initiated hereunder.

Section 125.04 - Children's Court

(a) There is hereby established a Bad River Children's Court exercising jurisdiction pursuant to this chapter.

(b) The chief judge and any associate judges of the Bad River Tribal Court shall serve as judges of the Children's Court.

(c) All proceedings in Children's Court shall be designated as "In the interest of _____, a child."

(d) In the event that a proceeding is transferred to the Children's Court from any other court, the Children's Court may require conformity with the substantive and procedural law of the Tribe, and shall permit amendment of pleadings and other actions necessary to effect jurisdiction over the child and for conformity with this chapter.

(e) All records of the Children's Court shall be confidential. No person other than a party or a party's representative shall have access to court records, absent permission of the Children's Court.

Section 125.045 - Full Faith and Credit to Other Jurisdictions

(a) The Children's Court, Child Welfare Coordinator and other officials of the Bad River tribal government shall grant the public acts, records and judicial proceedings of other entities applicable to Indian child welfare proceedings full faith and credit to the same extent such entities give full faith and credit to the public acts, records and judicial proceedings of the Tribe.

(b) Without limitation to subsection (a) above, the Children's Court may, upon petition, accept a case originally brought in another court. Cases not accepted by the Children's

Court within 60 days of the entry of the order transferring the case shall be deemed a declination of the case. The Children's Court may decline or waive jurisdiction over a child at any time and may grant hearings upon a motion to decline or waive jurisdiction.

(c) Upon entry of the order transferring the case, dispositional orders in effect when the case was transferred to the Children's Court shall have the same effect as if they had issued from the Children's Court, regardless of whether the Children's Court would in fact have had the power to make the order. Regardless of the law of other jurisdictions, the Children's Court may modify, extend, suspend or terminate any order issued in a transferred judicial proceeding pursuant to Section 125.18 of this Chapter.

(d) Nothing in this section shall be construed to conflict with subsection 125.04(d) of this Chapter.

Section 125.05 - Jurisdiction

(a) The Children's Court shall have jurisdiction over a child upon a petition filed by any person with an interest in the child alleging that the child is a child in need of care because one or more of the following conditions exist:

(1) The child is the victim of or in danger of physical or emotional harm by other than accidental means, except that any child who is or may be the victim of sexual abuse or exploitation may be referred to appropriate state or county agencies or services.

(2) The child is or may be deprived of necessary custodial, medical, or other care for reasons other than poverty.

(3) The child has been abandoned by identified or unidentified parents, unless provision for necessary custodial, medical, and other care has been satisfactorily arranged and

maintained.

(4) The child is habitually truant from home and either the child or parent, guardian or relative in whose home the child resides signs the petition requesting jurisdiction.

(5) The child is habitually truant from school, and the school attendance officer attests that the activities required under sec. 118.16(5), Wis. Stats., or the applicable law in the jurisdiction if not in Wisconsin, have been completed.

(6) The child's parent, court-appointed guardian, or custodian signs a petition alleging that he or she is unable to provide necessary custodial care or make appropriate provision for the child's special custodial, medical or other specified needs after consultation with the Child Welfare Coordinator.

(7) The child's parent has failed to maintain an appropriate parental role or has failed to maintain significant contact with the child for a period of one year.

(8) The child is under 12 years of age and has violated tribal, state, or federal law.

(9) The child has been placed for care or adoption in violation of law.

(10) The child is without a parent or guardian..

(11) The child is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized, or institutionalized.

(12) The child is suffering from alcohol or other drug abuse, for which the parent is unwilling or unable to provide appropriate treatment.

(13) The child has not received immunizations as required by law.

(b) In addition to jurisdiction granted by other sections of this Chapter, the Children's

Court shall have jurisdiction to:

(1) Order a law enforcement officer or the child welfare coordinator to take a child into custody pursuant to Section 125.10(b) and conduct other proceedings called for in Sections 125.10 to 125.13 inclusive.

(2) Terminate the parental rights of a parent of a child pursuant to Section 125.21.

(3) Appoint a guardian for a child pursuant to Section 125.22.

(4) Enter an order of adoption resetting the parental relations of a child pursuant to Section 125.23.

(5) Conduct any other proceedings not contrary to express tribal law necessary to exercise delegated and inherent authority held by the tribe to protect child members of the tribe and children eligible for tribal membership.

(c)(1) In addition to jurisdiction granted by other sections of this Chapter, the Children's Court shall have jurisdiction over persons 18 years or older alleged to have contributed to, encouraged, or tended to cause, by act or omission, a condition of a child as described in Section 125.05(a).

(c)(2)(i) The Children's Court may make orders with respect to any person 18 years or older who has contributed to, encouraged, or tended to cause, by any act or omission, a child to be a child in need of care, whether or not the child is actually adjudicated a child in need of care, if the natural and probable consequences of the act or failure to act would be to cause the child to be a child in need of care.

(c)(2)(ii) No order with respect to any person 18 years or older may be entered until

the person is given an opportunity to be heard upon the allegation against him or her. Such person shall be served no less than ten day prior to a hearing under this subsection with written notice of the time, place, and purpose of the hearing. Any such person who fails to comply with any order issued by the Children's Court under this subsection may be proceeded against for contempt of court.

(d) The Children's Court shall have continuing jurisdiction, subject to Section 125.13 and 125.16(h), over a child who is determined to be subject to this chapter and shall have the power to modify or dismiss previous orders, expunge the child's records, or consider petitions based on new evidence concerning the child.

(e) The child welfare coordinator is an officer of the Children's Court and has the authority to receive referrals, investigate reports, ascertain whether a child is probably subject to this chapter, take a child into emergency custody to protect the child's safety or welfare, file petitions, represent the Tribe in matters before the Children's Court, enter into consensus dispositions on behalf of the Tribe, and to report as required by the Court on the conditions of a child who is subject to this chapter.

(f) Whenever an order rendered under this chapter conflicts with a custody, physical placement, or other family court order rendered by any court, the order under this chapter shall take precedence. Nothing in this chapter shall be construed to limit the power of the Court to have jurisdiction over a child under other sections of this Code or other law.

Section 125.055 - Waiver of Jurisdiction Protest of Child's Tribe

When a petition is filed regarding an Indian child who is domiciled on the Reservation but who is not a member of or eligible for membership in the Bad River Tribe, the party filing

the petition shall notify the child's tribe, or any tribe(s) in which the child is eligible for membership. Any party filing any document in the case shall serve the child's tribe(s) with the document. If a child's tribe objects to the jurisdiction of the Bad River Tribal Court prior to the entry of a final judgment in the case, the Court shall waive jurisdiction over the child. Such a child shall be deemed an ineligible child subject to section 125.24.

Section 125.06 - Definitions

For purposes of the Code, the following definitions shall apply:

(a) "Child" shall mean a person under 18 years of age who is:

(1) A member of or is eligible for membership in the Bad River Band of the Lake Superior Tribe of Chippewa Indians, whether or not resident or domiciled on the Reservation and whether or not the subject of a child welfare proceeding in any court; or

(2) Any Indian child who is not a member of or eligible for membership in the Bad River Band of the Lake Superior Tribe of Chippewa Indians, but who is domiciled on the Bad River Reservation, provided that the child's parents or legal guardian consent to any jurisdiction exercised by the Bad River Tribe, except that no child who is the subject of a proceeding in any other court shall be deemed a child subject to this chapter, unless such proceeding is properly transferred to the Children's Court.

(b) "Guardian" means a person appointed by any court to be guardian of a child's person.

(c) "Custodian" means a person having care and custody of child under any arrangement with the child's parent or guardian or pursuant to order of court.

(d) "Extended family" shall include persons over 18 years of age who are a child's

brother, sister, step-parent, grandparent, aunt, uncle, first cousin, niece, or nephew.

(e) "Law enforcement officer" includes any tribal, state or county social worker, peace officer, military or other security official of any jurisdiction within the boundaries of the United States and Canada

(f) "Child welfare coordinator" means the director of the Indian Child Welfare Office of the Bad River Band of the Lake Superior Tribe of Chippewa Indians or his or her designee

(g) "Secure custody" means a locked facility approved by the child welfare coordinator and tribal attorney for the secure, temporary holding in custody of children..

(h) "Person with an interest in a child" means the child if 14 years of age or over, the child's parent, guardian, or a custodian, a member of the child's extended family, a law enforcement or conservation officer when jurisdiction under Section 124.05(a)(8) is alleged, and the child welfare coordinator.

(i) "Child welfare proceeding" has the meaning given to "child custody proceeding" in Title 23, United States Code 1903(1) (1992) and shall be defined to encompass all delegated and inherent power held by the Bad River tribal government applicable to child welfare proceedings.

Section 125.07 - Pre-Petition Procedure

(a) Any person may inform the child welfare coordinator of facts suggesting a child is in need of care, whereupon the child welfare coordinator shall investigate such facts and either file a petition or tell the complainant the reasons why not, provided that the child welfare coordinator shall not disclose any confidential information or any information which is not in the child's interest to disclose. If the child welfare coordinator decides to not file a petition under

Section 125.14, he or she may attempt to obtain an Informal Resolution rather than declining all further proceedings.

(b) All Informal Resolutions shall be in writing, shall clearly state all of the obligations of each of the parties in such a way that their performance may be determined, shall include the effective period of the Resolution, shall bear the signatures of the child welfare coordinator, the child if over twelve years of age, and the parent or parents having legal custody or physical placement rights, and any guardian. All parties to an Informal Resolution shall receive a copy of it.

(c) The existence of an Informal Resolution shall not preclude the filing of a petition under Section 125.14 if any party fails to comply with the Resolution or if any new factor or newly discovered factor requires the filing of the petition for the protection of the child's best interests.

(d) Any Informal Resolution which includes an out-of-home placement shall be filed with the court and shall be reviewed by the court within six months of its effective date, and thereafter within six months of each judicial review.

(e) At any time after the filing of a petition under Section 125.14 the parties may by stipulation resolve any matter, subject to the approval of the Court.

Section 125.08 - Parties

(a) In the absence of a court order to the contrary, parties to a Children's Court proceeding held in the interest of a child shall be the child, the Tribe by the child welfare coordinator, and the child's parents, guardians, and custodians. For the purpose of this chapter, persons who are parties to a Children's Court proceeding are deemed "affected persons." After a

termination of parental rights, no parent whose rights have been terminated shall be entitled to notice of any further proceedings regarding the child, except as the court may deem appropriate.

(b) The Court shall, in all proceedings where a conflict exists among the parties, appoint a guardian ad litem to represent, for purposes of the proceeding, the interests of the child. Appointment shall be made upon filing of the petition, and shall only be of an adult whom the Court is satisfied is familiar with this chapter and with the procedures of the Court, and will sincerely and competently represent the child. The guardian ad litem shall be compensated at a rate set by order of the Children's Court.

(c) In all proceedings before the Court, the child welfare coordinator shall represent the interests of the Bad River Tribe. The child welfare coordinator may be represented by the tribal attorney or other attorney appointed by the Tribe to represent its interests before the Children's Court.

(d) Any party to a proceeding under this chapter may be represented by an attorney at the party's expense, provided the attorney is admitted to practice before the Bad River Tribal Court.

(e) Upon a showing of good cause, and if the best interests of the child so indicate, the Court may allow or invite persons other than affected persons entitled to notice under Section 125.08(a) to intervene and participate in any or all phases of the proceeding.

Section 125.09 - RESERVED FOR FUTURE USE.

Section 125.10 - Taking a Child Into Custody

(a) Any law enforcement officer, or the child welfare coordinator, may take a child into custody under circumstances in which the officer or coordinator reasonably believes:

(1) The child has run away from his or her parents, guardians, or custodians.

(2) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from these surroundings is necessary.

(3) The child will cause injury to self or another, or to the property of another, or be subject to injury by another.

(4) The child's parent, guardian, or custodian, is unavailable, unwilling, or unable to provide necessary supervision or care such that the child's safety or well-being is at imminent risk.

(5) The child will run away or be taken away so as to be unavailable for convenient further Children's Court proceedings.

(b) Any law enforcement officer or the child welfare coordinator shall take a child into custody upon written order of the Children's Court, which may be entered upon a verified petition showing that the welfare of the child demands the child's immediate removal from his or her present placement or custody. A petition for an order to take a child into custody may only be filed by the child welfare coordinator.

(c) Any person taking a child into custody under this section shall immediately attempt to notify the parent, guardian or custodian by the most practical means, and shall continue to make such attempts until notification is made. Any law enforcement officer acting under this section shall also immediately attempt to notify the child welfare coordinator. If the child is physically transferred to the child welfare coordinator, the coordinator shall thereafter continue notification attempts until notification is made.

(d) If the person taking a child into custody, or the child welfare coordinator, believes

the child to be in need of prompt medical diagnosis or treatment, that person shall deliver the child to a hospital or physician, for that purpose.

Section 125.11 - Release From Custody

(a) Any child taken into custody shall be released as soon as it is possible to do so, while protecting the child from the conditions causing the taking into custody.

(b) The person taking a child into custody, or the child welfare coordinator, shall attempt to immediately release the child to his or her parent, guardian, or custodian, unless such release is inconsistent with the child's best interests, or, if the parent, guardian, or custodian is unwilling or unable to receive such child, to a responsible adult, with suitable counsel, advice, or warning, in which case the name and address of the person to whom the child has been released shall be immediately given to the parent, guardian, or custodian, unless there is reason to believe the release of such information will endanger the child or the person to whom the child has been released. If the procedure given in Sections 125.12, 125.13 and 125.17(a) is not followed, the child's parent, guardian or custodian shall have a right to exercise custody and supervision over the child.

Section 125.12 - Holding a Child in Custody

(a) A child may be held in custody if the child welfare coordinator has probable cause to believe that any of the conditions enumerated in Section 125.10(a) or (b) exists.

(b) No child shall be held in secure custody unless the child consents to secure custody in order to protect him or her from an imminent physical threat from another, and such secure custody is ordered by the Children's Court.

(c) A child may be held in custody in any of the following places:

- (1) The home of a parent or guardian.
 - (2) The home of a relative.
 - (3) The home of a custodian.
 - (4) The home of another responsible adult.
 - (5) A licensed foster home provided the placement does not violate the terms of the license.
 - (6) A licensed group home provided the placement does not violate the terms of the license.
 - (7) A nonsecure facility operated by a child welfare agency.
 - (8) A hospital or physician's office.
 - (9) A drug or alcohol treatment facility.
- (d) The child welfare coordinator shall immediately notify the child's parent, guardian, or custodian that the child is in custody, the reasons for the custody, and the location of the child unless there is reason to believe that such information will present imminent danger to the child.

Section 125.13 - Hearings For Child in Custody

(a) For any child who has been taken into custody and not released under Section 125.11, a hearing shall be held to determine whether the criteria exist under Section 125.10 to 125.12 to continue holding the child in custody. The hearing shall be held within 24 hours of the time the child is taken into custody, excluding Saturdays, Sundays, holiday, any time after 4:00 p.m. of the day preceding any such day, and any time before 9:00 a.m. of the day succeeding any such day. A petition under Section 125.14 shall be filed before or at the hearing. All reasonable

steps shall be taken to notify the child's parents, guardian, and custodian of the hearing. If the parent, guardian, and custodian does not receive actual notice, he or she may request a rehearing by right if the child is still under the court's jurisdiction or the issue is not otherwise moot.

(b) If, within the time provided by Section 125.13(a), no hearing is held, or no petition is filed, the child shall be released from custody, unless the court finds either ex parte or at a post-deadline hearing that probable cause exists to believe that the child is in imminent danger to self or another, or that the child's parent, guardian, or custodian is unwilling or unable to provide adequate supervision and care, in which case one 48 hour extension may be granted during which time the child shall remain in custody pending the filing of a petition. Ex parte findings of probable cause shall be reconsidered, and an opportunity to present oral and written evidence and argument shall be provided, by right, if any affected person requests reconsideration or hearing. Hearings under this subsection may be conducted by telephone.

(c) The hearing required under this section may be waived by the child's parents, guardians, or legal custodians or, if the child is over 12, by the joint waiver of the above and of the child. If a guardian ad litem is subsequently appointed for the child, or if the parents, guardian, or legal custodians subsequently retain counsel, such waiver may be subsequently withdrawn and a hearing demanded, which shall be scheduled as soon as practicable.

(d) The petitioner shall make all practicable efforts to secure the appointment of a guardian ad litem prior to the hearing.

(e) A copy of the petition shall be given to the child's parent, guardian, or legal custodian, and to the child if 12 or older, as soon as practicable, and in no case later than the commencement of the hearing.

(f) At the commencement of the hearing, the court shall advise the child, and the parents, guardians, or custodians, of the allegations made, the possible consequences of the hearing, the right to counsel at a party's own expense, the right to confront and cross-examine witnesses, and the right to present witnesses.

(g) If the court finds that one or more of the conditions enumerated in Section 125.10(a) or (b) exists, it may continue custody in any of the placements enumerated in Section 125.12. The Court may also impose reasonable restrictions on the child's travel, association with other persons, or places of abode, and may assign the child to the supervision of the Bad River Indian Child Welfare Department. Reasonable restrictions may be placed upon the conduct of the parents, guardians, custodians, or other responsible adult as necessary to secure the safety of the child. Any order entered under this section shall be reduced to writing within ten days thereof.

(h) Any order under this section shall be subject to rehearing for good cause.

Section 125.14 - Petitions

(a) All petitions under this chapter shall be filed with the Children's Court, shall be made under oath, and shall include the child's name, date of birth, parents' names, and child's parents' last known addresses, and the names and addresses of all other affected persons, if known.

(b) All petitions shall allege facts upon which the petitioner asserts jurisdiction exists. No petition shall be sufficient if it merely reiterates the language of the Code section invoked, but shall include reference to the specific subsection of the Code section upon which petitioner alleges jurisdiction.

(c) No petition filed by the child welfare coordinator shall be deemed insufficient on account of hearsay, provided that there is a sufficient indication alleged of the declarant's reliability.

(d) All petitions shall be filed with the clerk of court, with copies served, by the petitioner, on the child welfare coordinator and all parties who may be affected by an order concerning the subject child.

(e) Unless impracticable or ineffective, petitions shall be served personally or by first class mail.

Section 125.15 - Initial Hearing

(a) Upon petition by the child welfare coordinator or any party pursuant to Section 125.05(b), the court shall schedule an initial hearing. The hearing shall be scheduled within ten days of the date of the petition in the case of a child held in custody, and within 30 days of the date of the petition in all other cases. All affected persons and the child welfare coordinator shall be served notice of this and all other hearings and shall be given a reasonable opportunity to prepare and be heard.

(b) Any affected person has the right to be represented at a hearing by counsel at his or her own expense. The petitioner shall secure the appointment by the court of a guardian ad litem for any child who is subject of a petition. The court may, on its own motion or that of any party, appoint a guardian ad litem for any minor parent of a child subject of a petition.

(c) At the initial hearing, the child and the parent, guardian or custodian shall be informed of their rights as follows:

(1) The right to remain silent, although the silence may be considered

adversely against the party remaining silent.

- (2) The right to confront and cross-examine witnesses.
- (3) The right to counsel at the party's own expense.
- (4) The right to subpoena and present witnesses.
- (5) The right to have the allegations of the petition proven by clear and

convincing evidence.

(6) The right to demand for cause or pursuant to Section 104.4 a substitution of judge, which if not made before the close of the initial hearing is deemed waived.

(d) The child and the non-petitioning parties shall state whether they intend to contest the allegations of the petition.

(e) If no party intends to contest the allegations of the petition, the court shall set a date for a dispositional hearing no later than 30 days from the date of the initial hearing. If all parties consent, the court may proceed immediately with the dispositional hearing.

(f) If the petition is contested, the court shall set a date for a adjudicatory hearing no later than 20 days from the date of the initial hearing.

(g) Before accepting an admission or a statement of no contest to a petition, the court shall make inquiry to determine that the admission or statement is informed, voluntary, and made with an understanding of the potential dispositions that could result from the admission or statement. The court shall also establish whether any promises or threats were made to elicit the admission or statement, and shall inform any unrepresented parties that a lawyer could discover defenses or mitigating circumstances not apparent to them. The court shall also elicit a factual basis for the admission or statement.

Section 125.16 - Adjudicatory Hearing

(a) At the adjudicatory hearing the court shall determine whether the subject child is within the jurisdiction of the court pursuant to the allegations of the petition as shown by clear and convincing evidence. In the event jurisdiction is found, the court shall schedule a dispositional hearing no later than 30 days from the date of the adjudicatory hearing. If all parties consent, the court may proceed immediately to the dispositional hearing.

(b) The jurisdiction of the court shall extend for one year plus thirty days from the date of a finding of jurisdiction.

(c) All hearings shall be to the Court without a jury, all hearings shall be closed to the public, and all records shall remain confidential except for good cause to the contrary shown to the court. All proceedings shall be recorded electronically, or verbatim by a licensed court reporter.

Section 125.17 - Disposition

(a) At any stage of a proceeding under this chapter the court may order interim disposition for the child. Such an order may include any disposition authorized by Section 125.17(d).

(b) Upon entry of an adjudication order, the court shall determine the disposition appropriate for the child. The child welfare coordinator and the petitioning party if other than the child welfare coordinator, shall submit reports to the court summarizing the child's personal history, the circumstances leading to the petition, the resources available and suitable to the child and family, the disposition recommended, and the rationale for the disposition. The report shall specify how the disposition is related to the circumstances leading to the petition and the role each

affected person is expected to play in the removal of such circumstances in the future. Any other party may submit such a report. All such reports shall be filed with the court no later than four (4) days prior to the dispositional hearing. Copies shall be provided to the child's guardian ad litem and counsel for any party, or directly to any party not represented by counsel. No additional copies shall be made. All copies shall be returned to the court at the close of the dispositional hearing.

(c) Any party requesting out-of-home placement of a child shall submit to the court, and distribute as provided in subsection 125.17(b), above, a report enumerating the attempts made to prevent an out-of-home placement, and a statement describing the efforts that will be made to make it possible for the child to return home.

(d) In considering an appropriate disposition, the court may consider any or all of the following factors:

- (1) Special physical or emotional needs of the child.
- (2) Social, cultural, or religious tradition of the child, the child's family, or the Tribe,
- (3) Availability of resources within the child's extended family,
- (4) The child's preference, if the child is over 12 years of age, and the recommendation of the guardian ad litem,
- (5) The recommendation of the child welfare coordinator or any person with an interest in the child,
- (6) Recommendations of professionals experienced in services to children,
- (7) Other factors calculated to meet the needs of the individual child and

purposes of this chapter.

(e) The Court may order disposition in any or all of the following ways:

(1) Counsel the child or the parent, guardian, or custodian.

(2) Remand the child to the custody of a parent, guardian, custodian, or other responsible relative in the child's home, with supervision of the child by the child welfare coordinator and reasonable rules of conduct by the child and the parent, guardian, custodian, or other responsible relative.

(3) Participation of the child and/or parent or custodian in a specified counseling, treatment, or educational program, which may include use of traditional or culturally appropriate services or activities.

(4) Restitution in any reasonable amount for acts of the child resulting in damage or injury to any person or the Tribe.

(5) Community service appropriate to the needs or abilities of the child.

(6) Removal of the child from the home and/or placement with a member of the child's extended family, a tribal member licensed foster home, a licensed Indian foster home, an institution for children approved by the Tribe, or any other foster home.

(7) Inpatient alcohol, drug, or mental health treatment for specified purposes for a specified period of time.

(8) Any other disposition calculated to provide for physical, mental, emotional, or developmental needs of the child.

(9) Such order may also provide for visitation by parties or extended family members as appropriate.

(f) Any party to a proceeding under this chapter may seek and the Court of its own motion may direct the child welfare coordinator to seek enforcement of any court order in any other appropriate court.

(g) The Court on its own motion may waive, and any party to a proceeding under this chapter may seek by motion and for good cause shown a waiver of, continuing jurisdiction over a child and refer a case to any other court having, in such a case, jurisdiction.

(h) In any dispositional placement of a child, the court shall require testimony and make findings that services designed to prevent the necessity of out-of-home placement are appropriate and available and have been offered. This shall not require any petitioning party to prove that services that are either not appropriate or not available through or from the Tribe have been offered, attempted, or rejected.

(i) In any out-of-home placement, the court shall consider and make findings about the attempts made to prevent out-of-home placement and availability or appropriateness of custodial care within the child's extended family or with tribal members before ordering a placement in any other home or facility.

(j) Whenever the court orders a child to be placed outside the home, the court shall orally inform the parents who appear in court, and shall include in the written order a statement, of any ground for termination of parental rights under Section 125.21 that may be applicable.

Section 125.18 - Extensions and Modifications

(a) At any time in the last two months of the period in which a dispositional order issued by the Children's Court or issued by another court and subsequently transferred to the Children's Court is effective, any person with an interest in the child, or any person who was a

party to the original proceedings may move or petition for an extension of the court's or dispositional order.

(b) In the event a motion or petition for extension is filed within the time period specified in Section 125.18(a), the Court may make such temporary extension orders as are necessary to preserve its jurisdiction and to protect the interests of the child pending a full hearing on the extension motion or petition.

(c) The scope of inquiry at the hearing on an extension is whether the conditions that warranted the adjudication continue or whether new circumstances provide jurisdiction pursuant to Section 125.05. If an extension is sought on the ground of new circumstances, the circumstances justifying extended jurisdiction shall be alleged in the petition. To assist the court, parties and guardian ad litem, parties may prepare and distribute court reports similar to those called for in Section 125.17.

(d) Upon motion or petition by any person with an interest in the child, for good cause shown, the Court may modify a dispositional order any time before one year after entry of the order sought to be modified unless a shorter period is provided by the Court in the order.

Section 125.19 - Discovery

(a) Copies of all peace officer reports, including but not limited to officers' memoranda and witness statements, shall be made available upon request of the tribe's attorney, to counsel or to the child's guardian ad litem prior to the initial hearing. The child, through his or her guardian ad litem, shall be the only non-petitioning party to have access to such reports in proceedings filed under Section 125.05(a)(8).

(b) All records relating to a child which are relevant to a proceeding under this chapter

shall be open to inspection by a guardian ad litem or counsel, upon demand, and upon presentation of releases whenever necessary. Persons entitled to inspect records may obtain copies of them at their expense upon permission of the custodian of the records or the court. The court may require counsel not disclose material contained in the records to any other person if the court reasonably believes such disclosure would be harmful to the child.

(c) Counsel and guardian ad litem shall have the right to view any videotaped oral statement of the child upon reasonable notice.

Section 125.20 - Psychological and Other Examinations

The Court may in any proceeding under this chapter, order any child and the child's parents, guardians, or custodians, to submit to a psychological, mental, or developmental examination, or to a drug and alcohol abuse evaluation, if the court reasonably believes that any condition that may be illuminated by such an examination would assist in the adjudication or disposition of the case. The costs to any affected person of any such exam, if approved by the court, shall be paid by the Tribe, if the costs are not covered by a third-party payer.

Section 125.21 - Termination of Parental Rights

(a) Termination of parental rights means that, pursuant to court order, all rights, powers, privileges, immunities, duties, and obligations existing between parent and child are permanently severed; however, tribal membership, rights, privileges, entitlements, or obligations shall not be affected by such termination.

(b) Termination of parental rights may be ordered only in a proceeding where the petition clearly states that the petitioner is seeking an order of termination of parental rights, and where the mother and father have been summoned to appear before the Children's Court. No

termination of the parental rights of an unadjudicated or unacknowledged father may be ordered without evidence and findings as to paternity of the child to the satisfaction of the court.

(c) Involuntary Termination. Termination of parental rights may be ordered only in cases where the court finds that one or more of the following grounds exists:

(1) Abandonment.

(a) The child has been left without provision for care or support and without reasonable expectation that a relative or other person would care for and support the child, and the petitioner has investigated and cannot locate the parent, or

(b) The child has been left by the parent with a relative or other person, or could reasonably expect that a relative or other person would provide for the child's care and support, or the child has been placed outside the parent's home by the order of a court of competent jurisdiction issued in a proceeding whereby the parent received either an oral or written warning that their parental rights may be terminated in subsequent proceedings, and in either case that the parent has failed to visit or communicate with the child for one year or longer, and that ninety days prior to the filing of the petition for termination of parental rights the parent was notified in a written notice to the parent's last known address that a petition would be filed; or

(2) Failure to remedy condition. The child has been under the jurisdiction of court or courts of competent jurisdiction for at least one year and the parent has made no progress in remedying the conditions requiring jurisdiction or the child has been under the jurisdiction of court or courts of competent jurisdiction for at least two years and it is unlikely that the parent will remedy the conditions requiring jurisdiction, and in either case that at least ninety days prior to the filing of a termination of parental rights petition that parent was warned that a petition

would be filed; or

(3) Abuse. The child is under the jurisdiction of the court pursuant to Section 125.05(a)(1) and the Court finds that the facts establishing jurisdiction show a pattern of repeated or severe abuse; or

(4) Continuing denial of periods of physical placement. The parent has been denied all periods of physical placement or visitation rights by a court or courts of competent jurisdiction for a period of at least one year, the parent has been warned at least ninety days prior to the filing of a petition that a petition would be filed, and there is no currently pending action to modify the parent's physical placement or visitation rights in a court of competent jurisdiction.

(5) Failure to assume parental responsibility. The child is a non-marital child whose father has not subsequently adopted the child or married the child's mother and who has not established a substantial parental relationship with the child, meaning the acceptance and exercise of significant responsibilities for the daily supervision, education, protection, and care of the child, as evidenced by factors including but not limited to whether the father has ever expressed concern for or interest in the support, care, or well-being of the child or mother, and whether the father has neglected or refused to provide support.

(d) Voluntary Termination. The court may terminate the parental rights of a parent who has given his or her informed, voluntary consent as provided in this section.

(1) The parent appears personally at a hearing and gives his or her consent, the court explains the effect of a termination of parental rights, and the court has questioned the parent and found to its satisfaction that the consent is informed and voluntary.

(2) If the personal appearance of the parent before the court would be

impossible or difficult, the court may accept written consent executed by the parent before an embassy or consular official, a military judge, or any judge of a court of record of another jurisdiction, and the consent is accompanied by the official's or judge's written findings that the parent was questioned and that the consent is informed and voluntary.

(3) A person who may be but has not been adjudicated the father of a non marital child may consent as in (1) or (2) by signing a written, notarized statement that he has been informed of and understands the effect of a termination of parental rights and voluntarily disclaims any rights he may have to the child, including the right of notice of further proceedings under this chapter.

(4) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, the parent may consent to termination of rights as provided in (1) or (2) or by filing with the court an affidavit witnessed by two persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights, and that he or she voluntarily disclaims all rights to the child, including the right to notice of further proceedings under this chapter.

(5) Any minor parent stating an intent to consent to the termination of parental rights shall have a guardian ad litem appointed for him or her by the court. The minor parent's consent to terminate rights shall not be accepted unless joined by his or her guardian ad litem. The consent of the guardian ad litem shall preclude later attack on the validity of the consent on the grounds of incompetence or minority.

(e) Petition.

(1) A petition for termination of parental rights may only be filed by a child's

parent or by the child welfare coordinator.

(2) The petition commencing a proceeding for termination of parental rights shall set forth the following facts:

1. The name, birth date, and address of the child or children.

2. The names, birth dates, and addresses of the child's parents, and the names and addresses of any guardian or custodian.

3. A statement that consent to termination of parental rights will be given as provided by this chapter, or a statement that consent will not be given, a statement of the specific grounds for involuntary termination under this chapter, and a statement of facts which petitioner alleges establish the grounds.

(f) Summons. A summons shall be filed with the petition, and shall set forth the following:

(1) The name and birth date of the child.

(2) The nature, location, date, and time of the initial hearing.

(3) Advice that the party summoned has the right to legal counsel at the party's own expense.

(4) Advice that failure to respond or appear at the hearing may result in a termination of the party's parental rights.

(5) Name of petitioner, and name, address, and phone number of petitioner's attorney, if any, or of the petitioner if unrepresented.

(g) Service.

(1) The petitioner shall cause the summons and petition to be served on the

parent or parents of the child; any person who may be the father of the child, based on statements of the person or the mother; the guardian, guardian ad litem, and custodian of the child, as applicable; the child, if 12 years of age or older.

(2) Personal service shall be accomplished as provided by the tribal court code no less than seven days prior to the initial hearing or, if personal service cannot with reasonable diligence be accomplished, by publication one time in a newspaper likely to give notice to the party, together with mailing of the summons and petition to the party's last known address. The published notice shall contain the following information:

- i. The name of the party or parties to whom notice is given.
- ii. The former address of the party or parties.
- iii. The approximate date and place of conception of the child.
- iv. The date and place of the birth of the child.
- v. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the child unless the court finds that inclusion is essential to give effective notice to the father.
- vi. Advice that the parental rights of any parent or alleged parent who fails to appear may be terminated.
- vii. Advice that any party has the right to representation by counsel at his or her own expense.

(3) Upon motion of petitioner, the court may waive constructive notice to any person whose identity is unknown but may be the father of the child if such notice appears unlikely to give the father effective notice.

(h) Initial Hearing.

(1) An initial hearing shall be held on a petition to terminate parental rights no later than 30 days after the filing of the petition. At the hearing the court shall determine whether any party wishes to contest the petition and shall inform the parties of their rights under Section 125.15(c).

(2) If the petition is contested the court shall set a date for a fact finding hearing no later than 45 days after the date of the initial hearing, unless all parties consent to an immediate hearing, in which case the court may immediately so proceed.

(3) If the petition is not contested, the court shall set a date for a dispositional hearing no later than 45 days from the date of the initial hearing, unless all parties consent to an immediate hearing and the report required by Section 125.21(k) has been filed, in which case the court may immediately so proceed.

(4) Any non-petitioning party shall be granted a continuance for the purpose of consulting legal counsel.

(5) A guardian ad litem shall be appointed for the child in any contested proceeding under this section.

(6) The court shall determine whether all interested parties, including parties who may be the child's father, have been notified. If the court determines that an unknown person may be the father of the child, the court shall further determine whether constructive notice will substantially increase the likelihood of actual notice to that person. If the court so determines, it shall adjourn the hearing and order such notice to be given. If the court determines that constructive notice will not substantially increase the likelihood of actual notice, the court shall

order that the hearing proceed.

(j) Fact Finding Hearing.

(1) At the fact finding hearing the court shall determine whether the facts alleged in a petition that has been contested are true beyond a reasonable doubt. If the court so finds, it shall proceed immediately to a dispositional hearing unless all parties agree to a delay or unless the report required in Section 125.21(k) has not been completed, in which case the court shall set a hearing date no later than 45 days after the fact-finding hearing.

(2) If disposition is delayed, the court may enter an interim disposition under Section 125.17(a).

(k) Disposition.

(1) Prior to disposition, the child welfare coordinator shall prepare a report to the court including a complete social, adjudicatory, and dispositional history of the child and the parent, a statement of feasible alternative dispositions, if any, and a statement applying the standards and factors contained in Section 125.21(k)(2). The report shall include a description of efforts made to prevent removal of the child from the home and efforts made, if any, to return the child, and to remedy the conditions resulting in the termination proceeding. If the report recommends termination of both parents, or of the only living or known parent, the report shall include a statement of the child's likelihood of adoption, listing factors that might prevent it and factors that might facilitate it, and the interim plan and designated guardian recommended pending adoption. The report shall also contain a medical and genetic history of the child and birth parents on a form as provided by the Wisconsin Department of Health and Social Services.

(2) Court considerations. In making a decision about the appropriate

disposition, the court shall consider the standard and factors enumerated in this section.

(a) Standard. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter,

(b) Factors. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

- i. The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home,
- ii. The wishes of the child,
- iii. The duration of the separation of the parent from the child,
- iv. Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

(3) Any party may present evidence relevant to disposition, and propose alternative dispositions. The court shall order either disposition listed below no later than ten days after a hearing on disposition.

(4) Upon a finding that grounds exist for a termination of parental rights the court shall order one of the following dispositions.

- (a) The court may dismiss the petition.
- (b) The court may order the termination of parental rights of one or both parents. If the rights of both parents or of the only living or known parent is terminated, the

court shall transfer guardianship of the child to the child welfare coordinator, the Wisconsin Department of Health and Social Services, a relative of the child, with whom the child resides, if the relative has filed a petition for adoption, or an individual who has been appointed guardian of the child by a court of competent jurisdiction. The court may also transfer custody of the child to one of the agencies listed above or to a relative or other individual if the child has resided in the home of that individual for a meaningful period of time prior to the termination.

(4) The court shall inform any parent whose rights have been terminated of the provisions of 48.432 and 48.433, Wis. Stats..

(5) Any order under this section shall be reduced to writing and filed within 30 days of its rendition.

Section 125.22 - Guardianship

(a) Upon petition by any person with a legitimate interest in the welfare of the child, including persons with an interest in the child as defined in Section 125.05(b), but excluding the child welfare coordinator, the Children's Court may appoint a guardian for a child who is without both parents or whose parents are unavailable for reason of incarceration or commitment or otherwise unable to care for the child. Except when the petitioner is a person with an interest in the child, the decision to allow a person to petition for the appointment of a guardian shall be in the Court's discretion. The Court may impose any restriction or limitation on the powers of a guardian, or condition its appointment on the guardian's performance of specified duties, not inconsistent with this Chapter, it finds will help protect the child's interest.

(b) A guardian may be appointed to exercise custody and the power to make decisions of importance to the child's health, education, support and welfare. Such a guardian shall be

known as a "guardian of the child." A guardian of the child may not manage the financial interests of the child.

(c) A guardian may be appointed to conserve the assets, income, and financial interests of a child, subject to a duty of disclosure and reporting to the Children's Court regarding such matters no less than annually. Any such order shall fix a date or dates for the filing of such reports and may require the posting of a bond or other conditions to protect the child's interests. Such a guardian shall be known as a "guardian of the child's estate." A guardian of the child may be guardian of the child's estate or separate guardians may be appointed.

(d) A petition for guardianship shall state:

- i. The name, residence, address, post office address, and date of birth of the proposed ward, the petitioner, and the proposed guardian or guardians.
- ii. The reason guardianship is sought.
- iii. Whether temporary or permanent guardianship is sought.
- iv. The income and assets of the proposed ward.
- v. Whether any guardian of the proposed ward now exists.

(e) The summons shall include the time, date, and place of hearing on the petition, and the names of the proposed ward and guardian, the petitioner, and the petitioner's attorney, if any.

(f) The summons and petition shall be served upon any parent of the proposed ward and any current guardian of the proposed ward.

(g) The court shall appoint a guardian ad litem for the proposed ward, who shall be served by petitioner with a copy of the summons and petition.

(h) Any guardianship created under this chapter shall terminate upon the ward's

eighteenth birthday.

Section 125.23 - Adoption

(a) Upon entry of the order of adoption, the relation of parent and child together with all the rights, duties, and other legal consequences of the natural relation of parent and child exist between the adoptive parents and adopted child.

(b) Any child, as defined in Section 125.06, may be adopted.

(c) The following are eligible to adopt a child:

(1) A husband and wife jointly, or either if the other spouse is a parent of the child,

(2) An unmarried person who is at least 18 years of age,

(3) In the case of a child whose parents are not married, the child's natural father.

(4) Two unmarried persons co-habiting for a substantial period of time as a married couple.

(d) The consent of the following are required for adoption:

(1) The child if 13 years or older,

(2) The parent or parents if living including the adjudicated or acknowledged father of a child born out of wedlock, unless parental rights have been terminated.

(e) A proceeding for adoption shall be commenced by the filing of a verified petition which shall include:

(1) The name, address and date of birth, or expected date of birth, of the child to be adopted.

(2) The name, address, and age of the birth parents and of the proposed adoptive parents.

(3) The name and address of the petitioner and his or her relationship to the child.

(4) The identity of all persons or agencies which solicited, negotiated, or arranged for the adoption on behalf of any party.

(5) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents. The report shall itemized and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the proposed adoptive parents, by either parent, by any other person to whom payment was made by or on behalf of the proposed adoptive parents. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parents in connection with the adoption or the placement of the child with them.

(6) A statement of the tribal membership, if any, of each of the birth parents and each of proposed adoptive parents.

(7) The domicile of each of the birth parents, and the facts supporting the statement of domicile.

(8) Whether the birth parents' parental rights are terminated; if not that a petition for voluntary termination has been filed and that consent will be given. If rights have been terminated, a certified copy of the court order terminating the rights shall be attached to the petition.

(f) Upon receipt of a petition, the clerk of court shall set a date for hearing not later than 60 days from the date of filing. The petitioner shall serve notice of hearing on the child's guardian, or custodian, the natural parents if their parental rights have not been terminated, and the child welfare coordinator.

(g) Upon receipt of the petition, the child welfare coordinator shall perform an investigation as to the suitability of the petitioner as the child's adoptive parent. The coordinator shall complete the report and file it with the court, providing a copy to the petitioner no less than ten days before the hearing. If the report is unfavorable or discloses a situation which in the court's opinion raises a serious question as to the suitability of the proposed adoption, the court may appoint a guardian ad litem for the child who shall make an independent recommendation.

(h) At a hearing, the presence of the petitioners and if the minor is 14 or older, shall be required unless the court orders otherwise. The court shall determine from the child welfare coordinator's report and any evidence presented by the petitioners or the child's guardian whether the petitioners are suitable adoptive parents. The court shall receive evidence from interested parties and if it determines that granting the petition is in the child's best interest, it shall so order.

(i) Temporary order: Final Judgment

(1) The court may issue a temporary order giving the care and custody of the

child to the petitioners pending the further order of the Court; provided, that if the child is a close blood relative of one of the petitioners, or is a stepchild of a petitioner or has been living in the home of the petitioner for more than 1 year preceding the date of filing the petition for adoption, the Court may waive the entry of a temporary order, and immediately enter a final judgment for adoption.

(2) Where a temporary order is entered, the child welfare coordinator may observe the child in his home and report to the Court within 6 months on any circumstances or conditions which may have a bearing on the child's adoption or custody.

(3) Upon application by the petitioner after 6 months from the date of the temporary order, or upon the Court's motion at any time, the Court shall set a time and place for additional hearing. Notice of the time and place of the hearing shall be served on the child welfare coordinator, the child, and the petitioners. The child welfare coordinator may file with the Court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the temporary order. After such hearing, if satisfied that the adoption is in the best interests of the child, the Court may enter a final judgment of adoption.

(4) The final order shall include a provision ordering the adoptive parents to maintain the child's relationship to the Tribe.

Section 125.24 Ineligible Children

(a) Any child who does not fall within the definition of "child" under section 125.06(a), or whose tribe has objected to jurisdiction under section 125.055, shall be subject to this chapter only if present on the Bad River Reservation and only for the following purposes:

(1) Taking into custody for the purpose of protecting the ineligible child from imminent physical or emotional harm,

(2) Making emergency placement necessary to protect the child,

(3) Referral or placement to an appropriate tribal, state, or other child welfare agency.

(b) A report of the conditions requiring action under subsection (a) shall be filed immediately with the Ashland County Department of Social Services.

Section 125.25 - Indian Child Welfare Act

(a) The child welfare coordinator is designated as agent for service of notices concerning child welfare proceedings as provided under the Indian Child Welfare Act.

(b) Upon receipt of such notice, the child welfare coordinator may consult with such tribal staff as may be necessary to determine the eligibility of the child named in such notices.

(c) Upon a determination that the notice received concerns a child defined under this Code, the child welfare coordinator shall consult with the Children's Court, tribal attorney, and Child Welfare Committee for the purpose of determining whether to intervene or seek transfer of the proceeding to the Children's Court.

(d) The child welfare coordinator shall determine whether to seek transfer, which determination, upon petition or motion of a person with an interest in the child, may be reviewed and reversed by the Children's Court.

(e) In any non-tribal proceeding, where transfer of jurisdiction is denied or not sought, the child welfare coordinator shall maintain a record of all information gathered, actions taken and documents received.

Section 125.26 - Child Welfare Coordinator

(a) Duties and authority. The child welfare coordinator shall have the following authority and duties:

- (1) To represent the Tribe in all tribal proceedings concerning the child under this code,
- (2) To represent the Tribe in proceedings concerning the welfare of any child as defined under this code in any foreign court or agency proceeding,
- (3) To maintain records and establish procedures to maintain confidentiality of such records,
- (4) To negotiate agreements for services with local, state, or federal agencies, subject to Tribal Council review and approval,
- (5) To establish procedures for compliance with duties as required under this code,
- (6) To share information for statistical or service purposes in conformity with agreements entered into,
- (7) To receive and administer guardianship and custody of children under this chapter.
- (8) To make such reports as may be required to the Tribal Council or its designee, provided that no such report that becomes a part of the Tribal public record shall contain any identifying information concerning the child or the child's parents except as permitted by the Children's Court.
- (9) To receive as the Tribe's agent, notifications under sec. 48.981, Wis. Stats.,

and to maintain the confidentiality of such records as required by law.

(b) Immunity for acts and omissions. No liability shall attach to the child welfare coordinator for statements, acts, or omissions while in the course of activities defined under this code.

Section 125.27 - Child Welfare Committee

(a) There is hereby established a Child Welfare Committee, composed of three persons designated by the Tribal Council in executive session who shall establish procedures and guidelines for the conduct of committee business. The child welfare coordinator, tribal attorney, and other staff aides designated by the committee shall serve in advisory capacities to the committee, as requested by the committee.

(b) The Child Welfare Committee shall have the authority to meet, consider the conditions of a child alleged to be in need of care, and determine whether a case commenced in another jurisdiction should be transferred to children's court or whether the Tribe should intervene in the proceeding in the other jurisdiction.

(c) By this chapter and by the resolution adopting this chapter, the Child Welfare Committee is delegated the Tribal Council's authority under 25 U.S.C. sec. 1915(c) to establish in individual cases a different order of preference than that set forth in 25 U.S.C. sec. 1915 (a) and (b).

ENACTED BY RESOLUTION #3-8-88-128/AMENDED BY RESOLUTION #4-5-89-33/AMENDED BY RESOLUTION #5-9-95-49

CHAPTER 126 - MARRIAGE

Section 126.01 - Applicability

(a) This chapter applies to marriages performed on the Reservation, in which one or

both parties to the marriage is a member of the Tribe.

(b) The procedures set forth herein shall be exclusive as to any marriage performed on the reservation in which both parties are members of the Tribe.

(c) The procedures set forth herein shall be concurrent with the procedures established by the laws of the State of Wisconsin as to any marriage performed on the reservation in which one party is not a member of the Tribe. The application for a license under this chapter constitutes the non-member's consent to the Tribe's jurisdiction to grant such a license.

Section 126.02 - A Civil Contract

Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.

Section 126.03 - Marriageable Age; Who May Contract

(a) Every person who has attained the age of 18 years may marry if otherwise competent.

(b) If a person is between the age of 16 and 18 years, a marriage license may be issued with the written consent of the person's parents, guardian, legal custodian or parent having the actual care, custody and control of the person. The written consent must be given before the clerk of court under oath, or certified in writing and verified by affidavit (or affirmation) before a notary public or other official authorized to take affidavits. The written consent shall be filed with the clerk of court at the time of application for a marriage license. If there is no guardian, parent or custodian or if the custodian is an agency or department, the written consent may be given, after notice to any agency or department appointed as custodian and hearing proper cause

shown, by the court having probate jurisdiction.

Section 126.04 - Who Shall Not Marry; Divorced Persons

(a) No marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer kin than 2nd cousins except that marriage may be contracted between first cousins where the female has attained the age of 55 years or where either party, at the time of application for a marriage license, submits an affidavit signed by a physician stating that either party is permanently sterile. Relationship under this section shall be computed by the rule of the civil law, whether the parties to the marriage are of the half or of the whole blood. A marriage may not be contracted if either party has such want of understanding renders him or her incapable of assenting to marriage.

(b) It is unlawful for any person, who is or has been a party to any action for divorce in any court to marry again until 6 months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of 6 months from the date of the granting of judgment of divorce shall be void.

Section 126.05 - Marriage License; by Whom Issued

No persons to whom this chapter is applicable under Section 126.01(b) may be joined in marriage within the Reservation until a marriage license has been obtained for that purpose from the Clerk of Court. No persons to whom this chapter is applicable under Section 126.01(c) may be joined in marriage within the Reservation until a marriage license has been obtained for that purpose from the Clerk of Court or the Ashland County Clerk.

Section 126.06 - Application For Marriage License

No person shall receive a marriage license except upon proper application upon forms

provided by the Clerk of Court.

Section 126.07 - Fee

No license shall be issued unless a fee of \$25.00 is paid by the applicants. The fee shall be deposited in the Tribal Court Fees and Collections Account.

Section 126.08 - Identification of Parties; Statement of Qualifications

(1) (a) No applications for a marriage license may be made by persons lawfully married to each other and no marriage license may be issued to such persons.

(b) Paragraph (a) does not apply to persons whose marriage to one another is void under Section 126.04(b) and who intend to intermarry under 765.21, Wis. Stats.

(2) No marriage license may be issued unless the application for it is subscribed by the parties intending to intermarry and is filed with the Clerk of Court.

(3) Each party shall present satisfactory, documentary proof of identification and residence and shall swear (or affirm) to the application before the Clerk of Court. The application shall contain such informational items as is also required by the Wisconsin Department of Health and Social Services. Each applicant under 30 years of age shall exhibit to the Clerk a certified copy of a birth certificate, and any applicants shall submit a copy of any judgments or a death certificate affecting the marital status. If such certificate of judgment is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu thereof.

Whenever the Clerk is not satisfied with the documentary proof presented, he or she shall submit the same, for an opinion as to the sufficiency of the proof, to the tribal court.

Section 126.09 - Objection to Marriage

(a) If any parent, grandparent, child or natural guardian of a minor applicant for a

marriage license, any brother, sister or guardian of either of the applicants for a marriage license or either of the applicants, the Tribal Court believes that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, that person may file with the tribal court a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the marriage license should not be refused. Whereupon, the court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court directs, but not more than 14 days after the date of the order, which shall be served forthwith upon the applicants for the marriage license residing in the state, and upon the clerk and shall operate as a stay upon the issuance of the marriage license until further ordered; if either or both of the applicants are nonresidents of the state the order shall be served forthwith upon the nonresident by publication once in the Ashland Daily Press and by mailing a copy thereof to the nonresident at the address contained in the application.

(b) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the marriage license. If the falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the marriage license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the marriage license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court,

but none shall be taxed against any district attorney or family court commissioner acting in good faith.

Section 126.10. - Marriage License, When Authorized; Corrections; Contents

(a) If all the provisions of this chapter are complied with, and if there is no prohibition against or legal objection to the marriage, the clerk shall issue a marriage license. With each marriage license the clerk of court shall provide a pamphlet describing the causes and effects of fetal alcohol syndrome. After the application for the marriage license the clerk shall, upon the sworn statement of either the applicants, correct any erroneous, false or insufficient statement in the marriage license or in the application therefor which shall come to the clerk's attention prior to the marriage and shall show the corrected statement as soon as reasonably possible to the other applicant.

(b) The marriage license shall authorize the marriage ceremony to be performed on the Reservation. The officiating person shall determine that the parties presenting themselves to be married are the parties named in the marriage license. If aware of any legal impediment to such marriage, the person shall refuse to perform the ceremony. The issuance of a marriage license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the marriage license shall contain a statement to that effect.

Section 126.11 - Form of Marriage Document

The marriage document shall contain such informational items as the Wisconsin Department of Health and Social Services determines are necessary and shall agree in the main with the standard form recommended by the federal agency responsible for national vital

statistics. It shall contain a notification of the time limits of the authorization to marry, a notation that the issue of the marriage license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the signature of the clerk of court, who shall acquire the information for the marriage document and enter it in its proper place when the marriage license is issued.

Section 126.12 - Form of Marriage Document When Solemnized by Parties

If the marriage is to be solemnized by the parties without an officiating person, as provided by Section 126.13(d) the marriage document shall contain all those items and notations required by 126.13.

Section 126.13 - Marriage Contract, How Made; Officiating Person

Marriage may be validly solemnized and contracted on this Reservation only after a marriage license has been issued therefor, and only in the following manner: by the mutual declarations of the 2 parties to be joined in marriage, made before a duly authorized officiating person and in the presence of at least 2 competent adult witnesses other than such officiating person, that they take each other as husband and wife. The following are duly authorized to be officiating persons:

(a) Any ordained clergyman of any religious denomination or society who continues to be such ordained clergyman;

(b) Any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church of the denomination to which the clergyman belongs, if not restrained from doing so by the discipline of the church or denomination;

(c) Any spiritual leader recognized as such by the community.

(d) The 2 parties themselves, by such mutual declarations, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of said parties may belong;

(e) Any tribal judge, judge of a court of record or a reserve judge appointed under Wisconsin law.

(f) Any family court commissioner or court commissioner appointed under Wisconsin law.

Section 126.14 - Nonresident Officiating Person; Sponsorship

Any clergyman, licentiate or appointee named in Section 126.08 who is not a resident of Wisconsin may solemnize marriages in this state if he or she possess at the time of the marriage a letter of sponsorship from a clergyman of the same religious denomination or society who has a church in this state under his or her ministry.

Section 126.15 - Delivery and Filing of Marriage Document

The marriage document, legibly and completely filled out with unfading black ink, shall be returned by the officiating person, or in the case of marriage ceremony performed without an officiating person, then by the parties to the marriage contract, or either of them, to the clerk of court within 3 days after the date of the marriage, who shall forthwith file the completed marriage document with the Enrollment office and a copy of the same within the State of Wisconsin Department of Health and Social Services Bureau of Vital Statistics.

Section 126.16 - Records and Blanks

The clerk shall keep among the records in the office a suitable book called the marriage license docket and shall enter therein a complete record of the applications for and the issuing of

all marriage licenses, and of all other matters which the clerk is required by this chapter to ascertain relative to the rights of any person to obtain a marriage license. An application may be recorded by entering into the docket the completed application form, with any portion collected only for statistical purposes removed. The marriage license docket shall be open for public inspection or examination at all times during office hours.

Section 126.17 - Unlawful Marriages Void; Validation

All marriages hereafter contracted in violation of this chapter shall be void, except as provided in Sections 126.18 and 126.19. The parties to any such marriage may validate the marriage by complying with the requirements of this chapter as follows:

- (1) At any time, if the marriage is declared void under Sections 126.03 or 126.11.
- (2) No earlier than 6 months after the divorce judgment is granted, if the marriage is declared void under 126.04(b).

Section 126.18 - Immaterial Irregularities as to Authority of Person Officiating

No marriage hereafter contracted shall be void by reason of want of authority or jurisdiction in the officiating person solemnizing such marriage, if the marriage is in other respects lawful, and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Section 126.19 - Immaterial Irregularities Otherwise

No marriage hereafter contracted shall be void by reason of any informality or irregularity of form in the application for the marriage license or in the marriage license itself, or the incompetency of the witnesses to such marriage or because the marriage may have been solemnized more than 30 days after the date of the marriage license, if the marriage is in other

respects lawful and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Where a marriage has been celebrated in one of the forms provided for in Section 126.11 and the parties thereto have immediately thereafter assumed the habit and repute of husband and wife, and having continued the same uninterruptedly thereafter for the period of one year, or until the death of either of them, it shall be deemed that a marriage license has been issued as required by this chapter.

Section 126.20 - Recognition of Previous Indian Traditional Marriages

All marriages heretofore consummated whether according to state law or tribal custom are declared valid subject to annulment under applicable law. Cohabitation without solemnization by a third party is not recognized as constituting a traditional marriage.

Section 126.21 - Delayed Registration of Previous Indian Traditional Marriages

(a) Both parties to an Indian traditional marriage heretofore consummated, or the surviving party if the other is deceased, may petition the tribal court for an order causing the marriage to be registered.

(b) The petitioner or petitioners shall file and serve a written petition stating under oath the names of the parties to the marriage, their dates of birth, the date and place of marriage, and the name and address, if known, of the third party solemnizing the marriage.

(c) Notice of the time, place, and date of hearing on the petition, together with a copy of the petition, shall be served upon all interested parties. Interested parties shall include the heirs of both parties and any other putative spouses. Service may be personal or by certified mail, return receipt requested.

(d) The petitioners shall bear the burden of proving by a preponderance of the

evidence that the parties were parties to a traditional marriage.

Section 126.22 - Indian Traditional Marriages

All marriages hereafter must comply with the provisions of this chapter.

Section 126.23 - Removal of Impediments to Subsequent Marriage

If a person during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract in accordance with Section 126.11 and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled, or dissolved by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of them, be held to have been legally married from and after the removal of such impediment and the issue of such subsequent marriage shall be considered as the marital issue of both parties.

Section 126.24 - Penalties

(a) The following shall be subject to a civil forfeiture not less than \$100 nor more than \$1,000:

(1) False statement. Any person who in any affidavit or statement made under this chapter willfully and falsely swears, or who procures another to swear falsely in regard to any material fact relating to the competency of either or both of the parties applying for a marriage license, or as to the ages of such parties, if minors, or who falsely pretends to be the parent or guardian having authority to give consent to the marriage of such minor.

(2) Unlawful issuance of marriage license. Any clerk who knowingly issues a marriage license contrary to or in violation of this chapter.

(3) False solemnization of marriage. Any person, not being duly authorized by this chapter who intentionally undertakes to solemnize a marriage on the Reservation or any person who intentionally participates in or in any way aids or abets any false or fictitious marriage.

(b) The following shall be subject to a civil forfeiture not less than \$100 or more than \$500:

(1) Unlawful solemnization of marriage. Any officiating person who solemnizes a marriage unless the contracting parties have first obtained a proper marriage license as heretofore provide; or unless the parties to such marriage declare that they take each other as husband and wife; or without the presence of 2 competent adult witnesses; or solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a marriage more than 30 days after the date of the marriage license, or falsely certifies to the date of a marriage solemnized by the officiating person.

(2) Unlawful solemnization by parties. Where a marriage is solemnized without the presence of an officiating person if the parties to such marriage solemnize the same without the presence of 2 competent adult witnesses or more than 30 days after the date of the license; or falsely certify to the date of such marriages.

(c) The following shall be subject to a civil forfeiture not less than \$10 nor more than \$200.

(1) Failure to file marriage certificate. Every officiating person, or persons

marrying without the presence of an officiating person, who neglect or refuse to transmit the original marriage certificate, solemnized by him or them, to the clerk of court within 3 days after the date of the marriage.

(2) Violations relating to records. Any clerk who refuses or neglects to enter upon the marriage license docket a complete record of each application, and of each marriage license issued from the clerk's office, immediately after the same has been made or issued, as the case may be, or fails to keep such marriage license docket open for inspection or examination by the public during office hours, or prohibits or prevents any person from making a copy or abstract of the entries in the marriage license docket.

(d) The following shall be subject to a civil forfeiture not less than \$10 nor more than \$50:

(1) Other violations. Any person violating any provision of this chapter for which no other penalty is provided.

Section 126.25 - Definitions

(a) "Enrollment Office" means the Bad River Tribal Enrollment office.

(b) "Clerk" means the Tribal Clerk of Court.

(c) "Court" means the Tribal Court.

(d) "Reservation" means the Bad River Reservation.

(e) "Tribal Court" means the Tribal Court of the Bad River Tribe.

Enacted by Resolution #9-14-90-141

CHAPTER 127 - DISSOLUTION OF MARRIAGE

Section 127.01 - Applicability

(a) This chapter applies to dissolutions of marriage and legal separations of marriage performed on the Reservation, in which one or both parties to the marriage is a member of the Bad River Tribe, or to marriage performed in another jurisdiction in which both parties are members of the Bad River Tribe, or a marriage performed in another jurisdiction in which one party is a member of the Bad River Tribe and the party filing the action has been a resident within the exterior boundary of the Bad River Reservation for a period of at least 60 days prior to the commencement of the dissolution action.

(b) The procedures set forth herein shall be exclusive as to any dissolution of marriage and/or legal separation in which one or both parties is a member of the Bad River Tribe.

(c) The procedures set forth herein shall be concurrent with the procedures established by the laws of the Bad River Tribal Court and the State of Wisconsin where applicable, in which one party is a non-member of the Bad River Tribe. The signed Petition by a non-member for a dissolution of marriage under this chapter constitutes the non-member's consent to Bad River Tribe's jurisdiction to grant a divorce.

Section 127.02 - Definitions

Tribal Court - means the Bad River Tribal Court.

Dissolution of Marriage - means the legal termination of a marriage between a husband and wife.

Proceeding - means legal process and shall be entitled "In Re the Marriage of _____ and _____." A custody or support proceeding shall be entitled "In Re the (Custody) (Support) of _____."

Irretrievably broken - means the determination that there is no reasonable prospect for reconciliation.

Joinder of Parties - means the uniting of two or more persons as co-plaintiffs or as co-defendants in one suit.

Maintenance/Support - means the act of maintaining, keeping up, support; livelihood; means of sustenance.

Final Decree - means a final decision, one which leaves nothing open to further dispute and which sets at rest the cause of action between parties.

Special Master - means a court appointed person assigned to complete a specific task on behalf of the Court in a case.

Section 127.03 - Dissolution of Marriage: Findings Necessary

The Court shall enter a Decree of Dissolution of Marriage if it finds each of the following:

- (1) That one of the parties at the time the action was commenced was domiciled in Ashland County for a period at least thirty (30) days, and a resident of the State of Wisconsin for not less than six months.
- (2) That the marriage was irretrievably broken.
- (3) The Court may consider, approve and make provision for child custody, the support of any, natural or adopted, child common to the parties of the marriage entitled to support, the maintenance of either spouse and the disposition of property.

Section 127.04 - Decree of Legal Separation; Findings Necessary

The Court shall enter a Decree of Legal Separation if it finds each of the following:

- (1) That one of the parties at the time the action commenced was domiciled in Ashland

County for a period of at least ninety days and a resident of the State of Wisconsin for six months.

(2) The marriage is irretrievably broken.

(3) The other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the Court shall upon one of the parties meeting the required domicile for dissolution of marriage, direct that the pleadings be amended to seek a dissolution of the marriage.

(4) The Court may consider, approve or make provisions for child custody, the support of any natural or adopted child common to the parties of the marriage entitled to support, the maintenance of either spouse and the disposition of the property.

Section 127.05 - Annulment

No marriage may be annulled or held void except pursuant to judicial proceedings. No marriage may be annulled after the death of either party to the marriage. A court may annul a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of age, because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage. Suit may be brought by either party, or by the legal representative of a party lacking the capacity to consent, no later than one year after the petitioner obtained knowledge of the described condition.

(2) A party lacks the physical capacity to consummate the marriage by sexual intercourse,

and at the time the marriage was solemnized the other party did not know of the incapacity. Suit may be brought by either party no later than one year after the petitioner obtained knowledge of the incapacity.

(3) A party was 16 or 17 years of age and did not have the consent of his or her parent or guardian or judicial approval, or a party was under 16 years of age. Suit may be brought by the under-aged party or a parent or guardian at any time prior to the party's attaining the age of 18 years, but a parent or guardian must bring suit within one year of obtaining knowledge of the marriage.

(4) The marriage is prohibited by the laws of the State of Wisconsin or the Tribe. Suit may be brought by either party within 10 years of the marriage, except that the 10 year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed as follows:

If a person during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled, or dissolved by a divorce, or without knowledge of such former marriage, if they continue to live together as of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment and the issue of such subsequent marriage shall be considered as the marital issue of both parents.

Section 127.06 Pleadings; Contents; Defense; Joinder of Parties

(a) Either or both parties may petition the court for Dissolution of Marriage or Legal Separation. The petition shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation and address of each party and his/her length of domicile in Ashland County.

(2) The date of the marriage and the place at which it was performed.

(3) The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant.

(4) The details of any agreements between the parties as to support, custody and visitation of the children and maintenance of a spouse.

(5) The relief sought.

(6) The only defense to a Petition for the Dissolution of a marriage or Legal Separation shall be that the marriage is not irretrievably broken.

(7) The Court may join additional parties necessary for proper disposition of the matter.

Section 127.07 - Temporary Order or Preliminary Injunction; Effect

(a) In a proceeding for Dissolution of marriage or for Legal Separation, or for maintenance or support following Dissolution of Marriage, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the Court to issue a preliminary

injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued.

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child.

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

(4) Enjoining a party from removing a child from the jurisdiction of the Court.

(5) Providing other injunctive relief proper in the circumstances.

(c) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the Court deems it appropriate.

(d) On the basis of the showing made, and in conformity with sections 127.03, 127.04, and 127.05, the Court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(e) A temporary order or preliminary injunction:

(1) Does not prejudice the rights of the parties or any child to be adjudicated at the subsequent hearings in the proceedings.

(2) May be revoked or modified before final decree on a showing by affidavit of

the facts necessary to modification of a final decree.

(3) Terminates when the final decree is entered or when the Petition for Dissolution of Marriage or Legal Separation is dismissed.

Section 127.08 - Irretrievable Breakdown; Finding

(a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it or if the parties have voluntarily lived apart for at least 12 months immediately prior to the Commencement of the action and at least one party has stated under oath that the marriage is irretrievably broken, the Court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(b) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall, upon hearing, consider all relevant factors as to the prospect of reconciliation, and shall either:

(1) Make a finding whether or not the marriage is irretrievably broken; or

(2) Continue the matter for further hearing, not more than sixty days later. The Court, at the request of either party, or on its own motion may order a conciliation conference. Upon review of the evidence and testimony, the Court shall make a finding whether or not the marriage is irretrievably broken.

(c) A finding that the marriage is irretrievably broken is a determination that there is no reasonable prospect or reconciliation.

Section 127.09 - Separation Agreement; Effect

(a) To promote amicable settlement of disputes between parties to a marriage attendant

upon their separation or the dissolution of their marriage, the parties shall enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children.

(b) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody and visitation of children, are binding upon the parties unless the Court finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unfair.

(c) Upon review, if the Court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or maintenance. In separating marital property, the Court shall assign each spouse's sole and separate property to him/her. It shall also divide the Community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct. For purposes of this section only, property acquired by either spouse outside the Community shall be deemed to be community property if said property would have been community property if acquired in this Community. Nothing in this section shall prevent the Court from considering excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

(d) If the Court finds that the separation agreement is not unfair the court shall enter the document in to the record and upon final disposition order the parties to abide by the agreement.

Section 127.10 - Maintenance: Computation Factors

(a) In a proceeding for Dissolution of Marriage or Legal Separation, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(1) Lacks sufficient property, including property apportioned to him or her, to provide for his or her. reasonable needs; and

(2) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.

(b) The maintenance order shall be in such amounts and for such periods of time as the Court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him or her and his or her ability to meet his or her needs independently.

(2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment.

(3) The standard of living established during the marriage.

(4) The duration of the marriage.

(5) The age and the physical and emotional condition of the spouse seeking maintenance.

(6) The ability of the spouse from whom maintenance is sought to or her needs while meeting those of the spouse seeking maintenance.

(7) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

(8) The ability of the spouse seeking maintenance to earn a living separate from the other spouse.

Section 127.11 - Child Support; Factors

(a) In a proceeding for Dissolution of Marriage, Legal Separation, Maintenance, or Child Support, the Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for his support, without regard to marital misconduct after considering all relevant factors, including:

- (1) The financial resources and needs of the child.
- (2) The financial resources and needs of the custodial parent.
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved.
- (4) The physical and emotional condition of the child, and his educational needs.
- (5) The financial resources and needs of the non-custodial parent.
- (6) Excessive and abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy or other property held in common.

(b) In the case of a mentally or physically disabled child, if the Court, after considering the factors set forth in Subsection “A” deems it appropriate, the Court may order support to continue past the age of emancipation and to paid to the custodial parent, guardian or child.

Section 127.12 - Representation of Child by Counsel; Fees

The Court may appoint an attorney or any other person to represent the interests of a minor

or dependent child with respect to his support, custody and visitation. The Court may enter an Order for costs, fees and disbursements in favor of the child's representative. The order may be made against either or both parents.

Section 127.13 - Payment of Maintenance or Support to Courts; Records

(a) Upon its own motion or upon motion of either party, the Court may order at any time that maintenance or support payments be made to the Clerk of Court for remittance to the person entitled to receive the payments.

(b) The Clerk of Court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the Clerk of Court of any change of address.

(d) If the person obligated to pay support has left or is beyond the jurisdiction of the Court, any party may institute any other proceeding available under the laws of this Community for enforcement of the duties of support and maintenance.

Section 127.14 - Assignments

In the event a person obligated to pay child support is in arrears for at two months or more, the Court may order the person obligated to pay child support to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two weeks after service upon such person of notice that the assignment has been made. The payor shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment

and shall transmit the payments to the Clerk of the Court. The payor may deduct from each payment a sum not exceeding five dollars as reimbursements for costs. An employer shall not discharge or otherwise discipline an employee solely as a result of a wage or salary assignment authorized by this section.

Section 127.15 - Costs and Expenses

The Court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter. For the purpose of this section costs and expenses may include fee, of a lay advocate or attorney, deposition costs and such other reasonable expenses as the Court finds necessary to the full and proper presentation of the action, including any appeal. The Court may order all such amounts paid directly to the attorney or lay advocate, who may enforce the order in his name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Section 127.16 - Decree; Finality; Restoration of Maiden Name

(a) A Decree of Dissolution of Marriage or of Legal Separation is final when entered, subject to the right of appeal. An appeal from the Decree of Dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or the minor child or children, shall not be suspended or the execution thereof stayed pending the appeal.

(b) The Court may upon hearing within six months after the entry of a Decree of Legal

Separation, convert the decree to a Decree of Dissolution of Marriage.

(c) The Court shall upon motion of either party after expiration of six months from the entry of a legal separation, convert the decree to a Decree of Dissolution of Marriage.

(d) Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name restored.

Section 127.17 Independence of provisions of decree or temporary order

If a party fails to comply with a provision of Decree or Temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he/she may move the Court to grant an appropriate order.

Section 127.18 - Modification and Termination of Provisions for Maintenance, Support and Property Disposition

(a) Except as otherwise provided in subsection “E” of Section 127.07 the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances which are substantial and continuing. The provisions as to property disposition may not be revoked or modified, unless the Court find the existence of conditions that justify the reopening of a judgment under the laws of this Community.

(b) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(c) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of the minor child are not terminated by the death of a parent obligated to support

the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment to the extent just and appropriate in the circumstances.

Section 127.19 - Jurisdiction; Commencement of Proceedings

(a) The Bad River Tribal Court is vested with jurisdiction to child custody matters by initial determination or by modification of the decree, if:

(1) The Bad River Reservation or Ashland County is the domicile of the child at the time of commencement of the proceeding, or had been the child's domicile within six months before commencement of the proceeding and the child is absent from Ashland County because of his/her removal or retention by a person claiming his/her custody or for any other reason, and a parent or person acting as parent continues to live in this/her Community; or

(2) It is in the best interest of the child that this Court assume jurisdiction because the child and his/her parents, or the child and at least one contestant, have a significant connection with this Community, and there is available in his/her Community substantial evidence concerning the child's present or future care, protection, training and personal relationships; or

(3) The child is physically present on the Bad River Reservation or Ashland County and has been abandoned or it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(4) No other Court outside this Reservation has jurisdiction under prerequisites substantially in accordance with Paragraph 1, 2, or 3, or another jurisdiction has declined to exercise its jurisdiction on the ground that this Court is the more appropriate forum to determine

custody of the child, and it is in his/her best interest that this/her Court assume jurisdiction

(b) Except under Paragraphs 3 and 4 of Subsection 127.19, physical presence on this Reservation of the child or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a Court of the Community to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his/her custody.

(d) A child custody proceeding is commenced in the Tribal Court:

(1) By a parent, by filing a Petition:

(a) For the dissolution or legal separation; or

(b) For custody of the child; or

(2) By a person other than a parent, by filing a Petition for custody of the child,

but only if he/she is not in the physical custody of one of his/her parents.

(a) For the dissolution or legal separation; or

(b) For custody of the child; or

(e) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The Court, upon a showing of good cause, may permit intervention of other interested parties.

Section 127.20 - Best Interest of Child; Modification of Decree; Fees

(a) The Court shall determine custody, either originally or upon petition for modification, in accordance with the best interests of the child. The Court may consider all relevant factors, including:

(1) The wishes of the child's parent or parents as to his/her custody.

(2) The wishes of the child as to his/her custodian.

(3) The interaction and inter-relationship of the child with his/her parent or parents, his/her siblings, and any other person who may significantly affect the child's best interest.

(4) The child's adjustment to his/her home, school and community.

(5) The mental and physical health of all individuals involved.

(b) No motion to modify a custody decree may be made earlier than one year after its date, unless the Court permits it to be made on the basis of affidavit that there is reason to believe the child's a present environment may endanger seriously his/her physical, mental, moral or emotional health.

(c) Fees of attorneys or lay advocate and costs shall be assessed against a party seeking modification if the Court finds that the modification action is pursued in bad faith and/or constitutes harassment.

Section 127.21 - Temporary Orders

(a) A party to a custody proceeding may move for a temporary custody order. This motion must be supported by pleadings as provided in Section 127.06 . The Court may award temporary custody under the standards of Section 127.11 after a hearing, or, if there is no objection, solely on the basis of the pleadings.

(b) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a child welfare matter consistent with the Bad River Tribal Code and, after a hearing, that the circumstances of the parents and the best interests of the child require that a placement order is issued.

(c) If a placement proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order thereby is vacated.

Section 127.22 - Interviews By Court: Professional Assistance

(a) The Court may interview the child in chambers to ascertain the child's wishes as to his/her custodian and as to visitation.

(b) The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis. The advice given shall be in writing and shall be made available by the Court to counsel, upon request, under such terms as the Court determines. Counsel may examine as a witness any professional personnel consulted by the Court, unless such right is waived.

Section 127.23 - Investigations and Reports

(a) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the Court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by a social service agency, the staff of the juvenile court or any other person or agency appointed by the Court.

(b) In preparing his/her report concerning a child, the investigator may consult any person who may have information about the child or potential custodial arrangements.

(c) The Court shall mail the investigator's report to counsel of the parties at least ten days prior to the hearing, unless otherwise ordered by the Court. The investigator shall make available to counsel of the parties the names and addresses of all persons whom the investigator has consulted. Any party to the proceedings may call for examination of the investigator and any person whom he/she has consulted.

Section 127.24 - Custody Hearings: Priority; Costs; Record

(a) Custody proceedings shall receive priority in being set for hearing.

(b) The Court may impose as costs to the parties, the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.

(c) The Court shall determine questions of law and fact. If it finds that public hearing may be detrimental to the child's best interest, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.

(d) If the Court finds that to protect the child's welfare, the record of any interview, report, investigation, or testimony in a custody proceeding should be kept secret, the Court may then make an appropriate order sealing the record.

Section 127.25 - Visitation Rights; Exception

(a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health.

(b) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental moral or emotional health.

Section 127.26 - Judicial Supervision

(a) Except as otherwise agreed by the parties in writing at the time of the custody

decree, the custodian may determine the child's upbringing including his/her education, health, care and religious training, unless, upon motion by the noncustodial parent, the Court, after hearing, finds that in the absence of specific limitation of the custodian's authority, the child's physical health would be endangered or his/her emotional development significantly impaired.

(b) If both parents or all contestants agree to the order, or if the Court finds that the child's physical health would be endangered or his/her emotional development significantly impaired, the Court may order a social service agency to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Section 127.27 - Affidavit; Contents

A party seeking a temporary custody order or modification of a custody decree shall submit an affidavit or verified petition setting forth detailed facts supporting the requested order or modification and shall give notice, together with a copy of his/her affidavit, or verified petition to other parties to the proceeding, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the pleadings, in which case it shall set a date for hearing on why the requested order of modification should not be granted.

Section 127.28 - Investigations

If deemed necessary, by the Court, the Chief Judge of the Bad River Tribal Court shall appoint a Special Master or other person to carry out the following duties:

- (1) Investigate the facts upon which to base warrants, subpoenas, or orders in actions or proceedings filed in or transferred to the conciliation division pursuant to the chapter.
- (2) Hold conciliation conferences with parties to proceedings under this/her chapter and

report the results of such proceedings to the Judge of the Tribal Court.

Section 127.29 - Subsequent Petition Filed within One Year

Once a petition by either or both of the spouses has been filed pursuant to this chapter, the filing of any subsequent petition under such section within one year thereafter by either or both of the spouses shall not stay any action for dissolution of marriage or legal separation then pending, nor prohibit the filing of such action by either party. The filing of a subsequent petition by either or both of the spouses more than one year after the filing of any previous petition with such effect shall have the same effect toward staying any domestic relations action then pending and toward prohibiting the filing of any such action as provided in this chapter.

CHAPTER 128 ADULT GUARDIANSHIP

Section 128.01 - Jurisdiction in Tribal Court

Pursuant to the Bad River Tribal Constitution, Article VI Sections 1 (j) and (q), the Tribal Court shall have jurisdiction over all petitions for adult guardianship. A guardianship of the estate of any adult person, once granted shall extend to wherever any of his or her assets, whatever the nature, are located.

Section 128.02 - Voluntary proceedings; conservators

(1) Any adult member who believes that he or she is unable to properly manage his or property or income may voluntarily apply to the tribal court for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days notice by mail be given to the person's guardians, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless

it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee, to be determined by the court, shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

Section 128.03 - Incompetency; appointment of guardian

(1) Whenever it is proposed to appoint a guardian on the ground of incompetency a licensed physician or licensed psychologist, or both shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. The person shall also be informed that he or she has right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

(2)

(a)(1) The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of a guardian ad litem or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be six in number. The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub.(1). The attorney or physician or psychologist at least 48 hours in advance of the hearing. Any final decision of the is subject to the right of appeal.

(a)(2) If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel.

(a)(3) If the person is indigent, the tribe shall be liable for any fees due the guardian ad litem and counsel.

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the tribe to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(c) The hearing on a petition which contains allegations that the person is refusing psychotropic drugs shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by the court that there is probable cause to believe that the person is a proper subject for guardianship has the effect of filing a petition.

(d) Every hearing on a petition shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the

person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the persons is incompetent, the court shall appoint a guardian.

(5)

(a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

[1] Order the appropriate mental health professional to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

[2] Review the plan submitted by the mental health professional and approve, disapprove or modify the plan.

[3] If the court modifies the treatment plan under sub. (2), the court shall order the mental health professional to provide the modified treatment plan to the ward.

[4] If the court modifies the treatment plan under sub. (2), the court shall order the appropriate mental health professional to provide the modified treatment plan to the ward.

[5] Order protective services.

[6] Order the appropriate mental health professional to ensure that protective services, including psychotropic medication, are provided in accordance with the approved treatment plan.

(6) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (5), the court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The Tribal Attorney or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person a designated mental health professional stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

(1) Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

(2) If the guardian consents to forcible administration of psychotropic medication as specified in sub. (1), authorize the sheriff or other law enforcement agency, in the

county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes the tribal police or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the treatment facility, tribal police department or other law agency enforcement and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(7) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care the court shall give consideration the appointment of the health care agent for the individual as the individual's guardian.

(8) All court records pertinent to the finding of incompetency are closed but subject to access as determined by the court. The fact that a person has been found incompetent is accessible to any person who demonstrates to the court a need for that information.

(9) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement.

Section 128.04 - Nomination; selection of guardians.

The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

- (a) Ability to properly care for ward.
- (b) Knowledge and capacity to manage assets taking into account the scope of ward's estate.

Section 128.05 - Guardian Ad Litem in incompetency cases.

(1) Appointment. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency, protectively place a person or order protective services.

(2) Qualifications. The guardian ad litem shall be admitted to practice by the Bad River Tribal Court. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) Responsibilities. The guardian ad litem shall be an advocat for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) General Duties. A guardian ad litem shall do all of the following:

- (a) Interview the proposed ward or alleged incompetent and explain the applicable hearing procedure, the right to counsel and the right to request or continue a limited

guardianship.

(b) Advise the proposed ward or alleged incompetent, both orally and in writing, of that person's rights to a jury trial, to an appeal, to counsel and to an independent medical or psychological examination on the issue of competency, at the Tribe's expense if the person is indigent.

(c) Request that the court order additional medical, psychological or other evaluation, if necessary.

(d) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.

(e) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.

(f) Report to the court on any other relevant matter that the court requests.

(5) Duties in reviews. In any review of a protective placement or of a protect service order the guardian ad litem shall do all of the following:

(a) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.

(b) Provide the information under par. (a), to the ward in writing.

(c) Secure an additional evaluation of the ward, if necessary.

(d) Review the annual report and relevant reports on the ward's condition and

placement.

(e) Review the ward's condition, placement and rights with the guardian.

(f) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(g) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(6) Communication to a jury. In jury trials the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent.

(7) Termination and extension of appointment. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the

appellate court may order the guardian ad litem to participate in the appeal.

Compensation. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the person who the guardian ad litem is appointed for unless the court otherwise directs.

Section 128.06 - Duration of guardianship; review.

(1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. The court shall make a specific finding of any rights which the individual is competent to exercise at the time.

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

(3) A ward, any interested person on the ward's behalf, or the ward's guardian may petition the court to have the guardian discharged and a new guardian appointed, or to have the guardian of the ward's property designated as a limited guardian.

(4) A ward, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the tribe.

(5) After a hearing under sub. (4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

(6)

(a) If the court appoints a guardian under this chapter the court shall do all of the following:

(1) Order the tribe's social service department to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood that the person could function at a reasonable level if protective services, including psychotropic medication, were withdrawn. The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

(2) Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under sub. 10. The guardian ad litem shall inform the person and the guardian of all of the following:

(a) The person's right to representation by full legal counsel under par. (b).

(b) The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

(c) The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if

requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

(1) Whether an independent evaluation should be conducted under par. (d).

(2) Whether the person continues to be a proper subject for guardianship because the person is not competent to refuse psychotropic medication and/or protective services.

(3) Whether a change a in the treatment plan or protective services, including psychotropic medication is warranted.

(4) Whether the person or the guardian requests a change in status, treatment plan or protective services.

(5) Whether a hearing should be held on the continued need for guardianship because a person is not competent to refuse psychotropic medication and/or protective services.

(d) Following review of the evaluation under par. (a)1., and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed

with the court:

(1) Order continuation of the guardianship without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person could function at a reasonable level if protective services, including psychotropic medication, were withdrawn.

(2) Order continuation of the guardianship with modification of the protective services order.

(3) Terminate the guardianship and protective services order. A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under Section 128.13 any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could otherwise exercise if the person were not determined to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make amend or revoke a will..

(4) General duties. The guardian of the estate shall take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the

termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(5) Retention of assets.

(a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance so long as such retention constitutes the exercise of the judgment and care tunder the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court.

(6) Continuation of business. In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(7) Investments

(a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with Wisconsin Statute Chapter 881:

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other

moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to Wisconsin Statute Chapter 881.

(c) No guardian shall lend guardianship funds to himself or herself.

(8) Sales and other dispositions.

(a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4),

(b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a co-tenant with the ward in the property.

Section 128.07 - Fraud, waste, mismanagement.

If the tribal court has reason to believe that any guardian within its jurisdiction has filed false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem thus any minor or incompetent person interested and shall order the guardian to file the account. If upon the

examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days notice shall be given to the guardian ad litem and to all persons interested. If upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

Section 128.08 - Claims.

(1) Payment. Every general guardian shall pay the just debts of the ward out the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

(2) Proceedings to adjust claims. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in Section 128.13. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or barred. Notice of the time and place so fixed and limited shall be given by publication. After the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the tribal court has jurisdiction.

Section 128.09 - Actions.

The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the tribal court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

Section 128.10 - Compensation allowed from estate.

Fees and expenses of guardian. Every guardian shall be allowed the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. The guardian shall also have such compensation for the guardian's services as the court, in which the guardian's accounts are settled, deems to be just and reasonable.

Section 128.11 - Accounting.

(1) Annual reports. Every guardian, except a corporate guardian, shall, prior to April 15 of each year, file and account under oath specifying the amount of property received and held or invested by the guardian, nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. The guardian shall also report any change in the status of the surety upon the guardian's bond.

(2) Display of assets. Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account.

(3) Small estates. When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the guardian shall be required to render account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court.

(4) Examination of accounts. The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

(5) Notice. No action by the court upon any account shall be final unless it is upon notice.

Section 128.12 - Petition for placement of assets in trust.

Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred to the trustee of an existing revocable living trust created by the person for the benefit of himself or herself and those dependent upon the person for support, or to the trustee or trustees of a trust created for the exclusive benefit of the person.

Section 128.13 - Application for limited guardianship of property.

(1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the

person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from the person's employment; and

(b) Contract and legally bind himself or herself for any sum of money not exceeding \$300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in Section 128.03(3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

Section 128.14 - Guardian of the person of incompetent.

(1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court but may admit a ward to certain residential facilities or make an emergency protective placement under. The guardian of the person has the power to apply for placement and for commitment under Wisconsin Statute Section 51.20 or 51.45(13).

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

(3) A guardian of the person of an incompetent appointed under this chapter shall make an annual report on the condition of the ward to the court. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

Section 128.15 - Bonds.

The court in its discretion may require that a guardian post a bond.

SECTION 128.16 - Guardianship of person; exemption from civil liability.

Any guardian of the person is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best

interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

CHAPTER 129 - VISITATION RIGHTS FOR GRANDPARENTS AND OTHERS

Section 129.01 - Purpose

The purpose of this chapter is to preserve the opportunity of children who are members of the Tribe, or eligible for membership in the Tribe, to form and maintain meaningful relationships with grandparents, stepparents, and others who play an important role in their care, development, education, or nurturance.

Section 129.02 - Definitions

(a) "Child" means any person under the age of eighteen years who is a member of the Tribe or eligible for membership in the Tribe, whether or not domiciled or resident on the Bad River Reservation.

(b) "Court" means the Bad River Tribal Court

(c) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 129.03 - Visitation Rights

Upon petition by a child's grandparent, great-grandparent, stepparent, aunt, uncle, or other person with an interest in the child, except a parent, the Court may order visitation rights with the child.

Section 129.04 - Procedure

The clerk of court shall schedule a hearing on the petition within 60 days of its filing. A copy of any petition filed under this chapter shall be served on each of the child's parents, and any guardian other than a parent, together with a notice of hearing which specifies that the hearing shall be on the merits of the petition and that the court may make a visitation award at the close of

the hearing. A guardian ad litem shall be appointed in all cases upon the filing of a petition under this chapter, unless the visitation order is stipulated to by the petitioner, the child's parents, and any other guardian.

Section 129.05 - Standards

The Court may order visitation rights if it finds that such an order would be in the best interests of the child. The Court shall take into account following factors:

(a) The family relationship of the petitioner to the child, provided that visitation rights may be awarded notwithstanding the death or termination of parental of either or both of the child's parents.

(b) The length and quality of the relationship of the petitioner with the child.

(c) The family relationship, and length and quality of the relationship, between the petitioner and each of the child's parents and any other guardian.

(d) The nature of each of the parent's and other guardian's relationships with the child, and the parents' and guardians' ability to provide appropriate care to the child without visitation by the petitioner.

(e) The relationship between the child's parents, provided that visitation rights may be awarded whether or not the parents' relationship is intact.

(f) The child's wishes, taking into account the age of the child.

(g) The benefits and detriments to the child of awarding visitation rights to the petitioner.

(h) The feasibility of fashioning an award of visitation rights while minimizing interference with the parents' custodial rights.

Section 129.06 - Order

(a) Within 30 days of the hearing, the Court shall grant or deny the petition, or grant the petition conditionally or with such modifications as are in the best interest of the child. All orders shall be in writing and shall specify to the greatest extent practicable the particular rights, if any, that are awarded.

(b) An order may award visitation rights under the circumstances prevailing at the time of the order, and may also award contingent visitation rights under circumstances prevailing at the time of the order, and may also award contingent visitation rights under circumstances that may reasonably be expected to occur at a future time, provided that any such award of contingent rights is reviewable under sec. 129.08.

(c) Any person served with a copy of a notice and petition under sec. 129.04, and with a copy of an order under this section, shall be required to comply with the terms of the order, and may be proceeded against for contempt of court for any interference therewith.

Section 129.07 - Guardian Ad Litem Fees

The fees of the guardian ad litem shall be paid by the Court. The Court may order the petitioner, parent, and guardian, or any of them, to contribute to the reimbursement of such fees.

Section 129.08 - MODIFICATIONS

Any order issued under this chapter may be modified upon motion, notice, and hearing.

CHAPTER 130 - NAME CHANGES

Section 130.1

Any tribal member may petition the Tribal Court to have his or her name changed. A parent or guardian of a child may petition on behalf of the child to have the child's name changed. Both natural parents of the child must be given any opportunity to object to the change of name.

Section 130.2

If no objections are entered on the record by any interested party and all conditions are fulfilled, the Court must grant the petition for a name change. If any interested person enters an objection and within the Court's discretion to grant or deny the petition for change of name.

Section 130.3

The petitioner for a change of name must cause a notification of his or her intentions to change name to be published in the Tribal Newsletter for one issue and in the Ashland Daily Press for three issues. The notice must state the petitioner's present name and intended name and must state the date and time of the Court hearing and where change will take place, and that any person who objects will have an opportunity to raise his objections at that time.

CHAPTER 130 ENACTED BY RESOLUTION #8-7-85-216

CHAPTER 131 - FOSTER HOME LICENSING

Section 131.01 - Purpose

The purpose of this ordinance is to protect and promote the health, safety, and welfare of children in foster care.

Section 131.02 - Exceptions to Rules

The Tribal Council may make, or may delegate the authority to make, exceptions to any of the rules for licensing foster homes when the Tribal Council is assured that granting such exceptions, or the authority to make exceptions, is not detrimental to the health, safety or welfare of children.

Section 131.03 - Definitions

(a) "Child" means a person under 18 years of age.

(b) "Foster Child" means a child placed for care in a home required to be licensed under this chapter.

(c) "Foster Home" means a facility operated by a person or persons required to licensed under this chapter.

(d) "Foster Parent(s)" means a person or persons who operate a facility required to licensed under this chapter.

(e) "Guardian" means a person, appointed by a court, who has the right to make major decisions affecting the child, including the right to consent to marriage, to enlistment in the armed forces, to major surgery and to make recommendations as to adoption. In the absence of an applicable order "guardian" means the child's natural mother and, if the child is a marital child or if paternity has been established, the child's natural father.

(f) "Legal Custodian" means a person to whom a court has transferred a child's legal custody who has the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for a child. In the absence of any applicable order, "legal custodian" means the child's natural mother and, if the child is a marital child or if paternity has been established, the child's natural father.

(g) "Licensee" means a person licensed under this chapter.

Section 131.04 - Rights of Applicants and Licensees

Applicants for license under this Chapter, and licensees shall have the following rights:

- (a) The right to make application for license.
- (b) The right to be evaluated objectively on the basis of this Chapter.
- (c) The right to receive a license if applicant fully satisfies all requirements.
- (d) The right to written notice and specification of grounds for revocation of license.
- (e) The right to accept children for care if licensed.
- (f) The right to refuse to accept children for care at their own discretion.

Section 131.05 - Application for License

(a) Any person seeking a license under this chapter shall make application on forms prescribed by the Indian Child Welfare office. Married couples and couples living together but not married shall both be parties to the application. Couples married but not living together shall have their eligibility determined on a case by case basis.

- (b) Foster parents wishing to continue to be licensed shall file a new application when:
 - (1) Their present license will expire within 30-60 days.
 - (2) They plan to move from the address specified on their present license within

30 days or less.

(3) Their legal status has changed within the last 30 days.

(4) They wish to have the conditions changed that are specified on their present license.

(c) Persons already licensed through Ashland County and residing on the Bad River Reservation may submit application to the Bad River Indian Child Welfare office for Tribal Foster Home license. Such applications will be handled the same as license application for renewal of license.

Section 131.06 - Age of Foster Parents

No applicant(s) may receive a license for the first time when one or both are younger than 21 years of age.

Section 131.07 - Personal Qualifications Required of Foster Parents

(a) Foster parents shall be responsible, mature individuals of reputable character who exercise sound judgment and display the capacity to provide good care for children. They shall give sufficient information to enable the Indian Child Welfare office to verify whether or not they meet these requirements.

(b) A minimum of 25 hours of training and/or meetings approved by the Indian Child Welfare office per licensing period is required of foster parents.

Section 131.08 - Health of Foster Family

(a) All members of the foster family household shall be in physical and mental health that will not adversely affect the health of children received for foster care, or the quality and manner of their care.

(b) At the time of first application for a license and each licensing period thereafter, foster parents shall authorize their physician, or the Tribal Clinic Family Nurse Practitioner, to submit a statement to Indian Child Welfare certifying that a physical examination was completed and that the foster parents were essentially free from medical conditions which might endanger foster children.

(c) If the Indian Child Welfare office has reason to believe that the physical or mental health of any child or adult member of the foster family household might endanger children in care, the Indian Child Welfare office may require that the foster parents (for themselves or on behalf of their own children) or the adult family members in questions, shall authorize the submitting of a statement from a qualified physician and, if required, a psychiatrist, certifying the condition of the person.

Section 131.09 - Foster Homes General Requirements

(a) The home shall be so constructed, arranged and maintained as to provide adequately for the health and safety of all occupants. It shall be of size and space, and shall have furnishings and equipment to accommodate comfortably both the family and foster children in their care. The Indian Child Welfare Office may require inspection of the home by fire, health, sanitation or safety officials when in its judgment such expert opinion is needed to assist the Indian Child Welfare office in making a decision about the safety of the home for the care of foster children.

(b) Potentially dangerous items such as, but not limited to, household poisons, medicines, plastic bags, matches, knives and firearms shall not be kept where they are easily accessible to children.

(c) Foster parents shall provide sufficient drawer and closet space to accommodate

each child's clothing, toys, and other belongings.

(d) The home shall have space for indoor play and access to outdoor play space.

Section 131.10 - Foster Home-Sleeping Arrangements

(a) Each foster child shall be provided with a separate bed, except that 2 brothers or 2 sisters may share a double bed. Each bed shall be of size as to insure comfort of the child, shall have suitable springs in good condition, a clean and comfortable mattress with waterproof covering when necessary and provided with suitable bedding adequate for the season.

(b) No foster child 6 years of age or older shall be permitted to share a bedroom with a child of the opposite sex.

(c) Foster children shall not be permitted to sleep in any building, apartment or other structure which is separate from the family home; nor shall any child be permitted to sleep in an unfinished attic, unfinished basement, or in a hall or any other room which is normally used for other than sleeping purposes. For purposes of this Chapter, a basement is a story whose floor line is below grade at any entrance or exit and whose ceiling is not more than 5 feet above grade at any such entrance or exit.

(d) At night a responsible adult shall sleep within call of foster children.

Section 131.11 - Supervision of Children

(a) Child training and discipline shall be handled with kindness and understanding.

(b) No child in care shall be subjected to spanking, unusual, severe or cruel punishment.

(c) No child in care shall be subjected to verbal abuse, derogatory remarks about him or herself or members of his or her family, or to threats to expel the child from the foster home.

(d) No child shall be permitted to discipline any other child in care.

(e) No child shall be deprived of meals, mail or family visits as method of discipline.

Section 131.12 - RESERVED FOR FUTURE USE.

Section 131.13 - Work Performed by Children

Children in care shall have opportunities to assume responsibility for household duties or chores appropriate to age, sex, health and ability. Such duties shall not be assigned as punishment, or interfere with school, sleep, recreation, or study.

Section 131.14 - Education

Foster parents shall make every reasonable effort to see that children of school age in their care attend school regularly unless otherwise excused by school officials. If the foster parents do encounter problems, they shall contact the Indian Child Welfare office immediately.

Section 131.15 - Moral, Religious and Cultural Training

Foster parents shall provide for the moral training of children in care and shall make opportunities available to each child in care for religious or cultural education and attendance at services or functions compatible with his or her religious or cultural heritage.

Section 131.16 - Nutrition

Food shall be provided to children in care in sufficient quantities and varieties, and shall provide for essential nutrition and dietary needs.

Section 131.17 - Clothing

Foster parents shall see that funds provided by parents of foster care payments for the purchase of clothing are used in such a way that children in their care are comfortably and appropriately clothed within the limits of funds provided, and that children's clothing is kept in a

state of suitable repair and cleanliness.

Section 131.18 - Responsibility of the Foster Parents When Accepting Foster Children

(a) Foster parents shall keep the Indian Child Welfare office informed of the child's progress while in their care. They shall inform the Indian Child Welfare office regarding care, training and plans for the child whenever more than the day to day routine is involved.

(b) Foster parents shall notify the Indian Child Welfare office before taking or allowing the child to go on vacation trips or visits to the child's relatives.

(c) Foster parents shall notify the Indian Child Welfare office as soon as possible of emergencies involving the foster child. This includes serious illness or injury requiring medical treatment, unauthorized absence from the home, or other situations of which prudence suggests the Indian Child Welfare office be notified. This requirement in no way relieves foster parents from first taking action, such as obtaining emergency medical treatment for the child before notifying the Indian Child Welfare office.

(d) Foster parents shall allow the Indian Child Welfare office a minimum of 30 days in which to make suitable plans for the child when the foster parents have requested the child's removal from their home, unless an emergency requires faster action.

(e) Foster parents shall cooperate with the Indian Child Welfare office in seeing that an appropriate relationship is maintained between the child and their relatives.

(f) Foster parents shall maintain in confidence all personal information regarding children in their care, such as prior medical or family history revealed to the foster parents in confidence.

Section 131.19 - Reserved for Future Use

Section 131.20 - Records to be Maintained by Foster Parents

(a) The Indian Child Welfare office will provide the foster parents with a record of their foster child's medical and school information. It is the responsibility of the foster parents to keep such records updated during the care of the foster child.

(b) At the request of the Indian Child Welfare office, foster parents shall make available for inspection medical and school records of children received by them for care.

Section 131.21 - Numbers of Children in Home

The number of children foster parents may receive for care shall be determined by the Indian Child Welfare office on a case by case basis.

Section 131.22 - Licenses

(a) Investigation of Applicant - Granting of License

After receipt of application for a license, the Indian Child Welfare office shall investigate to determine if the applicant meets all minimum requirements for a license. Upon satisfactory completion of this investigation, the license shall be granted.

(b) Provisions of License

Each license shall bear the name of the person licensed, describe the premises included and state the maximum number of children who can be received, their age and sex, date of issuance and expiration date.

(c) Expiration and Revocation of Licenses

(1) All licenses issued by the Indian Child Welfare office shall be for a term not exceed 2 years from the date of issuances. No license shall be transferable.

(2) Licenses may be revoked by the Indian Child Welfare office because the

licensee has substantially violated any provision of this Chapter, any condition of the license, or any condition of any foster home placement agreement, or because the licensee fails to continue to meet the requirements for a license.

(3) The Indian Child Welfare office shall give the licensee written notice of any revocation and the grounds for the revocation. The written notice shall be given at least 30 days prior to the revocation and the revocation shall take place only if the violation remains substantially uncollected at the end of the 30 day notice period. The Indian Child Welfare office may remove at any time for a reason any child placed in the foster parent's care.

(4) Any licensee who objects to the revocation of his or her license may appeal the revocation to the Bad River Tribal Council. The appeal, including grounds for appeal, shall be submitted in writing to the Tribal Chairman, with a copy to the Indian Child Welfare office, no later than 15 days after the end of the 30 day notice period provided in Section 131.22(c)(3). The Indian Child Welfare office shall have 15 days in which to respond in writing to the appeal. Such response shall be submitted to the Tribal Chairman, with a copy provided to the licensee. The Tribal Council shall consider the appeal in executive session. At its discretion the Tribal Council may invite oral presentation from the licensee and the Indian Child Welfare office.

(d) Renewal of License

A licensee may apply to renew his or her license by completing the license renewal form prescribed by the Indian Child Welfare office.

(e) Inspection of Licensees

The Indian Child Welfare office may visit and inspect each foster home licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license.

CHAPTER 134 - CURFEW

Section 134.1 - General Provisions

(a) Purpose. The purpose of this code is to provide for a curfew for persons under age 18 within the Bad River Reservation and enforce parental control over and responsibility for persons under age 18.

(b) Authority. This code is enacted pursuant to Article VI, Section 1(q) of the Bad River Tribal Constitution.

(c) Effective Date. This code shall take effect on the day following the date of approval of this code by the Bad River Tribal Council.

Section 134.2 - Definitions

For the purpose of this code, the following terms shall have the meaning ascribed below:

(a) "Curfew hours" means for any minor under 18 years of age 10:30 p.m. until 5:00 a.m. of the following day on nights proceeding school days, and 11:30 p.m. until 5:00 a.m. of the following day on nights not preceding school days; for any minor under 13 years of age 9:30 p.m. until 5:00 a.m. of the following day.

(b) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life or serious damage to significant property.

(c) "Guardian" means a person appointed by any court to be guardian of a minor.

(d) "Minor" means any person under 18 years of age.

(e) "Parent" means a person who is:

- (1) A natural parent, adoptive parent, or stepparent of another person, or
- (2) At least 18 years of age and authorized by a parent or guardian to have the

care and custody of a minor.

(f) “Public Place” means any place to which the public or a substantial group of the public has access and includes but is not limited to streets, sidewalks, highways, private residences left open to the public without the presence of adult supervision and the common areas of tribal buildings.

(g) “Remain” means to:

- (1) Linger or stay, whether on foot or in a vehicle, or
- (2) Fail to leave premises when requested to do so by an owner or person in

control of the premises or a law enforcement officer.

(h) “Reservation” means the area within the external boundaries of the Bad River Reservation.

(i) “Tribe” means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(j) “Law enforcement officer” means any officer of the Bad River Police Department.

Section 134.3 - Prohibited Activities

(a) It shall be unlawful for a minor to remain in any public place within the Reservation during curfew hours.

(b) It shall be lawful for a parent or guardian of a minor to knowingly person, or by in insufficient control allow, the minor to remain in any public place within the Reservation during curfew hours.

Section 134.4 - Exceptions

The activities prohibited by section 134.3 shall not be unlawful in the following circumstances:

- (a) When the minor is accompanied by the minor's parent or guardian.
- (b) When the minor is engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop,
- (c) When the minor is involved in an emergency, and
- (d) When the minor is attending official school activities, activities sponsored by a religious or community organization or other cultural, educational or social events or is going to or returning home from, without any detour or stop, such activity.

Section 134.5 - Enforcement and Penalties

(a) Enforcement Procedure. Before taking any enforcement action under this chapter, a law enforcement officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation under section 134.3 unless the officer reasonably believes that an offense has occurred as provided in this chapter.

(b) Penalty for Violations. Any person found guilty of having violated section 134.3 of this chapter shall be subject to a civil forfeiture of no more than one thousand dollars (\$1,000) and may be required to perform community service. The period of community service shall not exceed ninety (90) hours.

(c) The Bad River Tribal Court shall have jurisdiction over cases brought to enforce this chapter. Proceedings shall be conducted in accordance with Bad River Tribal Court Code.

CHAPTER 135 - TRUANCY

Section 135.1 - General Provisions

(a) Purpose. The purpose of this code is to required the regular attendance at school of all school-age children living on the Bad River Reservation and all tribal children living off the reservation attending school within the Bad River Reservation or Ashland School District.

(b) Authority. This code is enacted pursuant to Article VI, Section 1(q) of the Bad River Tribal Constitution.

(c) Effective Date. This code shall take effect on the day following the date of approval of this code by the Bad River Tribal Council.

(d) Interpretation. In its interpretation and application, the provisions of this code shall be held to be minimum requirements and shall be liberally construed in favor of the tribe and shall not be deemed as a limitation upon, or a repeal of any other tribal power or authority. The Tribe by the adoption of this code does not waive its sovereign immunity in any respect.

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

(f) Applicability. This code shall apply to all tribal children living on the Bad River Reservation and their parents or other persons having said tribal children in their care or custody or under their control.

(g) Consent to Tribal Jurisdiction. The Bad River Tribal Court may also exercise its authority and impose penalties under this section where the provisions of subsection F do not apply provided that the person charged with the offense consents to the jurisdiction of the Tribal Court. Consent must be knowing, intentional and voluntary. This section shall apply only to:

(1) Non-tribal children living on the Bad River Reservation and their parents or

other persons having said children in their care or custody or under their control; and

(2) Tribal children attending school within the Bad River Reservation or Ashland School District living off the Bad River Reservation and their parents or other persons having said tribal children in their care or custody or under their control.

Section 135.2 - Definitions

For the purpose of this code, the following terms shall have the meaning scribed below:

(a) “Adult” means any person 18 years of age or older who is not enrolled in the Ashland School System.

(b) “Child” means any person who is less than 18 years of age, or any person who is less than 19 years of age if attending the Bad River Tribal School, the Lac Courte Oreilles Tribal School or Ashland School District.

(c) “Member” means a person enrolled in the Bad River Tribe.

(d) “Reservation” means the area within the external boundaries of the Bad River Reservation.

(e) “School” means the Bad River Tribal School, the Lac Courte Oreilles Tribal School or a school in the Ashland Public School District.

(f) “School Attendance” means physical presence of a child in school, and includes attending scheduled classes during such hours and on such days as determined by the school or, for students enrolled in Alternative Education Programs, attendance the place and during hours scheduled by the school for the student, unless excused from such attendance by school policy or state law.

(g) “School Attendance Officer” means an employee designated by a school board

under the Bad River Tribal Constitution, Lac Courte Oreilles Tribal Constitution or Wis. Stat. Sec. 118.16 to deal with matters relating to school attendance and truancy.

(h) “School Attendance Policy” means the current policy for school attendance duly adopted by the appropriate school board.

(i) “Tribal Child” means a child who is either (a) an enrolled member of the Tribe; or (b) eligible for enrollment in the Tribe.

(j) “Tribal Court” means the Bad River Tribal Court.

(k) “Truancy” means any absence of part or all one or more days from school during which the school attendance officer, or his agent, has not been notified of the legal cause of such absence by the person having the absent pupil under his or her control during non-school hours. “Truancy” also means intermittent attendance carried on for the purpose of defeating the intent of the tribe’s and state’s attendance laws (Bad River Truancy section 135.3 and Wis. Stat. Sec. 118.5).

(l) “Habitual Truancy” means truant for five (5) days within ten (10) truanancies within any ninety (90) day school day period within a school year.

(m) “Student” means one who attends school in the Bad River Tribal School, Lac Courte Oreilles School or Ashland School District.

(n) “Tribe” means the Bad River Band of Lake Superior Chippewa.

Section 135.3 - Compulsory School Attendance

(a) School Enrollment Required. Except as excused under a school policy governing school attendance or the state compulsory attendance law (Wis. Stat. Sec. 118.15), any person having under their control a school aged child shall enroll the child in school.

(b) Requirement to Attend School. Except as excused under a school policy governing school attendance or the state compulsory attendance law (Wis. Stat. Sec. 118.15), any person having under their control a school aged child shall enroll the child in school.

(c) Truancy Prohibited.

(1) Truancy is prohibited.

(2) It shall be unlawful for any person to cause, assist, or enable a child to be truant.

Section 135.4 - Enforcement and Penalties

(a) The school attendance officer may contact the Home-School Coordinator, Indian Child Welfare Worker, or other appropriate party to assist in the enforcement of the provisions of this code.

(b) The school must document the following steps before the Tribal Court hears a truancy petition:

(1) First Incident: The School Attendance Officer shall give verbal warning and send a letter to the parent/legal guardian custodian and to the mentor (if appropriate).

(2) Second Incident: The School Attendance Officer is to contact the Home-School Coordinator, Indian Child Welfare Worker or other appropriate party to set up and document a meeting with the child and legal guardian/legal custodian. The purpose of the meeting shall be to identify and resolve behaviors that are in violation of the provisions of this code through an appropriate plan of action, which shall be agreed to and signed by all parties involved. The following steps shall be required in developing the action plan:

(a) Provide an opportunity for educational counseling to the child to

determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modification.

- (b) Evaluate the child's curriculum to determine whether learning problems may

be a cause of the child's truancy and, if so, take appropriate action or make appropriate referrals.

- (c) Conduct an evaluation to determine whether social problems may be the cause of the child's truancy and, if so, take appropriate action or make appropriate referrals.

- (d) A copy of the plan of action shall be given to the parent/guardian and the principal of the child. Included in the action plan shall be a schedule for consistent, timely review to evaluate and monitor the effectiveness of said plan.

(3) Third Incident: Refer to Tribal Court. A checklist documenting evaluation of the steps required in section must be submitted to the court upon referral. Once referred to Tribal Court, the child's parent(s)/legal guardian(s)/legal custodian(s) shall be summoned in accordance with Bad River Tribal Court Code. If summoned to Tribal Court, appearance is mandatory by both the child and the parent/legal guardian/legal custodian.

- (4) The designated school official or their agent may issue citations to any child who violates the Bad River Truancy Code, to appear in the Tribal Court.

- (5) Each incident of truancy may constitute a separate offense.

Section 135.5 - Penalties

- (a) A child or adult who violates this Chapter shall be subject to the following:

- (1) Any child convicted of truancy under section shall be subject to a minimum penalty of community service hours equal to the number of school hours truant, with a maximum

civil money penalty of \$25.00 and/or seven (7) community service hours per incident of truancy.

(2) Any child who is convicted of aiding a child's truancy shall be subject to a penalty of not more than \$50.00.

(3) Any adult who is convicted of aiding a child's truancy shall be subject to a penalty of not less than \$35.00, but not to exceed \$500.00.

(4) In addition to the imposition of civil forfeitures and community services hours for violations of this chapter, the Tribal Court may impose other remedies, including but not limited to: alcohol assessment and counseling, home detention, limitations on the use of public facilities within the exterior boundaries of the Bad River Reservation.

(b) If the Tribal Court determines a child is habitually truant, the court may order the Indian Child Welfare Department and/or Human Service Agencies to initiate an in-depth investigation into the child's background to determine if a child-in-need-of-care petition should be filed.

(c) Nothing herein shall prohibit the referral of a tribal child to the Child Welfare office for the filing of a child welfare petition under Chapter 125 of the Bad River Code of Laws. A child welfare petition may be filed regarding any tribal child who has been truant for five (5) days or more in any three (3) month period.

(d) The Tribal court shall have jurisdiction over case brought to enforce this code. Proceedings shall be conducted in accordance with the Bad River Tribal Court Code.

Passed by Resolution #8-24-99-327

CHAPTER 145 - DOMESTIC AND FAMILY VIOLENCE CODE

Section 145.01 - Title, Statement of Purpose and Definitions

(a) Title. This code may be cited as the “Domestic and Family Violence Code”

(b) Statement of Purpose. The purpose of this code is to:

(1) Eliminate barriers to meeting the safety and other needs of victims of family violence;

(2) To hold batterers accountable for their actions; and

(3) To enhance the provision of services to victims and their batterers.

(c) Construction. This Chapter shall be liberally construed to effect the purposes stated above and shall be interpreted to comport with the customs and traditions of this Tribe. If tribal law, customs and traditions are inconclusive in any matter arising under this chapter, then other tribal law, federal law and, as a last resort, the law of the State of Wisconsin, may be used for guidance.

(d) Definitions. As used in this Chapter the following terms shall have the meanings given below:

Domestic and Family Violence

(1) Domestic and family violence means:

(a) intentional infliction of physical harm to a family or household member;

(b) an act, word, gesture or any other behavior that places family or household member in fear of imminent physical harm;

(c) intentional use of force, coercion, threat, intimidation, humiliation,

or confinement which results in mental or emotional harm to a family or household member; or

(d) causing a family or household member to engage involuntarily in sexual activity by force, coercion, threat, intimidation, humiliation, confinement, or administering alcohol or drugs to the family or household member without their knowledge.

(2) Imminent physical harm as used above refers to such physical harm that is close or near at hand, that is impending perilous, or on the point of happening. It does not require that such physical harm be immediate or without delay after the behavior that places the victim in fear.

Family or household member means:

(1) adults and/or minors who are current or former spouses;

(2) adults and/or minors who are living together or have lived together and who have engaged in a sexual relationship.

(3) adults and/or minors who are involved or have been involved in a sexual or otherwise intimate, ongoing relationship including persons who are identified in the community as boyfriend and girlfriend;

(4) adult relatives who are living together or who have lived together;

(5) adults and/or minors who have a child, including an unborn child, in common regardless of whether the parents of the child have married or have lived together at any time;

Exclusions: Domestic and family violence in the parent-minor child relationships is not covered in this Code. The occurrence of domestic and family violence in that relationship is covered in Chapter 125, the Children's Code of this Tribe or through the juvenile and children's

codes of the State of Wisconsin.

Section 145.02 - Jurisdiction & Civil Nature of This Code

(a) Jurisdiction & Authority to Enact This Code. This Code is adopted pursuant to Article VI, section 1 (q) of the Bad River Band’s Constitution and pursuant to an exercise of this Tribe’s inherent sovereign authority.

(b) Jurisdiction of the Court & Civil Nature of This Code. The jurisdiction of the Tribal Court shall be civil in nature and shall include the power to issue all orders necessary to insure the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

(d) Availability of Criminal Penalties. The provisions of this Code do not replace the criminal penalties and procedures available under state law for an act of domestic and family violence.

Section 145.03 - Civil Orders For Protection

(a) Who May Petition the Court. A petition to obtain an order for protection under this section may be filed by:

(1) A person who is subject to the jurisdiction of this Tribe’s Court and who has been a victim of domestic and family violence may file a Petition for an order for protection against a family or household member who commits an act of domestic and family violence.

(2) A parent, guardian, or other representative may file a Petition for an order for Protection on behalf of a minor victim against the family or household member who commits an act of domestic violence.

(3) No filing fee, bond, or other payment shall be required from the victim for

the filing of a petition for an order for protection under this Code. If an alleged perpetrator has been arrested for the offense of domestic violence, the Court or arresting law enforcement officer shall advise the alleged victim of the right to file a petition under this section without cost.

(b) Contents of the Petition.

(4) The petition shall include membership status or any other information necessary to establish jurisdiction of the Court; the petitioner's name and address at the time of the incident of domestic and family violence; the name, address, and relationship of the family or household member who is the respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the respondent, if known.

(5) The current location of the petitioner shall not be released by the Court except on petitioner's written request.

(6) The petition shall also state the nature of any other legal matter pending regarding the petitioner or the respondent; for example, criminal charges, child protection proceeding, and divorce.

(7) The petition may include a request that the court arrange for law enforcement to be present at the time of the hearing.

(c) Duty of Court Personnel to Provide Forms and Clerical Assistance.

(1) The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection;

(a) a standard petition form with instructions for completion;

(b) all other forms required to petition for an order for protection,

such as those needed for service of process;

(c) clerical assistance in filling out the forms and filing the petition for an order for protection; and

(d) provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.

(2) In order to facilitate enforcement under full faith and credit provisions of state law the Clerk of Court or other designated person shall send an authenticated copy of the emergency order for protection and the order for protection to the local law enforcement agency or agencies and the circuit court clerk for the county where respondent is located within one business day of the issuance of the order.

(d) Emergency Orders for Protection.

(1) The Court shall immediately grant an ex-parte emergency order for protection if, based on the specific facts stated in the petition, there is reasonable grounds to believe that the petitioner is in danger of domestic and family violence occurring prior to a hearing on the petition. An allegation of a recent incident of domestic and family violence constitutes reasonable grounds to believe the petitioner is in danger.

(2) The emergency order for protection may include the following relief:

(a) prohibit the respondent from committing or threatening to commit acts of domestic and family violence against the petitioner and the petitioner's family and household members;

(b) prohibiting the respondent from contacting or communicating with the petitioner directly or indirectly;

(c) removing and excluding respondent from the petitioner's residence, regardless of ownership;

(d) removing and excluding respondent from the petitioner's place of employment and other locations frequented by petitioner; and

(e) such other relief as the Court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

(3) The emergency order for protection shall be served with the notice of hearing on the respondent and shall expire at the time of the hearing.

(e) Notice to Respondent & Other Interested Parties. The Court shall cause an emergency order for protection, along with notice of hearing, notice of rights and a copy of the petition, to be served on the respondent immediately. Service must be made by posted notice if personal service cannot be completed within twenty four (24) hours.

(f) Hearing.

(1) The Court shall hold a hearing on the petition for an order for protection within seven (7) days of the filing date of the petition.

(2) The Court may extend the time for a hearing once for up to fourteen (14) days upon consent of the parties or upon finding that respondent has not been timely served a notice of hearing.

(g) Remedies Available in an Order for Protection.

(1) The Court may grant the following relief in an order for protection if requested by the petitioner and after notice and hearing, whether or not the respondent appears:

(a) prohibit the respondent from threatening to commit or committing

acts of domestic or family violence against the petitioner;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, or through others;

(c) remove and exclude respondent from petitioner's residence, or if Respondent owns or leases the residence and the petitioner has no legal interest in the residence, then the Court may order the respondent to avoid the residence for a reasonable length of time until the petitioner relocates;

(d) remove and exclude respondent from petitioner's place of employment at any time petitioner is present;

(e) remove and exclude respondent from other specified locations frequented by petitioner;

(f) remove and exclude respondent from specified public social events and activities;

(g) award temporary custody or establish temporary visitation rights with regard to minor children of the respondent on a basis which gives primary consideration to the safety of the claimed victim of domestic violence and the minor children;

(h) provide for child support and temporary support for the person having custody of the children in any temporary custody order;

(i) award temporary use and possession of property of the respondent;

(j) restrain one or both of the parties from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and require that an accounting shall be made to the Court of all such transfers, encumbrances, dispositions, and

expenditures;

(k) refer minors who are family or household members for assessments and services through the Indian Child Welfare Department, health services program, or other tribal program;

(l) require respondent to participate in alcohol and other assessments and to participate in treatment where the treatment program meets the State of Wisconsin's batterer's treatment standards;

(m) limit or prohibit respondent from using or possessing a firearm or other weapon as specified by the Court;

(n) require respondent to reimburse the petitioner or any other person for any expenses associated with the domestic or family violence; including but not limited to medical expense, counseling, shelter, and repair or replacement of damaged property;

(o) require respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;

(p) require that notice of respondent's act(s) of domestic and family violence be publicly posted;

(q) notify the parties that willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment of both and constitutes a violation of this Chapter for which civil penalties may be assessed; and

(r) any other relief as the Court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

(2) An order for protection shall not contain any provisions which impose

requirements on a victim of domestic and family violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.

(3) The Court shall not grant a mutual order for protection in opposing parties.

(4) The Court shall not deny a petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the petition.

(h) Service of Order for Protection. Orders for protection are to be served personally upon the respondent in Court or by a law enforcement officer. If the respondent cannot be located, the order will be mailed by certified mail to the respondent's last known address, and upon application with the Court, notice will be posted.

(i) Copy to Law Enforcement Agency. Each order for protection granted pursuant to Section 145.03(D) of this Chapter and each order issued under Section 145.03 (G) of this Chapter shall be forwarded immediately to the local law enforcement agency or agencies and the circuit court clerk for the county where the respondent is located.

(j) Duration, Extension, and Modification of Orders for Protection.

(1) The provisions of the order for protection shall remain in effect for the period of time stated in the order, not to exceed two (2) years, unless extended by the Court at the request of any party or the request of the Domestic Abuse Program.

(2) An order for protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either petitioner or respondent if;

(a) assessments or treatments ordered by the Court have been completed;

(b) respondent demonstrates behavioral changes which eliminate the risk

of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court; or

(c) the Court determines the safety needs of the petitioner and other family or household members are provided for by the modification or withdrawal of the order for protection.

(3) If respondent is excluded from petitioner's residence or ordered to stay away from petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

(k) Enforcement and Penalties for Violation. Where respondent has violated an order for protection, the Court may order additional and other remedies as provided in Section G., above and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the order. Penalties include, but are not limited to those available for contempt, fines, assessments of court costs and fees, and exclusion from tribal offices and businesses.

(l) Full faith & Credit.

(1) Any protection order that is consistent with subsection (2) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by this Tribe and enforced as if it were the order of this Tribal Court.

(2) A protection order issued by a state or tribal court is consistent with this subsection if:

(a) such court has jurisdiction over the parties and matter under the law of such state or tribe; and

(b) reasonable notice and opportunity to be heard is given to the person

against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the issuing state's or tribe's law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(3) A protection order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(a) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(b) across or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

Section 145.04 - Intervention & Referrals

(a) Confidentiality for Victims.

I. A victim of domestic abuse may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic abuse from disclosing, the content of oral communication and written records and reports concerning the victim.

II. This privilege may be waived only by the victim. It must be in writing and must identify what information may be disclosed, to whom, and for what purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes the waiver.

III. This privilege does not relieve a person from a duty imposed under the Indian Child Protection and Family Violence Act, codified as Title 18, United States Code §1167, or Wisconsin Statutes Chapter 48 to report child abuse or neglect or from providing evidence about

child abuse or neglect in State Court pursuant to proceedings under Wisconsin Statutes Chapters 48 and 938 and in Tribal Court under Chapter 125, Children's Code.

IV. These provisions on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

(b) Intervention for Batterers. Where services are provided for batterers pursuant to an order for protection the batterer who is ordered into the program shall be required by the Court to sign the following releases:

(1) allowing the provider of services to inform the victim and victim's advocate whether or not the batterer is in treatment pursuant to the order, whether or not the batterer is in compliance with treatment provisions, and whether or not the safety of the victim and family or household members of the victim is at risk;

(2) allowing prior and current treating agencies to provide information about the batterer to the service provider; and

(3) allowing the service provider to provide information about the batterer to relevant legal entities including courts, parole and probation officers and child protective services.

Section 145.05 - Severability

If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Tribal Council hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or the application of any part would be declared invalid.

RULES OF EVIDENCE

CHAPTER 150 - GENERAL

Section 150.1 - Scope

These rules shall apply to all proceedings in Tribal Court. The Tribal Court, subject to the decisions of the Court of Appeals, shall interpret and apply these rules. The policies and rationales underlying the Federal Rules of Evidence and the Wisconsin Rules of Evidence may be cited as persuasive authority, but the Federal Rules and Wisconsin Rules shall not be controlling.

Section 150.2 - Rulings on Evidence

No appeal may be predicated on an evidentiary ruling unless a substantial right of a party is affected and

(a) An objection or motion to strike is timely made, stating the specific ground of objection, unless the specific ground was clear from the context; and

(b) In the case of a ruling excluding evidence an offer of proof in the form prescribed by the court is made.

CHAPTER 151 - RELEVANCY

Section 151.1 - Definitions

"Relevant evidence" is any evidence tending to make the existence of any fact of consequence more or less probable.

Section 151.2 - Admissibility

Only relevant evidence is admissible.

Section 151.3 - Exclusion of Relevant Evidence - General Rule

Relevant evidence may be excluded if its admission would violate any other section of this

chapter, or if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of the issues, or if it would be cumulative, a waste of time, or cause undue delay.

Section 151.4 - Exclusion of Relevant Evidence - Specific Rules

Evidence of the following is not admissible, even if relevant:

(a) Statements made in settlement negotiations or mediation, compromises, or offers to compromise, when offered to prove liability or the lack thereof.

(b) Corrective measures taken after an event, which would have made the event less likely to occur, when offered to prove negligence or culpability.

(c) Payments, offers to pay, and promises to pay for medical, hospital, or disability expenses, when offered to prove liability.

(d) Pleas of no contest or subsequently withdrawn pleas of guilty, in any court, when offered against the person making the plea, to prove liability.

(e) Existence of insurance against liability, or lack thereof, when offered to prove negligence or culpability.

CHAPTER 152 - PRIVILEGES

Section 152.1 - General

(a) Except as provided by this section, the Indian Civil Rights Act, or the United States constitution, as applicable, no person is privileged to refuse to be a witness, to refuse to disclose any matter, to refuse to produce any object or writing, or to prevent another from doing any of the above.

(b) A confidential communication is one not intended to be disclosed to any third party except the agents or colleagues of the person to whom the disclosure is made, in the course of

furthering the purpose for which the disclosure was made.

(c) A privilege may be asserted by the person making the communication, or by the person making the communication, or by the person to whom the communication was made, on behalf of that person, unless the person making the communication has validly waived the privilege.

(d) Any person making a communication may waive the privilege by so testifying in open court.

(e) No inference shall be drawn from the assertion of a lawful privilege.

Section 152.2 - Attorney-Client Privilege

A client has a privilege to refuse to disclose and to prevent any other person from disclosing any confidential communication between the client and the attorney or attorney's agent, made for the purpose of obtaining legal assistance, except:

(a) When such communication was used to commit or plan a crime.

(b) When two or more parties claim some right through the same deceased client, and the communication is relevant to the claim.

(c) When the communication is relevant to a claim by the client against the attorney or by the attorney against the client.

(d) When the attorney attested to a document and a communication is relevant to an issue related to the attested document.

(e) When an issue exists between two or more joint clients, and a relevant communication to the attorney was made in their common interest by one of the clients.

Section 152.3 - Health Care Provider-Patient Privilege

A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between the patient and a physician, registered nurse, licensed psychologist, psychiatric social worker, or chiropractor, or any person reasonably believed by the patient to be one of the above, made for the purpose of obtaining diagnosis or treatment of the patient's physical, mental or emotional condition, except:

(a) When the physical, mental, or emotional health of a patient is relied on by the patient as an element of his claim or defense.

(b) When the court orders a physical, mental, or emotional examination of the patient, and the results of the examination, including any review of records conducted, are offered in the proceeding for which the examination was ordered.

(c) When an examination of a physically or emotionally abused or injured child creates a reasonable ground for an opinion that the condition was other than accidentally caused, or was inflicted by another.

(d) When the results of chemical tests for intoxication or blood alcohol concentration are offered.

Section 152.4 - Husband-Wife Privilege

A person has a privilege to prevent his or her spouse or former spouse from testifying against him or her as to any confidential communication made by him or her to the other during the marriage, except when both spouses are parties to the action.

Section 152.5 - Spiritual Advisor Privilege

A person has a privilege to refuse to disclose and to prevent another from disclosing a

confidential communication to his or her spiritual advisor in the advisor's capacity as such.

Section 152.6 - Honesty Testing Devices

A person has a privilege to refuse to disclose, and to prevent another from disclosing, any oral, written, or other communication made in the course of, and any results deriving from, any polygraph, voice stress analysis, psychological stress evaluator, or other test purporting to test honesty, in which the person was the test subject.

Section 152.7 - Ballot

A person has a privilege to refuse to disclose and to prevent another person from disclosing his or her vote in any secret ballot, unless the ballot was cast illegally.

CHAPTER 153 - WITNESSES

Section 153.1 - Oath

Prior to testifying, every witness shall indicate by solemn oath or affirmation, in a form prescribed by the Tribal Court, that he or she shall testify truthfully. A child or other person who may not understand the significance of an oath or affirmation may be allowed to testify if the court is satisfied that the witness understands the difference between truth and falsity and understands that he or she must tell the truth.

Section 153.2 - Personal Knowledge

A witness may only testify as to those facts within his or her personal knowledge.

Section 153.3 - Opinions

A witness may testify as to an opinion or inference only to the extent that the witness's observations, experience, education, and training qualify the witness to offer the opinion or inference.

Section 153.4 - Judge as Witness

The judge presiding at a trial may not testify as a witness.

Section 153.5 - Character Evidence

A witness's character for truthfulness may be attacked by evidence of reputation, opinion, or the testimony of the witness on direct or cross-examination, and if so attacked may be supported by evidence of the types listed above.

Section 153.6 - Impeachment by Conviction of Crime

The credibility of a witness may be impeached by evidence of the witness's conviction of a crime.

Section 153.7 - Prior Statements

(a) A witness examined about a prior statement made by him or her need not be shown the statement during the examination, but the statement shall be shown to opposing counsel upon completion of that part of the examination.

(b) Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness was examined so as to give him or her an opportunity to explain or deny the statement, or as the interests of justice require.

Section 153.8 - Court Control

(a) The court shall exercise control over the mode and order of interrogating witnesses to avoid waste of time and to protect witnesses from harassment.

(b) The scope of cross-examination extends to all relevant matters. The court may limit cross examination to those matters inquired into upon direct examination.

(c) Leading questions may not be used on direct examination except in introductory matters, matters not in dispute, or as deemed necessary by the court to develop testimony. A party may call an adverse party or a witness identified with him or her and interrogate him or her by leading questions.

(d) The court may call witnesses on its own motion, subject to cross-examination by the parties, and may interrogate witnesses.

Section 153.9 - Exclusion of Witnesses

At the request of a party, the court shall order witnesses excluded from the courtroom except while testifying, shall order witnesses to be kept separate from each other, shall order witnesses not to communicate with each other, and shall order such other measures as in the court's

discretion shall prevent undue influence or taint upon testimony.

CHAPTER 154. WRITINGS.

Section 154.1 - Writings Used to Refresh Recollection

(a) A witness may refer to any writing if necessary or helpful to refresh his or her recollection for the purpose of testifying, and any writing so referred to, either before or during testimony, shall be made available to an adverse party upon conclusion of that part of the examination.

(b) An adverse party may cross-examine the witness on the writing, and may introduce in evidence those portions of the writing that relate to the witness's testimony.

(c) If a claim is made that for any reason the writing cannot be made available to an adverse party, the judge shall examine the writing in camera and shall make such orders as justice requires, including striking all testimony of the witness subsequent to the use of the writing.

Section 154.2 - Recorded Recollection

Any writing shown to have been made by the witness when the matter was fresh in his or her mind, and shown to reflect that knowledge correctly, concerning a matter about which the witness now has insufficient recollection to enable him or her to testify fully and accurately, is admissible.

Section 154.3 - Specific Writings

Writings of the character set forth in this section are admissible, subject to the authentication requirements of Section 154.4.

(a) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a

regularly conducted activity, as shown by the testimony of the custodian or other qualified witness, unless the sources of information or other circumstances indicate lack of trustworthiness.

(b) Health care records.

(1) "Health care records" are those records maintained by a hospital, physician, licensed psychologist, psychiatric social worker, or dentist.

(2) When witness unnecessary. A custodian or other qualified witness is unnecessary if the party who intends to offer hospital records into evidence at a trial or hearing files with the court at least 10 days before the trial or hearing an accurate, legible and complete duplicate of the hospital records for a stated period, certified by the record custodian, and notifies all appearing parties at least 10 days before the trial or hearing that such records for the stated period have been filed.

(3) Subpoena limitations. Hospital records are subject to subpoena only if the hospital is a party to the action, or if authorized by an ex parte order of a judge for cause shown and upon terms, or if upon a properly authorized request for an attorney, the hospital refuses, fails, or neglects to supply within 2 business days a legible certified duplicate of its records at a minimum charge of \$5 per request. The rate shall be 10 cents per record page and \$2 per x-ray copy.

(c) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law, or (c) in civil cases and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(d) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the record thereof was made to a public office pursuant to requirements of law.

(e) Records of religious organizations. Statements of births, marriages, divorces, deaths, whether a child is marital or non-marital, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(f) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(g) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings or rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(h) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original record document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

(i) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant

to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(j) Statements in ancient documents. Statements in a document in existence 20 years or more whose authenticity is established.

(k) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(l) Learned treatises. A published treatise, periodical or pamphlet on a subject of history, science or art is admissible as tending to prove the truth of a matter stated therein if the judge takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as an expert in the subject.

(1) No published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art may be received in evidence, except for impeachment on cross-examination, unless the party proposing to offer such document in evidence serves notice in writing upon opposing counsel at least 40 days before trial. The notice shall fully describe the document which the party proposes to offer, giving the name of such document, the name of the author, the date of publication, the name of the publisher, and specifically designating the portion thereof to be offered. The offering party shall deliver with the notice a copy of the document or of the portion thereof to be offered.

(2) No rebutting published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art shall be received in evidence unless the

party proposing to offer the same shall, not later than 20 days after service of the notice described in par. (a), serve notice similar to that provided in par. (a) upon counsel who has served the original notice. He shall deliver with the notice a copy of the document or of the portion thereof to be offered.

(3) The court may, for cause shown prior to or at the trial, relieve the party from the requirements of this section in order to prevent a manifest injustice.

(m) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of no contest), adjudging a person guilty of a crime to prove any fact essential to sustain judgment, or to impeach. The pendency of an appeal may be shown but does not affect admissibility.

(n) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(o) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, at the instance or against a party with an opportunity to develop the testimony by direct, cross-, or redirect examination, with motive and interest similar to those of the party against whom now offered, by a witness who is now physically unavailable to testify, refuses to testify, or lacks memory sufficient to testify on the subject.

Section 154.4 - Authentication

(a) No writing, photograph, or other documentary evidence may be admitted unless evidence is supplied sufficient to prove that the matter in question is what it purports to be.

(b) No extrinsic evidence of authenticity is required for any of the following:

(1) Public documents under seal. A document bearing a seal purporting to be that of any tribe of or of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department officer or agency thereof, and a signature purporting to be an attestation or execution.

(2) Public documents not under seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in sub. (1), having no seal, if the public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Public documents of foreign countries. A document purporting to be executed or attested in his official capacity by a person authorized by the law of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the judge may, for good cause shown, order that they be

treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make certification, by certificate complying with sub. (1), (2) or (3) or complying with any statute or rule adopted by the supreme court.

(5) Official publications. Books, pamphlets or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control of origin.

(8) Acknowledged and authenticated documents. Documents accompanied by a certificate of acknowledgment under the hand and seal of rubber stamp of a notary public or other person authorized by law to take acknowledgments or any public officer entitled by virtue of his public office to administer oaths or authenticated or acknowledged as otherwise authorized by statute.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by the Uniform Commercial Code.

(10) Health care records. Records filed with the court pursuant to Section 154.3(b).

(11) Subscribing witness's testimony. The testimony of a subscribing witness is not necessary to authenticate a writing that is otherwise admissible.

CHAPTER 155 - HEARSAY

Section 155.1 - Definitions

(a) Statement. A "statement" is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Hearsay exclusions. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(i) Inconsistent with his testimony, or

(ii) Consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or

(iii) One of identification of a person made soon after perceiving him; or

(2) Admission by party opponent. The statement is offered against a party and is:

(i) His own statement, in either his individual or a representative capacity, or

(ii) A statement of which he has manifested his adoption or belief in its truth, or

(iii) A statement by a person authorized by him to make a statement concerning the subject, or

(iv) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or

(v) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(3) Any writing specified in Section 154.3.

Section 155.2 - Hearsay Rule

Hearsay is admissible only if facts and circumstances indicate that it has a sufficiently high degree of trustworthiness to justify its admission.

CHAPTER 156 - JUDICIAL NOTICE

Section 156.1 - Adjudicative Facts

The court may at any time in a proceeding take judicial notice of an adjudicative fact that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the court or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Section 156.2 - Foreign Law

The court may take judicial notice of any foreign law properly authenticated.

Section 156.3 - Legislative Facts

This section does not control the taking of judicial notice of legislative facts.

CHAPTER 201 - POWERS OF TRIBAL WARDENS

Section 201.1 - Warrants and Process

Any tribal warden may execute and serve warrants and processes issued by the tribal court in the same manner as any law enforcement officer of the State of Wisconsin may serve and execute such state warrants and processes under state law.

Section 201.2 - Stop and Search

For the purpose of enforcing any natural resource ordinance of the tribe or such other ordinance as the Tribal Council may direct, any tribal warden may stop and board any boat and stop any automobile, snowmobile, or other vehicle, if the tribal warden reasonably suspects there is a violation or breach of such ordinance. Any tribal warden may, with or without warrant, open, enter, and examine all buildings, camps, vessels or boats, wagons, trailers, automobiles or other vehicles snowmobiles, stages, tents, suit cases, valises, packages, and other receptacles and places where the tribal warden has probable cause to believe that game, fish, or other natural products of the Bad River Reservation taken or held in violation or breach of any tribal natural resource ordinance are to be found.

Section 201.3 - Arrest of Members

Any tribal warden may arrest, with or without a warrant, any tribal member detected in the actual violation, or whom such warden has probable cause to believe guilty of a violation of any tribal natural resource ordinance or such other tribal ordinance as the Tribal Council may direct, whether such violation is punishable by criminal penalties or civil remedial measures, and may take such member before the tribal court and make proper complaint.

Section 201.4 - Civil Remedial Enforcement

Any tribal warden may issue a citation to any member or non-member if the tribal warden reasonably believes that such person has breached a provision of any tribal natural resource ordinance or such other ordinance as the Tribal Council may direct, and may seize and hold any property authorized to be seized in such ordinance, pursuant to the civil remedial forfeiture provisions of the Tribal Court Code.

POWERS OF TRIBAL WARDENS - ENACTED BY RESOLUTION NO 6-24-80-85

CHAPTER 300 - CONSERVATION; GENERAL PROVISION

Section 300.01 - Waste

No member shall unreasonably waste, injure destroy, or impair natural resources while engaging in the exercise of on-reservation hunting, fishing, trapping, or gathering rights, or in the disposition of any animal or plant taken in such exercise, whether such disposition is on-reservation or off-reservation, and whether such waste, injury, destruction or impairment is accomplished by act or by omission.

WASTE ENACTED BY RESOLUTION #10-3-90-148

Section 300.02 - Trespass

(a) No member or non-member Indian shall trespass while hunting, fishing, or trapping, snowmobiling, recreational vehicles, or any other activity on land of another, after having been notified by the owner or occupant not to enter or remain on such land. Notification may be personal, either orally or in writing, or by posting. Posting is accomplished if the owner or occupant places a sign at least 11 inches square in at least two conspicuous places for every forty acres to be protected, including the appropriate notice, the name of the person giving notice, and title of "owner" or occupant: as appropriate.

(b) No non-member shall trespass for the purpose of hunting, fishing, trapping or gathering, snowmobiling, recreational vehicles, or any other activity on lands owned either by the Tribe, a tribal member, or the United States in trust for the Tribe or a tribal member.

TRESPASS ENACTED BY RESOLUTION #1-18-91-164

Section 300.03 - Tampering With Equipment of Another

No member shall molest, disturb, tamper with or in any way otherwise interfere with any hunting, fishing, trapping or gathering equipment or bait, used, set, or placed by another member without that member's permission.

TAMPERING ENACTED BY RESOLUTION #12-5-90-153

Section 300.4. - Endangered and Threatened Species

No member shall take, transport, possess, process, or sell any plant or animal species contained on either the federal (50 CFR Sections 17.11 and 17.12) or the State of Wisconsin (Wis. Adm. Code NR 27.03) endangered or threatened species list, as may be amended from time to time, or any species which the Tribal Council may declare as endangered or threatened, and no tag as provided for in Chapter 305 shall be issued or affixed to the carcass or part thereof of any such species.

ENDANGERED SPECIES ENACTED BY RESOLUTION #1-18-91-162

Section 300.45 - Resisting Tribal Warden or Animal Control Officer.

No member or non-member shall assault or otherwise resist or obstruct any tribal warden or animal control officer authorized to enforce the provisions of this ordinance in performance of duty.

Section 300.50 - Forfeitures

(a) Except as specifically provided in this section, a civil remedial forfeiture not to

exceed \$1,000 may be assessed against any person for breach of any provision of this chapter.

(b) Except as specifically provided in this section, a civil remedial forfeiture not to exceed \$2,000 may be assessed against any person for a breach of any provision of this chapter, who has been found to have breached the same provision at least once before in the five years proceeding the violation.

(c) In addition to any other penalty herein, the Court may order a suspension or revocation of any or all hunting, fishing and gathering rights.

FORFEITURES ENACTED BY RESOLUTION #1-18-91-163

CHAPTER 301 - HUNTING OF DEER

Section 301.1 - Findings

The Tribal Council finds that the lands now comprising the Bad River Reservation were traditional hunting grounds for the ancestors of the Tribe; that these lands were selected as a Reservation because of their wealth of fish, game, and wild rice; that deer have been a nutritional staple for members of the Tribe for generations beyond memory; that deer continue to provide a substantial portion of the protein and other nutritional needs of the Tribe's members; that high unemployment and cash-poor local economy indicate that deer will remain critical as a food source for the Tribe's members; that pressure on the deer population by non-member sport hunting reduces the availability of deer as a food source for members; that non-members flaunting of tribal conservation laws has contributed to a decline in the reservation deer population; and that effective regulation of both member and non-member hunting of deer is essential for the preservation of the species in numbers sufficient to supply the economic and nutritional needs of the Tribe's members.

Section 301.2 - Definitions

(a) "Conservation Department" means the Conservation Department of the Tribe.

(b) "Member" means any person who is enrolled or is eligible for enrollment in the Tribe, or who is recognized as a member of the Tribe by the Tribal Council.

(c) "Non-members" means any person who does not come within the definition of member.

(d) "Reservation" means the Bad River Reservation.

(e) "Tribal Council" means the Tribal Council of the Tribe.

(f) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation.

Section 301.3 - Hunting Prescribed

(a) No person shall hunt or take any deer within the reservation except during the open season.

(b) No person shall hunt or take any deer within the reservation in excess of the limit allowed.

Section 301.4 - Season, Limits

Open seasons and limits are established as follows:

	Open Season	Limit
(a) Member	July 1 - January 31	None
(b) Non-member	none	n/a

Section 301.5 - Reporting a Kill

(a) No member who takes a deer shall fail to comply with reporting of kill regulations as established by the Conservation Department.

(b) No non-member who takes a deer shall fail to report the kill to the Conservation Department within 72 hours of the kill.

Section 301.6 - Equipment and Methods

(a) No person shall, while hunting deer:

(1) Hunt with any means other than the use of a gun discharged from the shoulder or a bow and arrow.

(2) Have in possession while hunting any poisoned, drugged, or explosive tipped arrow.

(3) Have in possession while hunting any incendiary type ammunition, except hunter distress flares.

(4) Be in possession of handguns (any gun having a barrel less than 12 inches in length) if under the age of 18 years unless supervised by an adult 18 years of age or older.

(5) Hunt with the aid of a dog.

(6) Use arrows that are not well sharpened broad head blades. Broad head blades may not be less than seven-eighths of an inch or more than one-half inches in width.

(b) No person shall, while hunting deer:

(1) Discharge a firearm on lands of another within 500 yards of a building devoted to human occupancy without permission of the owner or occupant.

(2) Appropriate, molest, or disturb any deer or the carcass or part thereof which has been lawfully reduced to possession by another without having that person's consent.

(3) Hunt with the use of an airplane, including the use of an airplane to spot, rally or drive deer for hunters on the ground.

(4) Put out bait containing poison where it might cause the destruction of wild animals or birds or possess poison while hunting or trapping.

(5) Place, operate, or attend, spread, or set any net, pitfall, spring gun, pivot gun, or any other contrivance for the purpose of catching or which catch or take deer.

(6) Take or attempt to take any deer with the aid of any explosives.

(7) Train dogs by pursuing deer.

(8) Fail to make every reasonable effort to retrieve all deer crippled or killed.

Section 301.7 - Licensing

No person shall hunt or take deer who does not have in his or her possession a valid license issued to him or her by the Conservation Department, or who does not have or is not eligible to receive a membership or enrollment card of the Tribe.

Section 301.8 - Forfeitures

(a) The following civil remedial forfeitures may be assessed against any person for a breach of the provisions of this chapter.

(1) For breach of any provision of Section 301.3, a forfeiture not greater than \$100.00.

(2) For breach of Section 301.5, a forfeiture not greater than \$100.00.

(3) For breach of any provision of Section 301.6, a forfeiture not greater than \$100.00.

(4) For breach of Section 301.7, a forfeiture not greater than \$100.00.

(b) The following civil remedial forfeitures may be assessed against any person for a breach of the provisions of the chapter, and against whom a breach of the same provision is found

to have occurred at least once before:

- (1) For breach of any provision of Section 301.3, a forfeiture not greater than \$500.00.
- (2) For breach of any provision of Section 301.5, a forfeiture not greater than \$500.00.
- (3) For breach of any provision of Section 301.6, a forfeiture not greater than \$500.00.
- (4) For breach of Section 301.7, a forfeiture not greater than \$500.00.

Section 301.9 - Seizure and Forfeiture

(a) Any deer taken in violation of this chapter may be seized by the Conservation Department and may be ordered forfeited.

(b) Any equipment used in the violation of this chapter may be seized by the Conservation Department and ordered forfeited.

Section 301.10. - Severability

Should any section of this chapter be held to exceed the regulatory authority of the Tribe the remainder hereof shall not be affected thereby.

HUNTING OF DEER - ENACTED BY RESOLUTION NO. 9-2-81-12/Amended by Res. #10-7-81-26SECTION 301.6(B)AMENDED BY RES. NO. 11-19-95-107B

CHAPTER 302 - TAKING OF WALLEYE

Section 302.1 - Findings

The Tribal Council finds that the lands now comprising the Bad River Reservation were traditional hunting and fishing grounds for the ancestors of the Tribe; that those lands were selected as a Reservation because of their wealth of fish, game and wild rice; that walleye have been a nutritional staple for members of the Tribe for generations beyond memory; that walleye continue to provide a substantial portion of the protein and other nutritional needs of the Tribe's members; that high unemployment and a cash-poor local economy indicate that walleye will remain critical as a food source for the Tribe's members; that pressure on the walleye population by non-member sport fishing reduces the availability of walleye as a food source for members; that the stocking activities of the Tribe's fish hatchery have contributed significantly over the last several years to the reservation walleye population; that non-member flaunting of tribal conservation laws have contributed to a decline in the reservation walleye population; and that effective regulation of both member and non-member taking of walleye is essential for the preservation of the species in numbers sufficient to supply the economic and nutritional needs of the Tribe's members.

Section 302.2 - Definitions

- (a) "Conservation Department" means the Conservation Department of the Tribe.
- (b) "Member" means any person who is enrolled or is eligible for enrollment in the Tribe, or who is recognized as member of the Tribe by the Tribal Council.
- (c) "Non-member" means any person who does not come within the definition of member.

(d) "Reservation" means the Bad River Reservation.

(e) "To fish" means to use a hook and line, net, spear, or any other means to catch and take fish.

(f) "Tribal Council" means the Tribal Council of the Tribe.

(g) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation.

Section 302.3. - Fishing Prescribed

(a) No person shall fish for or take any walleye within the reservation except during the open season.

(b) No person shall fish for or take any walleye within the reservation in excess of the limit allowed.

Section 302.4 - Season, Limits

Open seasons and limits are established as follows:

(a) Member. In the Kakagon River system the open season shall be at all times other than those posted by the Conservation Department at spawning season. In the Bad River system the open season shall be year-round. There shall be no limit.

(b) Non-member. There shall be no open season in either the Kakagon or Bad River systems.

Section 302.5. - Reporting of Kill

No person who takes walleye shall fail to comply with reporting regulations as established by the Conservation Department.

Section 302.6 - Licensing

No person shall fish for or take walleye who does not have in his or her possession a valid license issued to him or her by the Conservation Department, or who does not have or is not eligible to receive a membership or enrollment card of the Tribe.

Section 302.7 - Forfeitures

(a) The following civil remedial forfeitures may be assessed against any person for a breach of the provisions of this chapter.

(1) For breach of any provision of Section 302.3, a forfeiture not greater than \$100.00.

(2) For breach of Section 302.5, a forfeiture not greater than \$100.00.

(3) For breach of Section 302.6, a forfeiture not greater than \$100.00.

(b) The following civil remedial forfeitures may be assessed against any person for a breach of the provisions of the chapter, and against whom a breach of the same provision is found to have occurred at least once before:

(1) For breach of any provision of Section 302.3, a forfeiture not greater than \$500.00.

(2) For breach of any provision of Section 302.5, a forfeiture not greater than \$500.00.

(3) For breach of Section 302.6, a forfeiture not greater than \$500.00.

Section 302.8 - Seizure and Forfeiture

(a) Any walleye taken in violation of this chapter may be seized by the Conservation Department and ordered forfeited.

(b) Any equipment used in violation of this chapter may be seized by the Conservation Department and ordered forfeited.

Section 302.9 - Severability

Should any section of this chapter be held to exceed the regulatory authority of the Tribe, the remainder hereof shall not be affected thereby.

TAKING OF WALLEYE - ENACTED BY RESOLUTION NO. 9-2-81-92

CHAPTER 303 - HARVESTING OF WILD RICE

Section 303.1. Findings

The Tribal Council finds that the lands now comprising the Bad River Reservation were traditional hunting, fishing, and gathering grounds for the ancestors of the Tribe; that these lands were selected as a Reservation because of their wealth of fish, game, and wild rice; that wild rice has been a nutritional staple for members of the Tribe for generations beyond memory; that wild rice continues to provide a substantial portion of the protein and other nutritional needs of the Tribe's members; that the annual harvest of wild rice is a traditional event of long-standing cultural importance; that high unemployment and cash-poor local economy indicate that wild rice will remain critical as a food source for the Tribe's members; that one predictable source of cash income for the Tribe's members is the sale of wild rice to non-residents of the reservation; and that effective regulation of both member and non-member harvesting of wild rice is essential for the preservation of wild rice in amounts sufficient to supply the economic, nutritional, and cultural needs of the Tribe's members.

Section 303.2. - Definitions

- (a) "Conservation Department" means the Conservation Department of the Tribe.
- (b) "Member" means any person who is enrolled or is eligible for enrollment in the Tribe, or who is recognized as a member of the Tribe by the Tribal Council.
- (c) "Non-member" means any person who does not come within the definition of member.
- (d) "Reservation" means the Bad River Reservation.
- (e) "Tribal Council" means the Tribal Council of the Tribe.

(f) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation.

Section 303.3. - Ricing Prescribed

No person shall engage in any ricing activity within the boundaries of the reservation except during such times and except within such areas as the Conservation Department shall declare to be open to ricing.

Section 303.4 - Licensing

No person shall rice who does not have in his or her possession a valid license issued to him or her by the Conservation Department, or who does not have or is not eligible to receive a membership or enrollment card of the Tribe.

Section 303.5 - Notice and Posting

(a) The Conservation Department shall monitor the ripening of wild rice within the reservation and shall give notice 24 hours before opening the first area of the season. Thereafter no notice need be given before opening additional areas.

(b) The Conservation Department shall post signs indicating the limits of open areas.

Section 303.6. - Mechanization Prohibited

No person shall use any mechanical means to harvest wild rice, nor shall any person operate any boat motor or engine within the rice fields.

Section 303.7. - Forfeitures

(a) Any person violating Sections 303.3, 303.4, or 303.6 of this chapter for the first time shall be subject to a forfeiture of not more than \$150.00.

(b) Any person violating Sections 303.3, 303.4, or 303.6 of this chapter who has been

previously found to have violated either Sections 303.3, 303.4, or 303.6 of this chapter or who is subsequently found to have previously violated either Section 303.3, 303.4, or 303.6 of this chapter shall be subject to a forfeiture of not more than \$250.00.

Section 303.8. - Seizure and Forfeiture

(a) Any rice harvested in violation of this chapter may be seized by the Conservation Department and ordered forfeited.

(b) Any equipment used in violation of this chapter may be seized by the Conservation Department and ordered forfeited.

HARVESTING OF WILD RICE - ENACTED BY RESOLUTION NO. 9-2-81-12/Amended by Res. #10-7-81-26

CHAPTER 304. - TRAPPING ORDINANCE

Section 304.1 - Purpose

It is the purpose and intent of this ordinance to regulate the taking of fur bearers on the Bad River Reservation. The Tribe believes it is important to provide an opportunity for its trappers to take such animals as are necessary for cultural or economic purposes while still protecting the integrity of the species. The Tribe also believes it is important to provide for a system which protects its members from harassment and interference by non-Indians.

Section 304.2 - Jurisdiction

Any violation of this ordinance shall be referred to the Bad River Tribal Court.

Section 304.3 - Sale of Fur

Any furs, either trapped or shot by a Bad River Tribal member on reservation, which shall be sold to an authorized fur dealer or individual shall be tagged with the Bad River registration tag.

Section 304.4 - Limitation of Tags

Such tribal trapper/hunter who traps or kills certain tribally designated protected species shall be limited to either one or two tags depending on the species. These species shall be established by the Bad River Conservation Department. Additional tags may be distributed if the individual meets the requirements set forth by the Conservation Department. The Tribe designates bobcat and fisher as protected species for 1986-87.

Section 304.5 - Prohibitions

No member shall tag or sell any fur pursuant to this system which was not trapped/killed by a tribal member on the reservation. This shall not be construed to prohibit members from trapping/killing game off reservation pursuant to an off reservation system.

Section 304.6. Penalty

(a) A violation of sections 304.3 and 304.4 shall result in a minimum forfeiture of no less than \$50.00.

(b) A violation of section 304.5 shall result in a forfeiture of no less than \$100.00.

(c) Community service may be assessed in addition to the penalties set forth in (b) or in lieu of the penalties assessed in (a).

(d) Tags for any species including fish may be withheld upon failure to pay the set forfeiture or with flagrant or multiple violations, tags will be withheld.

CHAPTER 304 ENACTED BY RESOLUTION #12-3-86-11+9

CHAPTER 305 - TAGGING

Section 305.1 - Definitions

(a) "Office" means the Rights Protection Office of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(b) "Reservation" means all lands within the exterior boundaries of the Bad River Reservation.

(c) "Warden" means the Chief Conservation Officer of the Bad River Band of the Lake Superior Tribe of Chippewa Indians or any of his deputies.

Section 305.2 - Tagging Required

No person shall remove from the Reservation any fish or game that does not bear a tag issued in conformity with the procedures established by Sections 305.3 and 305.4 herein.

Section 305.3 - Issuance of Tags

(a) Any person authorized by treaty, tribal ordinance, or tribal license to fish, hunt, or trap on Reservation lands may apply to the Warden for the issuance of tags.

(b) After inspection of the fish or game the applicant proposes to remove from the Reservation, and upon payment by the applicant of an issuance fee, the Warden shall issue, attach, and lock on each carcass or party thereof proposed for removal, a tag bearing a number and the words "Bad River Tribe".

(c) No tags shall be issued to any applicant for a number of carcasses or parts thereof greater than the number the applicant is authorized to remove.

Section 305.4 - Issuance Fees

(a) A schedule of issuance fees shall be compiled by the Office. Fees shall reflect the costs incurred by the Office in procuring and distributing the tags.

(b) Persons eligible to receive tags may pre-pay for the number of tags which they are authorized to receive or any portion thereof. The Warden may issue tags to an applicant who has so pre-paid by deducting from the applicant's account the number of tags issued.

Section 305.5 - Records

(a) Upon issuance of a tag, the Warden shall record in a record book the following information:

- (1) The date of issuance.
- (2) The name and address of the person to whom issued.
- (3) The species and a description of the fish or game tagged.
- (4) The destination of the person to whom issued.
- (5) The name of the issuing warden.

(b) The record book containing the information required by section 305.5(a) shall be available to the public during regular working hours for inspection and duplication.

Section 305.6 - Lake Trout

Any tribal member who, fishing under his rights as a Bad River member, catches lake trout in Lake Superior is required to obtain a tag for each fish, under any procedures specified by this chapter, prior to his transportation of the fish off of the reservation, or his introduction of the fish into off-reservation commerce.

Section 305.7. - Forfeitures

(a) Any person violating Section 305.2 or Section 305.6 for the first time shall be

subject to a forfeiture of not more than \$150.00.

(b) Any person violating Section 305.2 or Section 305.6 who has been previously found to have violated the same section or who is subsequently found have previously violated the same section shall be subject to a forfeiture of not more than \$250.00.

TAGGING - ENACTED BY RESOLUTION NO. 11-5-80-132/AMENDED BY RESOLUTION NO. 11-18-82-01

CHAPTER 306. - MOOSE

Section 306.01. Prohibitions

(a) No member of the Bad River Band of the Lake Superior Tribe of Chippewa Indians may shoot, shoot at, or kill any moose on the Bad River Reservation (Reservation).

(b) No member may harass, molest, worry, or cause or permit an animal owned by him or her to harass, molest or worry any moose on the Reservation.

Section 306.02. Penalty

Any member found by the Bad River Tribal Court to have violated Section 306.01 (a) or (b) may be ordered to forfeit not more than \$2,500.00.

Section 306.03. Effective Date

The chapter is effective as of the date of passage.

Section 306.04. Sunset

This chapter shall of no force and effect on and after August 15, 1995, unless renewed by the Tribal Council.

CHAPTER 310 - CLOSED FISHING SEASON

Section 310.1 - Prohibiting of Fishing

The taking of fish by any means during the spawning season from the waters of the Kakagon Sloughs, Wood Creek, and Bear Trap Creek, by members and non-members, is banned, except for the fish needed by the Fish Hatchery located on the Bad River Reservation and other lawfully authorized personnel in the performance of their duties, i.e. U.S. Fish and Wildlife Service.

Section 310.2 - Posting

The exterior boundaries of the Bad River Reservation and any acquired lands outside of the Reservation shall be posted as to the closure set forth in Section 310.1.

Section 310.3 - Penalties

(a) Any individual who violates this ordinance and does so for the first time shall be punished by a fine of not more than one hundred dollars (\$100.00).

(b) An individual who violates this ordinance, who has previously been found guilty of violating this same ordinance, shall be punished by a fine of up to but not more than two hundred fifty dollars(\$250.00).

Section 310.4 - Right to Trial

Any person accused of violating this ordinance shall be entitled to a trial in the Bad River Tribal Court.

Section 310.5 - Game Wardens

This ordinance shall be enforced by Tribal Game Wardens to be appointed by the Tribal Council.

Section 310.6 - Seizure

Game Wardens and other appointed officials are hereby authorized to seize and impound weapons, fishing, trapping, and ricing gear and other implements used in such activities as evidence together with any fish, game or rice as found in the possession of a person violating this ordinance in order to utilize such in connection with prosecution.

Section 310.7 - Forfeiture

The court may order all impounded weapons, gear, implements and fish, and rice forfeited, as to any individual who does not appear in court at the time required or who is found by the court to have committed a breach of this ordinance.

CHAPTER 315 - SETTING OF NETS

Section 315.1

Any nets set in any river, stream, or other navigable water within the boundaries of the Bad River Reservation shall be sunk so as not to impede navigation.

Section 315.2

Any net in river, stream, or other navigable water within the boundaries of the Bad River Reservation shall be marked with the name of the owner and the words "Bad River" or an abbreviation thereof, indicating the tribal membership of the owner. Such marking shall be of an indelible nature and shall be placed on a red or white buoy, jug or other floating device.

Section 315.3

Any person who sets a net in any river, stream, or other navigable water within the Bad River Reservation shall check the net and remove all fish therefrom at least once within each twenty-four hour period.

Section 315.4

Except as provided in Section 315.5, no person shall remove fish from the net of another without authorization by the owner of the net. Any owner giving authorization shall so notify the Bad River Conservation Office.

Section 315.5

Tribal conservation wardens may inspect any net found in any river, stream, or other navigable waters within the Bad River Reservation. Any net which a warden reasonably suspects to be in violation of Section 315.1, 315.2, or 315.3 of this ordinance may be immediately seized, including any fish therein.

Section 315.6

For a first violation of Sections 315.1, 315.2, or 315.3 of this ordinance, a civil forfeiture not to exceed \$50.00 may be assessed, and the net used forfeited. For a second violation and any violation subsequent thereto of Sections 315.1, 2 or 3, a civil forfeiture not to exceed \$100.00 may be assessed and the net used forfeited. For a violation of Section 315.4 of this ordinance a civil forfeiture not to exceed \$100.00 may be assessed. For a second violation and any violation subsequent thereto of Section 315.4 a civil forfeiture of \$200.00 may be assessed. In addition to the forfeiture assessed for a violation of Section 315.4, the court may order restitution made to the person whose net was subject to the unauthorized taking.

CHAPTER 320 - CLOSED DEER SEASON

Section 320.1 - Prohibition

(a) No member of the Bad River Band shall take, catch, kill, hunt, pursue, shoot, or trap, by any means whatsoever, any deer within the boundaries of the Bad River Reservation during the closed season.

(b) The closed season shall extend from midnight of the night of January 31 to midnight of the night of June 30.

Section 320.2. - Penalties

(a) Any individual who violates this ordinance shall be assessed a civil forfeiture of not more than \$100.00.

(b) Any individual who violates this ordinance and who has once previously been found in violation of this ordinance shall be assessed a civil forfeiture of not more than \$250.00.

(c) Any individual who violates this ordinance and who has more than once previously been found in violation of this ordinance shall be assessed a civil forfeiture of not more than \$500.00.

Section 320.3

(a) Any weapons and other implements used in a commission of a breach of this ordinance, and any game found in the possession of a person believed to be violating this ordinance may be seized immediately and impounded.

(b) The court may order all impounded weapons, implements, and game forfeited as to any individual who does not appear in court at the time required or who is found by the court to have committed a breach of this ordinance.

Section 320.4.

This ordinance shall be posted for fifteen days at the Tribal Center and at the Conservation Office and shall become effective on January 31, 1981.

Closed Deer Season - Enacted by Resolution No. 12-3-80-141/Amended by Resolution No. 7-1-81-200

CHAPTER 325 - COMMERCIAL FISHING REGULATIONS

Section 325.1 - Findings

The Tribal Council finds that the fisheries of the Bad River Tribe, both on the reservation and in Lake Superior, constitute important communal resources possessed by the Tribe as a whole. The Bad River Tribe has a long history of lake and river fishing and a long history of respect for the fish its members pursue. Both before and after the treaty era, Bad River members fished for subsistence, consuming some of the fish they caught, and selling, on a subsistence level, others. Tribal members have also fished for market on a commercial scale, and the time is not so far past when commercial fishing wharves lined the Bad River at Old Odanah, home port to member-owned fishing steamers.

The Tribe's interests in the fish of the reservation and of the Lake continue to today. Today's interest is to see that the fish populations survive for harvest tomorrow, and into generations yet unseen. The Tribe's interest is also to provide a source of subsistence - for home use consumption and also for small scale market activity - to its members. Finally, the Tribe's interest is to provide a stable, protected source for the livelihood of those of its members who pursue the Lake's fish on a commercial scale.

To meet these interests, the Tribe has embarked on a cooperative management program with the Red Cliff Band of Lake Superior Chippewas and the Wisconsin Department of Natural Resources. It is only through the joint efforts of the three sovereigns with rights in the Lakes' resources that effective regulation and equitable sharing of the resource can be achieved. This chapter is therefore promulgated.

Section 325.2 - Definitions

(a) "Agreement" means the Lake Superior Management Agreement of April 7, 1986, as amended by Amendment #1 of 1991.

(b) "Commercial licensee" means a tribal member who has purchased a commercial license from the Conservation Department.

(c) "Conservation Department" means the Tribe's conservation department, including any tribal warden or member of the biological staff.

(d) "Fish" under this chapter refers to any fish taken for commercial or home use purposes.

(e) "Fisheries Office" means the Bad River Fisheries Office.

(f) "Fisherman" means any tribal member engaged in fishing whether a commercial licensee or not.

(g) "Fishing" under this chapter is defined as taking a fish with a net, hand, hook and line, or spear.

(h) "Fishing day" means any day during the open season for commercial fishing of lean lake trout and whitefish.

(i) "Immediate family" means, for purposes of this chapter only, spouse, mother, father, son, daughter, step-son, step-daughter, grandparent, and grandchild.

(j) "Member" means an enrolled member of the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(k) "Reservation" means the Reservation of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(l) "State conservation warden" means a warden of the Wisconsin State Department of

Natural Resources.

(m) "Tagging" is defined as affixing a tag to a fish and locking it securely.

(mn) "Trap net" means a device constructed of netting, which may employ wings or wings and leads, directing the movement of fish through a tunnel of netting into inner hearts or built-in fore bays wherein the fish are trapped by their own movement. Such nets may be referred to as shallow trap nets, submarine trap nets, or deep-water trap nets.

Section 325.5(mn) is added pursuant to Resolution No. 12-5-01-193

(n) "Tribal Council" means the governing body of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(o) "Tribal Court" means the Tribe's tribal court.

(p) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(q) "Valid tag" means a lean lake trout tag issued for use during the season in which it is used, and used by one authorized to use it.

Section 325.3 - Applicability

The provisions of this chapter apply to all members, whether a commercial licensee or not, fishing in the Wisconsin waters of Lake Superior.

Section 325.4 - Non-Commercial Species

(a) No member may sell any fish of any of the following species: brown trout, brook trout, rainbow trout, splake, coho salmon, Chinook salmon, Atlantic salmon, lake sturgeon, smallmouth bass, northern pike, panfish, and, except as provided in (b), below, perch.

(b) A member harvesting perch as a small boat fisherman in the Chequamegon Bay within one mile of the Reservation shore, pursuant to an assessment agreement with the

Conservation Department, may sell the perch so harvested.

Section 325.5 - Licenses

(a) No member may fish commercially in the Wisconsin waters of Lake Superior without a commercial fishing license unless he or she is an assistant on a commercial fishing boat whose owner has a commercial fishing license.

(b) Upon application and payment of the license fee, and subject to subsection (c), below, any member eighteen years of age or older complying with this chapter shall be issued a commercial fishing license provided that such person does not have his or her on-reservation or off-reservation fishing rights revoked or suspended pursuant to a Tribal Court Order.

(c) There shall be a limited entry to large boat fishers. No more than seven large boat licenses shall be issued in any one fishing year, with all license holders from the previous year having priority over all other applicants.

(d) Fishing licenses shall be issued for one year from November 28 of each year and shall not be transferred or altered.

(e) License classifications are as set forth below. License fees and maximum lean lake trout tag allocations for each classification shall be set by resolution of the Tribal Council upon recommendation of the Conservation Department and shall remain as set unless modified by further resolution of the Tribal Council.

i. Large boat. In order to obtain a large boat license, a member must possess at the time of application a boat in operational condition of at least 20 feet in length with a functional net lifting device installed. A large boat license is valid only for use on the specific boat identified in the member's application, except in case of temporary hardship or breakdown when

the Fisheries Office is notified of the alternate boat on which the license will be used. A licensee may request transfer of the license to another boat in his possession at any time during the fishing year.

ii. Small boat III. In order to obtain a small boat III license, a member must possess at the time of application a boat in operational condition.

iii. Small boat II. In order to obtain a small boat II license, a member must possess at the time of application a boat in operational condition.

iv. Small boat I. In order to obtain boat license, a member must possess at the time of application a boat in operational condition. No fee shall be charged for a small boat I license. No more than 100 lean lake trout tags shall be issued annually to a small boat I licensee.

(f) No member shall participate in any transaction by which a license, lean lake trout tags, effort allocation, or any interest therein, is practically transferred to a non-member.

Section 325.6 - Removed by Resolution #1-10-07-13

Section 325.7 - Net Mesh Size

No member shall fish in waters less than 35 fathoms deep using net with mesh size less than 4 1/4 inches (stretch measure), except for home use purposes and in strict compliance with all home use regulation, or except within one mile of shore of the Reservation.

Section 325.8 - Net Depth

(a) October 1 - November 27: No member shall set a net with mesh size less than 4 1/4" stretch measure in waters less than 35 fathoms deep, except within one mile of shore of the Reservation.

(b) No member shall set a net unless it is sunk sufficiently deep so as not to present a

hazard to navigation.

Section 325.9 - Net Attendance

(a) No member shall fail to lift any net he or she has set any less frequently than

(1) Once every 72 hours in open water less than 16 fathoms deep.

(2) Once every 120 hours in open water 16 to 35 fathoms deep.

(3) Once every 240 hours in open water more than 35 fathoms deep.

(4) Once every 120 hours in commercial ice fishing.

(b) Any member raising in extreme adverse weather as a defense to a charge under this section assumes the burden of proving by clear and convincing evidence that extreme adverse weather made compliance with this section unduly hazardous.

Section 325.10 - Net Marking

(a) Each gang of nets shall be marked with a visible buoy on each end, which shall display the commercial fishing license number or the identification number of the fisherman who has set the gang.

(b) Each gang of large mesh gill nets placed in waters less than 55 fathoms deep shall include an informational tag on the outside buoy line ten feet below the water's surface or on a tag placed in a secured pocket on the outside buoy flag. Each tag shall state the date and time on which the gill net was set, the length of the gang of nets, the commercial fishing license number of the fisherman, and the fisherman's initials.

Section 325.101 - Trap Net Regulations

(a) A maximum of twelve (12) traps nets may be set for each trap net permit.

(b) Trap nets may be set a any depth.

i. If, during monitoring, a disproportionate number of undersize fish are killed from lifting in deep water, the fisherman shall reset in shallower water.

ii. The Tribal fisheries biologist may declare a depth limit in his discretion for protection of the resources. Such limit shall become effective upon the fisheries biologist's mailing or delivery if in person of written notice of such depth limit to fishermen holding a trap net permit.

(c) Each trap net shall be lifted at least once every seven days (168 hours).

(d) Trap nets may not be set within one-quarter (1/4) mile of any other entrapment net.

(e) Trap nets shall be removed from the water or shall have the holding pot portion rendered inoperable during the closed season for lake trout and whitefish (October 1 through November 27). All webbing must be removed within fourteen (14) days after the season ends.

(f) All dead lake trout must be kept and tagged.

(a) The location and catch of each species of fish (pounds for harvested fish and numbers for released fish) from trap nets shall be reported for each net lifted in accordance with Section 325.12, below.

(b) Buoys or entrapment gear shall bear the commercial fisherman's identification number.

(i) Fishermen wishing to utilize trap net gear shall have a big boat license and shall not receive additional lake trout tags specifically for trap net fishing.

Section 325.101 is added pursuant to Resolution No. 12-5-01-193.

Section 325.11 - Closed Season

No whitefish or lean lake trout shall be taken by a commercial licensee from October 1

through November 27 except for home use consumption and in strict compliance with all home use regulations.

Section 325.12 - Reporting

(a) Reporting periods shall end on alternating Fridays, with the first such period of each fishing year ending on the second Friday of December. Each commercial fishing licensee shall submit a report as prescribed by this section no later than 4:00 p.m. on the third working day after the last day of each reporting period.

(b) Each commercial fishing licensee shall report to the fisheries office, on forms prescribed by that office, the number of each kind of fish taken or killed in the fishing operation, the kind and amount of fishing gear employed, the length of time (i.e. number of nights) each unit was fished, verification of the number of fish sold, and any other data the Fisheries Office may require in the performance of its duties. Catch and effort shall be reported by the date and by grid location.

(c) Reports shall be submitted for each reporting period regardless of whether or not any fish were taken or any fishing done during the period. If no fish were taken or fishing done, that fact will be reported.

(d) If two or more licensees fished together, the report shall be made by the vessel owner, or in the case of ice-fishing or boats owned in common by two or more licensees, the reported catch shall be made by one licensee.

(e) The Conservation Department may refuse the issuance of tags to any commercial fishing licensee who has not filed a report as required by this section.

(f) Home use fisherman shall report to the fisheries office, on forms prescribed by that

office, the number of each kind of fish taken or killed in the fishing operation, and the kind and amount of fishing gear employed, and any other data the fisheries office may require in the performance of its duties. Home use fisherman are not required to submit for a reporting period if no fish were taken or fishing done.

Section 325.13 - Quota on Lean Lake Trout

(a) The Fisheries Office, with the approval by resolution of the Tribal Council, shall set the tribe's annual quota for lean lake trout, in cooperation with the Red Cliff Band of Lake Superior Chippewas and the State of Wisconsin.

(b) The commercial fishery quota for lean lake trout shall be the tribe's quota minus an amount to be determined by the Fisheries Office not to exceed 1,000 set aside for the home use fishery.

(c) The Fisheries Office, upon consultation with representatives from each commercial license classification, shall divide the commercial fishery quota among the classifications and shall issue tags to individual fishermen. The Fisheries Office shall reserve an ample number of tags for small boat fishermen. The Fisheries Office may, at its discretion, reserve a portion of the quota and withhold a quantity of tags for future distribution, and deny or limit the issuance of tags to individual fishermen who, based on past performance and present capability, are unlikely to fully utilize them. Any tags un-utilized by August 1 may be redistributed by the Fisheries Office to any big boat or small boat fisherman, taking into account the maximum tag allocations to small boat fishermen, to assure the tags' maximum utilization.

Section 325.14 - Effort Limitations

(a) No commercial licensee shall set net in excess of the effort allocated to him for the

fishing year.

(b) Each commercial licensee may submit, no later than five working days before the start of the fishing year, harvest goal declarations for each of the year's seasons. Tag and effort allocation will be issued based on the fisherman's declaration. If a fisherman does not file a harvest goal declaration, the fisheries office will assign a percentage of the fisherman's annual effort allocation to each of the seasons. Effort shall be allocated to individual licensees pursuant to the Agreement and based upon the number of tags issued to the licensee under Section 325.13.

(c) Effort not used in season one will be carried over for each fisherman to the next season for the fishing year, using the formula set forth in Appendix C of this chapter.

(d) If not obtained personally from the fisheries office prior to the start of each season, seasonal effort allocations for each licensee shall be sent by regular first class mail to the licensee's address on file with the fisheries office and shall be deemed received by the licensee.

(e) No licensee may transfer any of his or her effort allocation to any other person except by a written memorandum, signed by both the transferor and transferee, and dated and filed with the Fisheries Office, prior to the transfer. No transfer or claim of transfer of fishing effort may be raised as a defense in a prosecution for exceeding fishing effort, except where the written transfer was filed prior to the date of the alleged offense. No transfer may be made to anyone other than a Bad River commercial licensee.

Section 325.15 - Refuges

(a) The following area refuges shall be closed to all fishing unless specifically provided for in subparagraph (b):

- i. Gull Island Shoals Refuge as set forth in Appendix A of this chapter.

Closed all year.

ii. Devils Island Refuge as set forth in Appendix A of this chapter. Closed all year.

(b) The following fisheries shall be allowed under the following conditions in the refuges set forth in (a):

i. Menominee can be fished from November 5 through December 5 employing nets of mesh size no greater than 2 3/4 inches stretch measure within 7 fathoms of water adjoining Michigan Island.

ii. Herring can be fished employing nets of mesh size no greater than 3 inches stretch measure south of a line running northwesterly from the northern tip of Devils Island from November 15 through January 15.

(c) Appendix A of this chapter is incorporated herein by reference, with the same force and effect as if set out in full.

Section 325.16 - Restricted Areas

(a) The following areas are closed to net fishing except as provided under subparagraph (b):

i. Minnesota-Iron River Area out to a depth of 35 fathoms described in Appendix B, par. 5 of this chapter.

ii. Iron River-Cranberry River Area out to a depth of 15 fathoms described in Appendix B, par. 4, of this chapter.

iii. Cranberry River-Quarry Point Area out to a depth of 12 fathoms, more particularly described in Appendix B, par. 3, of this chapter.

iv. Siskiwit Bay from Quarry Point to Squaw Point, more particularly described in Appendix B, par 1, of this chapter.

v. Port Superior Area out to a depth of 9 fathoms August 16 through May 31, more particularly described in Appendix B, par. 6 of this chapter.

vi. Chequamegon Bay Area, more particularly described in Appendix B, par. 10 of this chapter.

vii. Hagens Beach Area from June 1 through August 31, more particularly described in Appendix B, par. 8, of this chapter.

viii. Saxon Harbor Area, more particularly described in Appendix B, par. 9, of this chapter.

ix. Bark Bay Area, more particularly described in Appendix B, par. 2 of this chapter.

x. Sand Cut Area, more particularly described in Appendix B, par. 7 of this chapter.

(b) The restrictions in (a) are subject to the following exceptions:

i. Bark Bay shall be open from April 1 through May 31 and for entrapment nets for whitefish only the last period of the fishing license year.

ii. Nets of mesh size are greater than 3 inches stretch measure shall be allowed in waters greater than 15 fathoms, between the mouth of the Brule River and the mouth of the Iron River from November 15 through December 31.

iii. Tribal members may harvest within 1½ miles off the Reservation borders from Chequamegon Point eastward to the eastern border of the Reservation.

iv. Saxon Harbor Area is open from ice out to Friday of Memorial Day weekend, unless the tribe earlier reaches a harvest of 731 lean lake trout, in which case the Conservation Department shall order the area closed, and no further fishing will be permitted.

v. Saxon Harbor Area is open from November 15 through December 15 for a herring fishery employing nets no less than 2½ inches and no greater than 3 inches stretch measure, at 14 fathoms or below.

(c) Appendix B of this chapter is incorporated herein by reference, with the same force and effect as if set out in full.

Section 325.17 - Tagging of Lean Lake Trout

(a) All lean lake trout of legal size taken by a commercial licensee (including a subsistence fisherman who intends to introduce the fish into commerce) shall be tagged in conformance with Chapter 305, Bad River Ordinances, except that where in conflict, the provisions of this chapter supersede those of chapter 305.

(b) All lean lake trout caught in gill nets in waters less than 55 fathoms deep shall be kept and tagged, except that live lake trout caught from November 28 through March 30 may be returned to the water.

(c) All lean lake trout harvested on open water shall be tagged before docking with a valid tag issued to the fisherman.

(d) All lean lake trout harvested by a fisherman on ice shall be tagged prior to transport with a valid tag issued to the fisherman.

(e) All lean lake trout which filleted prior to transport to the ultimate retail consumer shall be accompanied by no fewer than one locked and cut tag for every two fillets.

(f) Extreme adverse weather or bodily injury is a defense to a charge of failure to tag. The burden of proof by clear and convincing evidence is on any fisherman who raises as a defense extreme adverse weather or bodily injury. Failure to use available means of notifying tribal wardens in advance, and the fact that fish were dressed shall constitute prima facie evidence that the failure to tag was not due to extreme adverse weather or bodily injury.

(g) No lean lake trout harvested in Michigan shall be docked in Wisconsin, unless tagged with a valid tag issued to the fisherman showing the fish to be harvested in Michigan.

(h) No combined catch of Wisconsin and Michigan lean lake trout shall be docked in Wisconsin.

(i) No member shall lift nets in the Wisconsin waters of Lake Superior with Michigan lean lake trout on board.

(j) No member fishing in the Saxon Harbor Area shall have tags for Michigan lean lake trout in his or her possession at the time.

(k) No member shall transfer any tags to another person unless

- (1) that person is employed by the member is acting as an assistant of the member and has not had his or her on-reservation or off-reservation fishing rights revoked or currently suspended by the Tribal Court, or
- (2) unless the transferor notifies the Conservation Department within five days of the transfer, and the person to whom the tags are transferred is a member, possessing a large boat license under this chapter, and has not had his or her on-reservation or off-reservation fishing rights revoked or currently suspended by the Tribal Court.

(l) No member shall use tags for lean lake trout on any boat other than one owned by a

member of the Tribe.

Section 32518 - Home Use

(a) All provisions of this chapter apply to home use fishermen unless by their terms or by inconsistency with a specific provision of this section they do not apply.

(b) Net mesh size: No tribal member fishing for home use shall use net with size greater than 2 3/4 inches (stretch measure) and less than 4½ inches (stretch measure).

(c) Net length:

i. From November 28 through September 30, no member shall set more than a total of 800 feet of net at any time.

ii. From October 1 through November 27, no member shall set more than a total of 500 feet of net at any one time.

(d) Net placement: From October 1 through November 27, no member shall place any net part of which extends more than 1,320 feet from the shoreline into waters adjacent to the Reservation.

(e) No members may sell any fish harvested pursuant to the provisions of this section.

(f) A commercial licensee may not fish home use nets unless specifically authorized by the tribe's fisheries specialist. Any home use nets so authorized must be marked pursuant to Section 325.10, and in addition bear the words "home use". In no case may a commercial licensee fish commercial and home use nets at the same time.

(g) All fish taken by a home use fisherman shall be tagged in conformance with Chapter 305, Bad River Ordinances, prior to transportation of the fish off of the reservation, except that where in conflict, the provisions of this chapter supercedes those of Chapter 305.

Section 325.19 - Biological Sampling

(a) The catch of all fishermen is subject to reasonable sampling by the Conservation Department, or by employees of the Great Lakes Indian Fish and Wildlife Commission.

(b) Notwithstanding the provisions of any other section of this chapter, the Conservation Department may, by written authorization, and under the terms and conditions established by it, permit assessment fishing by any commercial licensee at any specified time and place.

(c) If sampling requires taking legally harvested fish or impairs their market value, the fisherman shall be reimbursed the reasonable value of the loss.

Section 325.20 - Assistants

(a) No person who is not a member of a Chippewa tribe with fishing rights in Lake Superior or who has had his or her on-reservation or off-reservation fishing rights revoked or suspended shall participate in the taking of any treaty protected fishery resource, and no member shall be a party to such taking by a nonmember, except as specifically provided by this section.

(b) Members of the immediate family of a tribal member may assist the tribal member, in his or her presence, in the commercial taking of treaty protected fish in Lake Superior.

Section 325.21 - Enforcement

(a) No fisherman shall prevent the Conservation Department from inspecting nets and vessels used in his or her fishing operation, or any fish taken by him or her upon the request of the Conservation Department. Fishermen shall similarly allow state wardens to inspect when they are accompanying a representative of the Conservation Department.

(b) The acceptance of a license, identification number, or lean lake trout tags

constitutes the consent of the fisherman to inspections as provided in subparagraph (a), above.

(c) No fisherman shall refuse a demand by the Conservation Department to allow boarding and search, or to search items used in ice fishing, or to search a motor vehicle if the Department has probable cause to believe that the fisherman has violated on that day a provision of this chapter or that a violation is then occurring, nor shall any fisherman refuse to allow the participation of any state warden in any such boarding or search when done under the direction of the Conservation Department or pursuant to subsection (f).

(d) No fisherman shall refuse the demand of the Conservation Department that the fisherman proceed to a port designated by the Department, if such port is within two hours travel time, for the purpose of boarding and inspection.

(e) No fisherman shall refuse an order of a state conservation warden to remain on site until the arrival of the Conservation Department, if the state warden requests permission to search the vessel, the fisherman refuses, and the state warden informs the fisherman of his or her reasons for believing that a violation has occurred and of his or her efforts to contact tribal authorities.

(f) No fisherman shall refuse to allow state conservation warden to board and search his boat if the Conservation Department is unable to arrive at the boat within 1½ hours of contact by the state warden, or within ½ hour of the fisherman's arrival in port pursuant to an order under subparagraph (d), above.

(g) No fisherman shall refuse to allow a state conservation warden to search on the ice, or to search off-reservation a motor vehicle, provided the warden has probable cause to believe that a violation has occurred or is occurring and that evidence thereof may be found by such search, and provided further that the warden is unable to contact and secure tribal authorities to

conduct such search.

(h) No member shall resist or interfere with any lawful inspection, search or seizure by the Conservation Department or a state conservation warden.

(i) Seizure is permitted of any evidence of a suspected violation found pursuant to any search authorized by law, and of any gear set or found in an area where such gear is illegal under this chapter.

(j) Wisconsin State Department of Natural Resources Wardens are hereby deputized to enforce the provisions of this chapter, and to cite members in Tribal Court for violation.

(k) Red Cliff tribal wardens and Great Lakes Indian Fish and Wildlife Commission wardens are hereby deputized to enforce the provisions of this chapter and to cite members in Bad River Tribal Court for violation. Reference in this section to the Conservation Department shall also include Red Cliff and Great Lakes Indian Fish and Wildlife Commission wardens.

Section 325.22 - Penalties

(a) The Bad River Tribal Court shall have exclusive jurisdiction of all violations of this ordinance.

(b) Unless otherwise provided, the Court may impose the following maximum penalties for each violation of this chapter:

- i. A forfeiture not to exceed \$5,000.00.
- ii. Suspension or revocation of any commercial fishing license for a period not to exceed one year.
- iii. Suspension of off-reservation fishing rights for a period not to exceed one year.

iv. Denial of lean lake trout tags for a period not to exceed one year.

v. Forfeiture of all fish taken illegally and any proceeds therefrom obtained under par. (e) below. The Court shall order the distribution of any fish so forfeited so that neither the fish nor the proceeds of any sale thereof inures to the benefit of the member from whom seized, his agents or his immediate family members.

(c) For any violation of Section 325.21, the Court shall impose a minimum penalty of a commercial license suspension.

(d) For any violation of Section 325.21, when the member has been convicted for a previous violation within a five year period, the Court shall impose a minimum penalty of a commercial license suspension for not less than 30 fishing days.

(e) The Conservation Department shall sell any fish seized under this chapter, after first securing whatever evidence is required for the prosecution of any citations related to the seizure. The Conservation Department shall endeavor to obtain the fair market value of the fish seized, but no liability shall attach to the Department if it makes a good faith effort to obtain such value but fails to do so. The proceeds of any such sale shall be held as segregated funds until the court issues an order as to their disposition. Any warden of the Red Cliff Tribe, the Great Lakes Indian Fish and Wildlife Commission or the Wisconsin Department of Natural Resources seizing fish under this chapter, shall immediately contact the Conservation Department to receive direction under this section.

(f) In any case in which the court orders a money forfeiture, the court shall set a date by which the forfeiture shall be paid, and if the forfeiture is not paid by such date, shall suspend all off-reservation hunting and fishing rights until the forfeiture is paid.

(g) All forfeitures not paid when due shall accrue interest at the rate of 1½ percent per month on the unpaid balance, the first month's interest to be due on the day following the initial due date, and each subsequent month's interest accruing on the same day of each month thereafter.

Appendix A - Refuges

(1) Gull Island Refuge defined as all waters bounded by a line from the Gull Island light south to the northernmost point of Michigan Island and then proceeding in a southerly direction following the shoreline of Michigan Island to the Michigan Island light, thence southerly towards the center of the mouth of the Bad River in Ashland County to latitude 46°40', thence due east to the Michigan state line; thence northerly along the state line to latitude 46° 59.3'; from that point due west to longitude 90°26.5; and thence due south to the Gull Island light, the place of beginning; except that licensed commercial fishers may fish all the area within these external boundaries wherein the lake bottom lies at a depth of 35 fathoms (210) or more; and except in those included waters less than 7 fathoms in depth which immediately adjoin Michigan Island gill nets with a mesh size from 2-3/4" or less stretch measure may be used from November 5 to December 5 for the taking of Menominee Whitefish.

(2) Devils Island Refuge defined as all waters wherein the bottom lies at a depth of less than 35 fathoms northerly from a line beginning two miles north of the Outer Island light and extending westerly to the north end of North Twin Island, thence along the shoreline to the south end of North Twin Island, thence southwesterly to the north end of South Twin Island, thence northerly to the north end of Rocky Island, thence along the north shoreline to the northwest point of Rocky Island, thence northwesterly to the south end of Devils Island, thence along the shoreline to the north end of Devils Island, thence westerly to a point 2.5 Statute miles north of the York

Island Shoal bell buoy.

Appendix B - Restricted Areas

- (1) All waters of Siskiwit Bay bounded by the shoreline and a line extending from Roman Point to Squaw Point.
- (2) All waters of Bark Bay bounded by the shoreline and a line extending from Roman Point to Bark Point, except from April 1 through May 31.
- (3) All waters from a line extending due north from the mouth of the Cranberry River at Herbster, easterly to the Bark Point - Roman point line wherein the bottom lies at a depth of less than 12 fathoms.
- (4) All waters from a line extending due north from the mouth of the Iron River, easterly to a line extending due north from the mouth of the Cranberry river at Herbster, wherein the bottom lies at a depth of less than 15 fathoms.
- (5) All waters from a line extending due north from the mouth of the Iron River, westerly to the Wisconsin-Minnesota state line wherein the bottom lies at a depth of less than 35 fathoms, except that from November 15 through December 31 gill nets of 3" or less stretch measure may be used in that portion greater than 15 fathoms in depth, east of a line extending due north from the mouth of the Brule River.
- (6) All waters from a line extending due east from the breakwall light at Port Superior, southerly along the shoreline to Houghton Point, wherein the bottom lies at a depth of less than 9 fathoms, and those waters within one mile of the mouth of any stream along this shoreline except from June 1 through August 15.

(7) All waters bounded by a line beginning at the Chequamegon Point light on the western end of Long Island extending northeasterly to the southernmost point of Madeline Island, thence due east to the western boundary of Gull Island Shoals refuge, thence southerly along the refuge boundary to latitude $46^{\circ} 40'$, thence due west to the mainland shoreline, thence northwesterly along the shoreline to the place of beginning, except within one and one-half mile of the mainland shoreline in Ashland County.

(8) All waters east of Madeline Island between a line extending due east from the southernmost tip of Madeline Island to the western boundary of the Gull Island Shoals refuge and a line extending from the east end of Hagen Road to the western boundary of the Gull Island Shoals refuge from June 1 through August 31.

(9) Saxon Harbor area defined as all waters bounded by a line beginning at the mouth of Graveyard Creek extending due north to the southern boundary of the Gull Island Shoals refuge, thence due east to the Wisconsin-Michigan State line, thence southwesterly along the Wisconsin-Michigan State line to the mouth of the Montreal River, thence westerly along the mainland shoreline to the place of beginning.

(10) All waters of Chequamegon Bay bounded by the shoreline and a line extending from the easterly most tip of Houghton Point, Bayfield County to the Chequamegon Point light on the western tip of Long Island, Ashland County.

Appendix C - Calculation of Seasonal Effort Limitations

The following formulas will be used to calculate seasonal effort limitations based upon seasonal CPE's and the total number of fish available at the onset of each season.

Season 1

Available Individual Quota

-----x 1,000 = Season 1 Effort Limitation

Season 1 CPE

Season 2

Unused effort from season 1

-----x Season 1

1,000 CPE

-----x 1,000 = Season 2 Effort Limitation

Season 2 CPE

Season 3

Unused effort from Season 2

----- x Season 2

1,000 CPE

-----x 1,000 = Season 3 Effort Limitation

Season 3CPE

Alternative 2:

Season 1+2

Available individual Quota

-----x1,000=Season 1+2 Effort Limitation

Season 1+2 CPE

Season 3:

Unused effort from Season 1+2

-----x Season 1+2 CPE

-----x1,000=Season 3 Effort Limitation

Any unused portion of fish reserved for home use under Section 325.13, can be reallocated to the commercial component of the fishery no later than August 1. When and if home use fish are reallocated to the commercial fishery, a sum of 100 fish will be retained from the available balance for home use activity during the remainder of the quota year. The following formula will be used to calculate effort limitations for utilization of reallocated home use fish.

Available balance - 100

-----x 1,000 = Effort Limitation for

Season 3 CPE

Reallocated Home Use Fish

The effort limitation for reallocated home use fish will then be allocated among individual licensees.

CHAPTER 325 ENACTED BY RESOLUTION #3-7-84-59/AMENDED BY RESOLUTION 3-20-86-11/11-5-86-79/REPEALED AND RECREATED BY RESOLUTION #8-16-90-132/AMENDED BY RESOLUTION #1-10-07-13

CHAPTER 326 - COMMERCIAL FISHING IN THE WESTERN MICHIGAN WATERS OF LAKE SUPERIOR

Section 326.01 - Title

This chapter shall be known as the Bad River Western Michigan Waters of Lake Superior Commercial Fishing Ordinance.

Section 326.02 - Authority

This chapter is enacted pursuant to Article IV, section 1(y) of the tribe's constitution.

Section 326.03 - Effective Date

This ordinance shall be effective from the date adopted by the Tribal Council.

Section 326.04 - Interpretation

The provisions of this ordinance shall be interpreted and applied as minimum requirements applicable to tribal members, and shall be liberally construed in favor of the Tribe. The provisions shall not, however, be deemed a limitation or repeal of any other tribal power or authority.

Section 326.05 - Repeal of Inconsistent Tribal Ordinances

All ordinances and resolutions inconsistent with this ordinance are hereby repealed. To the extent that this ordinance imposes greater restrictions than those contained in any other tribal ordinance, the provisions of this ordinance shall govern. All other tribal ordinances regulating commercial fishing not inconsistent with the provisions of this ordinance apply to commercial fishing in the subject waters of this ordinance.

Section 326.06 - Severability and Liability

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

and shall remain in full force and effect. The Tribe further asserts immunity on its part and that of its agencies; employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this ordinance.

Section 326.07 - Definitions

(a) "Agreement" means the 1989-90 Michigan Waters of Lake Superior Agreement, signed by the Bad River, Red Cliff and Keweenaw Bay Tribes, as amended December 7, 1989, November 26, 1990, and from time to time thereafter.

(b) "Cooperating Tribe" means any of the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Keweenaw Bay Indian Community, and the Red Cliff Band of Lake Superior Chippewas if it has adopted an ordinance implementing the Agreement.

(c) "Fishing year" means the period beginning November 27 and ending the following November 26.

(d) "Grids" means the statistical reporting grids established by the Great Lakes Indian Fish & Wildlife Commission.

(e) "Large boat" means a boat 20 feet in length or greater, equipped with a motorized net lifter.

(f) "Licensee" means a member authorized to fish under subsection 326.09 of this ordinance.

(g) "Map 8" means Map 8 attached to the Agreement, which map is incorporated by reference herein.

(h) "Member" means a member of the Tribe.

(hn) "Small boat" means a boat in operational condition.

- (i) "Tribal conservation department" means the tribe's conservation department.
- (j) "Tribal Council" means the Tribe's governing body.
- (k) "Tribal Court" means the tribe's court.
- (l) "Tribe" means Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 326.08 - Subject Waters

The provisions of this ordinance apply to that area of Lake Superior located within the territory of the State of Michigan ceded by the Treaty of 1842, 7 Stat. 591.

Section 326.09 - Authorized to Fish

(a) No member shall fish in the subject waters without tribal license. Any member applying for a license shall show to the satisfaction of the Conservation Department that he or she possesses a big boat in operating condition. A license shall allow the licensee to operate only one boat at a time in the subject waters. No more than six licenses shall issued for the subject waters.

(b) The use of assistants is regulated by Section 325.19, Bad River Ordinances.

(c) Each hour or part thereof that a member fishes is in violation of this section shall be deemed a separate violation.

Section 326.10 - Lake Trout Quota

(a) For each fishing year, the Tribal Council shall issue an individual lake trout tag allocation to each licensee and shall authorize the distribution of lake trout tags to the licensees in numbers corresponding thereto. Quotas shall be set pursuant to the Agreement.

(b) Each lake trout taken shall be tagged before being removed from the permittee's boat.

(c) No person shall remove the lake trout tag required under this section prior to ultimate preparation for consumption.

Section 326.11 - Closed Season

(a) The fishing season for lean lake trout and whitefish shall be closed from 11:59 p.m. October 31 to 11:59 p.m. November 27.

(b) There is no closed season for chub, herring, or siscowet fishing in water 35 fathoms or deeper.

Section 326.12 - Closed Areas

No member shall fish in any of the following closed areas as described.

(a) Grids 1511, 1512 and 1413 from Memorial Day to November 28 for lean lake trout and whitefish.

(b) All areas south of the line between East Entry and Point Abbaye.

(c) The following areas are closed to all fishing during the month of October:

(1) Copper Harbor: no fishing within a two mile radius of the navigation light at Copper Harbor.

(2) Buffalo Reef: no fishing within a two mile radius of Loran C coordinates 8920-x-31856.4, 8920-y-46687.9.

(3) Traverse Island: no fishing within a two mile radius of the Island.

(4) Huron Islands: no fishing within a two mile radius of any of the islands which constitute the Huron Islands.

(5) Union Bay: no fishing in less than 50 ft. of water within a two mile radius.

(6) Eagle River Shoals: no fishing in less than 25 feet of water within a two mile radius; and

(7) Big Bay Reef: no fishing in less than 25 feet of water within a two mile

radius (map 7).

(d) Within a ½ mile radius of the mouth of each of the following rivers and streams, from April 15 through May 15, and from October 15 through November 15:

Unit	Number (Map 8)	River or Stream
MI-2	82	Montreal River
	79	Black River
	78	Presque Isle River
Unit	Number (Map 8)	River or Stream
	77	Little Carp River
	76	Big Carp River
	71	Big Iron River
	58	Ontonagon River
	56	Firesteel River
	MI-3	55
54		East Sleeping River
53		Misery River
51		Elm River
50		Graveret River
MI-4	36a	Tobacco River
	36b	Traverse River
	22	Falls River
	19	Silver River

	18	Slate River
	17	Ravine River
	14	Huron River
	13	Little Huron River
MI-5	11	Salmon Trout River
	8	Little Iron River
	7	Big Garlic River
	6	Little Garlic River
	5	Harlow Creek
	3	Dead River
	2	Carp River
	1	Chocolay River

Section 326.13 - Deleted by Resolution 1-10-07-14 Amendment

Section 326.14 - Gear Limitations

(a) Gill nets of 4½ inch stretched mesh and larger (used for lake trout, siscowet trout, salmon, and whitefish) and gill nets of 2-3/8 to 3 inch stretched mesh (used for herring, menominees, and chubs) shall be legal commercial gear. No other nets stretched mesh size shall be allowed.

(b) No licensee shall set more than 12,000 ft. of large mesh gill nets (4½ inch and larger) with a 5% variance in all waters less than 35 fathoms. In waters over 35 fathoms, no licensee shall set more than 20,000 ft. of large mesh gill net.

(c) No licensee shall set net within ¼ mile of another's nets.

(d) Nets shall be marked as provided in Section 325.10, Bad River Ordinances.

Section 326.15 - Non-Commercial Species

No member may sell any fish of the following species: rainbow (steelhead) trout, brook trout, or sturgeon.

Section 326.16 - Reporting

(a) Each permittee shall report the names and addresses of all individuals fishing or helping on his boat to the tribal conservation department.

(b) All commercial fishermen fishing in Michigan waters shall be required to submit monthly catch reports by the 15th day of the following month to a specific designee for each tribe who will forward the information once a month to the Great Lakes Indian Fish and Wildlife Commission, P.O. Box 9, Odanah, Wisconsin 54861. Fishermen are required to report for each day of fishing the location of lift (statistical grid), length of net lifted, mesh size of gill nets lifted, depth of nets, poundage of each fish species caught and sold, and names of identification numbers of individuals fishing with the licensee.

Section 326.17 - Deputization

Conservation wardens of the Great Lakes Indian Fish and Wildlife Commission are hereby deputized by the Tribal Council to enforce the terms of this ordinance against members.

Section 326.18 - Cooperation With Wardens, Biologists

(a) No member shall refuse to allow a conservation warden to enter upon and inspect his boat, gear, and catch, nor refuse to allow a biologist employed by any of the cooperating tribes or the Great Lakes Indian Fish and Wildlife Commission to enter upon his boat and take

reasonable fish samples.

(b) The tribal biologist or those of the Great Lakes Indian Fish and Wildlife Commission may direct any licensee to fish in a specified area in order to obtain a systematic survey of the fishery throughout the subject waters. Any licensee so directed shall comply therewith.

Section 326.19 - Tribal Court

The Tribal Court is hereby authorized to adjudicate all matters arising under this ordinance, pursuant to the provisions of the Tribal Court Code.

Section 326.20 - Schedule of Money Penalties; No Contest

The Tribal Court may adopt a schedule of forfeitures to be imposed by the court upon the receipt of an admission that a violation of this ordinance has occurred, which may be done either in person or in writing. This schedule is not binding as to forfeitures assessed by the Court after adjudicating a violation.

Section 326.21 - Penalties

Any member found by the tribal court to have violated a provision of this ordinance shall be subject to the following penalties:

(a) For a violation of any provision of this ordinance, a forfeiture of not more than \$5,000.00

(b) For a violation of any provision of this ordinance, a suspension or revocation of any license issued under this ordinance, and of any other off-reservation hunting or fishing privileges.

(c) For a violation of any provision of this ordinance, forfeiture of any fish taken in violation of such section or of equipment used in the violation of such section or forfeiture of any

proceeds from the sale or other trade of such fish or equipment.

Section 326.22 - Collection of Money Penalties

Enforcement of the penalties imposed by Section 326.20, 326.21(a), or 326.21(c) of this ordinance may be had through the collection of penalties from funds of the violator held by the Tribe, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of courts of other jurisdictions or through any other method authorized by tribal ordinance or state law.

Section 326.23 - Jurisdiction

This tribal court shall have jurisdiction

- (a) to determine the validity of this chapter, and
- (b) over any action arising from the implementation of this chapter.

CHAPTER 326 ENACTED BY RESOLUTION #5-8-85-179/REENACTED BY RESOLUTION 1-18-91-161

Amended by Resolution #1-10-07-14

CHAPTER 327 - BAD RIVER LAKE SUPERIOR COMMERCIAL FISHING VESSEL SAFETY REGULATIONS

Section 327.1 - Commercial Fishing Vessel Safety Regulations.

(a) Purpose and applicability. The purpose of this Chapter 327 is to protect members engagement in commercial fishing activities pursuant to the rights reserved by the Tribe in the Treaty of 1842, 7 Stat. 591, and the Treaty of 1854, 10 Stat. 1109. The provisions of this Chapter 327 apply to any vessel engaged in commercial fishing activities in Lake Superior that is owned or operated by a tribal member who possesses a commercial fishing license or permit from the Tribe. No member shall fail to comply with any requirement set forth in this Chapter 327.

(b) Relationship to Agreement with Coast Guard. This Chapter 327 shall be construed consistent with the purposes and provisions of the proposed *Memorandum of Understanding between the Bad River Band of the Lake Superior Tribe of Chippewa Indians and the United States Coast Guard*, as may be amended from time to time, should the *Memorandum of Understanding* be ratified by the Tribe. Upon its ratification, the *Memorandum of Understanding* shall be incorporated by reference herein as if set forth in its entirety.

(c) Definitions. For the purposes of this Chapter 327, the following terms mean:

(1) “Commercial Fishing Vessel” or “Vessel”- A boat owned or operated by a tribal member that is that engaged in commercial fishing activities under tribal license or permit.

(2) “Commercial Fishing Activities” - Any activity undertaken while a tribal member is operating a commercial fishing vessel for the purpose of harvesting fish under a tribal commercial fishing license or permit.

(3) “Conservation Department” - The Tribe’s conservation department,

including any tribal warden or member of the biological staff.

(4) “Serviceable” - Any required equipment or device must be in good working order and ready for immediate use, and must have been inspected, cleaned, repaired and/or tested in accordance with manufacturer guidelines and Coast Guard rules.

Section 327.2 - Inspections.

The Bad River Conservation Department is authorized to conduct commercial fishing vessel inspections as follows:

(a) Who May Conduct Inspections. Only those persons who have been qualified by the United States Coast Guard may conduct inspections. The Bad River Conservation Department may authorize inspections by persons who are not department employees if they are Coast Guard qualified.

(a) Purpose of Inspection. The purpose of the inspections is to ensure that commercial fishing vessels are in compliance with the requirements of this Chapter 327. The inspections may also ensure the vessels are in compliance with the requirements of Coast Guard regulations that go beyond the specific provisions of this Chapter 327. The Bad River Conservation Department shall develop an inspection form that is designed to obtain the information necessary to achieve these purposes.

(b) Proof of Inspection. Proof of inspection shall be demonstrated by a completed inspection form that is retained by the Bad River Conservation Department and by a Coast Guard approved decal that is affixed to the vessel’s outer hull. The decal may be the same decal that the Coast Guard uses. Any vessel for which an exemption has been requested pursuant to §1.02, below, shall not be issued a decal until the exemption request has been acted upon. The decal must

be removed upon transfer of the vessel's ownership.

(c) **Mandatory Dockside Inspections.** A vessel must be inspected:

(1) Within the first 12 months after the effective date of this Chapter 327 and at least once every 24 months thereafter;

(2) Any time the member wishes to seek an exemption from one of the requirements of this Chapter 327 in accordance with the provisions of §1.02, below;

(3) As requested by the Bad River Conservation Department or as ordered by the Tribal Court; and

(4) Within 12 months after the tribal member obtains ownership or otherwise first uses it for commercial fishing activities.

(d) **Voluntary Dockside Inspections.** A member may request a voluntary dockside inspection for the purpose of obtaining an inspection decal. No citation may be issued because a vessel fails to pass a voluntary inspection. However, citations may be issued for any non-complying vessel that is detected during routine law enforcement activities.

Section 327.3 - Exemptions.

(a) **Exemption Requests.** During any inspection, a member may request an exemption from any requirement of this Chapter 327. The inspection form shall indicate that an exemption request has been made and the inspector shall promptly notify the Bad River Conservation Department of the request.

(b) **Processing Exemption Requests.** The Bad River Conservation Department shall submit the exemption request to the United States Coast Guard. The department and the member shall provide the information requested by the Coast Guard that is necessary to respond to the

request.

(c) Issuing An Exemption. A Coast Guard exemption constitutes a tribal exemption. If the Coast Guard does not grant the requested exemption, there is no exemption from the requirements of this Chapter 327.

(d) Exemption Letter. The Exemption Letter issued by the Coast Guard constitutes proof of the exemption. A copy of the Exemption Letter must be carried on the vessel at all times.

(e) Complying With an Exemption. A vessel must be operated in compliance with the requirements and conditions of an exemption. Any violation of an exemption is a violation of this Chapter 327.

Section 327.4 - Navigation Lights.

A commercial fishing vessel must have navigation lights of the type and located on the vessel as specified in Coast Guard navigation rules. The lights must be illuminated between sunset and sunrise and at other periods of reduced visibility (such as fog, rain or haze) as the Coast Guard navigation rules require:

<u>Vessel</u>	<u>Side Lights</u>	<u>Masthead and/or Stern Light</u>
39.4 feet and less	Red and green sidelights are visible from dead ahead And to 22½ degrees to Either side of the vessel's beam	Either: All around white light Or: Stern light and masthead light that shows from dead ahead to 22½ degrees abaft the beam on either side
Longer than 39.4 feet	Same as above	Stern light and masthead light that shows from dead ahead to 22½ degrees abaft the beam on either side

Section 327.5 - Sound Signals.

The following sound signals must be used as required by Coast Guard navigation rules, such as when there is reduced visibility or to avoid collision:

All Vessels	A horn (such as a hand held air horn), whistle, or similar sound producing device
40 feet or longer	Also must carry a bell

Section 327.6 Life Preservers/Immersion Suits.

(a) Personal Floatation Devices (PFDs). Each vessel must carry at least one Coast Guard approved life preserver (Type I, II or III) of the proper size for each person on board. A Type V Hybrid life preservers may be substituted if it is worn when the vessel is underway and the wearer is not in an enclosed space.

(b) Immersion Suits. Each vessel must carry at least one Coast Guard approved immersion suit of the proper size for each person on board.

(c) Other Immersion Suit/PFD Requirements. Each immersion suit and wearable PFD must:

- (1) be in serviceable condition;
- (2) have a personal floatation device light (Coast Guard approved series 161.012) attached to the front shoulder area;
- (3) have Coast Guard approved Type I or II retro-reflective material attached as required by Coast Guard regulations;
- (4) be marked with the name of the vessel, or the owner of the device, or the individual to whom it is assigned; and
- (5) be stowed so that it is readily accessible to the individual for whom it is

intended.

Section 327.7 - Ring Life Buoy.

Each vessel must carry at least one serviceable orange 24 inch ring life buoy (Type IV PFD)

with 60 feet of line attached, except that a vessel that is at least 16 feet but less than 26 feet long may substitute one throwable cushion. Each ring life buoy must be marked with the name of the vessel and with Coast Guard approved Type II retroreflective material.

Section 327.8 - Survival Craft Required for Certain Vessels.

(a) Required Floatation Equipment. Certain vessels must carry Coast Guard approved floatation equipment, called a “survival craft,” that can be used like a raft if a vessel must be abandoned.

(5) Minimum Requirement.

Less than 36 feet long Buoyant Apparatus is required when:

Crew of 4 or more persons anywhere on Lake Superior, or

Crew of or fewer persons and more than 12miles from the shore of the mainland or an island.

36 Feet or Longer

Buoyant Apparatus is required when:

Crew of or fewer persons and less than 12 miles from the shore of the mainland or anisland.

Inflatable Buoyant Apparatus is required when:

Crew of 4 or more persons anywhere on Lake Superior, or

Crew of 3 or fewer persons and more than 12 miles from the shore of the mainland or an island.

“Buoyant Apparatus” means a Coast Guard approved floatation device (other than a lifeboat, life raft or personal floatation device) that is designed to support a specified number of persons in the water, and is constructed so that it retains its shape and requires no adjustment or preparation for use. The types of buoyant apparatus generally in use are the box-float type and the peripheral-body type.

“Inflatable Buoyant Apparatus” means a Coast Guard approved buoyant apparatus that depends on inflated compartments for buoyancy and is designed to support a specified number of persons completely out of the water.

“Crew” includes the people engaged in the commercial fisheries activities and not biologists, enforcement personnel or others performing natural resource management or regulatory duties.

(6) Substitutions. Other Coast Guard approved survival craft may be used in place of a buoyant apparatus to satisfy this requirement. These are: lifeboats, inflatable life rafts, inflatable buoyant apparatus and life floats. In addition, a boat (such as a skiff or other small open vessel), called an “auxiliary craft,” that is carried on board and that is integral to and necessary for normal fishing operations may be used instead of a survival craft.

(b) Other Requirements. A survival craft must be readily accessible during an emergency, capable of holding all crew members on board and stowed so as to float free if the vessel sinks. Where an auxiliary craft that is substituted has a Coast Guard required capacity plate, it must not be loaded in excess of the rated capacity.

Section 327.9 - Visual Distress Signals.

Each vessel must have the indicated distress signals (note: the numbers in parentheses indicate the Coast Guard approved devices that satisfy the requirement):

<u>More than 3 Miles from Coastline</u>	3 parachute flares (160.136 or 160.036), 6 hand flares (160.121 or 160.021), and 3 smoke signals (160.122, 160.022 or 160.037)
<u>3 Miles or Less From Coastline</u>	Night: 1 S.O.S. electric light (161.013) and Day: 1 Flag (160.072) or 3 approved flares for both day and night (such as hand flares or parachute flares)

Section 327.10 - EPIRBs.

Vessels operating beyond 3 miles from the coastline must carry an emergency position indicating radio beacon (EPIRB) properly licensed by the Federal Communication Commission as follows:

<u>Less Than 36 Feet Long</u>	406MHz Category I or II
<u>36 Feet or Longer</u>	406MHz Category I

The EPIRB must be tested at least once every month and registered with the National Oceanic and Atmospheric Administration (NOAA).

Section 327.11 - Fire Extinguishers.

Required Coast Guard approved fire extinguishers that must be serviceable condition are:

<u>Less Than 26 Feet Long</u>	1 B-I portable
<u>Exception</u>	None required for vessels less than 26 feet long flammable gases or vapors cannot be trapped in the boat (such as with an open boat and outboard motor).

26 Feet to Less Than 40 Feet Long 2 B-I portables or
1 B-II portable

40 Feet or Longer 3 B-1 portables or
1 B-II portable and 1 B-I portable

Section 327.12 - Backfire Flame Control.

Gasoline engines must have backfire flame control; exception: not necessary for outboard motors and for engines that are located where there is a free flowing exchange of air (for example, where forced ventilation is not necessary).

Section 327.13 - Illegal to Dump Garbage.

Garbage may not be dumped into the water (note: fish entrails are not considered garbage).

Section 327.14 - Jurisdiction, Enforcement and Penalties

(a) Tribal Court Jurisdiction. Jurisdiction over all matters arising under this Chapter 327 shall be with the tribal court which shall adjudicate in accordance with the Tribal Court Code all questions, complaints and alleged violations involving the provisions of this Chapter 327.

(b) Enforcement. The Tribal Conservation Department is empowered to enforce

the provisions of this Chapter 327.

(1) The Conservation Department shall have the authority to:

(1) Subject to subsection (2), conduct routine inspections of vessels utilized by a person in a commercial fishing activity authorized by the Bad River Code of Laws;

(2) Execute and serve warrants and other process issued by the Tribal Court in accordance with applicable law;

(3) Stop and board any commercial fishing vessel and auxiliary boats or vessels for the purposes of determining its compliance with requirements of this Chapter 327 or if the person reasonably suspects there is a violation or breach of this Chapter 327;

(4) Terminate the voyage of any vessel that is lacking required safety equipment or is otherwise being operated in an unsafe or illegal manner so as to present unreasonable risk to people or property.

(2) the inspections authorized by subsections (1)(a) and (2)(a) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities.

(3) No fisherman shall prevent the Conservation Department from inspecting vessels used in his or her fishing operation, upon the request of the Conservation Department.

(4) No fisherman shall refuse a demand by the Conservation Department to allow boarding and search if the Department has probable cause to believe that the fisherman is in violation of this Chapter on that day.

(5) No fisherman shall refuse the demand of the Conservation Department that the fisherman proceed to a port designated by the Department, if such port is within two hours travel time, for the purpose of boarding and inspection.

(6) No member shall resist or interfere with any lawful inspection, search or seizure by the Conservation Department.

(7) The acceptance of a license, identification number, or lean lake trout tags constitutes the consent of the fisherman to inspections as provided in paragraph (a), above.

(8) Great Lakes Indian Fish and Wildlife Commission Wardens are hereby

deputized to enforce provisions of this chapter and to cite members of the Bad River Tribal Court for violations of this chapters. Reference in this section to the Conservation Department or Tribal Wardens shall also include Great Lakes Indian Fish and Wildlife Commission Wardens.

(c) Penalties. The penalties for violating a section of this Chapter 327 shall be as

follows:

(1) Any person who, for himself or herself, or by his or her agent or employee, or who as an agent or employee of another, violates this ordinance, shall be liable as follows for each violation of this chapter:

(i) A civil forfeiture of not to exceed \$5,000.00;

(ii) A revocation or suspension of his or her commercial fishing rights for a period not to exceed one year;

(iv) Denial of lean lake trout tags for a period not to exceed one year;

(v) A civil remedial forfeiture of any property, including boats, motors, fishing equipment, or other property incidental to the commission of the violation of this ordinance;

(vi) The court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and

(vii) Appropriate court costs within the discretion of the court.

(2) Enhancement of Forfeiture and Penalties. Upon conviction of any member for a violation of this ordinance when such person has been convicted of a previous violation of

this ordinance within a period of five years, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate and the court shall impose a minimum penalty of a commercial fishing license suspension of not less than 30 fishing days.

(3) In any case in which the court orders a money forfeiture, the court shall set a date by which the forfeiture shall be paid, and if the forfeiture is not paid by such date, shall suspend all off-reservation hunting and fishing rights until the forfeiture is paid.

(4) All forfeitures not paid when due shall accrue interest at the rate of 1½ percent per month on the unpaid balance, the first month's interest to be due on the day following the initial due date, and each subsequent month's interest accruing on the same day of each month thereafter.

(c) Neither the imposition of a penalty as provided for above, nor satisfaction of the terms of such penalty, shall constitute a waiver or release from any additional civil or criminal liabilities, including but not limited to liability for damages to natural resources.

CHAPTER 330 - REGULATING MEMBERS FROM ASSISTING NON-INDIANS ON THE RESERVATION WITH FISHING, HUNTING TRAPPING AND RICING

Section 330.1 - Title

This ordinance shall be known as the Bad River Members Assisting Non Indians on the Reservation Ordinance.

Section 330.2 - Authority

This ordinance is enacted pursuant to Article IV, Section 1 (t) of the Bad River Tribal

Constitution.

Section 330.3 - Effective Date

This ordinance shall be effective on the date adopted by the Bad River Tribal Council.

Section 330.4 - Definitions

- (1) "Conservation Department" means the Conservation Department of the Tribe.
- (2) "Fishing" means using a hook and line, net, spear, or any other means to catch and take fish.
- (3) "Hunt" means to shoot, shoot at, pursue, take, catch, or kill, any animal on-reservation, but does not include the recovery of any animal which has already been lawfully reduced to possession.
- (4) "Member" means any person who is enrolled or is eligible for enrollment in the Tribe, or who is recognized as a member of the Tribe by the Tribal Council.
- (5) "Non-member" means any person who does not come within the definition of member.
- (6) "Reservation" means the Bad River Reservation.
- (7) "Trapping" includes the taking, or the attempting to take, of any wild animal by means of setting or operating any device, mechanism or contraption that is designed, built or made to close upon, hold fast, or otherwise capture a wild animal or animals.
- (8) "Tribal Council" means the Tribal Council of the Tribe.
- (9) "Tribe" means the Bad River Band of Lake Superior Tribe of Chippewa Indians of the Bad River Reservation.
- (10) "Trust Land" means any land held in trust by the federal government for the use of

the Bad River Tribe and its members. This does not include individually owned fee land not in trust.

Section 330.5 - Prohibition

No member shall assist, encourage or accompany any non-Indian with hunting, fishing, ricing or trapping on trust land within the exterior boundaries of the Bad River Reservation.

Section 330.6 - Penalty

- (1) The penalty for a violation of any provision of this ordinance shall be
 - (a) a forfeiture not to exceed \$500.00; or
 - (b) community service to be set by the court; or
 - (c) both (a) and (b) above.

CHAPTER 330 ENACTED BY RESOLUTION #2-5-86-2

CHAPTER 331 - RESIDENT NON-MEMBER INDIAN PERMITS

Section 331.1 - Definitions

Terms used in this chapter shall have the same meaning as in Chapter 330.

Section 331.2 - Permits Authorized

Upon application to the Conservation Department, a non-member Indian residing on the Reservation who is married to a member or who has a child who is a member and for whose support the non-member is obligated, may be issued a permit allowing the non-member to hunt deer on the reservation, for the consumption of the non-member and the non-member's immediate family. Such permit shall be valid only for the period July 1, through December 31 of the year in which the permit is issued.

Section 331.3 - Waiver and Consent Required

No permit shall be issued under Section 331.2 unless the applicant signs a statement irrevocably waiving any objection to the applicability of the Bad River Tribe's civil laws, and to the civil jurisdiction of the Bad River Tribal court over any violation the applicant may be alleged to commit. The applicant shall further affirmatively give his irrevocable consent to the civil jurisdiction of the Tribal Court over any offenses the applicant may be alleged to commit.

Section 331.4 - Automatic Lapse of Permit

Any permit issued under Section 331.2 shall automatically cease to have any force and effect upon any of the following conditions:

- (1) The permittee removes from residence on the reservation.
- (2) The permittee ceases to have a spouse or child who is a member and for whose support he is obligated.

(3) The permittee purports to revoke his waiver or consent as required by Section 331.1.

Section 331.5 - Prohibitions

(a) No non-member resident Indian shall hunt, fish, trap, or gather on the Reservation without a permit as provided in Section 331.2.

(b) No non-member Indian shall hunt, fish, trap, or gather after any permit issued to him or her shall have lapsed pursuant to Section 331.4.

(c) No non-member Indian shall violate any terms of any permit issued to him or her pursuant to Section 331.2.

(d) No non-member shall make any false representation on his or her application for a permit under Section 331.2.

Section 331.6 - Forfeitures

For any violation of this chapter, a non-member may be subject to a civil forfeiture not to exceed \$500 and revocation of all hunting, fishing, trapping, and gathering privileges.

Section 331.7. - Non-Member Assistance

The prohibition contained in Section 330.5 shall not apply to any non-member resident Indian possessing a permit issued under Section 331.2.

CHAPTER 340 - SLOUGHS PROTECTION

Section 340.1 - Title

This ordinance shall be known as “The Bad River Band Sloughs Protection Ordinance”

Section 340.2 - Authority

This ordinance is enacted pursuant to Article VI, Section 1(t) of the Bad River Tribal Constitution.

Section 340.3 - Effective Date

This ordinance shall be effective as of the date on which it is adopted by the Bad River Tribal Council, and shall remain in effect unless and until superseded by future ordinance(s).

Section 340.4 - Definitions

(a) “Bad River NRD” means the Natural Resources Department of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(b) “Boat” or “Vessel” means every description of water craft used or capable of being used as a means of transportation on water, including but not limited to motorboats, canoes, jet-skis, seaplanes, and fishing rafts.

(c) “Fishing” means any activity the purpose or effect of which is to capture, kill or take fish. The term “fishing” includes but is not limited to activities involving the use of a hook and line, net, or spear.

(d) “Growing Season” means the period between the time that submergent vegetation begins to grow and the time in which it ceases to grow (generally May 15 through September 15, unless otherwise determined by the Bad River NRD).

(e) “Motorboat” means any boat or vessel equipped with propulsion machinery, whether or not the machinery is the principal source of propulsion. The term specifically includes, but is not limited to, watercraft such as jet skis, seaplanes, and similar craft.

(f) “Person” means any natural or legal person, both members of the Bad River Band

of

Lake Superior Chippewa Indians and non-members.

(g) “Reservation” means all areas within the exterior boundaries of the Bad River Indian Reservation.

(h) “Respondent” means any person accused of violating the prohibitions described below.

(i) “Riparian Zone” means any area within the Kakagon Sloughs and Bad River wetland complex lying within the exterior boundaries of the Reservation.

(j) “Sensitive Vegetation Area” means any area within any slough in which submergent, floating leaf, or emergent vegetation is growing, or in which such vegetation is expected to grow.

(k) “Sloughs” means the Kakagon Sloughs, the Sand Cut Sloughs, Honest John Sloughs, the Bad River Sloughs, and any other sloughs located within the exterior boundaries of the reservation.

(l) “Slow-No-Wake” means that speed at which a boat moves as slowly as possible while still maintaining steerage control.

(m) “Slow-No-Wake-Zone” means any area within the entire Kakagon Sloughs and Bad River wetland complex designated as such and identified by Slow-No-Wake buoys.

(n) “Tribal Court” means the Bad River Tribal Court.

(o) “Tribe” means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(p) “Warden” means any officer authorized to enforce the terms of this ordinance.

(q) “Waters” means any waters within the exterior boundaries of the reservation, including but not limited to rivers, lakes, streams, creeks, ponds, sloughs and wetlands.

Section 340.5 - Applicability

This ordinance shall be applicable to all areas within the exterior boundaries of the reservation, and to all waters located within or traversing such areas. In addition, this ordinance shall be applicable to all waters in which the Tribe holds riparian rights.

Section 340.6 - Prohibitions and Requirements

(a) Motorboats. No person shall operate any motorboat within any sensitive vegetation area of any riparian zone during the growing season. Any boat located within any area of emergent aquatic vegetation shall have its motor lifted to its lock position. Inboard/outboard motors shall be lifted to their furthest lift position.

(b) Slow-No-Wake-Zone. No person shall operate any boat or vessel at a speed in excess of Slow-No-Wake within any area designated as Slow-No-Wake Zone.

(c) Courtesy. A slow No-Wake requirement shall be in effect at all times for all watercraft passing other watercraft.

(a) Paddles Prohibited in Emergent Vegetation. Propulsion through any area of emergent aquatic vegetation shall be done with a push-pole.

(b) Restriction on Bait. No person shall engage in any fishing activity unless the bait used in such activity is of a species indigenous to the Lake Superior basin.

Section 340.7 - Enforcement.

Enforcement of the prohibitions set forth above shall be performed exclusively by wardens of the Bad River NRD.

Section 340.8 - Jurisdiction.

The Bad River Tribal Court shall have exclusive jurisdiction over any alleged violation of this ordinance.

Section 340.9 - Penalties.

(a) The penalties for violations of any provision of this ordinance shall be as follows:

- (1) a civil forfeiture not to exceed \$500.00;
- (2) performance of community service, as determined by the Tribal Court;
- (3) both (1) and (2) above.

(b) Any boat or other equipment used in violation of this chapter may be seized by the Conservation Department and ordered forfeited.

CHAPTER 350 BOAT REGISTRATION

Section 350.1 - Purpose

The purpose of this chapter is to provide for boater safety and law enforcement by requiring tribal boat registration of all boats operated by tribal members on waters within the Bad River Reservation.

Section 350.2 - Registration Required

No tribal member shall operate a boat on any waters within the Bad River Reservation unless such boat has been registered with the tribe and displays its registration number as provided by Section 350.8, and has on board the registration certificate as provide by Section 350.9.

Section 350.3 - Exemptions

A boat is exempt from the registration requirements of this chapter if it is:

- (a) Registered and covered by a valid certificate of number issued by the State of Wisconsin.
- (b) A non-motorized boat which is not a sailboat.
- (c) A non-motorized boat which is a sailboat but which is either 12 feet in length or less or is a sailboard.
- (d) Covered by a valid certificate number issued under federal law, or a federally approved numbering system of a state other than Wisconsin, with the identification number properly displayed on each side of the forward half, but only if the boat has been in the state of Wisconsin less than 60 consecutive days, and is not the state of principal use of the boat.
- (e) Operated within a period of 15 days after application for tribal or state of Wisconsin registration has been made and the required fee paid, and if the proof of application is carried on

board.

(f) Is a federally documented vessel which is a commercial fishing boat licensed under Section 29.33, Wis. Stats.

Section 350.4 - Registration Period

The registration period runs for two years, commencing on April 1 of the year in which the registration is obtained, and ending on March 31 of the second year after issuance. A registration is valid only for the period for which it is issued.

Section 350.5 - Fees

The fee for any boat registration under this chapter for all or any part of the registration period shall be \$3.00, which must be paid prior to the acceptance of an application for registration or the issuance of registration.

Section 350.6 - Application for Registration

The Tribal Conservation Department shall obtain the following information, on forms developed by it for this purpose, from any tribal member applying to register a boat.

- (a) Name of owner.
- (b) Address of owner, including ZIP code.
- (c) Whether the vessel will be solely used on the Bad River Reservation.
- (d) Whether the vessel is used for subsistence, pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use.
- (e) Manufacturer's hull identification number (if any).
- (f) Make of vessel.

- (g) Year vessel was manufactured.
- (h) Overall length of vessel.
- (i) Whether vessel is an open boat, cabin cruiser, houseboat, or other type.
- (j) Hull material.
- (k) Whether propulsion is inboard, outboard, inboard-outboard, or sail.
- (l) Whether fuel is gasoline, diesel, or other.
- (m) The number previously issued by an issuing authority for the vessel, if any.
- (n) The signature of the owner.

Section 350.7 - Issuance Registration Certificate and Number

(a) The conservation department shall issue a registration certificate and registration number to any tribal member properly completing the application as prescribed by Section 350.6, and paying the fee prescribed by Section 350.5.

(b) The registration certificate shall contain the following information:

- (1) Number issued to the vessel.
- (2) Expiration date of the certificate.
- (3) A statement that the vessel will be solely used on the Bad River

Reservation.

- (4) Name of the owner.
- (5) Address of owner, including ZIP code.
- (6) Whether the vessel is used for subsistence, pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing or other commercial use.

- (7) Manufacturer's hull identification number (if any).
- (8) Make of vessel.
- (9) Year vessel was manufactured.
- (10) Overall length of vessel.
- (11) Whether the vessel is open boat, cabin cruiser, houseboat, or other type.
- (12) Hull material.
- (13) Whether the propulsion is inboard, outboard, inboard-outdrive, or sail.
- (14) Whether the fuel is gasoline, diesel, or other.

(c) A certificate of number issued to a vessel that has a manufacturer's hull identification number assigned, may omit items 8 through 14 of paragraph (a) of this section if the manufacturer's hull identification number is plainly marked on the certificate.

(d) The number issued shall be of following form: Two capitol letters, (BR) followed by four numerals followed by two capital letters, not to include the letters I, O, or Q.

(e) A registration decal shall be issued by the conservation department with the registration certificate.

Section 350.8 - Display of Number and Decal

Each number required by Section 350.7 must:

(a) Be painted on or permanently attached to each side of the forward half of the vessel except as allowed by paragraph (b) or required by paragraph (c) of this section.

(b) Be in plain vertical block characters not less than 3 inches in height.

(c) Contrast with the color of the background and be distinctly visible and legible.

(d) Have spaces or hyphens that are equal to the width of a letter other than "I" or a

number other than "1" between the letter and number groupings (Example: BR 5678 EF or BR-5678-EF); and

(e) Read from left to right.

(f) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number must be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

(g) The certification decal must be permanently affixed and displayed on each side of the vessel, 3 inches to the rear of and directly in line with the number.

Section 350.9 - Location of Registration Certificate

No person may use a vessel to which this chapter applies unless the registration certificate prescribed by Section 307 is carried on board in such a manner that it can be handed to a person authorized under Section 350.10 to inspect it.

Section 350.10 - Inspection of Registration Certificate

Each person using a vessel to which this chapter applies shall present the registration certificate prescribed by Section 350.7 to any Federal, Tribal, State or local law enforcement officer for inspection at his or her request.

Section 350.11 - Other Numbers Prohibited

No person may use a vessel to which this chapter applies that has any number that is not issued by the tribe for that vessel on its forward half.

Section 350.12 - Duplicate Registration Certificate

If a registration certificate is lost or destroyed, the person whose name appears on the certificate as the owner may apply for a duplicate certificate by submitting to the tribe:

- (a) An application on a form prescribed by the tribal conservation department; and
- (b) A fee of \$2.00.

Section 350.13 - Notification of Changes to Tribe

A person whose name appears as the owner of a vessel on a registration certificate shall, within 15 days, notify the tribal conservation department in writing of:

- (a) Any change in his or her address.
- (b) The theft or recovery of the vessel.
- (c) The loss or destruction of a valid registration certificate.
- (d) The transfer of all or part of his or her interest in the vessel; and
- (e) The destruction or abandonment of the vessel.

Section 350.14 - Validity of Registration Certificate

(a) Except as provided in paragraphs (b), (c), (d) and (e) of this section, a registration certificate is valid until the date of expiration prescribed by the Tribe.

(b) A registration certificate issued by the tribe is invalid after the date upon which:

- (1) The vessel is documented or required to be documented under Part 67 of Title 46, Code of Federal Regulations.
 - (2) The person whose name appears on the registration certificate as owner of the vessel transfer all of his or her ownership in the vessel; or
 - (3) The vessel is destroyed or abandoned.
- (c) A registration certificate issued by the tribe is invalid if:

(1) The application for the registration certificate contains a false or fraudulent statement; or

(2) The fees for the issuance of the certificate are not paid.

(d) The certificate is invalid when the person whose name appears on the certificate involuntarily loses his interest in the numbered vessel by legal process.

(e) The registration certificate is invalid for use of the boat on waters outside the Bad River Reservation.

Section 350.15 - Surrender of a Registration Certificate

A person whose name appears as the owner of a vessel on a registration certificate shall surrender the certificate to the conservation department within 15 days after becomes invalid under paragraph (b), (c), or (d), or Section 350.14.

Section 350.16 - Removal of Number

The person whose name appears on a registration certificate as the owner of a vessel shall remove the number and registration decal from the vessel when:

(a) The vessel is documented by the Coast Guard.

(b) The registration certificate of number is invalid under paragraph (c) of Section 350.14.

(c) The vessel is no longer solely used on the Bad River Reservation.

Section 350.17 - Decal Restriction

No person shall deface, change, modify, or transfer to any other boat any registration decal.

Section 350.18 - Registration Certificate Records

The conservation department shall on the first working day of each month, or more frequently, supply copies of all registration certificates (including renewals) issued during the preceding month to the Director, Northwest District, Wisconsin Department of Natural Resources. The Wisconsin Department of Natural Resources, the United States Coast Guard, and other state, federal, or local law enforcement agencies shall receive registration information from the conservation department upon request.

Section 350.19 - Adjudication

Any violation of this chapter shall be heard in Bad River Tribal Court.

Section 350.20 - Penalties

For any violation of this chapter, the Court may assess a forfeiture of not more than \$50 for the first offense and not more the \$100 upon conviction of the same offense a second or subsequent time within one year.

Chapter 350 Enacted By Resolution #4-22-88-152/Repealed and Reenacted By Resolution #5-2-90-109

CHAPTER 351 - SNOWMOBILE REGISTRATION

Section 351.1 - Purpose

The purpose of this chapter is to provide for snowmobile owner and operator safety, safety of community members, wildlife and property, by the setting of standards for safe operation of snowmobiles operated by any person, both member and non-member, and identification by requiring tribal registration of all snowmobiles operated by tribal members within the Bad River Reservation.

Section 351.2 - REGISTRATION

Section 351.2.1 - Registration Required

No tribal member shall operate, and no member who is an owner shall give permission for the operation of any snowmobile, within the Reservation unless the snowmobile is registered with the Department and displays registration decals pursuant to this chapter or is exempt from registration.

Section 351.2.2 - Exemptions

A snowmobile is exempt from registration if it is:

- (a) Covered by a valid registration in the State of Wisconsin, or
- (b) Covered by a valid registration on another reservation or in another state, province or country, provided there is some identification of registration displayed on the snowmobile and it has not been on the Reservation for more than 15 consecutive days.
- (c) Used exclusively for racing on a raceway facility.
- (b) Exemptions from the Registration requirement shall not provide for an exemption from the trail pass requirement in Section 351.5.1(a).

Section 351.2.3 - Registration Period

A snowmobile registration certificate is valid for 2 years beginning the July 1 prior to the date of application if registration is made prior to April 1 and beginning the July 1 subsequent to the date of application if registration is made after April 1, and ending on June 30, two years thereafter.

Section 351.2.4 - Fees.

(a) Issuance and Renewal. The fee for the issuance or renewal of a registration certificate is \$5. There is no fee for the issuance of a registration certificate to Tribal department or entities.

(b) Lost or Stolen Certificate Decal. If a registration certificate or decal is lost or destroyed, the owner must apply for an original certificate or registration decal as in 351.2.4(a) at a cost of \$5.

(c) Transfer of Ownership.

(1) Upon transfer of ownership of a snowmobile for which a registration certificate has been issued, the seller shall, at time of sale, deliver the assigned certificate to the purchaser.

(2) The purchaser shall complete the application for transfer and cause it to be mailed or delivered to the Department within 10 days from the date of purchase. A fee of \$5 shall be paid for transfer of a current registration certificate.

Section 351.2.5 - Issuance of Certificate and Decals

(a) Upon receipt of the required fee, and a completed application on forms prescribed

by the Department, the Department shall issue to the applicant a registration certificate stating the registration number, the name and address of the owner, and other information the Department deems necessary. The department shall issue 2 registration decals per snowmobile. The decals shall be no larger than 3 inches in height and 6 inches in width and no smaller than 2.5 inches by 3 inches, and shall contain reference to the Tribe, the Department and the expiration of the registration.

Section 351.2.6 - Display of Registration Decals

(a) The owner of the snowmobile shall attach the registration decals to the snowmobile on both sides of the cowling in a prominent place and shall maintain the registration decals in a legible condition at all times.

(e) Until the registration decals are received from the Department, a person may operate a snowmobile without having the registration decals displayed as provided under par. (a) if the owner has received an approved application for registration receipt validated by the Department and if the user of the snowmobile complies with pars. (c) and (d).

(c) The registration certificate or, for owners who purchased a snowmobile and who have received an approved application for registration receipt validated by the Department but who have not yet received the registration certificate, the approved application for registration receipt, shall be in the possession of the user of the snowmobile at all times.

(d) The registration certificate or, for owners who purchased a snowmobile and who have received an approved application for registration receipt validated by the Department but who have not yet received the registration certificate, the approved application for registration receipt,

shall be exhibited, upon demand, by the user of the snowmobile for inspection by any person authorized to enforce this chapter as provided under Section 351.6. complies with pars. (b) and (c).

Section 351.2.7 - Change of Address

Whenever the owner of a registered snowmobile changes his address he shall within 15 days thereafter, notify the Department in writing of his new address and of the registration numbers awarded to him or her. At the same time he or she shall endorse his or her new address on his registration certificate.

Section 351.2.8 - Junked Snowmobiles

Whenever a snowmobile is junked, the owner shall return the certificate of registration to the Department marked “junked” prior to disposal of the snowmobile. Snowmobiles shall be disposed of properly and in accordance with the Tribe’s Solid Waste Ordinance. All fluids and batteries shall be safely disposed of so as not to cause harm to any person, wildlife, or the environment.

Section 351.2.9 - Department Duties

(a) The Department shall, on the first working day of each month, or more frequently, supply copies of all registration certificates, including renewals, and notification of all cancellations, suspensions, revocations, changes of address and transfers, to the Bad River Police Department, the Wisconsin Department of Natural Resources, the Wisconsin Department of Transportation, and the Ashland County Sheriff’s Department. Each such agency shall receive current registration information upon request made to the Department.

(b) The Department shall provide to any qualifying applicant who properly completes a registration application and pays the fee required, a receipt of approved application to be used as

proof of registration pending delivery to the applicant of the certificate of registration and registration decals.

(c) No earlier than May 1 and no later than June 1 of each year the Department shall mail to each owner of a registered snowmobile a 2 part renewal application. If the owner wishes to renew the registration, the owner shall complete and sign one portion of the renewal application and return that portion and the proper fee to the Department. The owner shall complete and sign the other portion of the renewal application. The owner shall destroy this portion of the renewal application upon receipt of the registration certificate and decals.

Section 351.3 - SAFE OPERATION

Section 351.3.1 - Operation of Snowmobiles on or in the Vicinity of Highways and Roadways.

(a) No person may operate a snowmobile upon any part of U.S. Highway 2, except as permitted by Section 351.3.1(c)(1) below.

(b) Persons may operate a snowmobile only in the following manner on any highway or roadway or as otherwise authorized by law:

(1) Directly across any roadway, but only after stopping and yielding the right-of-way to all vehicles approaching on the roadway. Crossings under this subdivision may be made only at a place where no obstruction prevents a quick and safe crossing. For purposes of this subdivision, "obstruction" includes but is not limited to impairment of view and dangerous roadway condition.

(2) On any roadway which is not normally maintained for other vehicular traffic by the removal of snow.

(3) On the roadway of highways to cross a bridge, culvert, or railroad right-of-way unless posted by the maintaining authority, but shall yield the right-of-way to all vehicular traffic.

(4) On the roadway of county or town highways and Tribal or village roads or streets for special snowmobile events authorized under Section 351.5.

(5) On highways and roads which have been designated as snowmobile routes and which are required to be marked.

(6) On a portion of the roadway or shoulder of a highway for the purpose of residential access or for the purpose of access from lodging if the Tribal Council permits by posting for that portion of the roadway or highway. A snowmobile operated on a portion of the roadway or shoulder of a highway under this subdivision shall observe roadway speed limits.

(c) Snowmobiles may be operated adjacent to a roadway with due regard for safety in the following manner:

(1) Along U.S. Highway 2, state and county highways at a distance of 10 or more feet from the plowed edge of the roadway.

(2) Along Tribal roads outside of the roadway.

(3) During daylight hours travel may be in either direction regardless of the flow

of vehicular traffic.

(4) At night travel shall conform to the direction of vehicular traffic in the nearest lane unless:

(a) The snowmobile trail is located at least 40 feet from the roadway or is separated from the roadway by a head lamp barrier; and

(b) The use of the snowmobile trail is approved by the Tribal Council with respect to the snowmobile trails located near or crossing highways.

(5) Whenever it is impracticable to gain immediate access to an area adjacent to a highway where a snowmobile is to be operated, the snowmobile may be operated adjacent and parallel to the roadway for the purpose of gaining access to and from the area of operation. Loading or unloading of the snowmobile shall be accomplished with due regard to safety at the nearest practical point to the area of operation.

(6) Snowmobiles traveling adjacent to a roadway shall observe roadway speed limits, except no snowmobile may be operated in excess of a speed of 50 miles per hour at any time of day or night.

(d) Snowmobiles may be operated for emergency purposes on any highway during a period of emergency when so determined by the Tribal Conservation Department, Tribal Police Chief, Tribal Fire Chief, or Tribal Council.

(e) A law enforcement officer or Conservation Warden may operate a snowmobile on a highway in performance of his or her official duties.

(f) Under no circumstances, except as provided in this section, is a snowmobile to be operated on the main-traveled portion of a highway or on the plowed portion.

Section 351.3.2 - Right-of-way.

The operator of a snowmobile shall slow the vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not in or on a

snowmobile.

Section 351.3.3 - Responsibility for Operation by Minors/Owner Permitting Operation

(a) Responsibility for operation by minors.

(1) No owner or other person in possession of any snowmobile shall authorize or knowingly permit any person under 18 years of age to operate such a snowmobile in violation of any provision of this Chapter.

(2) No parent or guardian shall authorize or knowingly permit his or her child or ward, if under 18 years of age, to operate a snowmobile in violation of any provision of this Chapter.

(3) Any parent or guardian whose child or ward is found to have cause injury to persons, property or natural resources by operation of a snowmobile may be held personally responsible for such damages.

(b) No owner or other person having ownership, charge or control of a snowmobile may knowingly authorize or permit any person to operate the snowmobile in violation of this Chapter, or to operate the snowmobile if the person is prohibited from operating a snowmobile under this Chapter, if the person is incapable of operating a snowmobile because of physical or mental disability, or if the person is under the influence of an intoxicant.

(c) Any person having ownership, charge, or control of a snowmobile which was operated by any person in a manner which has caused injury to persons, property or natural resources may be held personally responsible for such damages.

Section 3513.4 - General Safety Provisions

(a) Right-of-Way: The following individuals shall have the right-of-way over

snowmobiles at all times and all locations.

- (1) Pedestrians
- (2) Vehicles entering or exiting driveways and access routes
- (3) Moving vehicles
- (4) Emergency & law enforcement vehicles, including cars, trucks, ATV's

snowmobiles, and boats.

(b) No person shall operate a snowmobile in the following manner:

- (1) At rate of speed that is unreasonable or improper under the circumstances.
- (2) At a rate of speed in excess of the posted speed limit for roadways or trails
in

the community in which the snowmobile is being operated, whether operated on road, trail, or off road or trail.

(3) At any time and at any place within the Reservation boundaries at a speed in excess of 50 miles per hour at any time of day or night.

(4) Without complying with all stop signs, yield signs, or other regulatory signs that are located along snowmobile routes, snowmobile trails or other established snowmobile corridors that are open to the public.

(5) On the private property of another, including tribal trust, fee or allotted property, without the consent of the owner or lessee. Failure to post property does not imply consent for snowmobile use.

(6) In any careless way so as to endanger the person or property of another.

(7) At any time of day or night, when within 150 feet of a dwelling, at a rate of

speed exceeding 10 miles per hour.

(8) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle or within 100 feet of a fishing shanty at a rate of speed exceeding 10 miles per hour.

(9) On a playground, slide, ski, skating or other non-motorized recreation area except for the purpose of servicing the area, responding to emergencies, crossing at places where marked or after stopping and yielding the right-of-way, but only for the purpose of crossing, access or exit to or from a dwelling, lodging or other building when no other route is safe or feasible, and at no time of day or night at a speed exceeding 10 miles per hour when within 150 feet of these areas.

(10) On or across a cemetery, burial ground, childcare, school or church property without consent of the owner or Tribal Council.

(11) On Tribal lands without the consent of the tribal governing body or Indian fee land owner. For purposes of this paragraph, "Tribal lands" means lands owned by the United States and held for the use or benefit of the Bad River Tribe or individual members and any lands owner by the Tribe or individual members. Failure to post Indian lands does not imply consent for snowmobile use. The Tribal Council by this Chapter hereby grants permission to Tribal Members to operate snowmobiles on lands owned in fee by the Tribe or held in trust for the Tribe unless otherwise posted or published as closed to snowmobiles provided all other provisions of the chapter are followed.

Section 351.3.5 - Head Lamps, Tail Lamps, Brakes and Mufflers

(a) Any snowmobile operated anywhere and at anytime within the boundaries of the Reservation shall display a lighted head lamp and tail lamp.

(b) Every snowmobile shall be equipped with at least one brake operated either by hand or foot, capable of bringing the snowmobile to a stop, under normal conditions, within 40 feet when traveling at a speed of 20 miles per hour with a 150 pound driver on a level, hard-packed snow surface. The design shall permit simple and easy adjustment to compensate for wear. There shall be no other control linked to the brake which impairs braking operation.

(a) No snowmobile shall be operated unless it is equipped with a muffler in good working order, which blends the exhaust noise into the overall engine noise and is in constant operation to prevent excessive or unusual noise. No snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise emission above that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

Section 351.3.6 - Intoxicated Snowmobiling

No person may engage in the operation of a snowmobile while under influence of an intoxicant to a degree which renders him or her incapable of safe snowmobile operation. Law enforcement personnel may hold a person reasonably suspected of operating a snowmobile under the influence of an intoxicant until another officer with a breathalyzer arrives on the scene and the test is administered.

Section 351.3.7 - Operation by Youthful Operators Restricted.

(a) PERSONS UNDER 12. No person under the age of 12 years may operate a snowmobile at any time, except when all of the following circumstances are present:

(1) Such person under the age of 12 years is operating a “toy” or childsize snowmobile which has a governor control which prevents it from exceeding speeds of 8 miles per hour;

(2) the child is wearing a helmet;

(3) The child is at all times supervised by a parent, legal guardian or individual over the age of 18 years; and

(4) all other sections of this ordinance are being complied with.

(b) PERSONS UNDER 16. No person under the age of 16 years may operate a snowmobile unless the person is accompanied either by a parent or guardian or by a person over 18 years of age.

(c) PERSONS AGED 16 AND OLDER; SNOWMOBILE SAFETY CERTIFICATES AND PROGRAM.. No person who is at least 16 of age but younger than 19 years of age may operate a snowmobile unless he or she holds a valid snowmobile safety certificate.

(d) Any person who is required to hold a snowmobile safety certificate while operating a snowmobile shall carry a certificate on the snowmobile and shall display the certificate to a law enforcement officer on request. Persons enrolled in a safety certification program approved by the Department may operate a snowmobile in an area designated by the instructor.

Section 351.3.8 - Safety Certification Program Established

The Department shall conduct a program of instruction on snowmobile safety, including intoxicated snowmobiling, regulations, safety and related subjects. The program shall be conducted by instructors approved by the Department. Each person satisfactorily completing this program shall receive a snowmobile safety certificate from the Department. The Department shall establish an instruction fee for this program. An instructor conducting a program of instruction under this section shall collect the instruction fee from each person who receives instruction and shall remit the fee to the Department. A person who is required to hold a valid snowmobile safety

certificate issued by another tribe, state, or province of Canada and if the course content of the program in such other tribe, state, or province substantially meets that established by the Department under this section.

Section 351.3.9 - Helmet Required

All persons operating or riding on a snowmobile and on devices attached to a snowmobile within the boundaries of the Bad River Reservation shall wear an approved snowmobile safety helmet properly secured at all times the snowmobile is in motion.

Section 351.4 - Driving or Harassing Animals and Damaging Plant Life/Area Closure

Section 351.4.1 - Driving or Harassing Animals, Birds, or Fish

(a) No person shall operate a snowmobile in any area posted as restricted by the Department for the protection wildlife nor in any deer yarding area, whether or not marked.

(b) No person shall drive, harass, or pursue any animal, bird, or fish with a snowmobile, except as a part of normal farming operations involving the driving of livestock.

Section 351.4.2 - Damaging Plant Life

(b) No person shall operate a snowmobile in any forest nursery, planting area, or on public lands posted or reasonably identified as an area of forest or plant reproduction when growing stock may be damaged, except Department personnel while engaged in their duties related to plant growth.

(c) No person shall recklessly or intentionally damage any plant life within the boundaries of the Reservation while operating a snowmobile. All persons shall endeavor to stay on trails, or when no trails exists, to avoid damage to plant life as much as possible.

Section 351.5 - TRAILS, ROUTES, SNOWMOBILE RACES AND DERBIES

Section 351.5.1 - Trails

The Tribal Council may adopt by resolution designated snowmobile trails for the purpose of recreation, subject to any limitations for use imposed by the Tribal Council in its designating resolution and subject to the following conditions:

- (a) All non-member users of the trail shall be required to purchase a trail pass prior to using the trail at locations designated by resolution of the Tribal Council. Such trail pass shall state the dates of validity, any trail use limitations set by the Tribal Council such as for recreational purposes only, and language to comply with subsection (c) below.
- (b) The trail pass fee, which shall be charged at the time of purchase, shall be set by resolution of the Tribal Council and may be changed as deemed necessary by the Tribal Council.
- (c) Any trail pass shall contain language acknowledging use's acceptance of Bad River Tribal Court jurisdiction for any violations of this ordinance. By accepting the trail pass, the user consents to the jurisdiction of the Bad River Tribal Court.
- (d) Tribal members operating snowmobiles duly registered under Section 351.2 of this ordinance shall not be required to purchase a trail pass. The exemptions of Section 352.2 shall not apply to this section.
- (e) All users of the snowmobile trail shall comply with all safety and operation regulations set out in this Chapter 351 and any trail use limitations set out by the Tribal Council in its trail designating resolution, and shall comply with all posted safety and operation signs.

Section 351.5.2 - Routes

On state trunk bridges, a sidewalk, or, if no sidewalk exists, one lane of the bridge may be designated by the Tribal Council as a snowmobile route. The Tribal Council may adopt resolutions designating highways as snowmobile routes for snowmobile operation, subject to the following limitations:

(a) Snowmobiles shall be operated on the extreme right side of the roadway.

(b) Left turns shall be made as safely as possible from any position depending on snow cover and other prevailing conditions.

(c) Snowmobile operators shall yield right-of-way to other vehicular traffic and pedestrians.

(d) Highways designated for snowmobile operation shall be marked in accordance with this Chapter.

Section 351.5.3 - Special Events

The Tribal Council may block off the highways and roads under its jurisdiction for the purpose of allowing special snowmobile events. No state trunk highway or connecting highway or part thereof shall be blocked off for any snowmobile race or derby. The Tribal entity hosting the event shall notify the Tribal Police Department and the Conservation Wardens office at least one week in advance of the time and place of any snowmobile race or derby which may result in any street or part thereof, being blocked off. Upon such notice, the Police Department shall take such measures as it deems appropriate to protect persons and property and to regulate traffic in the designated area and its vicinity on the day of such race or derby.

Section 351.5.4

The Tribal Council and any Tribal entity shall not be liable for any injury suffered in

connection with a race, derby, trail, or route under this section. The Tribal entity hosting an event shall post the provisions of this paragraph in a conspicuous place, readily accessible to all contestants and spectators, and shall assist in locating and identifying persons responsible for injuries that may occur.

Section 351.5.5

Section 351.3.5(c) does not apply to snowmobiles competing in a sanctioned race or derby.

Section 351.5.6

All snowmobile competing in a sanctioned race or derby shall be equipped with a device wired into the motor's electrical system that will shut off the motor if the operator falls from the snowmobile or otherwise leaves the operator's position. The device shall be capable of being attached to the body of the operator and shall be so attached when the snowmobile is being operated.

Section 351.6 - Enforcement.

(a) The Department, the Bad River Police Department, the Wisconsin Department of Transportation, and the Ashland County Sheriff's Department are authorized to enforce the provisions of this chapter and to cite any operators members for violation thereof into Tribal Court, using the Bad River Police Department citation form, Tribal Natural Resources citation form then approved or the state uniform citation form then approved.

(b) No person operating a snowmobile shall refuse to stop after being requested or signaled to do so by an officer of any Department listed in sec. 351.6(a).

Section 351.7 - Parties to a violation.

(a) Whoever is concerned in the commission of a violation of this chapter for which a

forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(b) A person is concerned in the commission of a violation if the person”

(1) Directly commits the violation;

(2) Aids and abets the commission of it; or

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

Section 351.8 - Adjudication.

Any violation of this chapter shall be prosecuted in Tribal Court. Violations of this ordinance shall be adjudicated in the Bad River Tribal Court pursuant to the rules and procedures promulgated in the Bad River Tribal Court Code.

Section 351.9 - Penalties, Seizure and Damages.

For any violation of this chapter, the court may assess a forfeiture of not more than \$250.00.

Section 351.9.1 - Penalties

The penalties for violations of any provision of this chapter shall be as follows:

(a) a civil forfeiture not to exceed \$500.00;

(b) performance of community service, as determined by the Tribal Court;

(c) both (a) and (b) above.

Section 351.10 - Definitions

Definitions. As used in this chapter, the following terms, shall be defined as

follows:

(a) “Accompany” means to be on the same snowmobile as the operator.

(b) “Approved protective helmet” shall mean a helmet of a type that meets the Snell standard or the standards set by the American National Standards Institute (ANSI) and which has not previously been subject to an impact.

(c) “Department” shall mean the Bad River Natural Resources Department.

(d) “Headlamp” means a major lighting device used to provide general illumination ahead of a vehicle.

(e) “Headlamp barrier” means a fence, natural growth, difference in elevation or other means of restricting the view that users of an adjacent roadway have of headlamps on a snowmobile trail.

(f) “Highway” means all public ways and bridges, including the entire width between the

boundary lines of every way, open to use of the public for the purpose of vehicular travel.

Highway does not include private roads or driveways.

(g) “Hours of darkness” means the period of time from one-half hour after sunset to one-half hour before sunrise and all other times when there is not sufficient natural light to render clearly visible and person or vehicle upon a highway at a distance of 500 feet.

(h) “Intoxicant” means any alcohol beverage, controlled substance, controlled substance

analog or other drug or any combination thereof.

- (i) “Junked” shall mean a snowmobile which is not operational and has been dismantled for parts or scrapped.
- (j) “Law enforcement officer” means a member of the Bad River Police Department or a Bad River Conservation Warden, or any member of the agencies listed in 351.6(a).
- (k) “Member” shall mean an enrolled member of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.
- (l) “Operate” means to exercise physical control over the speed or direction of a snowmobile or to physically manipulate or activate any of the controls of a snowmobile necessary to put it in motion.
- (m) “Operator” means a person who operates a snowmobile, who is responsible for the operation of a snowmobile, or who is supervising the operation of a snowmobile.
- (n) “Owner” means a person who has lawful possession of a snowmobile by virtue of legal title or equitable interest therein which entitles the person to possession of the snowmobile.
- (o) “Reservation” shall mean all lands and waters within the exterior boundaries of the Bad River Reservation.
- (p) “Roadway” means that portion of a highway between the regularly established curb lines or that portion which is improved, designed, or ordinarily used for vehicular travel, excluding the berm or shoulder.
- (q) “Sanctioned race or derby” means a competitive snowmobile event sponsored by the Tribal Council or a Tribal Entity.
- (r) “Snowmobile” shall mean any engine-driven vehicle of a type which utilizes sled type runners, or skis, or an endless belt tread or any combination of these or other similar means of

contact with the surface upon which it is operated, but does not include such vehicles which are either manually propelled or driven by a motor of 4 horsepower or less and operated only on private property.

(s) “Snowmobile route” means a highway or sidewalk designated for use by snowmobile

operators by the Tribal Council agency having jurisdiction as authorized under this chapter.

(t) “Snowmobile trail” means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by snowmobile operators by the Tribal Council, but excluding highways except those highways on which the roadway is not normally maintained for other vehicular traffic by the removal of snow.

(u) “State trunk highway” means any highway designated by the State of Wisconsin as part of the state trunk highway system over which the state has maintenance authority, exclusive of connecting highways.

(v) “Tail lamp” means a device to designate the rear of a vehicle by a warning light.

(w) “Tribal Court” shall mean the court of the Bad River Band of the Lake Superior Tribe of Chippewa Indians and its appellate court.

History: *This history is a summary of amendments to the ordinance and is for reference purposes only . Amendments of December 4, 2002; Title is changed to reflect safety provisions added to what were previously registration only provisions by adding the language "AND SAFETY." Section 351.1 is changed to include language regarding the safety of the community, wildlife, and property, as well as the setting of standards for safe operation by adding the language "safety of community members, wildlife and property by the setting of standards for safe operation of snowmobiles operated by any person, both member and non-member." A new section heading is created under 351.2 entitled "Registration" and old sections 351.2 through 351.9 are renumbered as 351.2.1 through 351.2.9 respectively. Subsection (d) has been added to new 351.2.2 to exclude the trail pass requirement from the registration exemption. Old Sections 351.4 and 351.5 have been renumbered as 351.2.4 and the fee amount as 351.2.4(a), changed the fee from \$12 to \$5 and has been reworded to read that Owners who lose or destroy certificates or decals must re-apply for an original at a cost of \$5. Old Section 351.5(b) and (c) have been renumbered to new section 351.2.4(c). Old Section 351.5(d) has been deleted and replaced by the language in new section 351.2.8 and now includes language regarding the proper disposal of fluids, batteries, and snowmobiles. Old Section 351.6 has been re-numbered to 351.2.5 and 351.6(b) has been deleted.*

Old Section 351.7 has been renumbered to 351.2.6 and the language "on both sides of the cowling" added. The language beginning with the words "Decals shall..." has been deleted. New Section 351.2.6 now includes the language "Until the registration decals are received from the Department." Old Section 351.8 has been renumbered to 351.2.7 and the language changed to be gender inclusive. Old Section 351.9 has been renumbered to 351.2.9 and the "the Bad River Police Department" has been added to the list of entities supplied copies. Old Section 351.9(c) has been deleted in its entirety.

Section 351.3 to 351.5.6 are new sections. Old Section 351.13 has been renumbered and renamed as 351.9. Penalties, Seizure and Damages, and new sections 351.9.1 have been added to clarify this section, set out new forfeitures, and change the previous maximum forfeiture from \$250 to \$500. Old Section 351.10 has been re-numbered as 351.6 and "the Bad River Police Department" has been added as an authorized enforcement entity and the reference to old section 351.10(a) has been deleted and changed to new section 351.6(a) and language changed to include "any operators" rather than only members. Old sections 351.10 through 351.14 are re-numbered as 351.6 through 351.10 respectively. New definition numbers 351.10(b) through (f), (h), (j) through (l), (m), (o), and (a) through (t) have been added, and former definitions have been re-numbered as follows: 351.14(b) to (g), (d) to (m), (e) to (p) and (f) to (u).

CHAPTER 352 - ALL TERRAIN VEHICLE REGISTRATION, SAFETY AND OPERATION STANDARDS. (ATV)

Section 352.1 - Purpose and Applicability

Section 352.1.1 - Purpose.

The purpose of this chapter is to provide for all ATV owner and operator safety, usage and registration, and to protect the environment and the general safety of the public on the Bad River Reservation.

Section 352.1.2 - Applicability.

Section 352.2 of this chapter shall apply to all Tribal member owners of ATV's located within the boundaries of the Bad River Reservation. All remaining sections of this ordinance shall apply to all owners and operators, whether Tribal members or non-members, within the boundaries of the Bad River Reservation.

Section 352.2 -Registration

Section 352.2.1 - Registration Required.

No tribal member shall operate, and no member who is an owner of an ATV shall give permission for the operation of any ATV, within the exterior boundaries of the Reservation unless the ATV is registered with the Bad River Natural Resources Department and displays registration decals pursuant to this Chapter or is exempt from registration as is provided at Section 352.2.2.

Section 352.2.2 - Exemptions.

An ATV is exempt from registration as is provided for at Section 351.2 if it:

- (a) Carries a valid registration from the State of Wisconsin:
- (b) Carries a valid registration from another recognized Reservation or from another

State, province or Country, and such registration and identification is displayed on the ATV and it has not been on the reservation for more than 15 days;

- (1) If any ATV is registered as provided in (b) B. above, after 15 days within the

exterior boundaries on the Reservation it just be licensed under this Chapter; or

- (c) Used exclusively for racing on a raceway facility.

Section 352.3 - Issuance of Certification of Registration and Decals.

- (a) The Department is authorized to draft appropriate application forms, registration forms and certificates and decals to carry out the purpose of this ordinance.

- (b) The Department is authorized to charge a fee that will cover the cost of assuring compliance with this ordinance both as to administration and enforcement. Such fee shall be set at \$5.00.

- (c) Upon receipt of a completed application form, and the required fee, the department shall issue to the applicant a registration certificate which will contain the name, address of the owner of the vehicle, the identification number from the vehicle and the registration number issued to that vehicle.

- (d) Each vehicle shall be issued two decals showing that it is registered, which shall state the expiration date for the registration.

- (e) If the registration certificate or decals are lost or destroyed, the owner of the ATV may apply for a duplicate to be issued upon payment to the Department of the required fee of \$5.00.

- (f) Whenever an ATV is junked, the owner shall return the Certificate of Registration

to the Department clearly marked “JUNKED”.

(g) All fees collected under this section shall be used to defray the administrative costs of operating the program, and for safety education of the ATV’s.

Section 352.2.3 - Issuance of Certification of Registration and Decals

(a) The Department is authorized to draft appropriate application forms, registration forms and certificates and decals to carry out the purpose of this ordinance.

(b) The Department is authorized to charge a fee that will cover the cost of assuring compliance with this ordinance both as to administration and enforcement. Such fee shall be set at \$5.00.

(c) Upon receipt of a completed application form, and the required fee, the department shall issue to the applicant a registration certificate which will contain the name, address of the owner of the vehicle, the identification number from the vehicle and the registration number issued to that vehicle.

(d) Each vehicle shall be issued two decals showing that it is registered, which shall state the expiration date for the registration.

(e) If the registration certificate or decals are lost or destroyed, the owner of the ATV may apply for duplicate to be issued upon payment to the Department of the required fee of \$5.00.

(f) Whenever an ATV is junked, the owner shall return the Certificate of Registration to the Department clearly marked “JUNKED”.

(g) All fees collected under this section shall be used to defray the administrative costs of operating the program, and for safety education of the ATV’s.

Section 352.4 - Waiver of fees.

There is no fee for the issuance of a registration certificate to the Tribe, but the Tribe shall display such decals correctly on its vehicles.

Section 352.5 - Ownership Transfer of Vehicle.

(a) Upon transfer of ownership of an ATV for which a registration certificate has been issued by the Department, the seller shall at the time of sale deliver to the purchaser the current registration certificate.

(b) The purchaser shall complete an application for transfer of registration and cause it to be mailed or delivered to the Department within 10 days from the date of purchase. A transfer fee shall be charged by the Department. Such transfer fee shall be \$5.00.

Section 352.2.6 - Registration Period.

An ATV registration certificate is valid for two (2) years beginning the 1st of July. The registration period ends on 30 June, two years after issuance, and such expiration date shall be clearly stated on the decals.

Section 352.2.7 - Display of Registration Decals.

The owner of the ATV shall attach the registration decal to the ATV on the right and left side of the gasoline tank, and shall maintain the registration decals in a legible condition at all times.

Section 352.2.8 - Change of Address.

Whenever the owner of a registered ATV changes their address, they shall, within 15 days thereafter, notify the Department in writing of their new address and of the registration numbers on any vehicles registered under this Chapter. At the same time, they shall write their new address on their registration certificate.

Section 352.3 - Rules of Operation

Section 352.3.1 - General rules of Operation

(a) No person shall operate an ATV in the following manner or under the following circumstances.

- (1) At the rate of speed that is unreasonable or improper under the circumstances.
- (2) At any time and at any place within the Reservation boundaries at the speed of 55 miles per hour at any time or 40 miles per hour between sunset and sunrise.
- (3) In any careless way so as to endanger the person or property of another.
- (4) Without complying with all stop signs, yield signs or other regulatory signs that are located along ATV corridors that are open to public. On the private property of another without consent of the owner or lessee. Failure to post private property does not imply consent for ATV use.
- (5) Between the hours of 10:30 p.m. and 7 am when within 150 feet of a dwelling at the rate of speed exceeding 10 miles per hour or less.
- (6) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle or within 100 feet of a fishing shanty unless operated at the speed of 10 miles per hour or less.
- (7) On a recreation or play area, unless specifically designated by the Tribal Council for ATV recreational purposes, except for the purpose of serving the area, crossing at places where marked or after stopping and yielding the right-of-way.
- (8) On or across a cemetery, burial ground, school or church property without

consent of the owner.

(9) On Tribal lands without the consent of the tribal governing body or Indian owner. For the purposes of this paragraph, “Tribal lands” means lands owned by the United States and held for the use and benefit of the Bad River Tribe or individual Members and any lands owned by the Tribe or individual members. Failure to post Indian Lands does not imply for consent of ATV use. The Tribal Council by this Chapter hereby grants permission to Tribal Members to operate ATVs on lands owned in fee by the Tribe or held in trust for the Tribe unless otherwise posted, except for in Residential Areas between dwellings and across common areas.

(10) ATVs may only be operated in residential areas outside roadways to gain immediate access to a dwelling or to exit from a dwelling to a roadway. ATVs shall not be operated between dwellings or across common areas unless on a posted and maintained trail or route.

Section 352.3.2 - Trails

(a) Operators of ATVs on any trails within the reservation boundaries shall operate the ATV in a safe and prudent manner and shall not disturb or harass wildlife or plant life.

(b) No person shall operate an ATV open any trail within the Reservation boundaries at a speed in excess of that which is safe under the existing conditions, however such speed shall in no circumstances exceed 55 miles per hour at any time and 40 miles per hour between sunset and sunrise and during weather conditions which limits visibility or creates wet, snow covered, or slippery road conditions.

(c) While operating on trails, no person shall exceed the posted speed limits for roads in

the community in which the trail is located.

Section 352.3.3 - Roadways and Highways

(a) No person may operate an ATV upon any part of U.S. Highway 2.

(b) Persons may operate an ATV only in the following manner on any highway or roadway as otherwise authorized by law:

(1) Directly across any roadway, but only after stopping and yielding the right-of-way to all vehicles approaching on the roadway. Crossing under this subdivision may be made only at a place where no obstruction prevents a quick and safe crossing. For purposes of this subdivision, "obstruction" includes but is not limited to impairment of view and dangerous roadway condition.

(2) On the roadway of highways to cross a bridge, culvert or railroad right-of-way unless posted by the maintaining authority, but shall yield the right-of-way to all vehicular traffic.

(3) On highways which have been designated as routes and which are required to be marked.

(4) On a portion of the roadway or shoulder of a highway for a purpose of residential access or for the purpose of access from lodging if the Tribal Council permits by posting for that portion of the highway. An ATV operated on a portion of the roadway or shoulder of the highway under this subdivision shall observe posted roadway speed limits.

(c) ATVs may be operated adjacent to a roadway with due regard to safety in the following manner:

(1) Along U.S. Highway 2 state and country high-ways at a distance of 10 or more feet from the roadway.

(2) Along Tribal roads outside of the roadway.

(3) During daylight hours travel may be in either direction regardless of the flow of vehicular traffic.

(4) At night travel shall conform to the direction of vehicular traffic in the nearest lane unless:

(a) The ATV trail is located at least 40 feet from the roadway, or is separated from the roadway by a head lamp barrier; and

(b) The use of the ATV trail is approved by the Tribal Council with respect to ATV trails located near or crossing highways.

(5) Whenever it is impracticable to gain immediate access to an area adjacent to a highway where an ATV is to be operated, the ATV may be operated adjacent and parallel to the roadway for the purpose of gaining access to and from the area of operation.

Loading or unloading of the ATV shall be accomplished with due regard to safety at the nearest practical point to the area of operation.

(6) ATVs traveling adjacent to a roadway shall observe posted roadway speed limits, except no ATV may be operated in excess of a speed of 55 miles per hour at any time or 40 miles per hour between sunset and sunrise.

(7) On gravel roads, no person shall operate an ATV in excess of 40 miles per

hour with no passengers, and no person shall operate an ATV in excess of 20 miles per hour when carrying one or more passengers. Carrying of passengers is subject to section 352.4.1(c).

(d) ATVs may be operated for emergency purposes on any highway during a period of emergency when so determined by the Tribal Conservation Department, Tribal Police Chief, or Tribal Council.

(e) A law enforcement officer or Conservation Warden may operate an ATV on a highway in performance of his or her official duties.

(f) Under no circumstances, except as provided in this section, is a ATV to be operated on the main-traveled portion of the highway or on the plowed portion during the winter.

Section 352.3.4 -Community Specific Operator Rules.

The following restrictions shall apply in addition to and taking precedence over other provisions in this Chapter to all ATV operation in the following communities: Birch Hill, Frank's Field, Aspen Estates, New Odanah, and Caville Road.

(a) No persons shall operate an ATV off road or trail except for entering onto from a home or exiting from the trail to a home.

(a) No persons shall exceed a speed of 10 miles per hour when operating an ATV to enter a trail from a home or to exit from the trail to a home between the hours of 10:00 pm and 7:30am

(c) All ATVs operated within these communities must have a working motor with a spark arrestor.

Section 352.3.5

Go-Carts: Go-Carts shall only be operated on specifically designated go-cart recreational

facilities or on fee land owned or managed by the operator or his or her immediate family.

Section 352.4 - General Safety Rules

Section 352.4.1 - Passengers and Age of Operators and Passengers

(a) No person under the age of 12 shall be permitted to operate ant ATV under any circumstances other than on land under the *ownership* or management and control of the person's immediate family. Management and control includes land leased through the Tribe or Housing Authority by the persons immediate family.

(a) Persons on an ATV under the age of 18 shall be required to wear an approved helmet.

(c) Unless an ATV vehicle id designed to carry more than two persons, only one person shall ride with the driver of a vehicle. Any driver of a vehicle which permits more than one person to ride with him, and/or if the rider is under the age of 16 and does not on a helmet shall be guilty of a violation of this Chapter and fined in the amount of \$200.

(d) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain safety certificate or is accompanied by a person over 18 years of age if the two people are on the same vehicle. A person who is at least 12 years of age but under 16 years of age who hold an all-terrain safety certificate shall carry it while he or she operates an all-terrain vehicle and shall display it to a law enforcement officer on request.

Section 352.4.2 - Safety Equipment

(a) Any person who operates an all-terrain vehicle during hours of darkness or during the daylight hours on any road or on any highway right-of-way or during any weather condition

which limits visibility of driver or other's ability to see ATV, is required to display a lighted head lamp and tail lamp on the all-terrain vehicle.

(1) The head lamp on the ATV is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the ATV: and

(2) The tail lamp on an ATV is required to display a red light plainly visible of darkness from a distance during hours of darkness from a distance of 500 feet to the rear.

(b) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(c) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester of type approved by the U.S. forest service.

Section 352.4.3 - Operation of ATV While Under the Influence of Intoxicants

(a) No person may operate an ATV while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.

(b) No person may engage in the operation of all-terrain vehicle while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of an all-terrain vehicle while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

(c) If a person has not attained the age of 21, the person may not engage in the operation of all-terrain vehicle while he or she has a blood alcohol concentration of more than 0.0%; or more than 0.0 grams of alcohol in 210 liters of his or her breath.

Section 352.4.4 - Owner's Liability for Other's Operation/Parental Liability for Actions of Children

(a) The registered owner shall be liable for violations of this ordinance committed by minor.

(b) No owner or other person having charge or control of an ATV may knowingly authorize or permit any person to operate the ATV if the person is prohibited from operating an ATV under this Chapter, if the person is incapable of operating an ATV because of physical or mental disability or if the person is under the influence of an intoxicant.

(c) Parents and legal guardians shall be personally liable for actions of their children or wards who violate this Chapter, in addition to the individual liability of the children or ward.

Section 352.5 - This section is reserved for future use.

Section 352.6 - Right of Way.

The operator of an ATV shall slow the vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not in or on a ATV.

Section 352.7 - RESTRICTED AREAS

Section 352.7.1 - Areas Closed to ATV Operation.

This section is reserved for future use.

Section 352.7.2 - Tribal Council Emergency Closure Declaration.

(c) The Tribal Chairman, upon recommendation of the Bad River Natural Resources Department or the Bad River Police Department, in the interest of public safety and/or preservation of natural resources, may declare any area within the boundaries of the Reservation as closed to ATV operation.

(b) Such closure shall be effective immediately upon the Tribal Chairman issuing such

declaration, but shall be approved by the Tribal Council at the next scheduled Tribal Council meeting at which the Tribal Council shall continue or discontinue the closure

(c) The closure shall continue until the Tribal Council removes such closure from the area by motion.

(d) Posting of the closure in the Tribal Administration and Natural Resources Department, as well at the primary access point for the closed area shall serve as sufficient notice of the closure.

Section 352.8 - Enforcement of this Chapter.

(d) Bad River Tribal Wardens and the Bad River Police Department are authorized to enforce this ordinance and to cite parties violating this ordinance into Tribal Court, using the Tribal Natural Resource Department citation form then approved or the state uniform citation form then approved.

(b) No person operating an ATV shall refuse to stop after requested or signaled to do so by an officer of any department listed in Section 352.9(a).

Section 352.9 - Adjudication.

Violation of this ordinance shall be adjudicated in the Bad River Tribal Court pursuant to the rules and procedures promulgated in the Bad River Tribal Court Code.

Section 352.10 - Penalties.

Section 352.10.1 The penalties for violation of any provision of this chapter shall be as follows:

- (b) a civil forfeiture of not to exceed \$500.00;
- (b) performance of community service, as determined by the Tribal Court;
- (c) both (a) and (b) above.

SECTION 352.10.2

Any ATV or other equipment used in violation of this chapter may be seized by the any Officer authorized to enforce the ordinance and order forfeited by the Tribal Court.

Section 352.10.3

Neither the imposition of a penalty as provide for above, nor satisfaction of the terms of such penalty, shall constitute a waiver or release from any additional civil or criminal liabilities, including but not limited to liability for damages to natural resources.

Secton 352.11 - Information Exchange

Section 352.11.1 - To State of Wisconsin.

Pursuant to the Tribe's ATV Reciprocal Registration Agreement with the State of Wisconsin, the Department shall on the first working day of each month, or more frequently, supply copies of all registration certificates, including renewals, and changes of address and transfers to the Wisconsin Department of Natural Resources, and the Wisconsin Department of Transportation and the Ashland County Sheriff's Department. Each such agency shall receive current registration information upon request made to the Department.

Section 352.11.2 - To the Applicant.

The Department shall provide to any qualifying applicant who properly completes a registration application and pays the fee required, a receipt of approved application to be used as proof of registration pending delivery to the applicant of the registration and registration decals.

Section 352.12 - Natural Resource/Conservation Code Ordinance.

This shall be considered a natural resource/conservation code ordinance for the definition of such under the Tribal Code.

Section 352.13 - Definitions

Section 352.13.1 - Terms as used in this Chapter are defined as follows:

- (c) “Alcohol beverages” means fermented malt beverages and intoxicating liquor.
- (b) “All-Terrain Vehicle” or “ATV” shall mean an engine-driven device which has a net weight of 700 pounds or less, which has a width of 38 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with the maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacture.
- (c) “Approved helmet” means a helmet which is certified to meet the standards set by 49CFR 571.218 and which has the chin strap properly fastened.
- (d) “Department” shall mean the Bad River Natural Resources Department.
- (e) “Junked” shall mean an ATV which is not operational and has been dismantled for parts and scraps.
- (f) “Intoxicating liquor” means all ardent, spirituous, distilled, or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include “fermented malt beverages”.
- (g) “Legal drinking age” means 21 years of age.
- (h) “Member” shall mean an enrolled member of the Bad River Band of the Lake

Superior Tribe of Chippewa Indians.

(i) “Operate” means to exercise the physical control over the speed or direction of an all-terrain vehicle or to physically manipulate or activate any of the controls of an all-terrain vehicle necessary to put it in motion.

(j) “Operation” means the exercise of physical control over the speed or direction of an all-terrain vehicle or the physical manipulation or activation of any of the controls of an all-terrain vehicle.

(k) “Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(l) “Person” means natural person, sole proprietorship, partnership, corporation or association, and includes any member of the Bad River Tribe and any non-member of this Tribe who is operating an ATV within the exterior boundaries of the reservation.

(m) “Recognized Reservation” shall mean any Reservation of any Federally Recognized Indian Tribe recognized by Department of the Interior, Bureau of Indian Affairs.

(n) “Reservation” shall mean all lands and waters within the exterior boundaries of the Bad River Reservation.

(o) “Tribal Court” shall mean the Court located on the Bad River Reservation under the authority of the Bad River Band of Lake Superior Chippewa Indians Constitution.

(p) “Underage person” a person who has not attained the legal drinking age of 21 years of age.

History: On July ____, 2001, the Bad River Tribal Council amended Chapter 352 as follows: The Chapter has been retitled and renumbered. Renumbering and resectioning has occurred and typographical errors

have been changed which do not appear below. Additions appear as italics, while deletions appear as strikethroughs of the original language.

- The state of purpose has been amended to add Section **352.1.2. Applicability.**
- Section 352.2.3(e) has been amended to read: If the registration certificate or decals are lost or destroyed, the owner of the ATV may apply for a duplicate to be issued upon payment to the department of the required fee of \$5.00.
- Section 352.2.4 has been amended to read: Waiver of fees. There is no fee for the issuance of a registration certificate to the Tribe, ~~The Band itself shall not pay for the issuance of decals,~~ but *the Tribe* shall display such decals correctly *on its vehicles.*
- Section 352.2.7 has been amended as follows: Display of Registration Decals. The owner of the ATV shall attached the registration decal to the ATV *on the right and left side of the gasoline tank front fender and on the rear fender,* and shall maintain the registration decals in a legible condition at all times.
- Section 352.3 has been added as an entirely new provision.
- Section 352.4 regarding safety rules has been renamed "**General Safety Rules**" as safety rules regarding basic operation are included in Section 352.3 under Rules of Operation.
- Section 352.4.1 *Passengers and Age of Operators and Passengers* has been renamed and amended as follows: (a) No person under the age of 12 shall be permitted to operate any ATV *under any circumstances other than on land under management and control of the person's immediate family.*
- Section 352.4.2 Safety Equipment has been amended as follows: (a) Any person who operates an all-terrain vehicle during hours of darkness or during the daylight hours on any road or on any highway right-of-way *or during any weather conditions which limits visibility of driver or other's ability to see ATV,* is required to display a lighted head lamp and tail lamp on the all-terrain vehicle. (1) *The headlamp on an ATV is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the ATV; and (2) The tail lamp on an ATV is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.*
- Section 352.4.4 *Owner's Liability for Other's Operation* has been amended by the addition of subsections (b) and (c) in their entirety.
- Section 352.6 has been amended as follows: Right of way has been. *The operator of an ATV shall slow the vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not in or on an ATV. This section is reserved for future use.*
- Section 352.7 has been amended as follows: Areas Closed to ATV Operation. This section is reserved for future use. And adding 351.7.2 Tribal Council Emergency Closure Declaration as a new section in its entirety.
- Section 352.8 Enforcement of this Chapter has been amended as follows: (a) *Bad River Tribal Wardens, The Bad River Police Department, Great Lakes Indian Fish and Wildlife Wardens, and Ashland County Sheriff's Department* are authorized to enforce this ordinance *and to cite parties violating this ordinance into Tribal Court, using the Tribal Natural Resources Department citation formk then approved or the state uniform citation form then approved* and subsection (b) was added in its entirety.
- Section 352.10 Penalties was amended by deleting the following language and substituting new language entirely: ~~Persons violating this ordinance may be assessed a fine of not more than \$250.00 by the Bad River Tribal Court~~
- Section 352.11 Information Exchange was amended as follows to reflect the entering into the ATV Registration Reciprocity Agreement with the State of Wisconsin on March 18, 1997: 352.11.1 To State of Wisconsin. ~~In the event that the Tribe enters into an~~ *Pursuant to the Tribe's ATV Reciprocal Registration Agreement with the State of Wisconsin, the Department shall on the first working day of each month, or more frequently, supply copies of all registration certificates, including renewals, and changes of address and transfers to the Wisconsin Department of Natural Resources, and the Wisconsin Department of Transportation and the Ashland County Sheriff's Department. Each such agency shall receive current registration information up request made to the Department .*
- Section 352.13 Definitions was amended as follows: (c) "Approved helmet" *means a helmet which is certified to meet the standards set by 49 CFR 571.218 and which has the chin strap is properly fastened;* (1) "Person" means natural person, sole proprietorship, partnership, corporation or association and ~~includes any person who violates any section of this Chapter is defined as both~~ *any member of the Tribe Band* who is operating an ATV within the exterior boundaries of the reservation; (m) "Recognized Reservation" *shall mean any Reservation of any Federally Recognized Indian Tribe recognized by Department of the Interior, Bureau of Indian Affairs.*

CHAPTER 360 - DOG CONTROL

Section 360.1 - Purpose

The purpose of the Dog Control Regulations is to protect the children, elderly, and all residents of the Bad River Reservation and their guests from injury by dogs and to prevent the spread of disease which could harm human beings and wildlife on the reservation.

Section 360.2 - Definitions

As used in this ordinance, unless the context otherwise indicates:

(a) "Animal Control Officer" shall mean any Bad River Tribal Warden and/or up to two persons designated by the Bad River Tribal Council may charge with the enforcement of this ordinance.

(b) "Dog" refers to any breed of *canis familiaris*, including both the male and female gender.

(c) "Owner" shall be intended to mean any person or persons, firm, association or corporation owning, keeping, or harboring a dog.

(d) "At large" means off the premises of the owner or some other person caring for the dog, and not under the control of the owner or some other person.

(e) "Isolation facility" means a pound, shelter, or veterinary hospital which is equipped with a pen or cage which isolates the animal from contact with other animals.

(f) "Tease, provoke & taunt" shall mean the ordinary meaning of the words.

(g) "Adequate" means ordinary care taking into account weather conditions, the animals coat, size and overall health.

Section 360.3 - License

(a) No person shall keep, harbor or maintain a dog unless such dog is currently validly licensed by the Tribe.

(b) The owner shall state on the application for the license his or her name and address, and the name, breed, color and sex of the dog, and whether the dog has been spayed or neutered.

(c) Every owner is required to provide each dog with a collar to which the license tag must be securely affixed, and shall insure that the collar, rabies tab and license tag are constantly worn.

(d) No owner shall transfer a dog tag from one animal to another.

(e) To obtain a tag, each owner shall pay a fee of \$3.00 per dog to a designated official with the Bad River Health Department. The tag fee shall be \$1.00 if the owner presents a veterinarian's certificate that the dog is neutered or spayed. If the original tag has been lost there will be a \$1.00 fee for any additional tags.

SECTION 360.4 - Inspection

(a) Every person who keeps, harbors, or maintains a dog on the reservation gives implied consent to any animal control officer to ascertain whether the animal is wearing rabies tag and a tribal license tag.

Section 360.5 - Lease Law.

(a) No owner or keeper of any dog shall permit such dog to be at large.

(b) It shall be the duty of every animal control officer to capture any dog found at large, and dispose of it humanely and immediately if the animal control officer cannot locate the owner after a reasonable effort, or impound the animal at the discretion of the animal control officer.

(c) Before disposal the animal control officer shall make reasonable efforts to identify the owner and notify the owner that disposal will be immediate.

(d) “Reasonable efforts” to notify the owner shall be presumed to have been made if the officer does any one of the following.

(i) Informs a person over the age of 12 at the address of record of the owner that the animal will be destroyed if not reclaimed immediately;

(ii) Post a notice on the door of the address of record of the owner that the animal will be destroyed if not reclaimed immediately;

(iii) Confers with three residents of the neighborhood where the dog is found to try and identify the owner and ascertain the owner’s address;

(iv) Post a notice at the headquarters of the Bad River Natural Resources Department that the impounded animal shall be destroyed if not reclaimed immediately; or,

(v) Drives through the reservation, including at least one housing area, with the animal in view.

(vi) It is a continuing obligation of every owner to inform the animal control officer of his or her current address. If the animal is found at large, the officer shall be entitled to rely on the address supplied by the owner in the application for a tribal dog license, which; shall be the address of record.

(vii) It shall not be a defense to a prosecution for a violation of this chapter that the Tribe failed to prosecute any other dog owner before the defendant was prosecuted.

(viii) At the option of the Tribe and subject to available funding, the Tribe may provide impounded animals to research hospitals or adoptive homes, or board any animal prior to

disposal.

(e) If reasonable efforts to locate the owner of a captured dog fails, it shall be the animal

control officer's responsibility to:

(i) Immediately destroy the dog in a humane manner or;

(ii) Impound the animal for a period not to exceed ten (10) days at an isolation facility or;

(iii) Release the dog to an approved adoption program.

Section 360.6 - Redemption

An owner who violates Chapter 360 and whose dog has been impounded may redeem; the animal upon payment of \$5.00 per day, for each day of impoundment.

Section 360.7 - Standards

A dog believed to have rabies or believed to have been bitten by a dog suspected of having rabies, shall immediately be confined by a leash or chain on the owner's premises, and upon demand of an animal control officer, the owner shall surrender the animal for inspection and impoundment, which shall be at the expense of the owner.

Section 360.8 - Nuisance

No person shall keep, harbor or maintain an animal which destroys property or frightens or harasses any person in any way. It is not a defense to a violation of this provision that the animal was leashed when the damage or harassment was done, unless the animal was provoked.

Section 360.9 - Cruelty to Animals

(a) No shall tease, provoke, or taunt an animal.

(b) Any person who keeps, harbors or maintains an animal shall provide adequate housing or shelter, feed and care for the animal.

(c) Persons found in violation of this section shall have any or all of the penalties imposed listed at 360.10.

Section 360.10 - Penalties

(a) A person who violates any provision of this Section shall be subject to a civil forfeiture of not more than \$5,000.00. In addition to or in lieu of a civil forfeiture, a person who violates any provision of this Section shall be subject to any or all of the following:

(1) Restitution of damages to the Tribe or to an injured individual, including but not limited to payment of medical bills; damages for pain and suffering; property damage; all costs of impoundment, licensing, boarding or disposal; all veterinary fees, or;

(2) Community Service, including but not limited to any service needed by the community; animal control education; building, operation, or maintenance of an animal shelter; boarding, disposal or burial of animals; or in kind provision of food, supplies, equipment or care for impounded animals.

(3) Any civil forfeiture and/or impoundment fee recouped under this Chapter shall be designated for the Animal Control Fund.

Section 360.11 - Parents

The parent or legal guardian of a minor is financially and legally liable for every act of the minor in violation of this Section.

Section 360.12 - Liability

Animal control officers and persons authorized to enforce the provisions of this Section

shall, in the performance of their official duties, be exempt from any and all liability for acts done or property destroyed by authority of the law.

Section 360.13 - Effective Date

The effective date of this amended ordinance is 8:00 a.m., February 24, 1999.

CHAPTER 375 - SOLID WASTE RECYCLING AND DISPOSAL

Section 375.1 - Findings

The Tribal Council finds that suitable solid waste disposal sites are not easily located. Those that are must be used in the most efficient manner. Items that can be recycled and thus kept out of landfills should be recycled. Inefficient, inappropriate, and unsanitary disposal of solid waste can have adverse impacts on the land and waters of the Bad River Reservation.

Section 375.2 - Authority

This chapter is promulgated pursuant to Article VI, Section 1(j), (m), (q) and (w), of the Bad River Constitution.

Section 375.3 - Applicability

This chapter applies to the activities on the Bad River Reservation of members and non-members of the Tribe, and residents and non-residents of the Reservation.

Section 375.4 - Definitions

(a) "Collection Site" means any place designated by the Tribal Council as the site where solid wastes may be presented, and includes transfer stations.

(b) "Collector" means any natural or legal person, and that person's employees and agents, who gathers from another person that person's solid waste.

(bm) "Computers and Computer Accessories" means all computer components, including but not limited to monitors, central processing units (CPU's), keyboards, printers, scanners, and any and all accessories to the computer, whether used for household, government, educational or commercial purposes. Computers and Computer Accessories which are not recycled shall be considered hazardous waste.

(c) "Hazardous waste" means any solid, liquid, or mixed waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a substantial presence or potential hazard to human health or the environment when improperly treated, managed, or which may cause or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness; including but not limited to nuclear waste or nuclear products, and petroleum, natural gas, or synthetic gas products.

(cm) "Major Appliance" or "White Goods" means a residential or commercial air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, furnace, boiler, dehumidifier, water heater or stove.

(d) "Non-resident" means any person who does not have a permanent place of abode on the Reservation, except as hereafter provided. Non resident does not mean any temporary or seasonal resident, for purposes of solid waste generated at the temporary or seasonal residence, and does not mean any place of business, for purposes of solid waste general at the business.

(e) "Reservation" means the Bad River Reservation.

(f) "Solid waste" means all waste, garbage, rubbish, offal, trash and other discarded solid waste materials resulting from residential, commercial, agricultural, industrial, community, and other human activities, including liquid waste contained within solid waste, and including hazardous waste, but does not include sewage and human wastes.

(g) "Transfer station" means any facility approved by the Tribal Council for the purpose of collecting, transporting, and disposing of solid waste.

(h) "Tribal Council" means the Tribal Council of the Tribe.

(i) "Tribal Court" means the Tribal Court of the Tribe.

(j) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 375.5 - Solid Waste Storage

(a) Solid wastes within the reservation boundaries shall be handled, stored, collected, transported, transferred, processed and disposed of in accordance with the provisions of this Chapter.

(b) The owner or occupant of any premises, business establishment, or industry shall be responsible for the sanitary storage of all solid waste accumulated at the premises, business establishment or industry.

(c) Solid waste shall be stored in durable, rust resistant non-absorbent, water tight, rodent proof, and easily cleanable containers with a close fitting insect-tight cover with adequate handles or bails to facilitate handling.

(d) Recyclables, as defined in Section 375.7(b), may be stored in the bin designated for that purpose, as provided for in Section 375.7(d).

(e) Non-recyclables, as defined in Section 375.7(c), may be stored in bags designated for that purpose, as provided for in Section 375.7(e).

(f) Unless otherwise provided for in a written rental agreement or lease, the tenant of any single unit detached residence and the landlord of any multi-unit residence shall be responsible for the provision and maintenance of containers as specified in paragraph (c), above.

Section - 375.6 - Solid Waste Disposal

(a) No person shall leave, deposit, or dump solid waste anywhere within the reservation except at designated solid waste collection sites. Sites shall be designated by the Tribal Council and locations of such shall be published and posted.

(b) No non-resident shall dispose of solid waste anywhere within the Reservation.

(c) No person shall dispose of any solid waste generated outside the boundaries of the Reservation on any lands, dumping sites, or landfill within the boundaries of the Reservation.

(d) No person shall dispose of solid waste on any private or public residential property, where disposal of such wastes will cause a public nuisance or health hazard, by causing foul odors to escape or by infestation of insects or rodents.

(e) No person shall deposit solid waste from any stopped or moving vehicle onto any state, county, town, or tribal highways, roads, or right of ways.

(f) No person shall release any hazardous waste within the Reservation, "release" meaning any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, or causing or allowing any of the above.

(g) No person shall dispose of any solid waste at a designated solid waste collection site except in the bin, container, or area specifically designated for the particular type of solid waste disposed.

(h) No person shall dispose of any solid waste at a designated solid waste collection site except in the manner provided by this chapter.

(i) No person shall dispose of any solid waste at a designated solid waste collection site except during the hours when such site is open to accept solid waste.

(j) No person shall dispose of any sewage or human waste except into a community sanitary sewage system or individual sanitary system constructed and operated according to Indian Health Service specifications on Indian owned land, or state of Wisconsin specification on non-

Indian owned land, or except into an enclosed pit in operation and used on the date of passage of this chapter.

Section 375.7 - Solid Waste Collection

(a) All solid waste presented to the Tribe for collection, either at curbside or at a designated solid waste collection site, shall be treated as provided by this section.

(b) "Recyclables" means

- (1) Glass containers
- (2) Metal cans
- (3) Newspaper
- (4) Cardboard
- (5) Plastics, HDPE and PET only
- (6) Aluminum cans
- (7) Motor oil

(8) Major appliances, except microwave ovens from which the capacitorS have been removed and disposed of off-reservation in compliance with community or county clean-sweep programs.

(9) Computers and computer accessories.

(c) "Non-Recyclables" means all solid waste not listed in subsection (b), above, excluding hazardous waste.

(d) Recyclables shall be prepared for collection as follows:

- (1) Glass containers: Lids shall be removed; interior shall be rinsed out.
- (2) Metal cans: Interior shall be rinsed out.

(3) Newspapers shall be bundled and tied with string or placed in a brown paper bag.

(4) Cardboard shall be flattened, tape and labels removed, and pieces sized no greater than 24 inches x 24 inches.

(5) Plastic. Caps shall be removed and interior rinsed out.

(6) Aluminum cans. Interior shall be rinsed out.

(7) Motor oil shall be placed in a nonbreakable container with a tight fitting cap.

(8) Major appliances or White Goods: Recycling and Solid Waste Department shall be contacted to arrange for proper pick-up or drop-off and handling. A fee to cover Department costs may be charged for pick-up or drop-off at times other than designated spring clean-up.

(9) Computers and Computer Accessories: Recycling and Solid Waste Department shall be contacted after options in sec. 375.7(d)9.A. are exhausted to arrange for proper pick-up or drop-off and handling. A fee to cover Department costs of recycling Computers and Computer Accessories may be charged.

(9).A Disposers of Computers and Computer Accessories shall, prior to recycling them through the Bad River Recycling and Solid Waste Department, attempt to reuse or recycle the computer through reuse, donation, resale, materials exchange, or through a computer recycler. Information on material exchange or computer recyclers may be obtained from the Bad River Recycling and Solid Waste Department.

(e) Recyclables shall be placed in the bin provided by the Tribe for that purpose and set out at curbside for pickup on the regular solid waste collection day. Recyclables transported to a

designated solid waste collection site shall be sorted and disposed of according to the designations at the site.

(f) Non recyclables shall be disposed of only in bags purchased from the Tribe and specially designated for that purpose.

(g) No person shall dispose of recyclables in bags designated for the disposal of non-recyclables.

(h) No designated solid waste collection site operated by the Tribe, no transfer station operated by the Tribe, and no collector transporting solid waste to a solid waste collection site or transfer station operated by the Tribe shall collect any solid waste in any bags designated for non-recyclables if the bag contains any recyclables.

(i) After written warning, any collector transporting solid waste to a solid waste collection site or transfer station operated by the Tribe may suspend the collection of all solid waste from any household or other collection site if any provision of this chapter is violated at that site, until compliance with this chapter is shown.

(j) The Solid Waste Administrator shall fix the fee to be charged for the bags designated for non-recyclables. Such fee shall be based on the amount necessary to cover the operating and capital costs of all solid waste collection facilities and systems.

(k) The Solid Waste Administrator shall fix the fee to be charged for the deposit of non-recyclable solid waste that is not contained in bags designated for such use, included but not limited to furniture, white goods, tires, and demolition materials.

Section 375.8 - Enforcement

(a) The Solid Waste Administrator, all tribal law enforcement and conservation

enforcement personnel shall be empowered to enforce this chapter.

(b) Actions for violations of this chapter may be commenced in tribal court by conservation citation or by summons and complaint.

(c) Violation of any provision of this chapter may be punished or remedied by a civil forfeiture not to exceed \$1,000. Each day of any continuing violation may be charged as a separate violation, and a separate forfeiture may be imposed.

(d) In addition to a civil forfeiture, any personal property, including vehicles and other equipment, which has been used in connection with the violation of this chapter may be seized and forfeited pursuant to the appropriate sections of the Tribal Court Code.

(e) Nothing herein shall prevent the Tribe from bringing suit against any violator of this chapter for money damages for harm to any tribal resource caused by the violation, or for injunctive relief.

(f) Any person may bring suit in tribal court to enjoin a violation of this chapter.

Section 375.9 - Administrator

(a) The Solid Waste Administrator shall be responsible for the administration of this chapter and of any tribal solid waste collection facilities or systems.

(b) This chapter is effective upon passage by the Tribal Council, posting on the Reservation, and publication in the Ashland Daily Press.

Section 375.10 - Severability and Non-Liability

If any section, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter will not be affected thereby.

The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees for

damages that may occur as a result of reliance upon or conformance with this Chapter. The Tribe, by adoption of this Chapter, does not waive sovereign immunity in any respect.

CHAPTER 375 ENACTED BY RESOLUTION #10-5-90-146/AMENDED BY RESOLUTION #6-13-00-425

CHAPTER 376 - OPEN BURNING, BURN BARREL AND FIRE PREVENTION ORDINANCE

Section 376.1 - Purpose and Scope

(a) Purpose. The burning of household and other waste can cause severe health problems, pollute the air, soil, and water, and pose a fire danger to the surrounding area. The purpose of this ordinance is to control and monitor the setting of fires and open or barrel burning within the exterior boundaries of the Bad River Reservation by any person in order to protect the welfare, peace, safety, environment, and property of the Bad River reservation and it's Tribal Membership.

(b) Scope. This ordinance applies to all open and burn barrel fires within the exterior boundaries of the Bad River Reservation.

Section 376.2 - Definitions.

(a) "Acceptable Burn Barrel" shall mean a metal drum of at least 55 gallon volume, which:

- (1) Has been placed upon blocks made of a material that will not cause the barrel to tip or cause the ground to burn.
- (2) Has air vents of approximately "pea size" on the sides and bottom,
- (3) Is covered by a screen of not to exceed 1/4 inch mesh, and
- (3) Has been inspected by the Natural Resources Department or Fire Warden.

(b) "Burning Barrel" shall mean any fire contained in a barrel or other type of containment where the products of combustion are emitted directly into the outdoor atmosphere and are not directed through a stack or chimney, incinerator or other similar device and the purpose

of the fire is not for cooking or to provide heat to dwelling.

(c) “Brush” shall mean woody debris commonly associated with land clearing of all types such as landscaping, trail clearing and general yard maintenance. Additional materials which may fall into this category are clean lumber from demolition (containing no paint, stain, or preservative), leaves, bark and other woody scraps from various activities.

(d) “Construction/Demolition Material” shall mean wood and non-wood products commonly associated with the demolition of structures, including but not limited to; shingles of all types, insulation of all types, gypsum board, tar paper, metal plumbing, ductwork, wiring, and chemically-treated wood of all types.

(e) “Forest Fire” shall mean uncontrolled, wild, or running fires occurring on forest, marsh, field, cut-over, or other lands within the boundaries of the Bad River Reservation.

(f) “Hazardous Waste” shall mean any commercial chemical substance designed pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A); any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 U.S.C. Section 7412; any hazardous waste defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. As amended, and any other substance which constitutes a hazardous waste under tribal, state, or federal law.

(g) “Kitchen Garbage” shall mean animal and vegetable waste resulting from the handling, preparation, cooking, and/or consumption of foods.

(h) “Non-recyclable Material” shall mean Pyrex glass, window glass, light bulbs, mirrors, broken glass, china, Styrofoam and melamine type plastics, waxed paper, waxed cardboard, soiled paper, garbage, bottle or jar caps and any material for which there is no

destination point for reclamation or processing.

(i) "Open Burning" shall mean any fire wherein the products of combustion are emitted

directly into the outdoor atmosphere and are not directed through a stack or chimney, incinerator or other similar device. "Open Burning" includes, but is not limited to, brush burning.

(j) "Owner" shall mean the person(s) or entity(ies) which hold legal or beneficial title to a burn barrel or property and the person(s) or entity(ies) which have or exercise possession of a burn barrel or property. Owner also means landlord and lessee.

(k) "Recyclable Material" shall mean brown, clear, and green container glass, aluminum cans, steel containers, bi-metal containers, plastics containers with #1 thru #7 inside a triangle on the bottom, corrugated cardboard, newspaper, magazines, mixed paper, office paper, used motor oil, vehicle tires, and any other material for which there is a destination point named for reclamation or processing or listed as recyclable material in the Bad River Solid Waste Ordinance.

Section 376.3 - General Provisions

(a) Within the exterior boundaries of the Bad River Reservation, it shall be unlawful for

any person to set any fire unless it shall be attended at all times and she or he has first obtained a Burning Permit from a Fire Warden duly appointed and designated by the Bad River Tribal Council, except for:

(4) When a fire is set and designed solely for warming the person or cooking food;

(5) When a fire is set for ceremonial purposes.

(b) Warming and Cooking Fires. Any person who sets a fire solely for warming the person or cooking food shall extinguish such fire before leaving it, and upon failure to do so will be in violation of this Ordinance.

(c) Ceremonial Fires. Any person who lights a fire for ceremonial purposes shall ensure that precautions are taken to prevent the spread of the fire outside the intended area and that the fire is attended at all times until it has extinguished itself.

(d) Windy Conditions. Except for ceremonial purposes where adequate fire safety precautions are taken, no burning shall occur when wind speeds exceed 10 miles per hour or when wind conditions are such that sparks or embers from the fire may be spread outside the parameters listed in subsection 376.6 for safe containment of the fire.

(e) Adequate provision shall be made to prevent fire from spreading (garden hose or other sufficient source of water, shovels, dirt, etc.).

(f) Fires shall be constantly attended by a competent person until the fire is completely extinguished (fire remains are cold).

(g) Fires must be completely extinguished before you leave(fire remains must be cold)

Section 376.4 Permit Application and Issuance.

(a) Permit Application. Permits may be obtained from the Bad River Fire Warden during normal business hours after filing of an application which may be obtained from the Bad River Fire Warden. The application shall contain at least the following information:

(1) Name, physical address, and phone number of person responsible for the

burn.

(2) Responsible persons who may be attending the burn.

(3) Location of the burn(Fire warden may, at his or her option, require an inspection of the site by the Natural Resources Department of the Fire Department).

(4) The signature of the applicant stating the following:

(A) that he or she has been given educational material regarding the environmental and health hazards of open burning,

(B) has read and understood the material, and has had an opportunity to ask questions of the Fire Warden about the burning regulations.

(C) has had an opportunity to ask questions of the Fire Warden about the burning regulations.

(b) Permit Issuance. Permits issued pursuant to this section shall include but not be limited to restrictions concerning: time of day, location, minimum required precautionary measures, and the length of the burning period of the permit.

(c) No fee shall be charged for a burn permit.

(d) If the permit is for a burn barrel, the burn barrel must be considered an acceptable burn barrel and inspected and approved by the Natural Resources Department or the Fire Warden prior to issuance of the permit.

(e) Burn permits for burn barrels shall expire upon on May 31 of each year.

(f) Burn permits for open burns expire upon competition of the open burn, but in no case beyond 30 days from the date of issuance of the permit. Subsequent burns at the same location require separate permits.

Section 376.5 - Permit Considerations

Burning permits shall be issued only after a determination by the Fire Warden that the danger to the resources will be minimized by allowing the permittee to burn if he or she complies with the conditions of the permit and takes all reasonable precautions to prevent the escape of the fire.

Section 376.6 - Permitted Burning

(a) Open Burning

- (1) Brush burning shall be limited to wood products only, which includes only twigs, brush, leaves, grass, and untreated, unpainted sawn wood or those items defined as brush, above.
- (2) No construction/demolition materials or household garbage may be burned.
- (3) No chemically or creosote treated wood may be burned.
- (4) No woody materials which may be contaminated with other construction materials, including but not limited to: tar paper, insulations of all types, shingles, gypsum board, paint and other wall treatments, may be burned.
- (5) No recyclable materials as defined in this ordinance may be burned.
- (6) The burning of objectionable materials such as rubber, roofing, or any material which can damage the property of another is prohibited.
- (7) No open fires shall be kindled within fifty feet (50') of any property line, public right-of-way, building, fence, or combustible growth or material other than that intended to be burned.
- (8) Burn piles may be no larger than five feet by five feet five feet (5' by 5' by

5').

(9) Burning of uncut grass, brush, or vegetation (running fire) is prohibited, except by special permit issued for exceptional circumstances only after inspection of the proposed burn site and agreement with the proposed burn by the Bad River Fire Warden and Natural Resources Department.

(10) Burning may only be conducted between the hours of 6:00 PM and MIDNIGHT. Burning on Sundays is prohibited.

(11) Burning is prohibited at all times when a general fire permit ban is in effect, as declared by the Bad River Fire Warden.

(b) Barrel Burning

(1) Barrel burning shall be limited to burning in an acceptable burn barrel the burning of small woody debris and soiled or other non-recyclable paper.

(2) No recyclable materials as defined may be burned.

(3) No demolition materials as defined may be burned.

(4) No material identified in 376.6(a) 2-6 may be burned

(5) Barrels must be covered while burning with a screen which will hold down flying ash. The screen must be in sound condition and have a mesh size no larger than one-quarter inch (1/4").

(6) The barrel must not be contaminated with paint, oil, gasoline, or other potentially harmful or noxious substance.

(7) Barrels must be continually observed by a responsible person during the burning process and completely extinguished before being left.

(8) Burning may only be conducted between the hours of 6:00 PM and MIDNIGHT. Burning on Sundays is prohibited.

(9) Burn barrels must be located in a ten foot (10') clear area, a minimum of twenty-five feet (25') from buildings and combustibles

Section 376.7 - Prohibited burn items.

- (a) Disposable Diapers
- (b) Oil
- (c) Gasoline
- (d) Paint
- (e) Plastics (including but not limited to Styrofoam and melamine type plastics)
- (f) Recyclable Material
- (g) Household trash or garbage (including kitchen garbage)
- (h) Cardboard
- (i) Non-recyclable paper containing plastic, paint, or other matter which is noxious when burned
- (j) Dead animals not being processed or cooked as food products
- (k) Any material that emits dense smoke or obnoxious odors
- (l) Thermometers containing mercury
- (m) Any item known to contain mercury or lead (including batteries)
- (n) Tires
- (o) Construction/Demolition material, except for wood scraps with no paint, stain, chemical treatment or other contaminants

(p) Hazardous Wastes

Section 376.8 - Special Authority to Restrict Burning

This chapter includes the authority for the Bad River Fire Warden to restrict and forbid the setting of any type of fire or burning within the exterior boundaries of the Bad River Reservation, by any person, when there is a dangerously dry season. Setting of fire or burning in this particular Section will include but will not be limited to the burning of paper or garbage, burning of leaves, campfires, outside cooking units, etc. The only exceptions will be those homes where a stove or appliance is located outside the home which is needed in the preparation of food or for heat and for ceremonial uses when the Fire Warden is notified of the general location of the fire and can assure that proper fire safety precautions have been met. Proper notice will be given to the public when this restriction goes into effect by the following notification:

- (a) Posting of notices at the Tribal Offices, Fire Hall, Bad River Natural Resources Department and at least one tribal enterprise, and
- (b) At the option of the Fire Warden, announcement on one or more local radio stations.

Section 376.9 - General Responsibility and Liability/Negligent Handling of any Material Which Might Cause a Forest Fire.

- (a) General Responsibility and Liability. It is the responsibility of the owner of any land upon which a burn is conducted or the owner of a burn barrel in which burning is conducted, as well as any individual, with or without a permit issued under this chapter, to ensure that his or her

fire is adequately contained and does not pose a threat to the safety of his or her own person and property and that of all others which may be harmed by the act of burning. Any private individual, including owners, with or without a permit issued pursuant to this chapter, shall be liable for any injury or property damaged by the act of burning or failure to take adequate precautions to prevent injury and damage due to his or her burning.

(b) Forest Fire. Any person who would start, kindle, or otherwise encourage a forest fire through the careless use of smoking materials, fireworks, campfires, motorized equipment, flammable substances, or any other material or item of equipment shall be in violation of the Section of the Ordinance.

Section 376.10 - Public Nuisance

Any private individual affected by another private individual's burning is authorized by this Chapter to bring a private citizen suit under this section to abate damages due to smoke or fire conditions which create a nuisance, or visual, or odor problems or to recover damages for injury or property damage caused by another private individual's fire.

(a) Initiation of a citizen suit shall not prohibit or limit the right of the Tribe to initiate enforcement action under this section, nor shall it require the Tribe to take enforcement action.

(b) This chapter does not provide a right of action for a citizen suit against the Tribe or any Tribal entity for any reason.

Section 376.11 - Effective Date and Severability

(a) Effective Date. This ordinance shall be effective upon the date of adoption by resolution of the Bad River Tribal Council, until amended or otherwise expressly invalidated by the Tribal Council.

(b) Severability. If any section, provision, or portion of this Ordinance is judged unconstitutional or invalid by the Bad River Tribal Court, the remainder of this Ordinance shall not be affected.

Section 376.12 - Enforcement/Evidence

(a) The Bad River Fire Warden and Fire Department, Conservation Wardens and the Bad River Police Department are authorized to issue citations for violation of this Chapter.

(b) The Bad River Fire Warden and Fire Department, the Bad River Conservation Wardens, and the Bad River Police Department may issue immediate cease and desist orders for suspected violations or when burning appears to create unsafe condition. Such cease and desist orders may be issued regardless of whether a permit has been issued or whether a citation has been issued. The cease and desist order shall expire within 36 hours of issuance if a citation is not issued.

(c) The Bad River Fire Warden, Fire Department, the Bad River Conservation Wardens, and the Bad River Police Department are authorized to enter private property, tribal, trust, allotted, or leased property at all times to inspect all outdoor fires.

(d) Citations for violations shall include, but not be limited to the following: an affidavit of a member of the Bad River Fire Wardens, or the Fire Department, the Bad River Conservation wardens, or the Bad River Police Department stating the conditions occurring during the burn or the manner of material being burned; or photographs of the burn site and material being burned when accomplished by an affidavit describing the date, time, location of the fire, the ownership, if known, of the barrel, and any other relevant conditions.

Section 376.12 - Jurisdiction/Penalties

(a) The Bad River Tribal Court shall have jurisdiction to hear all matters prosecuted pursuant to this Chapter, including citizen suits.

(b) The Bad River Tribal Court may impose any of the following penalties for violations

of this Chapter, singly or in any combination:

(b) Immediate injunction against burning;

(2) Restitution for damages caused by violations, including damages for any harm to any tribal resources;

(3) A civil forfeiture of not to exceed \$1,000.00. Each day of any continuing violation may be charged as a separate violation and separate forfeiture may be imposed;

(3) In addition to a civil forfeiture, any personal property, including vehicles and

other equipment, which has been used connection with the violation of this chapter may be seized and forfeited pursuant to the appropriate sections of the Tribal Court Code. Seizure of burn barrels or other items which are too hot to move may be effected by posting a copy of the citation on or near the item seized until the item has cooled sufficiently for removal.

(c) Citizen suit damages are separate from and may be in addition to and may duplicate any damages requested by the tribe under this Section.

Legislative History: this chapter 376 was enacted as a new chapter in the Bad River Conservation Code in its entirety on _____ by Tribal Council Resolution Number _____.

CHAPTER 403 - TRIBAL LEASES

Section 403.1 - Purpose

The purpose of this chapter is to provide for the public health, safety, and welfare by establishing an orderly procedure for the residential leasing of tribal land to tribal members.

Section 403.2 - Authority

This chapter is adopted pursuant to Art. VI, sec. 1 (c) and (w), Bad River Constitution.

Section 403.3 - Maximum Lot Size

No lease of tribal land to a tribal member for residential purposes shall exceed three acres in size.

Section 403.4 - Procedure Established

No agreement for the residential leasing of tribal land to a tribal member shall be entered into except as provided in this chapter.

Section 403.5 - Administrator's Duties

The administrator of this chapter shall be responsible for assisting applicants with applications, for making all necessary inter-departmental and inter-agency contracts with regard to particular applications, for certifying to the Tribal Council or denying all lease applications based on the standards provided in this chapter, for maintaining the Official Lease Map, and for executing all other tasks specifically assigned to him by this chapter.

Section 403.6 - Administrator Established

The Environmental Health Community Health Representative shall serve as the administrator of this chapter.

Section 403.7 - Procedure

(a) Application. The administrator shall make lease site application forms available to any tribal member seeking a residential lease. An applicant seeking a residential lease site shall complete an application on the form provided him by the administrator. The applicant may list in order of priority up to three desired lease sites. The applicant shall describe the lease sites as completely as possible and shall include a legal description if available. If necessary for adequate identification the administrator shall make a visit with the applicant to the proposed lease sites.

(b) Legal Description. If the applicant is unable to supply a complete legal description of any proposed lease site, the administrator shall request one from the Bureau of Indian Affairs before proceeding further in the certification process for that site.

(c) Zoning. The administrator shall check the proposed lease site against the Official Zoning Map, the Official Lease Map, and the Official Forestry Map, and shall verify on the application that the site is tribal property, is not otherwise leased, is within a residential district, is independent of shoreland/wetland restrictions, and is outside the boundaries of any forestry development project. If the site is encroached by shoreland/wetland restrictions but is partially usable for residential site, the administrator shall so note on the application and inform the applicant. The applicant may then choose to have the administrator continue the certification process of the site so encroached, or may request the administrator to proceed with the certification process on an alternate site.

(d) Flood Plain. The administrator shall check the proposed site against the Official Flood Map. If the site is within a 100 year flood plain the administrator shall so note on the application and inform the applicant. The applicant may then choose to have the administrator

continue the certification process of the site or may request the administrator to proceed with the certification process on an alternate site. If the applicant directs the administrator to proceed with the certification process of the flood plain site, the applicant shall sign a statement declaring that he is aware that he will be ineligible for tribal or Indian Health Service assistance in the installation of sewer and water facilities. The site shall not, however, be denied certification solely because it is within a 100 year flood plain.

(e) Percolation. The administrator shall refer a site not within a flood plain and meeting the criteria specified in Section 403.7(c) to the Indian Health Service to perform a percolation test and to determine the feasibility of locating at the site a private sewer disposal system and well meeting the requirements of Chapter 402. Based on Indian Health Service reports and recommendations the administrator shall determine if the site is suitable for an approved private sewer disposal system and well under Chapter 402. For sites within a flood plain, the applicant shall privately secure and convey to the administrator the information required by this subsection.

(f) Certification - Denial. If the proposed site fails to prove suitable under Section 403.7(e), the site shall be denied certification, the applicant shall be so informed, and the administrator shall commence the certification process for an alternative site listed on the applicant's application, or shall consult the applicant to determine his wishes.

(g) Certification - Granted. If the proposed site is found suitable for a private sewer system and well under Section 403.7(e), the administrator shall instruct the Bureau of Indian Affairs to prepare a lease for the site. The lease shall specify the type of private sewer disposal system permitted at the site.

(h) Tribal Council Approval. The administrator shall submit to the tribal council for approval the completed lease application, the lease prepared by the Bureau of Indian Affairs, and a draft resolution approving the lease. If the Tribal Council approves the lease resolution, the administrator shall submit all necessary papers to the Bureau of Indian Affairs for execution and recording.

(i) Recording on Official Lease Map. Upon execution and recording of the lease, the administrator shall record on the Official Lease Map the approved lease site, and shall set down the verbal information as required by Section 403.8.

(j) Appeal of Administrator Denial. Any denial of lease-site certification made by the administrator may be appealed to the Tribal Council by submitting to the Council the lease application, the administrator's denial of certification and a statement of reasons why the denial should be overridden. The Council in determining any appeal shall apply the provisions of this chapter and Chapters 401 and 402. For purposes of appeal any failure by the administrator to certify or to proceed further in the certification process because of a 403.7(c) conflict or 403.7(e) failure shall be construed as a denial.

Section 403.8 - Official Lease Map

The administrator shall maintain the Official Lease Map of the Bad River Tribe. The Map shall have no legal effect but shall be used as an administrative tool to locate, identify, and pictorially record lease sites. The Map shall not be altered except by the Administrator upon the execution or expiration of a lease. The Map shall contain, along with a pictorial representation of each site, the following information for each site: Name(s) of lessee(s); date of execution and term of each lease, legal description of each site, and yearly monetary consideration for each lease. The

Map shall be available for inspection to Tribal members and the administrator's office, in his presence during regular business hours.

Section 403.9 - Flow Chart

The flow chart attached to this chapter as Appendix A is intended to provide a graphic representation of the procedures prescribed herein. It is not a part of this chapter and is of no legal effect. In any case of conflict between the procedures as depicted on the flow chart and the procedures described in this chapter, the latter shall be controlling.

Section 403.10 - Application Form

The application form attached to this chapter as Appendix B shall be the official application form for residential leases for tribal members. The application form may be modified by the administrator provided such modification is submitted to the Tribal Council for review at the next subsequent regular Tribal Council meeting.

Section 403.11 - Effective Date

This chapter shall be effective on the date following Tribal Council approval.

Section 403.12 - Termination of Leases

Any lease executed hereunder may be terminated for violation thereof, in accordance with 25 CFR Part 131. Without implying limitation by enumeration, it is expressly stated that ground for termination of any residential lease executed hereafter shall be lessees failure to construct and complete permanent residential improvements within a period of two years from the date of the lease.

APPENDIX B TO CH. 403 - BAD RIVER ORDINANCES

BAD RIVER TRIBE RESIDENTIAL LEASE SITE APPLICATIONS

(1) Applicant(s) Name: _____

(2) Address: _____

Phone: _____

(3) Please describe the residential lease site(s) desired. Listing more than one site may expedite approval if your first choice is denied. If you list more than one site please do so in the order in which you desire them. If you know a complete or partial legal description of the site(s) you are listing, please provide it:

(a) First Choice:

(b) Second and third choices (optional):

(4) I (we) hereby make application for the above lease site to be used for residential purposes.

Signature

Date

Signature

Date

FOR OFFICE USE

(5) Legal description complete? Yes _____ No _____

BIA contacted for description: Date _____

Complete description:

(6) (a) Zoning Map: Tribal property? Yes _____ No _____

If no, inform applicant. Recommend for second choice.

(b) Zoning Map: State district: _____

(c) Zoning Map: Shoreline/Wetland encroachments on site?

Yes _____ No _____ If yes, describe type and extent:

(d) Lease Map: Conflict with existing lease?

Yes _____ No _____

(e) Forestry Map: Conflict with forestry project?

Yes _____ No _____

(7) If answer to 6(c) is yes, inform applicant. Does applicant wish to proceed or to go to second choice ?

(8) If answer to 6(b) is not residential or if answer to 6(d) or 6(e) is yes, inform applicant, recommend second choice. Applicant informed: Date _____

(9) Flood plain map: Within flood plain? _____

If yes, inform applicant. Date _____

Does applicant wish to proceed or go to second choice.?

Proceed _____ Second Choice _____

If proceed, applicant(s) must sign the following statement:

I (we) _____, have been informed by the Bad River Lease Administrator that the residential lease site I (we) am (are) seeking is within a flood plain and understand that the site will be ineligible for assistance from the Indian Health Service or the Tribe for in installing or maintaining any sewer or water facilities.

Applicant Date

Applicant Date

(10) Perc Test: Outside flood plain: Referred to IHS date _____

Within flood plain: Applicant informed of information required.

Date _____

(11) Results:

(12) Type(s) of private sewer disposal systems permitted on site:

(13) (a) Denial. The lease site described in line 5 of this application is denied certification for the following reasons:

Lease Administrator Date

Applicant informed:

Action taken: Second Choice _____ Appeal _____

Other _____

(b) Certification. I, _____, the Bad River Lease

Administrator, certify that the lease site described in line 5 of this application meets all the standards for issuing a residential lease as prescribed by Chapter 403, Bad River Ordinances.

Lease Administrator

Date

(14) Referred to BIA for lease preparation: Date _____

(15) Referred to Tribal Council for approval: Date _____

(16) Tribal Council action: Approve _____ Disapprove _____

Date _____

(17) Applicant informed of Tribal Council action:

Date _____

(18) Papers forwarded to BIA for execution and recording. Date _____

(19) Lease executed.

Date _____

Attach copy of executed lease.

(20) Official Lease Map modified.

Date _____

SUPPLEMENTARY FORM FOR ALTERNATIVE SITE APPLICATION

- (1) Name of applicant(s): _____
- (2) Address: _____ Ph. # _____
- (3) Date of Application: _____
- (4) Second Third Choice (cross out one).
- (5) Complete legal description of proposed site:
- (6) I (we) hereby make application for the above lease site(s) to be used for residential purposes.

Signature Date

Signature Date

FOR OFFICE USE

- (7) Legal description complete? Yes _____ No _____

BIA contacted for description: Date _____

Complete description:

- (8) (a) Zoning Map: Tribal property? Yes _____ No _____

If no, inform applicant. Recommend next choice.

(b) Zoning Map: State district: _____

(c) Zoning Map: Shoreline/Wetland encroachments on site?

Yes _____ No _____ If yes, describe type and extent:

(d) Lease Map: Conflict with existing lease? Yes _____ No _____

(e) Forestry Map: Conflict with forestry project? Yes _____ No _____

- (9) If answer to 6(c) is yes, inform applicant. Does applicant wish to proceed or to go to next choice?
Proceed _____ Next choice

(10) If answer to 6(b) is not residential or if answer to 6(d) or 6(e) is yes, inform applicant, recommend next choice.

Applicant informed: Date_____

(11) Flood plain map: Within flood plain? _____

If, yes, inform applicant. Date: _____

Does applicant wish to proceed or go to next choice?

Proceed_____ Next choice

If proceed, applicant(s) must sign the following statement:

I (we) _____, have been informed by the Bad River Lease Administrator that the residential lease site I (we) am (are) seeking is within a flood plain and understand that the site will ineligible for assistance from the Indian Health Service or the Tribe in installing or maintaining any sewer or water facilities.

Applicant

Date

Applicant

Date

(12) Perc Test: Outside flood plain: Referred to IHS. Date_____

Within flood plain: Applicant informed of information required.

Date_____

(13) Results:

(14) Type(s) of private sewer disposal systems permitted on site:

(15) (a) Denial. The lease site described in line 7 of this application is denied certification for the following reasons:

Lease Administrator

Date

Applicant informed_____

Action taken: Next choice _____ Appeal _____

Other _____

(b) Certification. I, _____ the Bad River Lease Administrator, certify that the lease site described in line 7 of this application meets all the standards for issuing a residential lease as prescribed by Chapter 403, Bad River Ordinance.

Lease Administrator

Date

(16) Referred to BIA for lease preparation:

Date _____

(17) Referred to Tribal Council for approval

Date _____

(18) Tribal Council action: Approve _____ Disapprove _____

Date _____

(19) Applicant informed of Tribal Council action

Date _____

(20) Papers forwarded to BIA for execution and recording.

Date _____

(21) Lease executed

Date _____

Attach copy of executed lease.

(22) Official Lease Map modified

Date _____

CHAPTER 403 ENACTED BY RESOLUTION # /AMENDED BY RESOLUTION 6-2-82-88

CHAPTER 405 - BAD RIVER UTILITIES

Section 405.1 - Purpose

The purpose of the Bad River Utility Department will be to manage, operate, and maintain utility systems of the Bad River Indian Tribe.

Section 405.2 - Place of Business

The Utility Department will maintain an office in New Odanah, Wisconsin. It's address will be:

Bad River Utility Department
P.O. Box 39
Odanah, WI 54861

Section 405.3 - Services Offered

(a) Water Services: The Utility Department is responsible to provide safe, adequate water for a fee to those houses connected to the mainlines of community water systems.

Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves and hydrants, and services lines to curb stops only and water meter installation and servicing. The service line from the curb stop to the house and interior house plumbing are the responsibility of the customer.

(b) Sewerage Service: The Utility Department is responsible to provide sanitary disposal of domestic waste for a fee to those houses connected to the mainlines of community sewerage systems. Responsibility for maintenance will include treatment facilities, pumping stations, mainline and manholes, and service lines to the property lines only. The service line from the property line to the house and interior house plumbing are the responsibility of the customer.

(c) Septic System and Holding Tank Pumping: The Utility Department shall, upon request of the customer, pump septic tanks and holding tanks for a fee, as specified below.

(d) To ensure the provision of adequate water and sewerage service to its customers, the Utility Department will retain qualified personal on duty or on call at all times. The Department will respond quickly to breakdown and other emergencies.

(e) Other Services: The Utility Department may agree to perform under contract with governmental, tribal, or private bodies construction or operating and maintenance services.

Section 405.4 - Systems Covered

This section may be amended as necessary as an Attachment A to this ordinance by Resolution of the Tribal Council. On the date of renumbering of this ordinance as Chapter 405, the systems are covered as follows:

(d) Water (Community Systems)

(d) New Odanah

(e) Diaperville

(f) Birch Hill

(g) Frank's Field

(b) Sewerage (Community Systems)

(h) New Odanah

(i) Diaperville

(j) Birch Hill

(k) Frank's Field

(c) Septic Systems and Holding Tanks within the Bad River Reservation.

Section 405.5 - Maintenance Schedule

The Utility Department will develop and follow a regular schedule of maintenance services

for each water and sewage system. These services will include, but not be limited to, the following:

(a) Water Systems

- (a) Inspect and operate valves and hydrants.
- (b) Inspect and repair water mains for leaks and damage.
- (c) Flush water lines.
- (d) Inspect storage tanks and level indicators.

(5) Adjust and service controls.

- (5) Insure proper residuals of chlorine and fluoride in the system.

(b) Sewerage Systems

- (b) Flush sewer mains.

(2) Remove debris for manholes.

(3) Control weeds and erosion at lagoons.

- (6) Inspect and service lift station and mechanical aerators.

Section 405.6 - Rate Schedule

This section may be amended as necessary as an Attachment A to this ordinance by Resolution of the Tribal Council. Upon installation of water meters, the Department shall establish and charge base rates and usage rates as recommended by the Department and approved by the Tribal Council. Such rates may be adjusted from time to time upon recommendation of the Department and approval of the Tribal Council and shall be published as an Attachment A to this ordinance:

(a) Residential

- (1) Water Service \$12.50/month
- (2) Sewer Service \$12.50/Month
- (3) Re-connection after shut-off \$40.00
- (b) Water and Sewer Monthly Charges for Commercial/Administrative Buildings
 - (1) Administration Building \$450.00
 - (2) Clinic \$125.00
 - (3) Casino \$350.00
 - (4) New Odanah Fire Hall \$ 50.00
 - (5) Birch Hill Fire Hall \$ 50.00
 - (6) Bad River Day Care \$125.00
 - (7) Bad River Head Start \$125.00
 - (8) Bad River Tribal Garbage \$ 50.00
 - (8) Bad River Tribal Center \$150.00
 - (9) Bad River Heritage Building \$ 50.00
 - (10) Bad River Lodge \$300.00
 - (11) Bad River Warehouse \$ 50.00
 - (12) Community Center \$125.00
 - (13) Bad River Housing Authority \$4,255.00
- (c) Reconnection Charge after shut-off \$40.00
- (d) Septic System and Holding Tank Pumping and Cleaning/Maintenance Fees
 - (1) Septic Systems: \$180.00 per system, up to 2000 gallons. Additional gallons pumped will be charged a pro-rata share of the \$180.00.

(2) Holding Tanks: \$90.00 per holding tank, up to 2000 gallons. Additional gallons pumped will be charged a pro-rata of the \$90.00.

(3) Cleaning and Maintenance Fees shall be charged at an hourly rate of _____ as well as the cost of part replacement.

Section 405.7 - Billing and Collection

(a) The Utility Department will maintain a complete and up-to-date record of all customers served by those systems operated by the Department. Additions and deletions will be made as soon as the Department learns of change.

(b) Water meters will be read according to a schedule established by the Department.

(c) The Utility Department will type and mail to each customer his bill for services on the 1st dat of the month. Payment will be due on the 10th day of the month. Non-payment by the 20th day of the month will be cause for the Utility Department to shut off the customer's water services. 10% will be added to any delinquent bills.

(d) Customers may make payments by cash, check or money order to the Tribal Accounting Office, Accounting Clerk, located at the Chief Blackbird Center, P.O. Box 39, Odanah, Wisconsin 54861.

(e) Customers who live in houses managed by the Tribal Housing Authority will continue to make water and sewer payments as part of the rent or house payment. The Housing Authority collecting the payments then will pay the Utility Department for its housing occupants. The Housing Authority will receive a receipt for this payment.

(f) If a customer's water service is discontinued he/she must pay all of this delinquent charges plus the re-connection fee before the Department will restore his water service.

Section 405.8 - Enforcement

(a) The Utility Department is hereby authorized by the Bad River Tribal Council to shut off services for non-payment.

(b) The Utility Department shall enforce its regulations and fee collections by shutting off water services and any and all violators and delinquent bill-payers. The Utility Department shall not seek to attach customer's property, nor seek to have fines assessed by Tribal Court, except in limited cases of blatant or continued abuses or destruction of property.

Section 405.9 - Bookkeeping and Handling of Funds

(a) The Tribal Accounting Office shall collect Water and Sewer fees and shall perform bookkeeping functions for the Department.

(b) Actual handling of the Utility Department's funds will be performed by the Tribal Treasurer, or his/her designated agent.

(c) All accounts and ledgers of the Utility Department shall be available for audit at any time by the Tribal Council.

(d) Reserve Accounts. The Utility Department shall cause to be established and the Tribal Accounting Department shall maintain the following reserve accounts, funded through collection of Utility rates:

(1) Sludge Disposal Reserve Account: An amount estimated to meet the needs for periodic final disposal of sludge through duly licensed land application methods or other means of legal disposal.

(2) System Maintenance Reserve Account: An amount estimated to meet the

needs of routine maintenance of the systems and replacement of parts as necessary.

Section 405.10 - Management

(a) The Department will establish a job description for the Water and Sewer Maintenance Worker which will authorize him/her to execute the Bad River Utility Department Plan of Operation.

(b) The Water and Sewer Maintenance Worker will manage the daily operations of the Utility Department. He/She shall establish an orderly functioning of the office and operation and maintenance of the utility systems.

(c) Job description for all employees will be developed by the Utility systems.

Section 405.11 - Customer Complaints and Problems

The Utility Department should serve the people of the Bad River Reservation. All meetings of the Utility Department shall be open to the public and notice of such meetings will be posted. Customers with particular problems or complaints should bring them to the Utility Department.

Section 405.12 - Mandatory Hook-Up

(a) The owner or lessee of each parcel of land adjacent to a sewer main on which there exists a building useable for human habitation or in a block through which such system is extended, shall connect to such system with 90 days of notice in writing from the Utility Department. Upon failure to do so, the Utility Department may cause such connection to be made and bill the property owner or lessee for the costs hook-up.

(a) If such costs of hook-up are not paid within thirty (30) days, notice shall be made to the owner or lessee the Utility Department intends to seek a redress in the Bad River Tribal Court,

notwithstanding subsection 405.8B, for recovery of the costs hook-up.

(b) Within 30 days of issuance of such notice, the owner or lessee may file a written statement with the Utility Department proposing a payment plan, not to exceed two (2) years from the date of notice, by which the costs of hook-up will be paid by the owner or lessee. The Utility Department shall accept such payment plan unless it is determined to be unreasonable or does not provide for full recovery of the costs of hook-up. If the payment plan is accepted, the Utility Department shall notify the owner or lessee in writing within 30 days, shall institute the payment plan at the time of notice is issued, and shall refrain from seeking redress in the Tribal Court unless and until the owner fails to follow the payment plan from the Utility Department.

(c) This chapter ordains that the failure to connect to the sewer system is contrary to the minimum health standards of the Bad River Band of Lake Superior Tribe of Chippewa Indians and fails to assure preservation of the health, comfort, and safety of the Bad River Reservation population and environment

Section 405.13 - Water Meters

All facilities/structures that are connected to the community water system are required to install a water meter. All meters for measurement of utility services provided shall be installed in accordance with the requirements of the Department in such locations as determined by the Department. All water meters shall be the property of the Utility Department and shall be maintained by it. All meters shall remain accessible to Department personnel and no person shall obstruct, damage or tamper with any meter. Such obstruction, damage or tampering shall be a violation of this ordinance and subject the violator to actual damages and civil penalties under this ordinance. The assignee of the property on which the meter is located shall be responsible for all

damage to or tampering with the turn off/on water valve, and remote readout attached to such meter.

Section 405.14 - Emergency Plan

The Utility Department shall develop and maintain an Emergency Plan for the Bad River Water/Wastewater System. The most recent copies of the Emergency Plan shall be maintained at the Utilities Department, the Tribal Operations Manager, the Bad River Fire Department, and the Bad River Police Department.

Section 405.15 - Amendments or Revisions

The Plan of Operation may be amended by a simple majority of Tribal Council members in attendance at a meeting called for that, purpose and thereafter by the Bad River Tribal Council as provided by law.

Legislative History: (This Legislative History is provided only as a reference and a guide to interpretation and application of this Chapter, and should only be cited as such. The Legislative History may not provide a complete historical record of the Chapter. Deletions specified below are indicated by strike-through and specified additions by bold.)

The following amendments were made to the Bad River Utility Ordinance on _____, by Resolution No. _____:

Add to 405.3.A and water meter installation and servicing

Change 405.6 as follows:

This section may be amended as necessary as an Attachment A to this ordinance by Resolution of the Tribal Council. On the date of renumbering of this ordinance as Chapter 405, the rates are as follows:

And Add: Upon installation of water meters, the Department shall establish and charge base rates and usage rates as recommended by the Department and approved by the Tribal Council. Such rates may be adjusted from time to time upon recommendation of the Department and approval of the Tribal Council and shall be published as an Attachment A to this ordinance.

Add a new section 405.7B as follows and renumber the previously number sections 405.7 B through E:

Water meters will be read according to a schedule established by the Department.

Change 405.12B as follows:

If such costs of hook-up are not paid within thirty (30) days, notice shall be made to the owner or lessee that the Utility Department intends to seek a redress in the Bad River Tribal Court, notwithstanding subsection 405.8.B, for recovery of the costs of hook-up. ~~The Utility Department shall not seek to attach the owner or lessee's property, or seek to have fines assessed by the Tribal Curt, except in limited cases of blatant or continued abuses or destruction of property.~~

Add a new section 405.13 as follows and renumber the previously numbered sections 405.13 through 405.14:

405.13 Water Meters

All facilities/structures that are connected to the community water system are required to install a water meter. All meters for measurement of utility services provided shall be installed in accordance with the requirements of the Department in such locations as determined by the Department. All water meters shall be the property of the Utility Department and shall be maintained by it. All meters shall remain accessible to Department personnel and no person shall obstruct, damage or tamper with any meter. Such obstruction, damage or tampering shall be a violation of this ordinance and subject the violator to actual damages and civil penalties under this ordinance. The assignee of the property on which the meter is located shall be responsible for all damage to or tampering with the turn off/on water valve, and remote readout attached to such meter.

The following amendments were made to the Bad River Utility Ordinance on 12-15-2005, by Resolution No. 12-15-05-26

Add 405.3 - D. Septic System and Holding Tank Pumping: The Utility Department shall upon request of the customer, pump septic tanks and holding tanks for a fee, as specified below.

Add to 405.4- E. Septic Systems and Holding Tanks within the Bad River Reservation.
Correct the numbering of 405.5.

Add to 405.6- D. Septic System and Holding Tank Pumping and Cleaning/Maintenance Fees
(1) Septic Systems: \$180.00 per system, up to 2000 gallons. Additional gallons pumped will be charged pro-rata share of the \$180.00.
(2) Holding Tanks: \$90.00 per holding tank, up to 2000 gallons. Additional gallons pumped will be charged a pro-rata share of the \$90.00.
(3) Cleaning and Maintenance Fees shall be charged at an hourly rate of _____ as well as the cost of part replacement.

Change 405.7 as follows- C. Customers may make payments by cash, check or money order to Tribal Accounting Office Accounting Clerk, located at the Chief Blackbird Center, P.O. Box 39, Odanah, Wisconsin 54861

Change 405.8 as follows- A. The Utility Department is hereby authorized by the Bad River Tribal Council to shut off services for non-payment.

Change 405.9 as follows- A. The Tribal Accounting Office shall collect Water and Sewer fees and shall perform bookkeeping functions for the Department.

D. Reserve Accounts. The Utility Department shall cause to be established and the Tribal Accounting Department shall maintain the following reserve accounts, funded through collection of Utility rates:

The Bad River Indian Reservation Plan of Operation of the Bad River Utility Department and the Utility Regulations were adopted by the Bad River Tribal Council on the 7th day of May, 1986, by Resolution No. 5-7-86-28.

The following amendments were adopted by the Bad River Tribal Council, by Resolution No. 4-4-01-76 on the 4th day of April, 2001:

The Plan of Operation and the Regulations referred to above were named and numbered as **Bad River Tribal Code Section 6, Chapter 405 Bad River Utilities Ordinance.**

Numbers were assigned to each section of the Ordinance (405.__)

Section 405.4 was amended to add the following language to provide for routing updating of services areas covered: **“This section may be amended as necessary as an Attachment A to this ordinance by Resolution of the Tribal Council. On the date of renumbering of this ordinance as Chapter 405, the systems covered are as follows:**

Section 405.6 utilized the rate schedules in effect at the time of passage of the ordinance. In addition, the following language was added to provide for routine adjustments in rate schedules: **This section may be amended as necessary as an Attachment A to this ordinance by Resolution of the Tribal Council. On the date of renumbering of this ordinance as Chapter 405, the rates are as follows:**

***Section 405.9.D** was added to include the following language to provide for income sufficient to perform vital functions of the sewage treatment system and to safely and legally provide for ultimate disposal of the sludge.*

***Section 405.12 Mandatory Hook-Up** was added to meet USDA funding requirements.*

***Section 405.13 Emergency Plan** was added to ensure that a plan is in place.*

***Section 405.14 Amendments or Revisions** was amended as follows to refer to the Plan of Operation as Chapter 405 and to provide a procedure more compatible with Tribal Council practice.*

This Chapter 405 may be amended by a resolution of the Tribal Council as provided by law.

CHAPTER 406 - PRIVATE ON-SITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS ORDINANCE

An ordinance regulating the design, location, installation, renovation, operation, maintenance, and inspection of individual, cluster, commercial and institutional wastewater treatment and disposal systems; requiring permits therefore; and prescribing penalties.

Section 406.1 - Introduction and Authority

(a) Title. This Ordinance shall be known as the Bad River Band of Lake Superior Tribe of Chippewa Indians (the “Band” or the “Tribe”) Private On-Site Wastewater Treatment and Disposal Systems Ordinance.

(b) Authority. The Bad River Tribal Council is authorized by Article VI of the Bad River Constitution to adopt regulations governing the use and management of the lands and other resources located within the exterior boundaries of the Bad River Reservation as set forth in Article II of the Treaty of 1854, September 30, 1854, 10 Stat. 1109.

(c) Purpose and Intent. The purpose of this Ordinance is to develop a Tribal code for individual septic systems and other types of individual wastewater treatment and disposal systems in order to protect the health, safety and welfare of the people of the Bad River Reservation and other affected communities by improving the groundwater and surface water quality on the Bad River through regulation of individual wastewater systems and preventing future negative impacts on the groundwater and surface water quality. Furthermore, the development of this Ordinance will help protect wildlife, fish and aquatic organisms in the streams, rivers, lakes and wetlands within the Bad River Reservation.

(d) Scope and Date of Applicability. This Ordinance shall govern within the boundaries of the Bad River Reservation and apply immediately upon enactment to any new installation or any renovation of private on-site wastewater treatment and disposal systems (POWTS) and the operation, maintenance, correction and inspection of such systems, as well as holding tanks, engineered systems, experimental systems, privies and other non-plumbing systems. Existing systems shall have one (1) year from the date of enactment of this chapter to come into compliance with its terms evidenced through acquisition of an Inspection Certificate for an adequate system or repair, upgrade, or replacement of a failing or inadequate system. POWTS owners who anticipate not being able to bring their system into compliance within one year of the date of enactment to enter into a compliance schedule agreement with the POWTS Inspector. Systems subject to such a compliance schedule agreement shall have three years from the date of enactment to come into full compliance.

(e) Interpretation. In the interpretation and application of this Ordinance, its provisions shall be held to be the minimum requirements and shall be construed so as to fully effect its purpose and shall not be deemed a limitation or repeal of any other power by law or Ordinance except as specifically provided herein. In the event conflicting requirements are imposed by this Ordinance or by other Ordinances of the Band, the most restrictive provisions shall apply. The POWTS Inspector shall rule on what is more restrictive, and appeals from such decisions, as well as other interpretations, may be made in accordance with Section 406.10E herein.

(f) Reference and Inclusion of Wisconsin Administrative Code, Department of Commerce and Department of Natural Resources Regulations and Wisconsin Statutes Annotated. Applicable provisions of the Wisconsin Administrative Code (WAC) Department of Commerce

Regulations (Comm), including Comm. 83, 84, 85, and 91, and Department of Natural Resources Regulations (NR), and Wisconsin Statutes Annotated (WSA) Section 145, are hereby incorporated into this Ordinance as tribal law. The most recent version of such provisions in effect on the date action is taken pursuant to this Ordinance shall apply. In the event such provisions are no longer the applicable regulations for the State of Wisconsin, this Ordinance shall adopt the regulations then in place for the State of Wisconsin, or, if none exists, the most recent version of such provisions prior to deregulation. Inclusion of WAC and WSA provisions by reference shall not serve to submit the Band or its members to the jurisdiction of the State of Wisconsin.

(g) Construction. Words used in the present tense include the past and future tense; the singular includes the plural and the plural includes the singular; the word “shall” is mandatory, and the word “may” is permissive; the masculine gender includes the feminine gender.

(h) Federal Law. Nothing in this Ordinance is intended to modify or supercede requirements of federal law. Permits will not be issued under this Ordinance until all required federal approvals and permits have been obtained.

Section 406.2 - Definitions

(h) “Applicant” shall mean a person who submits an application for a permit for the installation or renovation of a POWTS.

(i) “Board” shall mean the POWTS Board.

(j) “Compliance Order” shall mean an order issued by the POWTS Inspector, which shall provide in detail remedial measures, including a sequence of interim requirements and target dates (for instance actions, operations, or milestone events) that lead to compliance with this Ordinance of a Court Order.

(k) “Compliance schedule” shall mean that schedule for meeting interim and final requirements agreed to with the POWTS Inspector or issued through a Court order.

(l) “Department” shall mean the Bad River Natural Resources Department.

(m) “Engineered System” shall mean a system designed outside the defined parameters of this Ordinance. The engineered system design plans and calculations must demonstrate equivalency to this Ordinance. An engineered system shall require a variance.

(n) “Experimental System” shall have the same meaning as in WAC Comm 83 as referenced by Section 406.1F, above.

(o) “Failing System” shall have the same meaning specified under WSA Section 145.245(4).

(i) “Human Habitation” shall mean the occupying of a structure as a dwelling or sleeping place, whether intermittently or as a principal residence.

(j) “Imminent Threat to Public Health or Safety” shall mean situations that pose an immediate or potential threat to public health or safety. Such situations include, but are not limited to: discharge of sewage to the ground surface, surface water or a groundwater source; any system causing sewage backup into a dwelling, or other establishment; or other situation that prohibits the system from functioning as intended and which poses an immediate or potential threat to public health or safety.

(k) “Inspection Certificate” shall mean a certificate issued by the POWTS Inspector, pursuant to Section 406.4, below, for the use of a system that has passed an inspection ensuring the POWTS is of adequate size for the premises being served and is functioning properly, and which includes performance standards, time limitations, maintenance requirements, and other conditions

as may be required by the POWTS Inspector to evaluate and assure adequate system performance.

(l) “Installation” shall mean the construction or placement of a sewage treatment system on real property.

(m) “Journeyman Plumber” shall mean any person licensed and registered as a Journeyman Plumber in accordance with WSA Section 145.07.

(n) “Maintenance” shall mean such regular inspection and care for the system as may be determined by the POWTS Inspector in order to ensure safe, healthful operation consistent with the intent of this Ordinance.

(o) “Master Plumber” shall mean any person licensed and registered as a Master Plumber in accordance with WSA Section 145.07.

(p) “Non-plumbing Sanitation System” shall mean sanitation systems and devices within the scope of WAC Comm91, which are alternatives to water carried waste plumbing fixtures and drain systems; including, but not limited to, incinerating toilets, composting toilets and privies.

(q) “Non-Tribal member” shall mean someone whose name does not appear on the membership rolls of the Bad River Band and who is not eligible for membership in the Bad River Band.

(r) “Performance Standards” shall mean requirements and conditions applied to the issuance of an Inspection Certificate or Sanitary Permit for the purpose of evaluating system performance. Performance factors may include, but are not necessarily limited to fecal coliform, BOD, flow rates and other related factors designated in the operating permit.

(s) “Performance System” shall mean any individual wastewater treatment system to

which performance standards are applied to used to evaluate performance as a condition of an Inspection Certificate or Sanitary Permit.

(t) “Person” shall mean an individual, partnership, firm, corporation, or association, or other legal entity, the state, or any other political subdivision thereof or governmental entity, but not including the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(u) “POWTS Board” shall mean that board appointed by the Tribal Council to initially recommend fees and rates to the Tribal Council, amend and set fees and rates following the initial schedule adoption, establish a Policies and Procedures Manual, and hear appeals of decisions of the POWTS Inspector.

(v) “Plumbing Apprentice” shall mean any person other than a journeyman or master plumber who is engaged in learning and assisting in the installation of plumbing and drainage.

(w) “Private On-Site Wastewater Treatment System” or” POWTS” shall mean a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure (a cluster system), a system serving more than one structure or a system located on a different parcel than the structure. This term also means an alternate sewage system approved by the Department including a substitute for the septic tank or soil absorption field, or a holding tank. A POWTS may be owned by the property owner or by a special purpose district or management entity.

(x) “Privy” shall mean an enclosed nonportable toilet into which nonwater-carried human wastes are deposited.

(y) “Privy-pit” shall mean a privy with a subsurface storage chamber which is not watertight.

(z) “Privy-vault” shall mean a privy with a subsurface storage chamber which is watertight.

(aa) “Privy Permit” shall mean a permit that is issued by the POWTS Inspector for the use of a privy system that includes performance standards, time limitations, maintenance requirements, and other conditions as may be required by the POWTS Inspector to evaluate and assure adequate system performance.

(bb) “Property Owner” shall mean any person who has an ownership interest in the premises upon which the system is located and shall include leaseholders and tenants if such leaseholder or tenant is responsible for home maintenance or construction, and shall also include any person in possession of the premises or who holds an ownership interest in any structures served by the system.

(cc) “Rebuilt” shall mean the construction which takes place after a structure being served by the POWTS is demolished or damaged to the extent of fifty percent (50%) or greater of its current equalized assessed value.

(dd) “Registered Learner” shall mean a person, other than a Restricted Plumber Licensee, who is learning a limited type of plumbing and is engaged in assisting a Restricted Plumber Licensee.

(ee) “Renovation” shall mean activity involving the extension, alteration, reconstruction, or repair of a sewage disposal system in whole or in part.

(ff) “Repair” shall mean the repair or replacement of damaged or faulty component part of a POWTS such that completion of such repair will return the system to its original operable condition.

(gg) “Residential System” shall mean any POWTS serving a private residence.

(hh) “Restricted Plumber Licensee” shall mean any person licensed as a master plumber (restricted) or a journeyman plumber (restricted) under WSA Section 145.14.

(ii) “Sanitary Permit” shall mean a permit issued for the construction, installation repair or modification of an individual septic system by the POWTS Inspector under authority of the Band.

(jj) “Site Evaluator” shall mean any person who conducts an evaluation of a site proposed for a POWTS and who meets the requirements of licensing and certification set forth in Section 406.6 of this Ordinance.

(kk) “Soil and Site Evaluation Application” shall mean an application submitted for the purpose of requesting POWTS Inspector verification of a Soil and Site Evaluation Report.

(ll) “Standards” shall mean any POWTS standards as adopted and amended from time to time by the Band.

(mm) “Standard System” shall mean any POWTS which utilizes at least thirty-six inches (36") of soil, natural or imported, and is constructed and sized in accordance with recognized prescriptive standards and Department recommendations.

(nn) “Transfer, sale, or conveyance” shall mean all transfers, sales, or conveyance’s of the original owner’s or lessee’s interest in the buildings, structures or land which is served by a POWTS or upon which a POWTS is located, regardless of form, so long as the owner or lessee is divested of all rights of ownership or leasehold interest, or as exempted by Section 406.4.J.5, below.

(oo) “Variance” shall mean any modification or relief from this Ordinance where it is

determined that, by reason of exceptional circumstances, the strict enforcement of the provisions of this Ordinance would cause unnecessary hardship as defined in Section 406.7 of this Ordinance.

(pp) “Wetlands” shall mean the presence of hydric soils, surface and subsurface hydrology, and hydrophytic vegetation.

Section 406.3 - General Requirements

(a) Structure Applicability. All structures or premises within the exterior boundaries of the Bad River Reservation that are permanently or intermittently intended for human habitation or occupancy, whether private residential, institutional, or commercial, which are not serviced by a public wastewater treatment system, shall have a system for holding or treatment and dispersal of sewage and wastewater which complies with the provisions of this Ordinance.

(b) Treatment,. No building structures, area or premises shall be constructed or maintained for human occupancy, use or assembly without adequate facilities for sanitary and safe treatment and disposal of all human excreta, sewage and all liquid waste that could offer a hazard to the public or create objectionable nuisance conditions.

(c) Dispersal. Regardless of the type of treatment technology used, all sewage must be dispersed below grade in such a manner as to allow no sewage discharge to the ground surface or otherwise create an imminent health threat.

(d) Capacity. POWTS shall be designed to receive all sewage from the dwelling(s) or other establishment(s) served by the system, including laundry waste and basement floor drainage. Surface water, roof drainage, water softener, back flush water, spa/swimming pool water, foundation drainage, and other storm water shall not be allowed to enter any part of the system.

(e) Applicability. The requirements of this Ordinance shall apply to all land within the

exterior boundaries of the Bad River Reservation.

(f) Limitations.

(1) All commercial, institutional, and domestic wastewater shall enter a private or public sewage system unless otherwise exempted by the Band through this Ordinance.

(2) A non-plumbing sanitation system may be permitted when the structure or premises served by the non-plumbing sanitation system is not provided with an indoor plumbing system. If plumbing is installed in the structure or water under pressure is supplied to the structure, an acceptable method of sewage disposal other than, or in addition to, a non-plumbing sanitation system must be provided.

(3) A holding tank may be used as a POWTS unless soil and site conditions allow the installation of any of the following POWTS components:

- (a) At Grade
- (b) In ground non-pressurized system
- (c) In ground pressure
- (d) Mound system
- (e) Pretreatment Systems
- (f) Alternative Systems
- (g) Variance Systems
- (h) Engineered Systems.

(4) A thorough soil and site evaluation shall be completed in all areas in order to

comply with Section 406.4.C.

(g) Expansion. Where it can reasonably be anticipated that the construction of additional structures, dwellings, or bedrooms, or the installation of additional equipment or services will affect the operation of the existing system, a new system shall be installed or a renovation of the existing system shall comply with the applicable requirements for such additional needs.

(h) Replacement Area. All occupied properties shall provide and maintain sufficient undisturbed land area to allow for the replacement of a wastewater treatment system serving any structures, dwellings, or premises on the parcel. This area must meet, or exceed, the minimum site requirements for the treatment and disposal of the wastewater generated. A mound and an at grade system may be considered their own replacement area if no other area is available on the parcel to retain for future use.

(i) Proximity to Public Sewer. No POWTS or other means of sewage or excreta disposal shall be maintained or used on property located adjacent to a sewer main for a public wastewater treatment system or in a block through which such system is extended. Exception to this prohibition shall only be granted in accordance with Chapter 405, Bad River Utilities Ordinance.

(j) Location. All on-site sewage systems shall be located wholly upon the property served, except as specifically approved by the POWTS Inspector and included as a condition of the permit. A valid recorded easement shall exist for any part of the system not wholly located upon the property served. Such easement shall allow for access by the POWTS Inspector and other enforcement and maintenance personnel.

(k) Maintenance. It shall be the responsibility of the owner of any premises using a

POWTS, Engineered or Experimental System, holding tank, privy or non-plumbing system to provide for the periodic maintenance of such system as necessary to assure adequate function. See Section 406.9 for Maintenance Program Requirements. Failure to maintain shall result in civil fine or forfeiture.

(l) Correction: Ineffective Systems. When the POWTS Inspector, based upon inspection, determines any individual sewage treatment system, whether a POWTS, Engineered or Experimental System, holding tank, privy or non-plumbing system, is not operating in an approved manner and is in need of correction, he/she shall notify the owner in writing, through issuance of a compliance order, that the problem shall be corrected within a period of time as defined by the POWTS Inspector. Further, the POWTS Inspector may, upon failure of an individual to follow the compliance order, enter such property, upon authority of the Band, for the purpose of proper closure, restoration or cleanup of pollution as stated in the compliance order.

(m) New Systems in Conjunction with Old Systems. A new code compliant POWTS may be used in conjunction with an existing POWTS in an alternating configuration if the existing POWTS is code compliant and if the piping configuration is such that each system may be used independently and the homeowner is able to alternate between each system.

(n) Repair of POWTS. No permit is required for system repair if the repair does not alter the original are, dimensions, or concept of the system. However, written notice of any repair is required to be sent to the POWTS Inspector within ten (10) days of the repair completion.

(o) Failing Systems. Failing systems shall be brought into compliance within the period of time required by the POWTS Inspector's order. In the case of an imminent public health threat, abatement of the threat must be accomplished within ten (10) days of notification. Pump

and haul may be required at the discretion of the POWTS Inspector, including in cases of ponding.

(p) Provisional Permit. Where weather or other conditions prevent permanent correction of an imminent public health threat within 60 days or abatement within 10 days, a provisional permit for a temporary holding tank or other method of treatment may be issued, including the use of an existing tank if such tank is in sound condition. The length of the provisional permit shall not exceed 150 days.

(q) Abandonment of Private Sewage Systems.

(1) When public sewers approved by the Band become available to the structure or premises served, in accordance with Chapter 405 of the Tribal Code, the private sewage system shall be disconnected within one year and a connection made to the public sewer. The POWTS Inspector shall determine whether the sewer is available. Abandonment of the disconnected private sewage system shall be done in accordance with this Ordinance and the provisions of WAC Comm 83.

(2) The components of an existing private sewage system that are not part of the approved design of a replacement system shall be abandoned at the time of installation of the replacement system by the plumber installing the new system. The abandonment shall comply with this Ordinance and provisions of WAC Comm. 83.

(3) The POWTS Inspector may impose additional requirements for individual sites which may not be abandoned satisfactorily under the provisions of WAC Comm 83.

(4) Previously abandoned POWTS shall be confirmed by the POWTS Inspector to have been abandoned in conformance with this Ordinance, or, if not in conformance, shall be properly abandoned within one of the enactment of this Ordinance. Owners shall bear all costs of

abandonment.

(r) Privy Permits and Abandonment of Privies.

It is the policy of the Bad River Tribe to discourage the use of privies, whether pit or vault privies.

(1) A privy shall be permitted only when the structure or premises served by the privy is not served by an indoor plumbing system. If plumbing is installed in the structure or water under pressure is supplied to the structure, an acceptable method of sewage disposal other than a privy must be provided. All privies must meet the requirements of WAC Comm 91.

(2) Existing and new privies must be permitted by the POWTS Inspector. Owners of privies in existence at the time of enactment of this Ordinance must apply for, comply with all requirements of this Ordinance for privies, and receive a privy permit within one year of the date of enactment of this Ordinance. Owners intending to construct a privy must obtain a permit prior to beginning any construction.

(3) Applications for privy permits shall be on forms supplied by the POWTS Inspector and shall contain all information required by the POWTS Inspector, including, but not limited to, a Soil and Site Evaluation Report and an abandonment plan. Permits and applications shall generally follow the requirements for POWTS permits in this Ordinance. Applicants must pay a permit application fee, as stated in Exhibit A, at the time of submission of the application. There shall be no refunds of application fees for retracted, deficient, or denied applications.

(4) Permits shall be valid for a period of one (1) year from the date of issuance. Permit holders must renew privy permits yearly and pay a yearly privy fee, allow for yearly inspection of the privy by the POWTS Inspector or his or her designee, and provide such tests as

are required by the POWTS Inspector to ensure the health and safety of the Reservation residents and resources are protected. The POWTS Inspector may refuse to renew a permit and require proper abandonment or repair of a privy where the system does not meet minimum requirements for the protection of health and safety and the environment.

(5) Abandonment. Privies shall be abandoned in accordance with WAC Comm 91.

Section 406.4 - Inspection Certificates, Permits and Applications

(a) Inspection Certificate. All private wastewater treatments systems, whether a POWTS, Engineered or Experimental system, holding tank, privy or non-plumbing system, whether newly constructed or existing, must have a current Inspection Certificate issued by the POWTS Inspector.

(1) Inspection Certificates shall be issued to owners of POWTS and other systems which have been inspected by the POWTS Inspector and have been found to be of adequate size, meet all Performance Standards, and function properly.

(2) POWTS and other systems not meeting such criteria shall not receive an Inspection Certificate and are subject to a Compliance Schedule Agreement or Compliance Order.

(3) Inspection Certificates shall initially be valid for a period of one (1) to three (3) years based upon an inspection schedule determined by the POWTS Inspector and POWTS Board, to allow for a rotating schedule of inspection. Thereafter, Inspection Certificates shall be valid for a period of three (3) years from the date of renewal if the system passes inspection and the Inspection Certificate is not suspended or revoked.

(4) The POWTS Inspector may enter the property at any reasonable time to

inspect the system to ensure the POWTS is functioning properly or to investigate the adequacy of the system.

(5) The POWTS Inspector may suspend or revoke any Inspection Certificate upon a finding of system failure or inadequacy.

(b) Requirement. No person shall construct, install, renovate or use any type of individual sewage treatment system within the Bad River Reservation without first obtaining the required permit or permits from the POWTS Inspector applicable to the specific activity to be undertaken. All construction permits issued shall expire within 24 months after the date of issue. Permits are not transferable from one site to another. No system permit of any type shall be issued except following compliance with the provisions contained herein.

(c) Soil and Site Evaluation.

(1) Soil, site evaluations and design plans shall be complete prior to the issuance of permits as specified in this Ordinance, in compliance with WAC Comm 83, 85 and 91.

(2) Soil test pits shall be constructed which allow adequate visual observation, in the opinion of the POWTS Inspector, of the soil profile in place.

(3) There must be verification of the Soil and Site Evaluation Report by the POWTS Inspector. This will be done prior to the issuance of a sanitary permit. Verification may result in the following:

(a) Issuance of the permit, provided all information on the application, plans and calculations are correct and complete and the site otherwise meets all provisions of this Ordinance;

(b) Establishment of a file indicating site suitability;

(c) Holding the application pending clarification of information or new information by the owner, the plumber, or the certified soil tester; or

(d) Denial of the permit if the site does not meet all the provisions of this Ordinance.

(4) The POWTS Inspector may request verification of a Soil and Site Evaluation Report by a certified soil tester before a complete sanitary permit application is submitted. Application for this verification shall contain all information required in section 406.4.H and 406.4.I on forms provided by the POWTS Inspector, the original copy of the Soil and Site Evaluation Report and as many copies as are required by the POWTS Inspector.

(d) Sanitary Permits

(1) Every instance of construction, installation, repair or modification of a private sewage system shall require a separate application and sanitary permit immediately upon enactment of this Ordinance, unless otherwise exempted by this Ordinance. A sanitary permit shall be obtained by the property owner, prior to the installation, establishment or construction of any structure which requires a private sewage system. Any property owner, his agent or contractor, who starts construction prior to obtaining a sanitary permit is in violation and may be subject to citation or other enforcement action.

(2) A sanitary permit shall be obtained by the property owner, except as permitted in section 406.3.N, before any private sewage system or part thereof may be installed, replaced, repaired, reconnected or modified.

(3) If any part of a private sewage system has failed or requires replacement or modification, the entire system shall be evaluated for compliance with existing Codes and

Ordinances prior to sanitary permit issuance.

(4) If any part of the system is found to be defective or not in conformance with the applicable provisions of this Ordinance, the sanitary permit application shall include specifications for the repair, renovation, replacement or removal of that part, except as exempted by Section 406.3.N.

(5) All sanitary applications and soil and site evaluations must be submitted to the POWTS Inspector's office,. The applications must be original documents and written in ink.

(e) Permit Expiration.

(1) A sanitary permit for a private sewage or non-plumbing sanitation system which has not been installed, modified, or reconnected and approved shall expire two years after the date of issuance. Permits may be renewed following written application to the POWTS Inspector by the property owner, his agent or contractor, prior to the expiration date of the original permit.

(2) There shall be a fee for renewal of a sanitary permit.

(3) The renewal shall be based on Ordinance requirements in force at the time of renewal.

(4) Changed Ordinance requirements may impede or prohibit the renewal.

(5) The property owner shall return the original permit prior to receiving a renewal permit.

(6) All sanitary permits issued prior tot he effective date of this Ordinance shall expire two years from the date of issuance unless renewed.

(7) A new sanitary permit shall be obtained by the owner or his agent prior to

beginning construction if a sanitary permit has expired.

(f) Permit Denial. When applicable provisions of this Ordinance have not been complied with when applying for a sanitary permit, or if the system will not meet the standards of this Ordinance, the permit shall be denied. Reasons for the denial shall be forwarded to the plumber, landowner and when appropriate the POWTS Board or Bad River Tribal Council. The POWTS Inspector must approve or deny a permit, or request additional information or clarification, within thirty (30) days of receipt of the permit application.

(g) Permit Fees. The Fee Schedule shall be set initially by the Bad River Tribal Council upon enactment of this Ordinance. Thereafter, the POWTS Board shall have the sole authority to amend rates and fees. The Fee Schedule shall be attached to this Chapter as Exhibit A. There shall be no refunds of application fees for retracted, deficient, or denied applications.

(h) Application Requirements.

(1) A Soil and Site Evaluation Report.

(2) Work on existing systems shall require a report by a licensed plumber relative to the condition and capacities of all other system components, and other systems on the parcel.

(3) Work on existing systems shall require a report by POWTS Inspector stating that the new system will relieve the problems of the old, now failing, system.

(4) The application shall also include the following:

(a) Legal description, lot dimensions and driving directions to the proposed site;

(b) Name and address of property owners and of persons performing the

permit activity;

- (c) System plan (see Section 406.4.I);
- (d) Sketch of the proposed system;
- (e) Description of water supply, well depth, proximal location of

bedrock and water table when available.

- (f) Building use (single family, duplex, etc.); and
- (g) Any other information required by the POWTS Inspector.

(5) Each permit application shall be kept on file with any permit issued pursuant to this Ordinance.

(6) The POWTS Inspector shall, at his/her discretion, perform site visits or require additional information as necessary to evaluate or clarify information contained in the permit application with regard to the requirements contained herein.

(i) System Plans. System plans shall be submitted for approval of the POWTS Inspector in accordance with this Ordinance. Plans shall comply with the requirements of this Ordinance, except as otherwise provided.

(1) Plans submitted to the POWTS Inspector shall include the original and as many copies as are required by the POWTS Inspector.

(2) Plans submitted shall be clear, legible and permanent copies.

(3) Plans submitted shall comply with this Ordinance and include the

following:

- (a) The name of the property owner and the legal description of the site;
- (b) Estimated daily wastewater flow and design wastewater flow;

(c) A detailed plot plan (site plan), dimensional or drawn to scale on no smaller than 8 ½ by 11 inch paper;

(d) Details and configuration layouts depicting how the system is to be constructed;

(e) Provide a contingency plan in the event that the proposed plan fails and cannot be repaired or an alternate area may be provided; and

(f) Sufficient supporting information to ensure the proposed private sewage system or modification complies with the Ordinance.

(4) A copy of the approved plan shall be available at the construction site until completion of the private sewage system.

(5) A final “as built” copy of the plans shall be submitted to the POWTS Inspector and kept in a permanent file for the system.

(6) A modification to the design of the private sewage system which has previously been approved shall be submitted to the POWTS Inspector. Plan revisions must be approved before revision construction begins. Only modifications which affect the treatment of the sewage/effluent (such as downsizing the mound, change in loading rate, any additional pretreatment such as an aerator in the tank) shall require plan revision. Revision is not required for modifications that do not alter the original area, dimensions or concept of the system.

(j) Transfer of Ownership. In order to ensure the provisions of this Ordinance are complied with, upon transfer of ownership of a property for which a valid sanitary permit exists, the following shall apply:

(1) Any person transferring, selling, or conveying a building or dwelling, or

land

upon which a building or dwelling is located, shall report such transfer, sale, or conveyance fifteen (15) days prior to said transfer, sale or conveyance to the POWTS Inspector. Reporting shall be by such person, such person's agent, or any real estate agent.

(2) Prior to such transfer, sale or conveyance of any building or dwelling, the transferor, seller or conveyer shall have conducted an evaluation of the existing private waste disposal system, if said structure is served by the same. An evaluation of the private waste disposal system shall be done by the POWTS Inspector or any other person certified as a POWTS maintainer, inspector, and soil tester (all inclusive). Evaluation shall be conducted in accordance with and on forms furnished by the POWTS Inspector. All evaluations shall be submitted to the POWTS Inspector for review. The POWTS Inspector is empowered to investigate any system so evaluated.

(3) If, upon inspection, the existing system meets the criteria of a "failing private sewage system" as defined in this Ordinance or WSA Sec. 145.245(4), an order for replacement is issued under this Ordinance or WSA Sec. 145.20(2)(e), (f), and (g), said new system shall be installed within one year of the sale or conveyance date by the transferee unless by written agreement the transferor has retained the obligation to replace the system. Any such agreement shall be filed with the POWTS Inspector and shall be enforceable by the POWTS Inspector against the transferor.

(4) The following changes in ownership shall require an inspection: Gifts through addition of another person to ownership, unless the last inspection was completed within twenty-four (24) months of the transaction; addition of children to a deed; transfer to an

irrevocable trust; land contracts; addition of a name to property owners, except between spouses; proposed transfers which fall through, dating from the original transfer notification requirement.

(5) The following changes in interest shall not require an inspection at the time of transfer: life estates until the transferor is divested of all rights of ownership; transfer of marital estate between spouse, except transfer of individually classified property from one spouse to another; transfer of property to or from a revocable living trust; a lease-option until the option is exercised; subtraction of a name from ownership; a transfer within twenty-four (24) months of a passing inspection, at the discretion of the POWTS Inspector.

(6) The sanitary permit shall be returned to the POWTS Inspector so that a new permit may be issued noting the new property holder;

(7) Because the permit runs with the property, transfer of property shall not affect the expiration date unless a renewal is also requested; and

(8) A transfer filing fee of the correct amount as listed in Exhibit A shall be paid at the time of filing.

(k) Change of Plumbers.

(1) When an owner wishes to change plumbers during construction, it will be necessary for him to furnish the POWTS Inspector with the applicable change form signed by the new plumber. New plans must also be submitted by the plumber, designer, or engineer.

(2) The transfer of a sanitary permit shall take place prior to the installation of the private sewage system.

(3) A transfer filing fee of the correct amount as listed in Exhibit A shall be paid at the time filing.

Section 406.5 - Reconnection and Construction

(a) Reconnection and Construction.

(1) A reconnection permit shall be obtained prior to:

(a) Construction of a structure to be connected to an existing private sewage system;

(b) Disconnection of a structure from an existing private sewage system and connection of another structure to the system; or

(c) Rebuilding a structure that is connected to a private sewage system.

(2) Prior to issuance of a reconnection permit, the existing private sewage system shall be examined, including soil, tanks, and components to:

(a) Determine if it is functioning properly and whether it is a failing system; and

(b) Determine if it will be capable of handling the proposed wastewater flow and contaminant load from the building to be served.

(3) Application for a reconnection permit shall include the following:

(a) All items in Sections 406.4.H and I.

(b) For all systems that utilize soil for treatment or disposal, a Soil and Site Evaluation Report verifying that the vertical separation distance between the infiltrative surface of the existing treatment or dispersal component and estimated high groundwater elevation and bedrock complies with applicable provisions of this Ordinance, unless a valid report meeting these criteria is on file with the POWTS Inspector;

(c) A report provided by a licensed plumber, certified septage servicing

operator or a POWTS Inspector relative to the condition, capacities, baffles, RISERS and manhole covers for any existing treatment or holding tanks;

(d) A report provided by a licensed plumber or POWTS Inspector relative to the condition and capacities of all other components and verifying that the system is not a failing system;

(e) A plot plan prepared by a plumber including information specified in Section 406.4.H and I; and

(f) Complete plans, as specified in Sections 406.4.H and I for any system components which will be modified or replaced.

(4) In addition, the following may also be required:

(a) Reconnection to existing holding tanks may require a new servicing contract and an updated holding tank agreement which meets the requirements of this Ordinance; and/or

(b) Reconnection to an existing system other than a holding tank may require a new maintenance agreement or contract.

(5) Replacing a structure with a new or different structure within two years of the date of permit issuance will only require a statement that the system has not been altered, a statement that a modification in a wastewater flow or contamination load will not occur, and a plot plan that documents all setbacks between the structure and system components.

(6) When reconnection to an undersized system is permitted by WAC Comm 83 and 84, an affidavit for the use of the undersized system must be recorded in the POWTS Inspector's office.

(7) Systems may be inspected at the time of reconnection, prior to backfilling, at the discretion of the POWTS Inspector to insure that proper materials and methods are being used.

(b) Construction Affecting Wastewater Flow or Contaminant Load.

Prior to commencing the construction of an addition to or modification of a structure which will affect the wastewater flow and/or contaminant load to an existing private sewage system, the owner(s) of the property shall:

(1) Possess a sanitary permit to construct a new private sewage system or modify an existing private sewage system to accommodate the modification in wastewater flow or contaminant load; or

(2) Provide the following to the POWTS Inspector:

(a) Documentation that a private sewage system of adequate capability and capacity to accommodate the wastewater flow and contaminant load already exists to serve the structure, as specified in this Ordinance;

(b) Documentation showing that the location of the proposed structure conforms to the applicable setback distances for the existing private sewage system components.

(See WAC Comm 83 and Wisc. NR111, 112); and

(c) Documentation specified in Section 406.5.A.3.

(3) If the existing private sewage system is found to be undersized, construction of the building addition or modification shall be allowed only if it could be permitted by WAC Comm 83 and 84 and an affidavit for the use of the undersized system is recorded in the Tribe's Realty Office or the Ashland County Register of Deeds if non-trust property. An affidavit for the

use of the undersized system must also be recorded with the POWTS Inspector.

(4) Any installation, addition or modification of a system must be completed and accepted before the addition or modified area of the structure may be occupied.

(c) Construction Not Affecting Wastewater Flow or Contaminant Load.

Prior to commencing construction of any structure or addition to a structure on a site where there exists a private sewage system when such will not affect the wastewater flow or contaminant load, the owner or his agent shall still determine that the proposed structure conforms with applicable setback limitations of Comm 83, as adopted by Band law. Documentation shall be submitted to the POWTS Inspector.

(d) Permit Fees.

Reconnection permit fees shall apply as established by Exhibit A.

Section 406.6 - Licensing

Requirement. No person shall engage in or perform any aspects of the business or perform for others the service of site evaluation, design, installation, pumping, maintenance, or renovation of individual sewage treatment systems within the exterior boundaries of the Bad River Reservation without first obtaining a Master Plumber or the appropriate classification of Master Plumber-Restricted, as defined as Restricted Plumber Licensee, license under WSA Chapter 145 from the State of Wisconsin and submitting a copy of the license to the POWTS Inspector. Installer licensees shall be authorized to construct, install, renovate, and repair individual sewage treatment systems only as their license permits. Licensed Journeyman Plumbers may install a system without continual supervision, subject to a Master Plumber or Master Plumber-Restricted

Licensee inspecting and approving, signing-off in writing, and taking responsibility for all of the work. Plumbing Apprentices and Registered Learners shall at all times be supervised by a Master Plumber.

Section 406.7 - Variances

(a) The POWTS Inspector shall consider and may grant a variance to a provision of this

Ordinance only upon applicant demonstrating equivalency of the proposed varying system to a qualifying system.

(b) The POWTS Inspector may not approve a petition for variance for an existing POWTS which is determined to be a failing system.

(c) A property owner may apply to the POWTS Inspector for a variance. The applicant shall have the burden of establishing a hardship that is unique to the land in question. An unnecessary hardship may exist when compliance with the strict letter of the Ordinance would unreasonably prevent the applicant from using the property for an allowable purpose or would render compliance with such restrictions unnecessarily burdensome. Financial impact is not considered for a hardship variance. Any hardship shall be weighted against the danger to the health and safety of the environment and the Tribal membership.

Section 406.8 - Inspections

(a) Inspections: General

An inspection schedule shall be developed within the Policies and Procedures Manual, which may provide for more frequent inspections. The following shall serve as a minimum inspection schedule.

(1) All systems must be inspected at least once during construction.

(2) Notice for final inspection shall be given to the POWTS Inspector for all POWTS when installation, modification, or reconnection are complete.

(3) These POWTS shall be inspected by the POWTS Inspector, or another approved licensed inspector with prior notice to the POWTS Inspector, for compliance with this Ordinance. If inspection is conducted by anyone other than the POWTS Inspector, a copy of the inspection results must be filed with the POWTS Inspector within ten (10) days of the inspection.

(4) Notification for final inspection shall be given in accordance with the requirements of WAC Comm 83, as adopted by this Ordinance.

(5) When a private sewage system is ready for inspection, the plumber in charge shall make arrangements to enable the inspector to inspect all parts of the systems. The plumber shall provide the proper apparatus, equipment, and necessary assistance to make a proper inspection.

(6) Private sewage systems shall be inspected periodically, but not less than one (1) time every three years, after the initial installation inspection(s) and/or after the system is operative, as deemed necessary by the POWTS Inspector.

(b) Inspections: Site Constructed Holding Tanks.

(1) All site constructed holding tanks shall be inspected after the floor is poured and the keyway and water stop are installed or after the forms for the tank walls have been set but in all instances before any concrete for the walls has been poured.

(2) Concrete walls may be poured only after it has been determined that the tank, as formed, complies with the approved plans.

(3) This inspection shall not eliminate the need for an inspection after the installation has been completed.

(c) Inspections: Mounds.

(1) The plumber installing the mound shall notify the POWTS Inspector the working day prior to the installation, excluding Saturdays, Sundays and holidays.

(2) Mound systems may be inspected at the time the ground surface is plowed, before aggregate is placed in the distribution cell, at the time the distribution piping installation has been completed and after all work has been completed. At least one inspection prior to completion is required.

(d) Inspections: At-Grade Systems.

(1) The plumber installing the at-grade for the owner shall notify the POWTS Inspector the working day prior to installation, excluding Saturdays, Sundays and holidays.

(2) At-grade systems may be inspected at the time the ground surface is plowed, at the time the distribution piping installation has been completed and after all work has been completed. At least one inspection prior to completion is required.

(e) Re-inspection.

(1) Re-inspection may cause the assessment of a fee when a system fails the initial inspection or is incomplete. Additional re-inspections of the system shall require a fee.

(2) The re-inspection fee shall be due within ten (10) working days of written notification by the POWTS Inspection. Failure to pay this fee within that period shall constitute a violation of this Ordinance.

(f) Testing.

(1) If testing of new systems or new system components is required by this Ordinance, or as a condition of a plan approval, notice shall be given to the POWTS Inspector as specified in 406.8 so that the Inspector may make an inspection during the test.

(2) The Inspector shall verify that required testing has been completed by:

(a) Performing an inspection during the test;

(b) Requiring written verification from the responsible person; or

(c) Both (a) and (b).

Section 406.9 - System Management and Maintenance

(a) Maintenance and Management.

(1) All POWTS shall be managed and maintained in accordance with this Ordinance and the standards of WAC Comm 83.

(2) The property owner shall report to the POWTS Inspector each inspection, maintenance or servicing event, in accordance with this Ordinance and WAC Comm 83.

(3) The property owner shall submit a copy of an appropriate maintenance agreement and/or servicing contract to the POWTS Inspector prior to sanitary permit issuance.

(4) The property owner shall submit a new maintenance agreement and/or servicing contract to the POWTS Inspector whenever there is a change to such document(s).

(5) The property owner shall submit a new maintenance agreement and/or servicing contract to the POWTS Inspector prior to expiration of any existing maintenance agreement and/or servicing contract.

(b) Holding Tank Maintenance Agreement.

(1) The owner of the holding tank shall enter into a Maintenance Agreement

with the POWTS Inspector guaranteeing that a private contractor, who has also signed the agreement, will service the holding tank if the owner fails to have the holding tank properly serviced in response to orders issued by the POWTS Inspector. The Maintenance Agreement shall be binding upon the owner, the heirs of the owner, and assignees of the owner. The Maintenance Agreement shall be filed with the POWTS Inspector and shall be recorded in a manner which will permit the existence of the agreement to be determined by reference to the property where the holding tank is installed.

(2) The owner or agent shall submit a copy of the holding tank Maintenance Agreement when plans are submitted to the POWTS Inspector for review.

(3) Pumping records shall be filed at least quarterly with the POWTS Inspector.

(4) The POWTS Inspector may inspect pumping records and the site for compliance and overflow at all reasonable times.

(5) The POWTS Inspector may require a pumping schedule and/or a metering or monitoring device on the system.

(6) Holding tanks which are connected to public sewer systems and which serve individual premises and not the entire system are considered to be owned by the individual served by the holding tank and fall within the requirements of this Ordinance. Therefore, servicing requirements and Maintenance Agreements are required for owners of such holding tanks connected to public sewer systems.

Section 406.10 - Administration and Enforcement

(a) Administration. The POWTS Inspector shall be responsible for the administration and enforcement of this Ordinance. The POWTS Inspector may delegate his/her responsibilities to

personnel employed by the Department. The POWTS Inspector shall follow the provisions below, as well as those provided in a Policies and Procedures Manual, to be developed and approved by the POWTS Board, or developed by the POWTS Inspector and approved by the Tribal Council in the event no POWTS Board is in place.

(b) Powers and Duties. In the administration of this Ordinance, the POWTS Inspector shall have the following powers and duties:

(1) Delegate duties to and supervise clerical staff and other employees to ensure full and complete compliance with this Ordinance;

(2) Prepare reports and recommendations regarding any additional sanitary measures he/she deems necessary to implement the purpose of this Ordinance.

(3) Obtain assistance and cooperation from other Bad River Tribal departments and committees, and other federal, state and local health, legal and policy officials in the administration and enforcement of this Ordinance.

(4) Cooperate with federal, state, tribal and local personnel in the enforcement of this Ordinance and state regulations, rules and requirements relating to sewage treatment.

(5) Arrange for the enforcement of any and all rules, orders, permits and other requirements established herein or issued pursuant to this Ordinance.

(6) Interpret the provisions of this Ordinance as provided in Section 406.1.E.

(7) Advise applicants concerning the provisions of this Ordinance and assist them in preparing permit applications;

(8) Review and approve or disapprove all plans for private sewage systems;

(9) Issue sanitary permits and inspect properties for compliance with this

Ordinance;

(10) Keep records of all sanitary permits issued, inspections made, work approved and other official actions;

(11) Issue compliance orders and report continuing violations of this Ordinance to Tribal Conservation Wardens and Law Enforcement and the Office of the Tribal Prosecutor;

(12) Enter into compliance schedule agreements with POWTS owners, pursuant to Section 406.1.D., above, and enforce the terms of such agreement to ensure compliance schedule milestones are adhered to.

(13) Have access to any premises for the purpose of performing official duties between 8 a.m. and 8 p.m. or at other times set by mutual agreement between the property owner or his agent and the POWTS Inspector or upon issuance of a special inspection warrant.

Application for any permit or inspection certificate under this Ordinance is considered for the purposes of this Ordinance as the owner's consent to enter the premises;

(14) Upon receipt of reliable evidence of a real or potential threat to the environment or public health, the POWTS Inspector may enter upon any premises within the boundary of the Bad River Reservation to inspect the property for violation of this Ordinance. Tribal law enforcement personnel may accompany the POWTS Inspector or enter unaccompanied upon request of the POWTS Inspector to enforce the terms of this Ordinance;

(15) Upon reasonable cause or question as to proper compliance, revoke or suspend any sanitary permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a building which is in violation of the provisions of this Ordinance until compliance with this Ordinance is obtained;

(16) Issue and enforce orders to plumbers, pumpers, property owners, their agents

or contractors or the responsible party, to assure proper compliance with all provisions of this Ordinance;

(17) Withhold permit(s) or approval(s) pursuant to this Ordinance where the applicant, owner or licensed contractor is in violation of this or any Ordinance administered by the Band and for any parcel(s) of land which have an outstanding violation until the violation(s) have been corrected.

(18) Cooperate with the Office of the Tribal Attorney to commence actions on behalf of the Band seeking legal and/or equitable relief.

(19) Perform other duties regarding private sewage systems as considered appropriate by the POWTS Inspector, POWTS Board, or the Tribal Council.

(c) POWTS Board.

(1) The Bad River Tribal Council shall, at its discretion, establish a POWTS Board and policies governing such Board, with the following general duties and authority, which shall be more specifically described and governed by By-Laws adopted by the POWTS Board and approved by the Tribal Council;

(2) Recommend rates and fees under this Ordinance to the Tribal Council for the initial Fee Schedule, and thereafter amend and set fees and rates;

(3) Recommend Ordinance amendments/revisions to the Tribal Council;

(4) Establish a Policies and Procedures Manual with such provisions as are necessary to meet the requirements of this Ordinance and to allow the POWTS Inspector to operate

on a day to day basis under approved guidelines.

(5) Hear appeals from administrative decisions of the POWTS Inspector and determine whether to uphold or overturn the decision of the POWTS Inspector; and

(6) Incorporate as necessary to acquire grant funding to accomplish the purpose of this Ordinance.

(d) The POWTS Board shall not have the authority to:

(1) Oversee the day-to-day operations of the POWTS Inspector;

(2) Alter decisions of the POWTS Inspector without an opportunity for a hearing on the matter;

(3) Create permit conditions or issue permits;

(4) Impose monetary penalties upon persons in violation of this Ordinance.

(e) Requests for Reconsideration and Appeals

(1) Any person who alleges that there is an error in any order, requirement or decision made in the administration and enforcement of this Ordinance may request reconsideration and appeal the decision. Any request for reconsideration or appeal shall begin by filing a notice of reconsideration or appeal on forms furnished by the POWTS Inspector within 30 days of the date of the administrative action in question or the date of the written decision of the POWTS Inspector on a request for reconsideration.

(2) The timely filed request for reconsideration must specify the reasons for the request and the administrative remedy requested. The POWTS Inspector shall issue a written decision within forty-five (45) days of the request for reconsideration. Parties dissatisfied with the reconsideration decision of the POWTS Inspector may request an appeal as specified in this

Section.

(3) The timely filed notice of appeal must specify the reasons for the appeal and the administrative remedy requested. Upon receipt of a notice of the appeal, the POWTS Board shall provide notice, opportunity for a hearing, and a timely decision, which shall include the following:

(a) Notice

(1) Fix a reasonable time for the hearing;

(2) Publish a notice, posted in at least three public places, specifying the date, time, place and subject of the hearing;

(3) Ensure that the notice shall be mailed certified mail to parties in interest and the POWTS Inspector at least ten (10) days in advance of the hearing.

(b) Hearing

(1) Any party may appear in person or by agent or attorney;

(2) Decide appeals of the decisions of the POWTS Inspector.

(c) Decision

(1) Be made within reasonable time;

(2) Be sent to the POWTS Inspector and Appellant within ten (10) days of the decision;

(3) Be a written determination signed by the chairperson or secretary of the POWTS Board;

(4) State the specific facts which are the basis for the POWTS Board's decision;

(5) Either affirm, reverse, vary or modify the order requirement, decision or determination appealed, in whole or in part, or dismiss the appeal;

(6) Include the reasons or justifications for granting an appeal, with a description of the hardship or practical difficulty demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(4) Appeal to Tribal Court: Any party wishing to appeal decisions of the POWTS Board must file a claim with the Bad River Tribal Court in accordance with the Rules and Procedures of the Bad River Tribal Court.

(5) Each party shall bear their own costs of appeal unless the POWTS Board or Tribal Court determines a party's actions to be frivolous or abusive of the process, in which case the POWTS Board or Court may award costs and attorney fees to the other party.

(f) Jurisdiction/Enforcement

(1) The Bad River Tribal shall have jurisdiction to hear all matters brought pursuant to this Ordinance, including citizen suits.

(2) The POWTS Inspector and all Tribal law enforcement and conservation enforcement personnel, shall be empowered to enforce this Ordinance.

(3) The POWTS Inspector shall issue compliance orders. Failure to comply with such an order shall constitute a separate violation of this ordinance in addition to any other violations of this ordinance. Failure to comply will result in the matter being referred to the Tribal Conservation Officers and Law Enforcement for enforcement of the terms of this Ordinance and the Compliance Order.

(4) Actions for violations of this chapter may be commenced in Tribal Court by

conservation citation or by summons and complaint.

(5) Violations of this Ordinance shall be prosecuted by the Office of the Tribal Attorney.

(6) Any person may bring suit in Tribal Court to enjoin a violation of this chapter.

Section 406.11 - Violations

(a) Any person who fails to comply with the provisions of this Ordinance, or any order of the POWTS Inspector or Tribal Court issued in accordance with this Ordinance, or resists enforcement, shall be subject to the penalties and forfeitures herein.

(b) Any construction which is in violation of this Ordinance shall cease upon written orders from the POWTS Inspector, Tribal Court or the placement of notification of violation at the site by authorized persons in the event of imminent threat.

(c) All construction shall remain stopped until the order is removed by the POWTS Inspector or Tribal Court.

(d) Each day of any continuing violation may be charged as a separate violation and a separate forfeiture may be imposed.

Section 406.12 - Injunctions, Civil Damages, Civil Forfeitures, and other Remedies

(a) Injunctions, Civil Damages, Civil Forfeiture, Other Remedies

The Bad River Tribal Court may impose any of the following for violations of this Chapter, singly or in any combination:

- (1) Immediate injunction;
- (2) Restitution for damages caused by violations, including civil damages for

any harm to any Tribal resource;

(3) Civil forfeiture not exceeding \$5,000. Each day of any continuing violation may be charged as a separate violation, and a separate forfeiture may be imposed.

(4) In addition to a civil forfeiture, any personal property, including vehicles and other equipment, which has been used in connection with the violation of this Ordinance, may be seized and forfeited pursuant to the appropriate sections of the Tribal Court Code. Seizure of tanks installed equipment and materials or other items which are too impracticable to move may be effected by posting a copy of the citation on or near the item seized until an appropriate remedy or practicable removal method is determined.

(5) Restitution for costs of enforcement incurred by the POWTS Inspector, Conservation Wardens, Tribal Law Enforcement and the Tribal Court.

(b) Citizen Suit Damages

(1) The Bad River Tribal Court may award damages to individuals who successfully bring suit demonstrating harm from the actions of any person found in violation of this chapter.

(2) Citizen suit damages are separate from and may be in addition to and may duplicate any damages requested by the Tribe under this Section.

(c) Abatement of Imminent Threat/Emergencies

In the event of imminent threat to persons or the environment, the POWTS Inspector, or other authorized persons may issue immediate cease and desist orders, injunctions, and closures and may post premises with such orders. Administrative review of such action shall

be held within ten (10) days of the action. The POWTS Inspector or other authorized persons and the Tribe shall not be liable for damages incurred by good faith action on their part in addressing real or perceived imminent threats or harm.

INTERIM LAND USE CONTROLS

Section 1 - Statement of Policy

The Bad River Tribal Council recognizes that the land within its jurisdiction represents a unique confluence of cultural, historical, and environmental resources. Home to the ancestors of the Bad River Band for over three centuries, the land is an irreplaceable habitat for the wealth of fish, waterfowl, and mammal life from which the Chippewa Indians have traditionally derived their sustenance. Where the rivers widen, wild rice stands stretch out to the high ground and down to the Lake, and contribute to a delicate ecosystem about with life. Upstream, the Bad River Falls are the site of pictographs created by the ancestors of those Indians who still fish the Falls today. Throughout the territory traditional burial grounds are scattered, spiritual wellsprings of the Bad River Band and visible reminders of the Band's ancient attachment to the area now known as the Bad River Reservation.

Reminders of man's more recent and continuing impact on the land are also visible. Wrought by tribal members and non-members alike, sometimes beneficial to the Bad River Band and sometimes not, sometimes in harmony with the land and sometimes not, these artifacts are lasting mementos of man's presence. Timber sites, roads, utility rights-of-way, government buildings, stores, houses, taverns, motels, hunting shacks, quarries, dumps, mills - all have left a mark of more or less permanence whether appropriately placed and productively used or not.

The Bad River Tribal Council, aware of its responsibility to guard for future generations

the enjoyment of the resources that so many past generations of Chippewa Indians have enjoyed, is equally aware of increasing pressures on those resources. The demand for wooded and shoreline land is rapidly growing, as greater numbers of the general population seek sites for homes, vacation sites, and commercial development. Meanwhile the Bad River Band seeks an improved economic base to establish the financial security of itself and its members.

In limited areas the Band currently has the capability of controlling development. Tribal members have requested leases of tribal land in delicate areas to establish home sites for their families. The Council has denied these leases and by doing so has preserved these lands, to the immediate detriment of some tribal members.

The Council cannot, however, control the development of the reservation solely in its capacity as lessor. Regrettably, through the unwise actions of the United States government in previous years, much of the Reservation lands are no longer in tribal hands. Either as restricted allotments or as fee-title land, this property is beyond the proprietary control of the Band. Only through the exercise of the Band's regulatory authority can the majority of Reservation lands be subject to controlled, planned development, to the mutual reciprocal benefit of all.

The development of a land use plan, encompassing the 125,000 acres that constitute the Bad River Reservation, cannot spring full-blown overnight. On the other hand, developmental pressures will not cease while the Council deliberates. In order therefore to forestall any action which may limit the Band's regulatory prerogatives, in order to notify those with an interest in any Reservation lands that a comprehensive land use plan is under consideration, in order to establish a process for the creation of such a plan, and in order to establish interim controls pending the approval of such a plan, this ordinance is adopted.

Section 2 - Definitions

Section 2.1

"Activity" means any unskilled, semi-skilled, technical or professional labor performed by any person, including the employees of a corporation, during any eight-hour period.

Section 2.2

"Commission" means the Interim Land Use Commission consisting of the Tribal Planner and two other members of the Bad River Band appointed by the Tribal Chairman.

Section 2.3

"Committee" means the Land Use Committee.

Section 2.4

"Council" means the Tribal Council of the Bad River Band of Lake Superior Chippewa Indians.

Section 2.5

"Land Use Change" means any topographical or use change leading to commercial or industrial development, including the commercial logging of lands not held primarily for that purpose on March 4, 1981, and including the construction of any housing built for the occupancy of one other than the owner at the time of construction. If housing is rented or sold within one year of completion of construction it will be presumed to have been built for the occupancy of one other than the owner at the time of construction.

Section 2.6

"Reservation" means all lands within the boundaries of the Bad River Indian Reservation.

Section 3 - Changes Prohibited

Section 3.1

Except as otherwise provided, no person shall engage in any activity causing a land use change within the boundaries of the reservation.

Section 3.2

(1) Upon written application to the commission, a permit for land use change may be granted.

(a) The Commission shall establish a form for applications and procedures by which applications shall be considered.

(b) The Commission may impose reasonable conditions on the granting of a permit.

(c) The Commission may suspend any permit for failure to comply with its conditions and may revoke any permit for cause shown.

(2) Final decisions of the Commission may be appealed within ten days to the Council. The Council shall hear all such appeals in regular session. The Council's decision in all appeals shall be final.

Section 3.3

Any person who breaches Section 3.1 shall be assessed a forfeiture of not more than \$500.00 for each breach.

Section 3.4

Any articles of whatever description located within the jurisdiction of the Tribal Court, used in the commission of a breach of Section 3.1 may be seized and ordered forfeited.

Section 3.5

Citations for violations of Section 3.1 may be issued by the tribal conservation office, the tribal prosecutor, or the tribal attorney.

Section 4 - Land Use Committee Established

Section 4.1

A land use committee is hereby established for the purpose of preparing and presenting to the Council a permanent land use plan.

Section 4.2

The committee shall consist of the Tribal Planner, Tribal Attorney, and one Tribal member at large.

Section 4.3

The committee shall report to the Council according to the following timetable:

(a) At the April Council meeting the committee shall present a proposed base map, showing topographical, use, and ownership patterns.

(b) At the June Council meeting the committee shall present the revised base map and proposed zoning map and ordinance.

(c) At the July Council meeting the committee shall present the revised zoning map and ordinance.

Section 4.4

The committee shall invite public participation at all stages of the zoning procedure.

Section 5 - Sunset Clause

Unless extended by Council action, the provisions of Section 3 shall expire one year from date of passage of the ordinance, except that such provisions shall apply to any housing constructed during the effective period of this ordinance for one year following the completion of any such housing.

Section 6

All prior inconsistent ordinances or parts thereof are hereby repealed.

Section 7

This ordinance shall become effective upon posting at the Bad River Community Center and publication of notice of passage in the Ashland Daily Press.

Section 8 - Severability

If any provision of this ordinance on its face or as applied is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

INTERIM LAND USE ENACTED BY RESOLUTION NO. 3-4-81-166

CHAPTER 421 - RIGHT-OF-WAY MAINTENANCE METHOD ORDINANCE

Section 421.1 - Purpose and Policy Statement

The Right-of-Way Maintenance Method Ordinance establishes guidelines for clearing right-of-way vegetation on the Reservation. This ordinance prohibits the use of chemical treatments to clear vegetation from right-of-ways without expressed Tribal permission through a permit. This ordinance is enacted to preserve the health of water, wildlife, and plant resources of

the Bad River Tribe as well as the health of tribal members.

Section 421.2 - Authority

This chapter is promulgated pursuant to Article VI, sections 1(j), (n), (q) and (w) of the Bad River Constitution.

Section 421.3 - Applicability

This Chapter shall apply to all right-of-way maintenance activities of members, non-members, residents and non-residents undertaken within the exterior boundaries of the Bad River Reservation.

Section 421.4 - Non-chemical treatment alternatives to maintain Right-of-Ways:

All right-of-way maintenance activities shall utilize non-chemical treatment alternatives. Such non-chemical alternatives shall adhere to the following guidelines:

(a) Roadsides, Roadside Appurtenances, Pipelines, Utility Lines:

- (1) Mowing: Mowers may be used to reduce brush and herbaceous weeds. Cut

no shorter than 6 inches to prevent bare ground resulting in erosion.

- (1) Trimming: Use of hand labor or gas-powered devices to trim brush woody vegetation in right-of-way area. Adequate stumpage shall be left to prevent erosion.

- (2) Planting of native grasses and flowers: Native species should be introduced to discourage undesirable woody vegetation and other species that require high-maintenance. The planting or seeding of invasive exotic species is prohibited.

(b) Railroads:

- (1) Mowing and hand and power trimming shall be the first alternatives

pursued.

- (2) Controlled burns may be used to eliminate vegetation around railways

provided that:

- (A) The Tribe is informed prior to the burn.
- (B) The burn must be supervised at all times.
- (C) Special permission must be obtained during dry seasons and burning

is banned during the Tribal burn bans under the Tribe's burning ordinance.

- (3) Mowing and trimming should be used for maintaining visibility and at crossings and any additional areas that are not suitable for controlled burning.

Section 421.5 - Prohibition and Exceptions

In the event that a non-chemical treatment maintenance alternative is not feasible:

- (a) The use of herbicides on non-designated right-of-way areas is prohibited.
- (b) A Person shall be permitted to use chemical treatment for maintenance of right-of-ways on the Bad River Reservation only upon issuance of a permit for such application by the Bad River Tribal Council.

(c) Upon receipt of permit applicators must follow guidelines set forth in Section 421.7 of this Chapter.

(d) Bad River Natural Resources Department and Great Lakes Indian Fish and Wildlife Department programs may utilize chemical treatments for control of exotic invasive species when such use is part of an overall control plan approved by the Bad River Tribal Council.

Section 421.6 - Obtaining a Permit

- (a) Any person requesting to use chemicals to maintain a right-of-way must first obtain

written permission from the Tribal Council by:

(1) Submitting a written proposal to the Natural Resources Department requesting permission to use chemical treatment to maintain the right-of-way which provides the following information:

(A) Area to be treated, including a map, acreage and description of right-of-way;

(B) Time period of treatment, including start and finish dates, days of week, and times during the day treatment is proposed;

(C) A description of what chemicals will be used and in what quantities, and whether requesting party has certification to use such chemicals;

(D) Evidence demonstrating why non-chemical treatment alternatives are not available or feasible;

(E) The name, address, and phone number of the individual responsible for the request, his or her employer, and his or her title; and

(F) A notarized statement that the requesting party at all times claims ownership of any and all chemicals used, through proper disposal; that the requesting party shall has all required certifications and licensing for application of the chemical and provide records of transportation, storage and proper disposal of the chemical; and that the Tribe, Tribal employees, and the landowner(s), if different than requesting party, shall at no time be considered or alleged by the requesting party to be the owner or applicator of the chemicals used.

(2) The written proposal must be submitted to the Natural Resources Department at least two weeks prior to the next regularly scheduled Tribal Council meeting.

Requesting parties may be required to attend the Tribal Council meeting.

(3) The Natural Resources Department shall recommend a grant or denial of the request to the Tribal Council.

(4) The Natural Resources Department or Tribal Council may request additional information prior to making a recommendation or approving a request, including, but not limited to information on environmental impacts of the application.

(5) A vote of approval of the Tribal Council is necessary for a permit to be granted.

(6) The Tribal Council may condition the approval of a request for a permit upon the receipt of proof of adequate insurance and certifications as it deems necessary for the protection of the health of the Tribe's resources and members.

(7) An approval in the form of a letter permit or written denial will be provided to the requesting party by the Natural Resources Department following Tribal Council action.

(8) Appeals must be in writing and presented to the Tribal Council within 10 business days of notification of the initial Tribal Council decision. The Tribal Council will address the appeal at its next regularly scheduled meeting or at prior scheduled special meeting at the Council's option.

(b) Each permit is valid only for each approved chemical treatment application. Each additional application requires a new proposal, Tribal Council approval, and permit.

(c) No permit shall be granted within 3000 feet of an open water source or within one mile of residential areas, tribal communities, farms, or fish hatcheries. In addition, an environmental assessment will be required for any proposed spraying in all watershed areas.

Section 421.7 - Rules of Chemical Application

Upon written permission from the Tribal Council and under tribal supervision the following will apply:

- (a) Workers applying the herbicides must possess a current license or equivalent certification in worker protection training and relevant chemical application.
- (b) All areas to be treated must be marked at least once every quarter-mile with appropriate signage to warn the public of the application of chemicals and such signage shall be left in place for an appropriate time period to prevent contact of the public with herbicides.
- (c) No herbicides shall be applied which are not approved by the USEPA for such application and all application shall be in compliance with applicable Tribal, State, and Federal regulations or guidelines.
- (d) All spray records must be kept on file and sent to Bad River Natural Resources Department.
- (e) All herbicides shall be applied in the fall.
- (f) Applicators must spray in the morning before the wind exceeds five miles per hour to prevent drift. The applicator must contact the Bad River Natural Resources Department the morning of application to assure the wind speed.
- (g) All remaining chemicals, contaminated materials, and contaminated materials, and contaminated water must be disposed of in compliance with applicable Tribal, State and Federal regulations. Proof of proper disposal of the above shall be provided to the Natural Resources Department within thirty (30) days of the completion of the application of the herbicide.

Section 421.8 - Effective Date and Severability

(a) Effective Date. This Ordinance shall be effective upon the date of adoption by resolution of the Bad River Tribal Council, until amended or otherwise expressly invalidated by the Tribal Council.

(b) Severability. If the Bad River Tribal Court judges any section, provision, or portion of this Ordinance unconstitutional or invalid, the remainder of this Ordinance shall not be affected.

Section 421.9 - Enforcement/Evidence

(b) The Bad River Conservation Wardens and the Bad River Police Department are authorized to enforce the provisions of the Chapter.

(c) The Bad River Conservation Wardens and the Bad River Police Department are authorized to enter all right-of-ways upon private property, Tribal, trust, allotted, or leased property at all reasonable times to inspect for use of chemical maintenance methods.

Section 421.10 - Jurisdiction/Penalties

(a) The Bad River Tribal Court shall have jurisdiction to hear all matters prosecuted pursuant to this Chapter.

(b) The Bad River Tribal Court may impose any of the following penalties for violations of this Chapter, singly or in any combination:

(1) Immediate injunction against the use of chemical treatment for right-of-way maintenance;

(2) A civil forfeiture not to exceed \$1,000.00. Each day of any continuing violation may be charged as a separate violation and a separate forfeiture may be imposed;

(3) In addition to a civil forfeiture, any personal property, including vehicles

and

other equipment, which has been used in connection with the violation of this chapter may be seized and forfeited pursuant to the appropriate sections of the Tribal Court Code.

(4) The court may order restitution for damage to personal health or to natural resources caused by the use of chemical treatment for right-of-way maintenance.

Section 421.11 - Definitions

(a) **Applicator:** Any permitted party, including an individual or entity which contracts with or employs another to apply the chemical treatment to the right-of-way.

(b) **Natural Resources Department:** Shall mean the Bad River Natural Resources Department.

(c) **Brush:** Woody species of shrubs, trees, vines, and brambles generally not exceeding ten feet in height.

(d) **Chemical treatment of right-of-way:** The use of herbicides to reduce herbaceous weeds, brush, and trees within right-of-ways.

(e) **Hand labor:** The use of shovels, saws and axes to cut back vegetation or remove it completely, including grubbing and girdling.

(f) **Herbaceous weeds:** Plants or plant parts that are fleshy and wither after each growing season, as opposed to plants such as trees that grow woody stems and are persistent.

(g) **Herbicides:** Chemicals that kill plants or inhibit their growth.

(h) **Member:** An enrolled member of the Bad River Tribe, including those eligible for enrollment.

(i) **Open Water Source:** Any river, lake, stream, marsh, bog, slough, or any other area

with exposed water.

(j) Particle drift: The particulate matter released when spraying that is distributed beyond the target area by wind.

(k) Reservation: All lands and waters within the exterior boundaries of the Bad River Reservation.

(l) Right-of-way: An easement or servitude over Tribal land conferring a right of passage, including, but not limited to: the strip of land over which is built a public road; the land occupied by a railroad; the land used by a public utility.

(m) Trees: Woody plants, including brush and shrubs, that exceed 10 feet in height.

(n) Tribal Council: The elected body governing the Bad River Tribe.

(o) Tribal Council: The elected body governing the Bad River Tribe.

(p) Vegetation: Refers to herbaceous plants, brush, and trees.

(q) USEPA: The United States Environmental Protection Agency

(r) Watershed: The land area that drains into a stream; the watershed for a major river may encompass a number of smaller watersheds that ultimately combine at a common point.

(s) Wetland: An area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

CHAPTER 433 - BAD RIVER LOW FLOW ORDINANCE

Section 433.1 - Purpose

(s) The idea of water conservation ordinance focusing on low-flow plumbing fixtures is to encourage water conservation at the tap by requiring all new construction and repair or renovation of existing building to utilize low-flow plumbing fixtures, such as low-flow faucets, washing machines and dishwashers, and toilets.

(b) Water quality is of paramount concern to the Tribe. Reduction in water use is necessary to ensure that the Tribe's wastewater treatment facilities are able to function without threat of overload and to prevent overloads of private or individual sewerage systems such as septic systems and holding tanks. Most water coming from the tap goes directly down the drain. Because no distinction can be made between clean, "gray" or "black" water, all of the water becomes "black" and must be treated. Although the water meets strict effluent standards, it is not as "pure" as the water originally came out of the tap. The Tribe's wastewater treatment facilities are also limited in the amount of flow they can adequately treat, as are septic systems. Too much water can cause these systems to fail to meet effluent standards. Holding tanks are limited in capacity and must be pumped out. The material pumped out must then be treated in some system. By reducing the amount of water coming out of the faucet, individuals can reduce the amount of clean water entering the waste treatment system, and, consequently, help maintain or improve the quality of the Tribe's water system.

Section 433.2 - Policy

(a) Minimum low-flow requirements

(1) Residential minimum low-flow compliance requirements.

(a) All mixing faucets shall be designed to deliver a maximum of 1.5 gallons per minute or equipped with low flow control devices that deliver a maximum of two gallons per minute;

(b) All shower heads shall be of a type that deliver a maximum of three gallons per minute or equipped with low flow devices that deliver a maximum of three gallons per minute;

(c) All water closets shall be designed to use a maximum of 1.6 gallons per flush;

(d) Evaporative cooling systems shall be equipped with water recycling or re-use systems;

(e) All water fountains, waterfalls and other decorative, water-using facilities shall be equipped with water recycling or reusable systems.

(2) Commercial minimum low-flow compliance requirements.

(a) All shower heads shall be of a type that delivers a maximum of 2.5 gallons per minute;

(b) All water closets shall be designed to use a maximum of 1.6 gallons per minute;

(c) All public-use lavatories shall be equipped with either spring loaded faucets that are equipped with metering valves that closes automatically after delivering a maximum of one gallon, except public rest rooms may be equipped with faucets designed for use by the physically handicapped.

(d) All mixing faucets shall be designed to deliver a maximum of 1.5

gallons per minute or must be equipped with flow control devices that deliver a maximum of 1.5 gallons per minute;

(e) All fountains, waterfalls, and other decorative, water-using facilities shall be equipped with water recycling or re-use systems;

(f) All urinals designs shall use a maximum of one gallon per flush. No urinals shall be installed which use a timing device to flush periodically, irrespective of demand.

(3) Governmental minimum low-flow compliance requirements.

(a) All shower heads shall be of a type that delivers a maximum of 2.5 gallons per minute;

(b) All water closets shall be designed to use a maximum of 1.6 gallons per minute;

(c) All public-use lavatories shall be equipped with either spring loaded faucets that are equipped with metering valves that closes automatically after delivering a maximum of one gallon, except public rest rooms that may be equipped with faucets designed for use by the physically handicapped.

(d) All mixing faucets shall be designed to deliver a maximum of 1.5 gallons per minute or must be equipped with flow control devices that deliver a maximum of 1.5 gallons per minute;

(e) All fountains, waterfalls, and other decorative, water-using facilities shall be equipped with water recycling or re-use systems;

(f) All urinals designs shall use a maximum of one gallon per flush. No urinals shall be installed which use a timing device to flush periodically, irrespective of demand.

(b) Time Frame for meeting requirements.

(1) Owners or managers of property shall install or require the installation of low-flow devices by January 1, 2012.

(2) All contractors and sub-contractors shall install low-flow devices where required.

(3) Low-flow fixtures are required in all new construction of structures.

(4) Low-flow fixtures shall be installed with renovations of structure's plumbing, septic and/or heating systems where total project costs exceed \$100.

(5) Replacement of failed current fixtures must be done with fixtures that meet low-flow standards as aforementioned.

(6) Low-flow fixtures shall be installed prior to the time of sale of a structure.

Section 433.3 - Applicability

This chapter shall apply to all new construction, repair, renovation of commercial and residential structures owned by members, non-members, residents and non-residents undertaken within the boundaries of the Bad River Reservation and shall apply to all contractors and subcontractors undertaking the installation or replacement or repair of plumbing fixtures as prescribed in 433.2.B.

Section 433.4 - Effective Date, Severability and Incentives

(a) Effective Date: This ordinance shall be effective upon the date of adoption by resolution of the Bad River Tribal Council, until amended or otherwise expressly invalidated by the Tribal Council.

(b) Severability: If the Bad River Tribal Court judges any section, provision or portion

of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected.

(c) Incentives: The Tribal Council may enact incentives for free or low cost fixtures or issue a rebates for water savings at the end of the utility year.

Section 433.5 - Enforcement/Evidence

(c) The Bad River Construction Projects Manager, Conservation Wardens and the Bad River Tribal Environmental Systems Coordinator are authorized to issue citations for violations of this chapter.

(b) The Bad River Construction Projects Manager, Conservation Wardens and the Bad River Tribal Environmental Management Systems Coordinator are authorized to enter private property, tribal, trust, allotted, or leased property at all reasonable times; after a twenty-four hour notice has been given; to inspect new construction, repair, and replacement work.

Section 433.6 - Jurisdiction/Penalties

(a) The Bad River Tribal Court shall have jurisdiction to hear all matters prosecuted pursuant to this chapter.

(b) The Bad River Tribal Court may impose any of the following penalties for violations of this chapter, singly or in any combination:

(1) Immediate mandate requiring installation of low-flow plumbing fixtures;

(2) A civil forfeiture of not to exceed \$1,000.00. Each day of any continuing violation may be charged as a separate violation and a separate forfeiture may be imposed;

(3) In addition to a civil forfeiture, any personal property, including vehicles and

other equipment, which has been used in connection with the violation of this chapter may be

seized and forfeited pursuant to the appropriate sections of the Tribal Court Code.

Section 433.7 - Authority

This chapter is promulgated pursuant to Article VI, sections 1 (j), (n), (q) and (w) of the Bad River Constitution.

Section 433.8 - Definitions

(a) Bad River NRD: The Natural Resources Department of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(b) Black water: Wastewater from toilets, garbage disposals, and industrial processes.

(c) Commercial Structures: Any building engaged in Commerce, for example, in interchange of goods or commodities, lodging and/or entertainment.

(d) Contractor: A person who contracts to furnish, supply, or perform work at a certain price or rate.

(e) Evaporative Cooling System: System that cools by means of high velocity air and evaporation.

(f) Faucet aerator: Device that can be installed in a sink to reduce water use (Jensen, 1991).

(g) Gray Water: Domestic wastewater composed of washwater from kitchen sinks, bathroom sinks and tubs, clothes, washers, and laundry tubs (USEPA, 1989).

(h) Low-flow plumbing: Plumbing equipment that uses less water than was considered standard prior to Dec. 1, 2001.

(i) Low-flow showerhead: A showerhead that requires 3 gallons of water per minute or less.

- (j) Low-flush toilet: A toilet that requires 1.6 gallons of water per flush or less.
- (k) Members: The Bad River Band of Lake Superior Tribe of Chippewa Indians. Any person who is enrolled or is eligible for enrollment in the Tribe, or who is recognized as a member of the Tribe by the Tribal Council.
- (l) Mixing Faucet: A single outlet for water from separately control hot water and cold water taps.
- (m) Non-members: Any person who does not come within the definition of member.
- (n) Non-residents: Any person who does not have a permanent place of abode on the Reservation, except as hereafter provided. Non-resident does mean any temporary or seasonal resident, and does mean any place of business.
- (o) Person: Means any natural or legal person, both members of the Bad River Band of Lake Superior Chippewa Indians and non-members.
- (p) Reservation: Refers to all areas within the exterior boundaries of the Bad River Indian Reservation.
- (q) Residential Structures: Building suited for or characterized by private residence, a place in which a person lives or resides.
- (r) Residents: A person who resides on or in the boundaries of the Bad River Reservation.
- (s) Respondent: Refers to any person accused of violating the prohibitions described below.
- (t) Retrofit: Replacement of existing equipment with equipment that uses less water (Jensen, 1991).

- (u) Sub-contractor: A person or a business firm contracted to do part of another's work.
- (v) Toilet displacement device: Object placed in a toilet tank to reduce the amount of water per flush; for example, weighted plastic jugs filled with water or toilet dams that hold back a reservoir of water when a toilet is flushing (USEPA, 1991b).
- (w) Tribal Court: Refers to the Bad River Tribal Court and its appellate court.
- (x) Tribe: Refers to the Bad River Band of the Lake Superior Tribe of Chippewa Indians.
- (y) Warden: Refers to any officer authorized to enforce the terms of this ordinance.
- (z) Wastewater: Spent or used water from individual homes, a community, a farm, or an industry that contains dissolved or suspended matter.
 - (aa) Waters: Refers to any waters within the exterior boundaries of the reservation, including but not limited to rivers, lakes, streams, creeks, ponds, sloughs, and wetlands.
 - (bb) Water Closet: An enclosed room or compartment containing a toilet bowl fitted with a mechanism for flushing.
 - (cc) Water use efficiency: Employing water-saving practices to reduce costs to slow the depletion of water supply to ensure future water quality (Kromm and White, 1990)

Enacted by Resolution #5-14-02-276

ENACTED BY RESOLUTION NO. 3-4-81-166/AMENDED BY RESOLUTION NO. 9-2-81-14

CHAPTER 450 - LEASEHOLD MORTGAGE REGULATIONS

Introduction

The purpose of this ordinance is to make available to the Bad River Band of Lake Superior Tribe of Chippewa Indians and its members opportunities for purchasing or constructing family

residences on trust land within the Bad River Reservation. This ordinance accomplishes that purpose by setting up procedures for the orderly recording, lien prioritization, foreclosure and eviction with respect to leasehold mortgages given to secure loans.

(a) Lien Priority

All mortgage loans recorded in accordance with the recording procedures set forth in this Code, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. (In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.)

(b) Recording of Mortgage Loan Documents

(1) The Tribal Recording Clerk shall maintain in the Tribal Real Estate program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

(2) The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

(a) The date and time of receipt of the mortgage or other document;

(b) The filing number to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received, and;

(c) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Bad River Band of Lake Superior Tribe of Chippewa Indians)
)ss.
Bad River Reservation, Wisconsin)

I certify that this a true and correct copy of a document received for recording this date.

Given under my hand and seal this ____ day of _____.

(Signature)

(Date)

The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

(1) The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document in which there shall be entered:

(a) The name(s) of the Borrower/Mortgagor of each mortgage loan identified as such;

(b) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;

(c) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;

- (d) The date and time of receipt;
- (e) The filing number assigned by the Tribal Recording Clerk; and
- (f) The name of the Tribal Recording Clerk or designee receiving the

mortgage or document.

(1) The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

(2) All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

(c) Foreclosure Procedures

(1) A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

(2) When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before a foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

(a) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

- (b) Lender/Mortgagee shall document that it has made at least one phone

call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay message to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

- (3) Lender/Mortgagee may appoint an agent to perform the services of arranging

and conducting the face-to-face interview specified in this action.

- (4) When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

- (a) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

- (b) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

- (c) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

- (d) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements: (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if

any, and that forbearance relief may be available from government; and (iii) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

(5) If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section D of this Code.

(d) Foreclosure Complaint and Summons

(1) The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(a) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;

(b) A description of the property subject to the mortgage loan;

(c) A concise statement of the facts concerning the execution of the mortgage loan and in the case of Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(d) True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security interest (each a “security instrument”) and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any

assignment of any of these documents; and

(e) Any applicable allegations concerning relevant requirements and conditions prescribed in: (i) federal statutes and regulations; (ii) tribal codes, ordinances and regulations; and/or (iii) provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.

(2) The complaint shall be verified by the Tribal Court Clerk along with a Summons specifying a date and time for appearance for the Defendant(s).

(e) Service of Process and Procedures.

Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

(1) Delivery must be made by an adult person and is effective when it is:

(a) Personally delivered to a Borrower/Mortgagor with a copy sent by mail, or

(b) Personally delivered to an adult living in the property with a copy sent by mail, or

(c) Personally delivered to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

(2) If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:

(a) Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or

(b) Securely taping a copy of the notice to the main entry door of the

property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.

(3) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

(f) Cure of Default

Prior to the entry of a judgment of foreclosure, and Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

(g) Judgment and Remedy

This matter shall be heard and decided by the Tribal Court, in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and

(2) Granting title to the property to the Lender/Mortgagee or the Lender's

Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:

(a) The lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessess's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's Designated Assignee.

(b) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal member, the Tribe, or the Tribal Housing Authority;

(c) The mortgagee has the right to convey the leasehold interest to the Secretary of HUD without providing the right of first refusal to the Tribe for Section 248.

(h) Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth below.

(1) Jurisdiction. The provisions of this section H. shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

(2) Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person continue in occupancy of Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in

the Tribal Court;

(3) Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(a) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:

(i) Citing facts alleging jurisdiction of the Tribal Court;

(ii) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);

(iii) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(iv) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;

(v) Stating any claim for damages or compensation due from the the persons to be evicted; and

(vi) Otherwise satisfying the requirements of the Tribal Court.

(b) A copy of the summons, issued in accordance with established Tribal Court procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than

6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

(4) Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

(5) Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:

(a) delivering a copy personally to the Borrower/Mortgagor or to any other occupant under color of law, or to any adult residing on the leasehold Estate and, if applicable, to any Sublessee; or

(b) posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, property addressed, postage paid.

Proof of service may be made by affidavit of any adult person stating that he has complied with the requirements of one of the above methods of service.

(6) Powers of the Tribal Court. The Tribal Court shall enter of Order of Repossession if:

(1) Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

(1) The Tribal Court shall find during pre-trial proceedings or at trial that the lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer. Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

(7) Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal Law Enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

(8) Continuances in Cases Involving the Lender or Federal Agency. (Which originally made, insured or guaranteed the mortgage loan). Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound

discretion of the Court.

(i) No Merger if Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

(j) Certified Mailing to Tribe

In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the Tribe, this notice will also be mailed to the lessor at the same time the notice is mailed to the Tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

(k) Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

(l) Appeals

Appeals under this code shall be handled in accordance with the general tribal

appellate provisions.

offers promotional payouts and awards, the

CHAPTER 601 - MEMBERSHIP

Section 601.01 - Definitions

(a) "Application" means the original application filed with the Enrollment Office, including a carbonless copy which will be deemed the receipt.

(b) "Certified copy" means a copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded in a public office (including federal, tribal, state, and local government agencies), and certified as correct by the custodian or other person authorized to make the certification.

(c) "Committee" shall mean the Membership Committee created by this chapter.

(d) "Enrollment Clerk" means the employee or employees of the Tribe, whatever their current job title, designated to maintain the Tribe's membership records and to provide staff support to the Committee.

(e) "Member" shall a member of the Committee, unless the context indicates that the reference is to member of the Tribe.

(f) "Tribal Council" means the Tribal Council of the Tribe.

(g) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 601.02 - Qualifications for Membership Committee Members

Committee members shall meet the following qualifications:

- (a) Member of the Bad River Band of Lake Superior Tribe of Chippewa Indians;
- (b) At least 21 years of age;

(c) Resident of the Bad River Reservation for at least one year prior to Committee membership and knowledge of the history of the Bad River Band;

(d) Committee members shall not be Tribal Council members, Bad River Tribal Court judges, employees of the Enrollment Office, Legal Department or Tribal Court.

Section 601.023 - Powers and Duties of Committee

The Committee shall have the following powers and duties:

(a) To maintain custody of all of the membership applications and supporting evidence, and all related documentation, correspondence and collateral records related to membership.

(b) To review applications for membership in the Tribe, and to make recommendations to the Tribal Council on such applications.

(c) To request and receive records of the Bureau of Indian Affairs to determine eligibility for membership.

(d) To recommend to the Tribal Council disenrollment as provided by this chapter.

(e) To advise the Tribal Council on matters related to membership and enrollment.

(f) To delegate to the enrollment clerk the ministerial duties of the Committee as the Committee chooses to delegate.

(g) All actions of the Committee are subject to review by the Tribal Council as provided herein, the decision of which shall in all matters be final and conclusive.

Section 601.03 4- Powers and Duties of Enrollment Clerk

The enrollment clerk and assistant shall have the following powers and duties:

(a) To protect and maintain the records that are in the custody of the Committee.

(b) To accept and process applications for enrollment in the Tribe.

- (c) To certify eligibility for entitlements and benefits based on tribal membership.
- (d) To perform the ministerial duties of the Committee as delegated.
- (e) To advise the Committee and the Tribal Council on matters related to membership

and enrollment.

- (f) Such other duties as assigned by this chapter or by job description.

(g) The acts of the Enrollment Clerk shall be reviewable as provided by the Tribe's Personnel Policies.

(h) The names of all applicants whose applications have been processed and the disposition thereof shall be entered on a master log, which shall be typed up on the first regular working day following Committee screening session and which shall be kept by the Enrollment Clerk who shall keep the master log locked in the file cabinet when not in use.

Section 601.05 - Committee Structure

(a) The Committee shall be composed of seven members appointed by the Tribal Council, each of whom shall serve a term of two years, and be eligible for reappointment.

(b) The Tribal Council shall appoint from the seven members a Chairperson. The members among themselves shall select a vice-chairperson, who shall have all of the powers and duties of chairperson in his or her absence and a secretary, who shall keep the minutes of all committee meetings. All Committee members shall be deemed researchers.

(c) Each Committee member shall take an oath of office, which shall include an oath to keep all information he or she obtains by virtue of the office secret and confidential.

(d) The Committee shall meet regularly on the first Tuesday of each month, or such other day as established by the Committee, but no less frequently than once per month. The

Committee may also hold special meetings as required. A quorum of four shall be necessary for the transaction of business.

(e) Any member who is absent, with or without excuse from two consecutive regular Committee meetings will be deemed to have resigned and will be considered automatically removed. No further action will be required to treat the seat of such member vacant. The Committee, or a member designated by those remaining on the Committee, shall report such vacancy to the Tribal Chairman within five days of its occurrence.

(f) Any member who is convicted of a felony or misdemeanor involving dishonesty in any state, federal, or tribal court shall be subject to removal from the Committee by a vote of four members. The Committee, or a member designated by those remaining on the Committee, shall report such removal to the Tribal Chairman within five days of the removal.

(g) Any member who has violated his or her oath of office may be removed by the Committee by a vote of four members. Upon an allegation of such breach being lodged with the Committee, the Chairperson shall call a meeting of the Committee to be held within five days to determine if the evidence warrants removal. If the Chairperson is alleged to have violated the oath, the Vice-Chairperson shall call the meeting. If both the Chairperson and Vice-Chairperson are alleged to have violated the oath, or if the Vice-Chairperson is unavailable, any member may call the meeting. The challenged member shall have the opportunity to be heard. If the challenged member does not contest the allegations, or if he or she does not appear at the meeting, he or she shall be considered automatically removed. The Committee, or a member designated by the remaining members of the Committee, shall report any removal under this section to the Tribal Chairman within five days of such removal.

(h) Any decision on removal of a Committee member taken under subsection (f) or (g) may be appealed to the Tribal Council by an aggrieved party. "Aggrieved party" in this section shall mean, in the case of a vote to remove, the member so removed; in the case of a vote not to remove, shall mean the person or persons instituting the complaint against the member. Any such appeal must be filed by providing written notice thereof to the Tribal Chairperson and to the Committee within five days of the action appealed from.

(i) Each Committee member shall receive a stipend of \$25.00 for each Committee meeting attended and the Committee Secretary shall receive a stipend of \$35.00.

Section 601.06 - Screening of Application

(a) All persons applying for membership in the Tribe must complete an "Application for Enrollment" on the form provided by the Enrollment Clerk, and must attach to such form all documentary evidence offered as proof of eligibility for enrollment. The original of the application for enrollment must be submitted in person by the applicant to the Enrollment Clerk's office, and must be signed and dated in the presence of the Enrollment Clerk. In the case of an applicant who is under the age of eighteen (18), the application for enrollment must be submitted and signed by the applicant's parent or legal guardian, who must display proof of parenthood or legal guardianship at the time the application is submitted to the Enrollment Clerk.

(b) All applications for enrollment must include the social security number of the applicant, with the exception of newborns.

(c) Each application submitted in compliance with this Chapter shall be stamped by the Enrollment Clerk to reflect the date of submittal. The date indicated by the Enrollment Clerk's stamp will serve as the official date of the application, regardless of any other date(s) which may

otherwise appear on the application. An individual may request a copy of their application at this time.

(d) Screening of applications shall be done only when the Committee is in session at which a quorum is present, for the express purpose of processing applications and confirming those lineal descendants who meet the requirements for membership under the Tribal Constitution.

(e) To ensure that uniform action is taken on all applications, each application shall be screened by each member seated present. To prevent any dispute from arising at a later date, each member shall initial each application after screening. To further ensure accuracy in the screening of applications, each member shall enter the name of the applicant and the disposition of his or her application on a personal log which the member shall keep at all times. Dispositions shall be "recommended for inclusion on adoption ballot" or "not recommended for inclusion on adoption ballot."

(f) The names of all applicants whose applications have been processed and the disposition thereof shall be entered by the Enrollment Clerk on a master log, which shall be typed up on the first regular working day following a Committee screening session and which shall be kept by the Enrollment Clerk who shall keep the master log locked in the file cabinet when not in use.

(g) To ensure continued accuracy, the master log shall be compared to the member's private log periodically, and any discrepancies shall be resolved when discovered.

(h) When application is complete and accurate and meets the requirements for adoption, the applicant's name shall be included on the list of those individuals recommended to the Tribal Council for inclusion on the adoption ballot.

(i) Deadlines. The following deadlines shall be observed in the processing of applications for adoption to membership under Art. II, Sec. (4), Bad River Constitution:

(1) All applications for adoption to be considered at the regular election of any year must be submitted and complete no later than the date in May six months before the first Tuesday following the first Monday of November of that year.

(2) The Committee shall report to the Tribal Council at its regular meeting in June of each year the number of applications that were submitted and complete by the deadline stated in subsection (g)(1) for that year.

(3) The Committee shall report to the Tribal Council at its regular meeting in August the list of names of individuals recommended for inclusion on the adoption ballot at the regular election for that year. At the same time, the Committee shall report to the Tribal Council the list of names of individuals not recommended for inclusion on the ballot. The two lists shall together include the names of all individuals who submitted completed applications by the deadline stated in subsection (i)(1) for that year.

(1) the Enrollment Clerk shall post the list of names approved by the Tribal Council for inclusion on the election ballot no less than sixty days prior to the election.

(5) Prior to February 1 of each year the Committee shall post the calendar dates for that year that correspond to the deadlines set by subsections (g)(1) through (5).

(h) The Enrollment Clerk shall notify, by certified mail addressed to the individual's last known address, each individual whose name appears on the list submitted to the Tribal Council of names not recommended for inclusion on the adoption ballot. Such notification shall be mailed no later than the date specified in subsection (i)(3). Any individual may appeal the

Committee's recommendation, and seek Tribal Council inclusion on the adoption ballot, by filing a written notice of such appeal with both the Membership Committee and the Tribal Council. The individual shall be allowed to appear at any Tribal Council meeting scheduled prior to the deadline specified in subsection (i)(4) and present his or her case for Tribal Council decision. If no Tribal Council meeting is scheduled prior to the deadline specified in subsection (i)(4), the individual may demand the scheduling of a meeting upon payment of a meeting fee equal to the sum of the meeting stipends to which the Council members would be entitled for attending the meeting. The individual may, in the alternative, demand to be heard at a later scheduled meeting, in which case if the Tribal Council finds in the individual's favor his or her name will be placed on the adoption ballot for the subsequent year.

(k) The purpose of this section is to regularize the processing of applications for adoption. It does not confer upon any applicant for adoption any rights or expectation of membership.

(l) Applicants who are not voted into membership through the election process must reapply in order to be considered for membership on a subsequent election ballot.

Section 601.07 - Proof of Eligibility

(a) Any individual who demonstrates to the satisfaction of the Committee lineal descent from a tribal member whose name appears on the Basic Membership Roll, as provided in Art. II, of the Tribal Constitution, shall be eligible for recommendation for inclusion on an adoption ballot for purposes of enrollment into the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(b) The burden of proof rests upon the applicant to establish his or her eligibility for

inclusion on an adoption ballot. Documentary evidence of eligibility includes but is not limited to birth certificates, death certificates, baptismal records, copies of probate findings, affidavits and records of the Bureau of Indian Affairs. The Committee shall determine the weight and sufficiency of any documentary evidence used to establish eligibility and may require the production of additional evidence if the Committee determines that the evidence submitted is insufficient to establish eligibility. If an applicant fails to respond to the Committee's request for additional evidence within thirty (30) days, the Committee may refuse to recommend that application for approval to the Tribal Council. In addition, where the Committee determines that the documentary evidence provided in support of an application for enrollment is insufficient to establish eligibility for enrollment, the Committee may require an evidentiary hearing on the issue of eligibility. The Enrollment Clerk shall inform the applicant of the need for an evidentiary hearing by written notice, which notice shall also inform the applicant of the date, time and location of the hearing. The applicant may request that the hearing be rescheduled; any such request must be made within two weeks of the applicant's receipt of the notice hearing. The applicant and all witnesses in support of the application for enrollment must appear in person at any such evidentiary hearing. All testimony given shall be sworn. The Committee shall determine the weight and sufficiency of all evidence offered by the applicant to establish eligibility for enrollment and require as evidence of lineal descent that the applicant submit to blood or Deoxyribonucleic acid [DNA] testing. DNA testing shall only be recognized if performed at a bona fide laboratory employing current standards issued by either the "Technical Working Group on DNA Analysis Methods" [TWGDAM] associated with the "California Association of Criminalist Ad Hoc Committee on DNA Quality Assurance" or the "American Society of Crime Laboratory

Directors” [ASCLD]. Applicants shall pay for any and all testing required. Submission of DNA evidence of lineal descent shall occur by the following manner and method:

(i) A DNA sample of a known living Bad River tribal member purported to be a blood relative shall be compared to that of the applicant using the Restriction Fragment Length Polymorphism [RFLP] method of DNA analysis. Compared subjects may be considered of the same lineal descent of a person appearing on the basic membership roll of the Bad River Tribe, if the compared DNA samples of the applicant and known member are of such similar genotype that the scientific community generally accepts the comparison to be so unique that the applicant is of the direct issue of the known member, i.e., either mother/father and child, or grandmother/grandfather and grandchild, etc. Comparisons which indicate that a known member is a collateral relative such as an aunt, uncle, brother or sister, etc., is not in and of itself evidence of lineal descent from a person appearing on the basic membership roll of the Bad River Tribe.

(i) In no case shall a known member be compelled to submit a DNA sample or be otherwise ordered to submit a sample under this ordinance.

(ii) Notwithstanding DNA evidence submissions, all other requirements of this chapter shall be met when determining eligibility for membership.

(c) The applicant shall complete a family tree showing lineal descent from a member whose name appears on the Basic Membership Roll. If the applicant is unable to complete the family tree, the applicant may request the Enrollment Clerk to do so, in which case the applicant shall pay for the actual time and costs incurred by the Enrollment Clerk in completing the family tree. The applicant shall make advance payment of \$25.00 with the Enrollment Clerk for the estimated total expenses of completing the family tree, prior to the Enrollment Clerk undertaking

any work thereon. The Enrollment Clerk shall keep accurate contemporaneous time and expense records for all work undertaken on each family tree, and shall prepare a regular statement for the applicant thereon. Upon exhaustion of the initial payment, the Enrollment Clerk shall require an additional payment to continue work.

(d) Only originals or certified copies of documents submitted as proof of eligibility will be accepted as evidence by the Enrollment Office.

(e) The Enrollment Office shall retain all documents that are submitted, unless the applicant requests that the documents be returned to the applicant, in which event a copy of the submitted documents shall be retained by the Enrollment Office.

(f) The Tribe shall have sole ownership of all Tribal Membership documents retained by and in the custody of the Committee.

(g) Individuals of Indian blood of other tribes, and of no Indian blood, who claim lineal descendency through a person who has been legally adopted by a lineal descendant, are not eligible for enrollment, except that individuals of Bad River Indian blood shall be eligible for adoption to membership under Article II, Section (4) of the Bad River Constitution.

(h) Each applicant shall be required to disclose whether he or she claims descendency through any person who has been legally adopted. Applicants who so claim must indicate whether their biological descent is of Bad River Chippewa blood, blood of another tribe, or no Indian blood.

Section 601.08 - Newborns

Newborns, one or both of whose parents are tribal members, may be enrolled by a parent or legal guardian by completing an application form provided for that purpose and filing it with the

Committee no later than sixty days after the date of birth of the newborn.

Section 601.09 - Records and Files

(a) Membership applications and supporting evidence, and all related documentation, correspondence, and collateral records related to membership shall be kept secure at all times, except when necessary for the conduct of business of the Committee or of the Enrollment Clerk.

(b) No person other than the Committee and Enrollment Clerk in the course of their official business shall have access to any membership file other than his or her own and that of his or her minor children or wards, except that a member may authorize in writing another person to have access to his or her file and that of any of his or her minor children or wards.

(c) Any person may obtain a copy of documents in his or her file, or that of his or her minor child or ward, at a charge of twenty five (.25) cents per page to cover the cost of copying documents.

(d) The following information shall be deemed public information: the names of members, their sex, date of birth, date of death, roll number, allotment number through which member is enrolled and last known address. Upon request, membership lists showing this information may be made available to candidates for tribal political office upon payment of a charge set to reflect the cost of preparing and copying the list.

Section 601.10 - Disenrollment

(a) Grounds for Disenrollment. Any tribal member may be disenrolled from membership in the Tribe upon proof of the following; and in accordance with the procedures for disenrollment set forth below:

(1) Any person whose membership is based on false material information contained in his or her application, or who withheld material information in making his or her application for enrollment, shall be removed from the membership rolls.

(2) Any person whose membership is based on false information given by another person, or whose membership is based on another person's withholding of material information in making the application for enrollment, shall be removed from the rolls.

(3) No member may be enrolled in the Tribe who is also enrolled in another tribe. Any member who is alleged to be enrolled in another tribe may be required to furnish proof that he is not so enrolled. Any person who fails to furnish such proof shall be removed from the membership rolls.

(b) Disenrollment Proceedings. Disenrollment proceedings shall be governed by the following procedures:

(1) Upon receipt of any evidence that a tribal member should be subjected to disenrollment proceedings, the Committee shall discuss the matter at the next scheduled meeting, and shall vote on whether to initiate disenrollment proceedings against such tribal member. No proceeding for disenrollment of a tribal member shall be initiated unless at least four (4) members of the Committee vote to initiate such proceedings. If a majority of the Committee fails to vote in favor of initiating disenrollment proceedings, the matter shall be deemed closed.

(2) If the Committee decides to initiate disenrollment proceedings against a tribal member, the Enrollment Clerk shall send a "Notice of Disenrollment Proceedings" by certified letter to the last known address of such tribal member. The letter shall specify the grounds for initiating such disenrollment proceedings, and shall explain the disenrollment

procedures and the rights and remedies available to the tribal member. The date stamped by the U.S. Post Office on the Domestic Return Receipt shall be deemed to be the date on which the tribal member was served with the “Notice of Disenrollment Proceedings.”

(3) In the event that the “Notice of Disenrollment Proceedings” is returned undelivered by the United States Post Office, the Enrollment Clerk shall publish the “Notice of Disenrollment Proceedings” in the local newspaper in the county of the last known address of the tribal member against whom disenrollment proceedings have been initiated. At the expiration of sixty (60) days from the date such notice first appears in the local newspaper, the tribal member shall be deemed to have been served with the “Notice of Disenrollment Proceedings.”

(4) Any tribal member against whom disenrollment proceedings have been initiated must file a written response challenging such proceedings within thirty (30) days of receipt of the “Notice of Disenrollment Proceedings.” Such a response can be mailed by certified or regular mail, and will be deemed filed on the date the response is post-marked by the U.S. Post Office. Failure to file a written response to the “Notice of Disenrollment Proceedings” within the thirty day time period shall waive the tribal members rights to an informal hearing before the Committee and a formal hearing before the Tribal Council.

(5) Any tribal member against whom disenrollment proceedings have been initiated shall have a right to appear and testify in an informal hearing before the Committee. At such hearing, the Committee shall determine if sufficient evidence exists to support a finding that the tribal member should be disenrolled. If a majority of the members of the Committee decide that the tribal member should remain on the membership rolls, the disenrollment proceedings shall be deemed closed. If a majority of the members of the Committee find that sufficient evidence

exists to support disenrollment, the Committee shall submit a written recommendation to the Tribal Council that the tribal member be disenrolled. The recommendation of the Committee shall include all evidence compiled in the disenrollment proceeding. Upon receipt of such recommendation, the Tribal Council shall schedule a hearing to decide whether the tribal member shall be disenrolled, unless the tribal member has waived his/her right to a hearing by failure to respond to the "Notice of Disenrollment Proceedings," in which event the Tribal Council will make its decision based on the recommendation and evidence furnished by the Committee.

(6) Any tribal member subject to a disenrollment proceeding, who has filed a written response to the "Notice of Disenrollment Proceedings" with the Enrollment Clerk, shall have the right to be represented by counsel at his or her own expense at all stages of the proceeding, the right to inspect and copy all documents which purportedly support disenrollment, the right to inspect and copy all documents in the custody of the Committee which support the member's claim to continued eligibility for enrollment, the right to inspect and copy all documents in the member's application file, the right to cross-examine all adverse witnesses, the right to present testimony and documentary evidence on his or her own behalf, the right to adequate notice of all proceedings, and the right to a written decision in which the facts relied upon and the conclusions made by the Tribal Council are given. All disenrollment proceedings shall be conducted as closed hearings in Executive Session

(7) In any disenrollment proceeding, the Committee shall have the burden of proving by clear and convincing evidence that the tribal member is not eligible for enrollment.

(8) A decision to disenroll a tribal member shall be made by vote of the members of the Tribal Council. No less than five (5) members of the Tribal Council must vote to

disenroll the tribal member before such member shall be disenrolled. The decision of the Tribal Council in any disenrollment proceeding shall be final and non-appealable.

(9) If the Tribal Council votes to disenroll a tribal member, the Enrollment Clerk shall strike the name of such tribal member from the membership rolls of the Tribe. Any tribal member who has been disenrolled shall be prohibited from thereafter seeking enrollment in the Tribe.

(c) Voluntary Disenrollment. Any tribal member may request that his/her name be stricken from the membership rolls. Such voluntary disenrollment must be carried out in accordance with the procedures set forth below.

(1) The tribal member seeking voluntary disenrollment must submit to the Enrollment Office a notarized statement requesting relinquishment of membership in the Tribe, and stating the reason(s) for seeking relinquishment of membership.

(2) The statement requesting relinquishment of membership in the Tribe must be either submitted in person, or delivered by certified mail, and must be dated no more than sixty (60) days before the date such statement is received at the Enrollment Office.

(3) The Tribal Council shall direct the Enrollment Clerk to strike from the membership rolls the name of the tribal member seeking voluntary disenrollment.

(4) If a request for relinquishment is made on behalf of a tribal member who is under the age of eighteen (18) years, the following procedures will govern the voluntary disenrollment process;

(i) The person requesting relinquishment must be the parent having legal custody of the tribal member, or the legal guardian of such tribal member, and must provide

the Enrollment Office with proof of such legal custody or guardianship. For the purposes of this Chapter, the term “legal custody” means the custody awarded by a court of competent jurisdiction. Any documentary evidence provided as proof of legal custody or guardianship must be in the form of originals or certified copies. Proof of parenthood alone, without proof of legal custody or guardianship, will not authorize a person to request relinquishment on behalf of a tribal member who is under the age of eighteen (18) years.

(ii) Any parent requesting relinquishment for a child who is a tribal member must have sole custody of such child in order to request relinquishment of membership on behalf of the child. If a parent making a request for relinquishment on behalf of a child does not have sole custody of such child, such parent must demonstrate that he/she has joint custody of the child, and a notarized statement from the other parent joining in the request for relinquishment must be provided to the Enrollment Office. Certified copies of the divorce decree or order of separation, and of the order granting custody, must be submitted to the Enrollment Office.

(iii) No tribal member under the age of (18) years shall be disenrolled from membership in the Tribe until the Enrollment Office receives official notification from another tribe that such person has been accepted for membership in such other tribe.

(iv) If a person who is under the age of eighteen (18) years is disenrolled from membership in the Tribe by request of a parent or legal guardian, such person shall be entitled to enrollment in the Tribe in accordance with the procedures and requirements set forth in this Chapter, if such person makes a request for enrollment after his/her eighteenth (18th) birthday. No benefits associated with membership in the Tribe shall be granted to such person for the period of time during which he/she was not enrolled in the Tribe. Any tribal member whose membership

is challenged under subsection (a), (b), or (c) shall have a right to be heard by the Membership Committee, which shall determine if there is sufficient evidence to believe that the tribal member should be disenrolled. If the Committee so finds it shall present its evidence and recommendation to the Tribal Council which shall decide whether the tribal member shall be disenrolled.

MEMBERSHIP ORDINANCE ENACTED BY RESOLUTION #8-28-78-19/AMENDED BY RESOLUTION #6-1-83-39/AMENDED BY RESOLUTION #8-13-79-161/CHAPTER 600 MEMBERSHIP ORDINANCE ENACTED BY RESOLUTION#12-5-90-154/AMENDED BY RESOLUTION *****601.04(a) & 601.04(d), AMENDMENTS ENACTED BY RESOLUTION #5-10-00-413

CHAPTER 701 - CIGARETTES

Section 701.1 - Purpose

The purpose of this ordinance is to regulate the business of selling, exposing for sale, exchanging, or bartering of cigarettes for purposes of resale within the boundaries of the Bad River Reservation.

Section 701.2 - Authority

This chapter is adopted pursuant to Art. VI, Section 1(j), of the Bad River Constitution.

Section 701.3 - Definitions

(a) "Carton" means any container prepared by the manufacturer of cigarettes in which 200 cigarettes are held, packed, or contained.

(b) "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

(c) "Class I Certification" means a certification authorizing an Indian retailer to sell unstamped cigarettes and no more than 5,000 cartons of stamped cigarettes per month.

(d) "Class II Certification" means a certification authorizing an Indian retailer to sell unstamped cigarettes and an unlimited number of cartons of stamped cigarettes per month.

(e) "Reporting Date" means the first day of the month, or if any such date is a Saturday, Sunday or holiday, the first non-holiday weekday thereafter.

(f) "Reporting Period" means the period starting on a reporting date and ending one day before the next reporting date.

(g) "Reservation" means all land within the boundaries of the Bad River Reservation.

(h) "Tribe" means the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(i) "Tribal Council" means the Tribal Council of the Tribe.

Section 701.4 - Cigarette Sales Permitted

(a) Indian retailer sales. A member of the Tribe whether operating as a sole proprietorship, joint venture, or corporation, may sell, expose for sale, or possess with intent to sell cigarettes, whether stamped or unstamped, on the Reservation only upon compliance with the provisions of this chapter.

(b) Business organizations. No person or organization shall be considered an Indian retailer for purposes of this section unless said person is an enrolled member of the Tribe, or unless at least fifty-one percent of profits and control of the total business inure to one or more enrolled members of the Tribe.

Section 701.5 - Certification of Indian Retailers

(a) Any enrolled member of the Tribe or business organization desiring to do business as an Indian retailer pursuant to this chapter shall apply in writing to the Tribe requesting certification as such.

(b) An applicant for Indian retailer certification shall provide evidence to the Tribe of all of the following:

(1) Enrollment in the Tribe.

(2) In case of an organization other than a sole proprietorship, documents describing ownership, profit-sharing, control of organization, and identification of enrolled members participating in the organization.

(3) Description of the location to which wholesale deliveries of cigarettes shall be made, and statement as to its status as Indian-owned fee land, allotted land, leased tribal-trust

land or other.

(4) Whether the applicant requests a class I certification or a class II certification.

(c) The Tribal Council shall deny certification to any applicant who is not eligible for certification under Section 701.4(a) or (b), and to any applicant when it shall appear that the applicant will serve as a sham for any person or persons, legal or natural, who are not eligible for certification under Section 701.4(a) or (b).

(d) The issuance of certification is within the discretion of the Tribal Council. With no limitation by enumeration implied, the Tribal Council may deny certification to any applicant who has been found in non-compliance with any section of this chapter or of applicable state cigarette tax law, or who has any outstanding cigarette tax pre-collection liability.

(e) Any new certification issued shall be for a class I or class II certification as requested. Any applicant for renewal of certification shall be issued a class I or class II certification based on monthly sales as determined by an average of monthly sales over the preceding 12 month period.

(f) An Indian retailer holding a class I certification may sell more than the number of cartons of stamped cigarettes permitted by the certification. Upon submittal of invoices showing monthly sales of more than the number of cartons permitted under a class I certification, the tribal accounting office shall administratively reclassify the retailer as a class II retailer, starting with sales in the calendar month immediately following the submittal requiring reclassification, and continuing for the length of the certification period.

(g) Each certification shall state the name of the Indian retailer, the location at which

the certification authorizes cigarette sales, and the date of validity and expiration of the certification. Each certification shall be valid for only one location. The Tribal Council may in its discretion issue certifications for more than one location to a single applicant.

(h) The original of the certificate shall be issued to the Indian retailer. The original or copies thereof shall not be valid proof of certification to be furnished to the retailer's distributors. Such proof must be given as provided in Section 701.8(b).

(i) All certifications shall be valid for a period not to exceed one year, expiring on the June 30 following the initial date of validity of the certification.

(j) Certification is non-transferrable.

(k) Certification shall be by Tribal Council resolution.

(l) No member may sell, expose for sale, or possess with intent to sell cigarettes on the Reservation without a valid certification under this chapter.

Section 701.6 - Regulation of Indian Retailers

(a) Each retailer shall submit on each reporting date the original invoices for each sale and delivery to it of stamped and unstamped cigarettes. The original invoice shall meet the requirements of Wis. Adm. Code Tax Ch. 9.08 (4)(d).

(b) Each retailer shall submit on each reporting date the original records for the preceding reporting period showing all sales of unstamped cigarettes to Bad River members. The record shall show the date of sale, amount of sale in volume and dollar amount, and the name of purchaser, for each sale to a Bad River member. Failure to keep or produce such records shall be a violation of this chapter. In addition, all untaxed sales for which such records are not kept and produced shall be rebuttably presumed to have been made to persons ineligible to buy them.

(c) Each Indian retailer shall allow any agent authorized by the Tribe to audit and inspect the books, records, and the premises of the location for which the Indian retailer possesses certification.

(d) No Indian retailer may sell any unstamped cigarettes to any one who is not a member of the Tribe and a resident of the Reservation.

(e) No Indian retailer may sell more than 100 cartons of unstamped cigarettes to any one person, natural or legal, in any one calendar month.

(f) No Indian retailer may transfer, or cause to be transferred, any cigarettes from the location to which the invoice shows their delivery to another location.

Section 701.7 - Tax Refunds

Any Indian retailer complying with provisions of this chapter shall receive that portion of the state cigarette tax to which the Tribe is entitled by virtue of the Indian retailer's sales, less

(a) In the case of a retailer holding a class I certification, twenty-five cents per carton.

(b) In the case of a retailer holding a class II certification, per carton.

Section 701.8 - Distributors and Wholesalers

(a) Any distributor or wholesaler selling cigarettes to an Indian retailer on the reservation shall, upon request of any agent authorized by the Tribe, produce all records pertaining to the sale of cigarettes to that retailer.

(b) Prior to sale or delivery of any cigarettes to any Indian retailer, a distributor or wholesaler must first obtain, directly from the Tribe, a duplicate original of the retailers certification, specifically endorsed to the specific wholesaler or distributor.

(c) Any distributor or wholesaler who fails to comply with subsec. (b) or any request

under subsection (a) may be barred by order of the Tribal Chairman or Treasurer. Within 20 days of service of any such order, the distributor or wholesaler may file a complaint in Tribal Court seeking review of the order.

Section 701.9 - Suspension and Revocation, Penalties, Civil Liability

(a) The Tribal Council may suspend or revoke the certification of any Indian retailer who is found to have submitted misleading, untruthful, or fraudulent information in the retailer's application for certification.

(b) The Tribal Council may refuse to issue, or may suspend or revoke the certification of any Indian retailer who has any outstanding cigarette tax pre-collection liability or who is found by Tribal Court to have violated this chapter or any provision of applicable state cigarette tax law.

(c) Any violation of this ordinance may be punished by a civil forfeiture not to exceed \$5,000.00. All findings of violation of this chapter shall be reported by the Clerk of Court to the Tribal Chairman and Treasurer.

(d) In addition to a penalty, if any, imposed by the Tribal Court, or suspension or revocation, if any, imposed by the Tribal Council, the Tribe by its Chairman or Treasurer, may assess an Indian retailer holding a class I certification 25 cents, and an Indian retailer holding a class II certification _____cents, for each carton of unstamped cigarettes sold to a person ineligible to purchase it. Such assessments may also include simple interest at 1<<% per month from the date of the sale, or if the date of the sale cannot reasonable be estimated, from assessment, the Indian retailer may file a complaint in Tribal Court seeking review of the assessment.

Section 701.10 - Effective Date

This chapter as amended shall be effective on and after July 1, 1991.

CHAPTER 701 ENACTED BY RESOLUTION #9-21-83-18/REPEALED AND RECREATED BY RESOLUTION #10-14-83-24

CHAPTER 800 - EXCLUSION AND REMOVAL OF NON-MEMBERS FROM THE BAD RIVER RESERVATION

Section 800.1 - Purpose

It is the purpose of this Chapter to provide a procedure for excluding and removing non-members from the Reservation when it is in the best interest of the Band to do so, including the exclusion and removal of those individuals who act in disregard of tribal or other law, destroy tribal fish and game, trespass upon tribal trust property, pollute tribal lands and waters, destroy real or personal property of the Band, its members or Reservation residents, or endanger or harm the natural, social, psychological or physical well-being of members or other persons on the Reservation.

Section 800.2 - Scope

The Bad River Tribal Council is authorized to exclude non-members from the Reservation and to determine conditions upon which they may remain. Except as provided by this ordinance, all persons, except those authorized by federal law to be present on tribal land, may be excluded and removed from the Bad River Reservation or parts thereof. Any person having an interest in real property on the Reservation may be excluded from any portion of the Reservation as long as he or she is not denied access to or the use of such property.

Section 800.3 - Authority

This ordinance is enacted pursuant to Article VI, Section 1(s) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians and is also based

on the Bad River Band's sovereignty and inherent power of exclusion.

Section 800.4 - Severability

If any portion of this ordinance is found to be invalid for any reason, the remaining portions of this ordinance shall remain in full force and effect.

Section 800.5 - Exclusive Remedy

Exclusion and removal does not prevent, negate or exclude the use of any other remedy or penalty that is otherwise provided by this Code or other governing federal, state or tribal law.

Section 800.6 - Definitions

(a) "Exclusion and removal" means the temporary or permanent expulsion of an individual from within the boundaries of the Bad River Reservation.

Section 800.7 - Petition

An exclusion and removal action shall be commenced by any member of the Bad River Band or Tribal Council upon the presentment of an oral or written Petition for Exclusion and Removal in an open meeting of the Tribal Council. The Petition shall include the name of the individual sought to be removed and a statement of the reasons which individually or collectively are justifiable cause for exclusion and removal.

Section 800.8 - Personal Appearance

No individual considered for possible exclusion or removal has any right or privilege to personally appear before the Tribal Council in either the initial consideration of a Petition for Exclusion and removal or in any subsequent appeal of an Order for Exclusion and Removal before the Tribal Council. However, the Tribal Council may, in its discretion, grant an individual the

right to appear before it in either proceeding.

Section 800.9 - Grounds for Exclusion and Removal

Upon consideration of a Petition; the Tribal Council may enter an Order of Exclusion and Removal if it finds that it is in the best interests of the Band to do so. The Tribal Council may consider whether the individual's conduct threatens or has some direct effect on the political integrity, institutional process, economic security, or health or welfare of the Band, its members or Reservation residents. In determining whether to issue an Order of Exclusion and Removal, the Tribal Council may consider the number and pattern of acts committed and the history, circumstances and/or significance of each act. Acts for which an individual may be excluded and removed from the Bad River Reservation may include but are not limited to the following:

(b) Doing or attempting to do any act upon the Reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the Bad River Band, its members, Reservation residents, or other persons;

(c) Any act causing physical loss or damage of any nature to the property of the Band, any member or Reservation resident;

(d) Entering an area in violation of any order of the Bad River Band or any entity thereof designating such area as closed;

(e) Failing or refusing to pay any taxes, rents or other charges justly due the Bad River Band or an entity thereof, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;

(f) Mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;

(g) Committing a fraud, to wit: meaning a false representation of a matter of material fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

(h) Trading or conducting business within the Reservation in violation of tribal law;

(i) Hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law;

(i) Disturbing or excavating items, sites or locations of religious, historic or scientific significance without the authority of the Bad River Band or in violation of tribal or federal law;

(j) Failing to obey an order of the Tribal Court; or

(k) Committing any criminal offense as defined by state, federal or tribal law.

Section 800-10 - Standard of Proof

In considering whether justifiable cause exists to exclude and remove an individual from the Reservation, the Tribal Council must be satisfied by a preponderance of the evidence given the totality of the circumstances.

Section 800.11 - Order for Exclusion and Removal

Upon finding that it is in the best interests of the Bad River Band, the Tribal Council shall issue an Order for Exclusion and Removal. If the individual is not present at such meeting or if a decision is not rendered until after the meeting, appropriate notice shall be served on the individual, informing him or her of the action of the Tribal Council. Such notice shall include a copy of the Order for Exclusion and Removal issued pursuant to this ordinance. The Order shall include the reasons for the decision, the terms of the exclusion (including duration), and the

individual's appeal rights (including any conditions under which the individual may return for an appeal of the Order). An Order issued pursuant to this ordinance shall remain in force for the duration provided in the Order or, unless the Order specifically provides otherwise, until revoked or modified by the Tribal Council.

Section 800.12 - Enforcement of Orders of Exclusion and Removal

Upon the issuance of an Order for Exclusion and Removal, the Tribal Council shall deliver said Order to any qualified law enforcement officer, who shall thereupon serve notice upon the individual and direct the individual to obey the Order. If, after the time specified in the Order, the individual does not comply with the Order, the Tribal Council shall request relief through the appropriate federal, state or tribal courts:

(k) Referring the matter to the Tribal or other prosecutor for appropriate action, including prosecution or other action authorized under any applicable tribal, federal or state law;

(l) Directing any law enforcement officer to remove the individual from the Reservation covered by the Order at the individual's expense;

(m) Directing law enforcement to remove the individual bodily, using only so much force as is reasonable and necessary to effect the removal; and

(n) Directing any law enforcement officer to prevent the individual from reentry onto any Reservation lands covered by the Order for so long as the Order remains in effect.

Section 800.13 - Appeals

Any individual to whom an Order for Exclusion and Removal has been issued pursuant to this ordinance may appeal such Order to the Bad River Tribal Council. The individual must apply to the Tribal Council in writing within ten (10) DAYS OF HIS OR HER RECEIPT OF

SAID Order, requesting revocation or amendment of said Order. Upon receipt of such a request, the Tribal Council shall call a special meeting for the purpose of allowing the individual to address the Tribal Council regarding the reasons for constituting the justifiable cause for his or her exclusion and removal and to show cause why he or she should not be excluded and removed from the Reservation. Unless the Tribal Council has specifically granted the individual the right to personally appear before it in the special meeting, the individual must set forth his or her position, arguments and proofs in writing and provide same to the Tribal Council in advance of the special meeting. Appropriate notice of such a special meeting shall be delivered to the individual not less than five (5) days prior to the meeting. Decisions of the Tribal Council on appeal shall be final.

ENACTED BY RESOLUTION #8-14-02-324

CHAPTER 900 - HIRING BY CONTRACTORS IS RESTRICTED

Section 901.1 - Purpose

The purpose of this ordinance is to help provide employment for tribal members living on or near the reservation who may have skills as laborers, heavy machine operators or in other construction areas. Often times there are contracts given out for road, bridge and other types of construction in this area. The idea is to allow for our members participate in such jobs to enable them to be employed and to instill pride in their work on or near the reservation.

Section 901.2 - Definitions

(a) "Tribe" means the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(b) "Member" means any person who is a member of the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(c) "Reservation" refers to all lands and roads within the exterior boundaries of the reservation.

(d) "Contract or subcontract" refers to any individual, partnership or company who has been awarded a contract or subcontract to do road, bridge or other work on the reservation.

(e) "Tribal Personnel Officer" refers to that person who is in charge of the Personnel Office.

Section 901.3 - Prohibition

(a) No contractor or subcontractor who has been contracted to do road, bridge, or other work on the reservation shall hire any additional persons needed for the job who is not a member of the Tribe unless there is no qualified member of the Tribe able to perform such job or jobs.

(b) No contractor or subcontractor shall be deemed to have complied with subsection

(a) above unless (1) they have a statement from the Tribal Personnel Officer stating that they have worked with the Personnel Office and (2) the statement sets forth whether or not there are qualified members of the Tribe to perform the job.

Section 901.4 - Penalties/Forfeitures

Violation of Section 901.3 of this ordinance shall be subject to the following:

- (a) Forfeiture not to exceed \$500.00, or
- (b) Recession of the contract if possible, or
- (c) Barred from receiving future contracts.

Section 901.5 - Violation

All violations shall be tried in Tribal or Federal Court.

CHAPTER 900 ENACTED BY RESOLUTION #10-3-86-75

CHAPTER 920 - CODE OF CONDUCT FOR PROCUREMENTS AND CONTRACTS

This Code of Conduct is established by the Bad River Band of the Lake Superior Tribe of Chippewa Indians Tribal Council and shall govern the performance of all officers, committees and their members, employees or agents of the Bad River Band of the Lake Superior Tribe of Chippewa Indians Tribe engaged in the award and administration of all procurement or contracts. For the purposes of this Code, the term “officer” shall include members of the Tribal Council.

Section 920.1 - Conflict of Interest

(a) No officer, employee, committee member, or agent of the Bad River Band of the Lake Superior Tribe of Chippewa Indians shall participate in the selection, or in the award or administration of a procurement or contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the officer, employee, committee member, or agent; and/or

(k) Any member of his or her immediate family; and/or

(l) His or her partner; and/or

(m) Any organization which employs, or is about to employ any of the above, has or may foreseeably develop a financial or other interest in the firm or individual selected for award of the procurement or contract.

Section 920.2 - Gratuities or Positions of Employment or Monetary Interest

No officer, employee, committee member, or agent of the Bad River Band of the Lake Superior Tribe of Chippewa Indians Tribe shall either solicit or accept gratuities, favors or anything of monetary value, including any position of employment or monetary interest from firms

or contractors, potential firms or contractors, or parties to subcontracts.

Section 920.3 - Acceptance of Gifts

(a) Officers, Employees, Committee Members, and Agents of the Tribe. An officer, employee, committee member, or agent may accept a gift from a firm or contractor seeking to do business with the Band or having interests that may be substantially affected by performance or nonperformance of the officer, employee, committee member or agent, if such is unsolicited and of nominal value (not to exceed \$10.00). Acceptance of such gifts will be limited to items used as advertising by firms or contractors. Acceptance of any other gift shall constitute a violation of this Code.

(o) Tribal Council. The Bad River Band of the Lake Superior Tribe of Chippewa Indians Tribal Council may receive such other gifts as offered by a firm or contractor after completion of a contract where no promises of the gift has been given before completion, which if accepted will be retained by the Tribe in remembrance of a program or project. In addition to the limitation of gifts, the acceptance of excessive or unusual entertainment, loans or other favors (valued in excess of ten dollars [\$10.00]) shall constitute a violation of this Chapter.

(p) Exceptions. It shall not be a violation of this Chapter to accept the following so long as the acceptance does not influence or have the appearance of influencing the procurement or award of contracts:

(k) Ceremonial gifts given according to traditional customs which are retained by the Tribe;

(l) Food and refreshments of nominal value in the ordinary course of meals provided as part of meetings;

- (m) Unsolicited advertising or promotional material of nominal value;
- (n) Personal achievement awards for meritorious service of nominal value; or
- (o) Plaques or other similar items intended to memorialize or remember some

program or project.

Section 920.4 - Violations

Violation of this Code of Conduct shall be prosecuted as follows.

(a) Any violation of this Code of Conduct by an officer of the Bad River Band of the Lake Superior Tribe of Chippewa Indian Community shall be handled by the Bad River Tribal Court. In the event that the officer, employee, committee member, or agent is a member the Tribal Council, the Tribal Court will review the violation and take such action against the officer(s) involved as is allowable under the Constitution and By-Laws of the Bad River Community, including possible removal from the Tribal Council according to the terms of the Constitution.

(b) Any violation of this Code of Conduct by an employee of the Bad River Band of the Lake Superior Tribe of Chippewa Indian Community will be handled in accordance with the Personnel Policies and Procedures, Chapter XIV. Discipline, reprimand, suspension, or termination may result with respect to the seriousness of the violation.

CHAPTER 1000 - WINTER PARKING ORDINANCE

Section 1000.01 - Purpose

The purpose of this Ordinance is protect public health, safety and welfare of the Bad River residents and visitors by regulating vehicular parking during winter months.

Section 1000.02 - Authority

This Ordinance is adopted pursuant to the Bad River Constitution, Article VI, §(1)(q); and Tribal Resolution 11-6-91-160.

Section 1000.03 - Effective Date

This Ordinance shall take effect upon its adoption by resolution by the Tribal Council.

Section 1000.04 - Construction

This Ordinance shall be interpreted to comport with the customs and traditions of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 1000.05- Definitions

For the purposes of this ordinance, the following definitions shall apply:

(a) "Ticketing Official" means any Bad River Tribal Law Enforcement Officer, to include Bad River Snow Plow authorized by the Bad River Garage Supervisor to issue tickets for non-compliance with this ordinance.

(b) "Class 1 Road" means all Bad River Community Streets: including Maple Street, Kinnickinnick Street, Oak Street, Birch Street, Pine Street, Elm Street, Evergreen Street, Caville Road, Old Odanah Road, Kakagon Street, Birch Hill Court, Sand Pit Road, Firebreak Road, Plantation Lane, Red Pine Road, Birch Lane, Clear Cut Drive, Moccasin Trail, West Denomie Street, Fire Hall Lane, Butterfield Road, and Lemieux Road.

(c) “Class 2 Road” means all Bad River Tribal Roads other than those listed above in Subsection (b) including: Lake Birch Road, Pine Flats Road, Potato River Road, and Cemetery Road.

Section 1000.06 - Severabililty and Non-Liability

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

(b) The Tribe declares that there is no liability on the part of the Tribe, it’s agencies, agents, or employees for any damage which may occur as a result of reliance upon or conformance with this Ordinance.

Section 1000.07 - Parking Prohibited in Certain Specified Places.

(b) No person shall stop or leave any vehicle standing on any Class 1 road within the confines of the Bad River Reservation from November 1, to April 30, except temporarily for the purpose of and while actually engaged in loading or unloading, or in receiving or discharging passengers and while the vehicle is attended by a licensed operator so that it may be promptly moved to avoid obstruction of snowplow traffic.

(b) No person shall stop or leave any vehicle standing on any Class 2 road within the confines of the Bad River Reservation for a period longer than 24 hours from November 1, to April 30.

Section 1000.08 - Enforcement.

(a) Any Ticketing Official may issue a citation to any Tribal member or non-member if the Ticketing Official reasonably believes that such person has breached a provision of this

Ordinance.

(c) Any Ticketing Official may authorize the removal of any vehicle in violation of this ordinance by having the vehicle towed at the owner's expense, including any impound charge.

Section 1000.09 -Penalties.

Any person who violates the provisions of this ordinance shall be subject to the following penalties: Any person violating a provision of §1000.07 shall be required to forfeit \$30.00 for a first offense, \$45.00 for a second offense and \$60.00 for a third or subsequent offense within a two year period.

Section 1000.10 - Jurisdiction.

Jurisdiction is hereby conferred upon the Bad River Tribal Court over all matters related to the enforcement of this ordinance.

CHAPTER 1001 - ESTABLISHMENT OF THE BAD RIVER TRIBAL POLICE COMMISSION

Section 1001.1 - Purpose

The purpose behind the creation of a Tribal Police Commission is to provide oversight of tribal police force operations, approve policy and procedure of the force, assist in the tribal budgeting process where necessary, and provide direction for the force. The safety and security of the Bad River Tribe requires a full time professional police force to operate on reservation with the cooperation of the membership, local community, Tribal leadership, state, county and neighboring communities. Effective oversight and communication concerning all aspects of the police force operations is essential. It is critical that day to day operations be kept separate and distinct from the oversight of the operation and that the interjection of political influences be kept out of the operation of the tribal police force.

Section 1001.2 - Scope

This ordinance is applicable to Bad River Tribal Police Commission as it relates to the oversight responsibility of the Bad River Police Department.

Section 1001.3 - Authority

This ordinance is enacted pursuant to Article VI, Section 1(m) and (q) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 1001.4 - Severability

If any of this ordinance is found to be invalid for any reason, the remaining portions of this ordinance shall remain in effect.

Section 1001.5 - Establishment and Composition

(d) Establishment of Police Commission

The Bad River Tribe hereby establishes an entity to be known as the Bad River Tribal Police Commission whose sole purpose shall be to oversee the conduct and operations of the Bad River Police Force.

(e) Composition of Police Commission

The Commission shall consist of seven permanent members. One shall be from the Ashland County Sheriff, and one member from the Wisconsin Department of Corrections Ashland Office, each of whom shall hold permanent seats on the commission and shall be non-voting members appointed by the Bad River Tribal Council to serve a five year term. Tribal appointees shall be eligible for reappointment. Members of the Police Commission may not simultaneously serve as members of the Tribal Council. Tribal member appointees must reside within the exterior boundaries of the Bad River Reservation and be at least twenty-one years of age.

Section 1001.6 - Removal

Members of the Police Commission may be removed by the Tribal Council for serious misconduct. Members shall not be removed except after given a fair and impartial hearing including the opportunity to respond to and rebut specific allegation or allegations of misconduct. Members facing removal shall be afforded due process including the right to present reliable evidence and witness, confront adverse witness with cross-examination and be represented by counsel at no expense to the Band. An affirmative vote of at least five Tribal Council members after the close of a hearing is required to remove a member of the police commission.

Section 1001.7 - Substitutions

If a member to the Police Commission is removed, resigns or is otherwise no longer a member of the commission, he or she shall be replaced by his or her successor in the case of a permanent member, or reasonable substitute at the discretion of the Tribal Council if necessary, or succeeded by a new appointment by the Tribal Council. When applicable, new appointees appointed pursuant to this section shall serve out the original term of their predecessor.

Section 1001.8 - Expenses/Stipends

Members of the Police Commission are authorized reimbursements for costs associated with official Police Commission business and shall be paid reasonable stipends. The Tribal Council shall authorize a sufficient amount of funding to meet the budgeted needs of the Police Commission.

Section 1001.9 - Reports

The Police Commission shall be invited to meet with the Tribal Council at least once per year and from time to time as necessary so as to report any information deemed important.

Section 1001.10 - Oversight Powers and Duties

(a) Oversight

It shall be the duty of the Police Commission to meet at least quarterly, and more frequently if necessary so as to perform the following:

- (1) Review the Bad River Police Chief's quarterly report to the Commission
- (2) Review all or selected police reports generated by the Bad River Police

Department.

- (3) Review any complaints lodged against the Bad River Police Department and take or direct any necessary action.

(4) Direct corrective action to the Bad River Police Chief concerning any deficiencies that are apparent with the Police Department.

(5) Ensure that the Bad River Tribal Police Department is acting in the best interests of the Band and is performing its duties in the most professional and effective manner possible.

(b) Powers

The Police Commission shall have the following powers:

(1) The authority to access the Police Department announced or unannounced.

(2) The authority to review all police reports, records, financial documents, policies and procedures.

(3) The authority to hire, fire, and reappoint police department personnel.

(4) The authority to suspend and discipline all police department personnel consistent with the appropriate personnel policies and procedures regulations.

(5) The authority to grant pay increases, bonuses and promotions for police personnel.

(6) The authority to review all purchases by the Police Department and have approval authority for those purchases over \$1,000.00.

(7) The authority to review and revise police department budget requests.

(8) The authority to direct, review, and revise law enforcement grant applications for the Police Department.

(9) The authority to review, revise and implement police department policies and procedures so long as such policies and procedures are not inconsistent with the terms and

conditions of any agreement entered into by the Band on behalf of the Police Department.

(10) The authority to negotiate, but not enter into, any necessary memorandums of agreement and Understanding, contracts and insurance on behalf of the police department.

(11) The authority to conduct internal investigations of police misconduct or to hire outside experts to do the same.

Section 1001.11 -By-Laws

The Police Commission shall operate under the procedures listed below but may establish by-laws and procedures for the operation of the organization not inconsistent with those set forth in this section.

- (1) A quorum shall consist of at least three members.
- (2) A tape recording of all official meetings shall be made and kept for a period of at least two years.
- (3) Official meetings do not have to be noticed nor made public.
- (4) Official actions shall be carried or defeated by majority vote.
- (5) Roberts Rules of Order shall be generally followed at all official meetings.
- (6) Tape recordings of official meetings shall be provided to the Tribal Council upon demand but do not have to be provided to the public. The Tribal Council is empowered to release copies of the tape recordings or transcripts therefore to the public upon reasonable request. Reasonable and prudent attempts must be made to protect the privacy and safety of individuals concerned with the release of any tape recording or transcript requested under this ordinance.
- (7) A chair and vice-chair shall be selected from within the members to officiate at meetings.

(8) A secretary shall be selected from within the members to be responsible for producing and maintaining records of official meeting, minutes and so forth.

Enacted pursuant to Bad River Tribal Council Resolution 10-25-01-174

CHAPTER 1100 - HEALTH AND DISABILITY BENEFITS (WORKER'S COMPENSATION)

Section 1100.1 - Purpose.

The Bad River Tribal Council may authorize the Tribe to offer health and/or disability insurance, including at its option, opting into the State of Wisconsin's Worker's Compensation system, to all full time employees, as defined in the Bad River Personnel and Policy Manual, of the Bad River Tribe, including its enterprises.

Section 1100.2 - Exclusive Remedy.

If the Tribe elects to offer health and disability benefits to Tribal Employees, such benefits shall be the sole and exclusive remedy for claims and compensation resulting from any work related injury or illness. If the Tribe elects to offer a comprehensive health insurance coverage to its employees for off-duty injury or illness, the benefits and coverage contained in the policy shall be the exclusive remedy for claims and compensation resulting for any non-work related injury or illness. If the Tribe opts not to offer health and/or disability insurance to its employees then there shall be no remedy available from the Tribe for injury sustained at the workplace.

Section 1100.3 -Index

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Section 1100.4 - Definitions

(1) This chapter may be referred to as the “Workers Compensation Ordinance” and allowances, recoveries and liabilities under this chapter constitute “Worker’s Compensation”.

(2) In the this chapter:

(a) “Compensation” means worker’s compensation.

(b) “Injury” means mental or physical harm to an employee while working in the scope of their employment caused by accident or disease, and also means damage to or destruction if artificial members, dental appliances, teeth, hearing aids and eyeglasses, but in the case of hearing aids or eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employee to compensation therefor either for disability or treatment.

(c) “Order” means any decision, rule, regulation, direction, requirement or standard of the Tribal Council or Tribal Court.

Section 1100.5 - Conditions of Liability.

(1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employee sustains an injury.

(b) Where, at the time of the injury, both the employer and employee are subject to the provisions of this chapter.

(c)(1) Where, at the time of the injury, the employee is performing service growing

out of and incidental to his or her employment.

(c)(2) Any employee going to and from his or her employment in the ordinary and usual way, while on the premises of the employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, any employee going between the employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way or any firefighter or municipal utility employee responding to a call for assistance outside the limits of his or her village, unless that response is in violation of law, is performing service growing out of and incidental to employment.

(c)(3) An employee is not performing service growing out of and incidental to his or her employment while going to or from employment in a private group or employer-sponsored car pool, van pool, commuter bus service or other ride-sharing program in which the employee participates voluntarily and the sole purpose of which is the mass transportation of employees to and from employment. An employee is not performing service growing out of and incidental to employment while engaging in a program designed to improve the physical well-being of the employee, whether or not the program is located on the employer's premises, if participation in the program is voluntary and the employee receives no compensation for participation.

(c)(4) The premises of the employer include the premises of any other person on

whose premises the employee performs service.

(c)(5) To enhance the morale and efficiency of Tribal employees and attract qualified personnel to work for the Band, it is the policy of the Bad River Band that the benefits of this chapter shall extend and be granted to employees in the service of the Band:

(1) Where the injury is not intentionally self-inflicted.

(2) Where the accident or disease causing injury arises out of the employees employment.

(3) Every employee whose employment requires the employee to travel shall be deemed to be performing service growing out of and incidental to the employee's employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of the employee's employment.

(4) Members of the Tribal Council are covered by chapter when they are engaged in performing their duties as Tribal Council members including:

(1) While performing services growing out of and incidental to their function as Tribal Council members;

(2) While performing their official duties as members of committees or other official bodies created by the Tribal Council;

(3) While traveling to and from the Chief Blackbird Center to to perform their duties as Tribal Council members; and

(4) While traveling to and from any place to perform services

growing out of and incidental to their function as Tribal Council members, regardless of where the trip originated, and including acts reasonably necessary for living are not deviations.

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier. This section does not limit the right of an employee to bring action against any co-employee for assault intended to cause bodily harm, or against a co-employee for negligent operation of a motor vehicle not owned or leased by the employer.

(3) Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker's compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, insurance service organization to liability for damages for an injury resulting from providing or failing to provide the inspection or services.

(4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of a tribal health and disability insurance policy in effect as of the date of the injury.

(5) If an employee of the Band, while working outside the territorial limits of this Band, suffers an injury on account of which the employee, or in the event of the employee's death, his or her dependents would have been entitled to the benefits provided by this chapter.

Section 1100.6 - Joint Liability of Employer and Contractor

An employee shall not recover compensation for the same injury from more than one party. If the Band pays compensation to an employee it may recover the same from the other employer for whom the employee was working at the time of the injury if such contractor, subcontractor or other employer as defined herein above.

Section 1100.7 - Employee Defined.

“Employee” as used in the chapter means:

(a) Every person, including all officials, in the service of the Band whether elected or under any appointment, or express contract of hire, and whether a resident or employed or injured within or outside the boundaries of the Reservation.

(b) Every member of the Bad River Police Department or Volunteer Fire Department or Ambulance Service.

(c) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

(1) Maintains a separate business with his or her own office, equipment, materials and other facilities.

(2) Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on work or service in the previous year.

(3) Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing

the services or work.

(4) Incurs the main expenses related to the service or work that he or she performs contract.

(5) Is responsible for the satisfactory completion of work or services the he or she contracts to perform and is liable for a failure to complete the work or service.

(6) Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.

(7) May realize a profit or suffer a loss under contracts to perform work or service.

(8) Has continuing or recurring business liabilities or obligations.

(9) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

(10) The Tribal Council may by resolution, prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employees for the purposes of this chapter.

(11) A juvenile performing uncompensated community service work as a result of a disposition ordered by the Bad River Tribal Court is considered an employee. No compensation may be paid to that employee for temporary disability during the healing period.

(12) An adult performing uncompensated community service work under is considered an employee of the Band. No compensation may be paid to that employee for temporary disability during the healing period.

(13) A prisoner of a county jail who is assigned to the Huber Program who

performs compensated work for the Band is considered an employee of the Band.

(14) A participant in a trial job or on probation is considered an employee of the Band and shall receive benefits under this chapter from the date of hire so long as he or she is otherwise eligible under this chapter.

Section 1100.8 - Health Benefits

The Tribal Council, in its discretion may contract with an insurance carrier or offer a self-insured health insurance benefit plan to its employees. The health insurance plan, if any, shall constitute the health benefit made available by the Band to employees for work related injuries, injured workers.

Section 1100.9 - Temporary Disability

The Tribal Council may, in its discretion, contract with an insurance carrier or offer a self-insured disability benefit to its employees. The disability plan, if any, shall constitute the health benefit made available by the Band to employees for disability compensation.

Section 1100.10 - Earnings, method of computation

The method of calculating disability payments shall be established by the Tribal Council and promulgated in the disability policy, if any, sponsored by the Band.

Section 1100.11 - Notice of Injury, Laches

Eligibility for a claim for compensation is contingent upon an employee qualifying for health coverage and/or disability compensation. Criteria for qualification shall be approved by the Tribal Council and all benefits and eligibility requirements for compensation will be published and made widely available to all employees. At a minimum, the criteria shall include policies and procedures for timely notice from the employee to the Band of injury. The notice shall, at a

minimum, include the date, time, nature of injury, and place of injury and any potential or actual witnesses to the injurious event. The notice shall be signed by the employee's supervisor. Further policies and procedures may be developed to supplement the above minimum requirements.

Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and no application is filed within 2 years from the date of the injury or death, or from the date of the employee or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation therefore is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the Band's own motion has the same effect for the purposes of this section as the filing of an application.

Section 1100.13 - Examination; Competent Witnesses; Exclusion of Evidence; Autopsy

(1)(a) Whenever compensation is claimed by an employee, the employee shall, upon the written request of the Band or insurer, submit to reasonable examinations by physicians, chiropractors, psychologists, dentists or podiatrists provided and paid for by the Band or insurer. A claim may be denied if an employee refuses to submit to an examination under this paragraph.

(1)(b) When compensation is claimed for loss of earning capacity the employee shall, on the written request of the Band, submit to reasonable examinations by vocational experts provided and paid for by the Band.

(1)(c) The employee is entitled to have physician, chiropractor, psychologist, dentist or podiatrist provided by himself or herself present at the examination and to receive a copy of all reports of the examination that prepared by the examining physician, chiropractor, psychologist,

podiatrist, dentist or vocational expert immediately upon receipt of those reports by the Band or insurer. The Band's written request for examination shall notify the employee of all of the following:

(1) The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert.

(2) The procedure for changing the proposed date, time and place of the examination.

(3) The employee's right to have his or her physician, chiropractor, psychologist, dentist or podiatrist present at the examination.

(4) The employee's right to receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert immediately upon receipt of these reports by the employer or insurer.

(1)(d) So long as the employee, after a written request from the Band or insurer which complies with par. (c), refuses to submit to or in anyway obstructs the examination, the employee's right to begin or maintain any proceeding for the collection of compensation is suspended. If the employee refuses to submit to the examination after direction by the Band or in anyway obstructs the examination, the employee's right to the weekly indemnity which accrues and becomes payable during the period of that refusal or obstruction, is barred. Subject to paragraph (e):

(4) Any physician, chiropractor, psychologist, dentist, podiatrist or vocational expert who is present at any examination under par. (a) may be required to testify as to the results thereof.

(5) Any physician, chiropractor, psychologist, dentist or podiatrist who attended a worker's compensation claimant for any condition reasonably related to the condition for which the claimant claims compensation may be required to testify before the Tribal Council when it so directs.

(6) Notwithstanding any chapter provisions except par. (e), any physician, chiropractor, psychologist, dentist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, Band, insurer reports relative to a compensation claim.

(7) The testimony of any physician, chiropractor, psychologist, dentist or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

(1)(e) No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony.

(2)(a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Any physician, chiropractor, psychologist, dentist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or Band or its representative, provide that

person with any information or written material reasonably related to any injury for which the employee claims compensation.

(2)(b) A physician, chiropractor, podiatrist, psychologist, dentist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs including reasonable attorney fees.

(3)(a) If 2 or more physicians, chiropractors, psychologists, dentists or podiatrists disagree as to the extent of an injured employee's temporary disability, the end of an employee's healing period, an employee's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the Band may appoint another physician, chiropractor, psychologist, dentist or podiatrist to examine the employee and render an opinion as soon as possible. The Band shall promptly notify the claimant of this appointment.

(3)(b) If the employee has not returned to work, payment for temporary disability shall continue until the terms regarding length of disability payments expires or the Band receives the opinion. The Band or its insurance carrier or both shall pay for the examination and opinion. The Band or insurance carrier or both shall receive appropriate credit for any overpayment to the employee.

Section 1100.14 - Rules of Procedure; Transcripts

(1) All testimony at any hearing held under this chapter shall be recorded by a recording

machine.

Section 1100.15 - Submission of Claims

All claims made by employees for compensation under this chapter shall be submitted to the Tribal Benefit Specialist who shall review the claim for evaluation of eligibility of payment. The Tribal Benefit Specialist shall evaluate each claim for payment of benefits based on the eligibility criteria and available benefits established in this chapter and the health and disability plan which may be adopted by the Band. The Tribal Benefit Specialist shall promptly evaluate all claims and either pay out health and/or disability benefits to eligible employees or deny such claims. A complete explanation of benefits, or in the case of a denial of benefits statement shall be forwarded to the employee.

Section 1100.16 - Disputes, Procedure; Notice of Hearing, Witnesses, Contempt; Testimony, Medical Examination

(1)(a) Employees who dispute either the amount and nature of the benefit offered, or are denied benefits by the Tribal Benefit Specialist shall file a dispute as outlined under this section. The Band may bring in additional parties by service of a copy of the application. The Band shall cause notice of hearing on the application to be given to each party interested, by service of such notice on the interested party personally or by mailing a copy to the interested party's last-known address at least 10 days before such hearing. In case a party in interest is located outside the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed and sent by registered or certified mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state. A hearing may be adjourned in the discretion of the

Band, and hearings may be held at such places as the Band designates.

(1)(b) In any dispute or controversy pending before the Band, the Band may direct the parties to appear before the Tribal Council for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports and bills which may avoid unnecessary proof and such other matters as may aid in disposition of the dispute or controversy. After this conference the Tribal Council may issue an order requiring disclosure or exchange of any information or written material which it considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange within the time stated in the order, the Band may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The Band shall provide each party with a copy of any order.

(1)(c) All parties shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the Tribal Council.

(1)(d) The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of certified reports by experts concerning loss of earning capacity presented by a party for compensation constitute prima facie evidence as to the matter contained in them, subject to any rules and limitations the Tribal Council prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to subject

himself or herself to cross-examination also constitute prima facie evidence as to the matter contained in them. Certified reports of physicians, podiatrists, surgeons, psychologists and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment and cause and extent of the disability. Certified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, tribe, or of any other hospital or sanatorium in the State of Wisconsin which is satisfactory to the Tribal Council, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the record of the patient in questions, and made in the regular course of examination of such patient, constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The Tribal Council may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide information concerning loss of earning capacity. The Tribal Council may not admit into evidence a certified report of a practitioners or other expert or a record of a hospital or sanatorium that was not filed with the Tribal Council and all parties in interest at least 7 days before the date of the hearing, unless the Tribal Council is satisfied that there is good cause for the failure to file the report.

(1)(e) The Tribal Council may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the Band to be examined by any Tribal Council member examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist,

dentist or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the Tribal Council for its consideration upon final hearing. All ex parte testimony taken by the Tribal Council shall be reduced to writing and either party shall have opportunity to rebut such testimony on final hearing.

(1)(f) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt as to the extent or cause of disability or death, the Tribal Council may direct that the injured employee be examined or autopsy be performed, or an opinion of a physician, chiropractor, dentist, psychologist or podiatrist be obtained without examination or autopsy, but an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the Tribal Council who is not under contract with or regularly employed by the Band or Insurer. The expense of such examination shall be paid by the Band. The report of such examination shall be transmitted in writing to the Tribal Council and a copy thereof shall be furnished by the Tribal Council to each party, who shall have an opportunity to rebut such report on further hearing.

(2) Any party, including the Tribal Council, may require any person to produce books, papers and records at the hearing by personal service of a subpoena upon the person.

(3) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in the Bad River Tribal Code Section 115.1 and must be served in the manner provided in the Bad River Tribal Code Section 115.2. The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the Band responsible for conducting the proceeding.

(4) Any person who shall willfully and unlawfully fail or neglect to appear or testify or to produce books, papers and records as required, shall be fined not less than \$25 nor more than \$100.00 each day such person shall so refuse or neglect shall constitute a separate offense.

(5) The right of an employee, the employee's legal representative or dependent to proceed under this section shall not extend beyond 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been payable if no advancement were made, whichever date is latest.

(6) This section does not limit the time within which the Band may bring an action to recover benefits fraudulently obtained.

(7) If an employee or dependent shall, at the time of injury, or at the time the employee's or dependent's right accrues, be under 18 years of age, the limitations of time within which the employee or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after the employee or dependent attains the age of 18 years. If, within part of the last of any such period of limitation, an employee, the employee's personal representative, or surviving dependent be insane or active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

(8)(a) Testimony or certified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employee's actual loss of earning capacity.

(8)(b) Except as provided in par. (c), the Tribal Council shall exclude from evidence, testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the Tribal Council and the other parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the Tribal Council shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the Tribal Council and the other parties of interest, at 45 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

(8)(c) Unless otherwise agreed to by all parties, an injured employee shall file with the Tribal Council and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental compensation claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment including the injured employee's destination, number of trips, round trip mileage and meal and lodging expenses. The Tribal Council may not admit into evidence any information relating to medical expenses and incidental compensation claimed by an injured employee if the injured employee failed to file with the Band and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation claimed by the injured employee, unless the Tribal Council is satisfied that there is good cause for the failure to file and serve the itemized statement.

Section 1100.17 - Apportionment of Liability

(1) If it is established at the hearing that 2 or more parties have each contributed to a physical or mental condition for which benefits would be otherwise due, liability for such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

(2) If after a hearing or a pre-hearing conference the Tribal Council determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation and one of the parties is the Band, the Tribal Council may order the Band to pay its prorated share in an amount, time and manner as determined by the Tribal Council. If the Tribal Council later determines that another party is liable for compensation, the Tribal Council shall authorize the Band to seek reimbursement from the responsible party.

Section 1100.18 - Findings, Orders and Awards

(1)(a) All parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but disposition of application may be made by compromise, stipulation, agreement or default without hearing.

(1)(b) Within 45 days after the final hearing and close of the record, the Tribal shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the Tribal Council may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The Tribal Council may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding

25% of each amount which shall not have been paid as directed thereby.

(2) A party in interest may petition the Tribal Council for reconsideration of its decision awarding or denying compensation if the Tribal Council receives the petition within 21 days after the Tribal Council mailed a copy of the findings and order to the party's last known address. The Tribal Council shall dismiss a petition for reconsideration which is not timely filed unless the petitioner shows probable good cause that the reason for failure to timely file was beyond the petitioner's control. If no petition is filed within 21 days from the date that a copy of the findings or order is mailed to the last known address of the parties in interest, the findings or order shall be considered final.

(2)(a) On its own motion, for reasons it deems sufficient, the Tribal Council may set aside any final order or award within one year the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

(2) Affirm, reverse or modify, in whole or in part, the order or award.

(3) Reinstate the previous order or award.

Section 1100.19 - Employees Confined in Institutions; Payment of Benefits

In case an employee is adjudged insane or incompetent, or convicted of a felony, and is confined in a public institution and has dependents wholly dependent upon the employee for support a person, whose dependency is determined as if the employee were deceased, compensation payable during the period of the employee's confinement may be paid to the employee and the employee's dependents, in such manner, for such time and in such amount as the Tribal Council may determine.

Section 1100.20 - Judicial Review

(1)(a) The findings of fact made by the Tribal Council acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section. Within 30 days after the date of an order or award made by the Tribal Council either originally or after the filing of a petition for reconsideration any party aggrieved thereby may be serving a complaint as provided in Bad River Tribal Code Chapter 111 and filing the summons and complaint with the clerk of the Bad River Tribal Court commence, in Tribal Court, an action against the Tribal Council for the review of the order or award, in which action the adverse party shall also be made a defendant. If the Tribal Court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days.

(1)(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the Tribal Council or agent authorized by the Tribal Council to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the Tribal Court shall mail one copy to each other defendant.

(1)(c) The Tribal Council shall serve its answer within 45 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order referred to in the complaint, with the same effect as if the party had commenced a separate action for the review of the order or award referred to in the complaint, with the same effect as if the

party had commenced a separate action for the review thereof.

(1)(d) The Tribal Council shall return to the court all of the documents and papers on file in the matter, and of all testimony which has been taken, and of the Council's order, findings and award. Executive sessions minutes shall not have to be made available to any party. The action may thereupon be brought on for hearing before the court upon the record by either party on 10 days notice to the other; subject however, to the provisions of a law for a change of the place of trial or the calling in of another judge.

(1)(e) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the Tribal Council acted without or in excess of its powers.
2. That the order or award was procured by fraud.
3. That the findings of fact by the Tribal Council do not support the order or award by preponderance of the evidence presented before the Council.

(2) Upon the trial of any such action the court shall disregard any irregularity or error of the Tribal Council unless it is made to affirmatively appear that the plaintiff was damaged thereby.

(3) The record in any case shall be transmitted to the Band within 5 days after expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such order or judgment.

(4) Whenever an award is made against the Band, the General Counsel may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub.

(1).

(5) The commencement of action for review shall not relieve the Band from paying compensation as directed, when such action involves only the question of liability as between the Band and one or more insurance companies or as between several insurance companies.

(6) If the Tribal Council's order or award depends on any fact found by the Tribal Council, the court shall not substitute its judgment for that of the Council as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the Tribal Council's order or award and remand the case to the Third Party Administrator or Tribal Benefits Specialist or if the Tribal Council's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

Section 1100.21 - Appeal from Judgment on Award

(1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal therefrom within the time period specified in the Bad River Tribal Code Chapter 121.

Section 1100.22 - Fees and Costs

No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between parties shall be in the discretion of the court.

Section 1100.23 - Third Party Liability

(1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or

maintain an action in tort against any party other than the Band for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury affect the right of the injured employee or the employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the Band pays or is obligated to pay a claim under this chapter the Band shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

(2) No employee who is loaned by his or her employer to the Band and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band who accepted the loaned employee's services.

(3) No participant in a community service job sponsored by the Band or is provided worker's compensation coverage by a Wisconsin works agency, as defined under Wis. Stat. §49.001(9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the Band.

Section 1100.24 - Other Insurance Not Affected; Liability of Insured Employer

(1) This chapter does not affect the right of the Band to insure in mutual or other companies against such liability or against the liability for the compensation provided for by this chapter.

(2) The Band may provide by mutual or other insurance, by arrangement with

employees or otherwise, for the payment to those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided under this chapter. Liability for compensation is not affected by any insurance, contribution or other benefit due to or received by the person entitled to that compensation.

(3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee's weekly wage.

(4) Payment of compensation under this chapter by either the Band or the insurance company directly to the employee or the person entitled to compensation is subject to the conditions of the policy.

Section 1100.25 - Department Forms and Records; Public Access

(1) The Band shall print and furnish free to any employer or employee such blank forms

as it shall deem requisite to facilitate efficient administration of this chapter; it shall keep such record books or records as it shall deem required for the proper and efficient administration of this chapter.

(2)(a) Except as provided in par. (b), the records of the Band related to the administration of this chapter are subject to inspection and copying.

(2)(b) Notwithstanding par. (a), a record maintained by the Band that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability,

the amount, type or duration of benefits paid to the employee or any financial information provided to the Band is confidential and not open to public inspection or copying. The Band may deny a request made or refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the Tribal Council for use pursuant to this Chapter.

2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is the Band or an insurance carrier or is a party to any worker's compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or Band, except that the Band is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the Band in finding the record requested. An attorney or authorized agent of a party to an employee's worker's compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the Band.

3. A court of competent jurisdiction orders the Band to release the record.

4. The requester is the subunit of the department that administers child and spousal support or a county child support agency under Wis. Stat. §59.53(5), the request is made under Wis. Stat. §49.22(2m) and the request is limited to the name and address of the employee

who is the subject of the record, the name and address of the employee's employer and any financial information about that employee contained in the record.

5. The federal or state department of revenue requests the record for the purpose of locating a person, or the assets of a person, who has failed to file tax returns, who has under reported taxable income or who is a delinquent taxpayer; identifying fraudulent tax returns; or providing information for tax-related prosecutions.

(3) TREATMENT REJECTED BY EMPLOYEE. Unless the employee shall have elected Christian Science treatment in lieu of medical, surgical, dental or hospital treatment, no compensation shall be payable for the death or disability of an employee, if the death be caused, or insofar as the disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical, surgical or dental treatment or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or medical treatment when found by an independent medical doctor to be necessary. The right to compensation accruing during a period of refusal or neglect to submit to or follow hospital or medical treatment when found by a medical doctor to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.

Section 1100.26 - Maximum Limitations

The maximum allowable benefits under this Chapter available to employees, if any, shall be outlined in the disability policy designated by the Band to be the disability policy for this Chapter.

Section 1100.27 - Benefits Payable to Minors; How Paid

Compensation and death benefit payable to an employee or dependent who was a minor

when the employee's or dependent's right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employee or dependent as may be found best calculated to conserve the employee's or dependent's interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employee's or dependent's 18th birthday.

Section 1100.28 - Death Benefit

Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit if obtained by the Band shall be limited to the amount specified in the policy for this purpose.

Section 1100.29 - Burial Expenses

In all cases where death of an employee proximately results from the injury, the Band may provide burial expense insurance in which case the Band, through its insurer shall pay the reasonable expense for burial in the amount specified in the policy obtained by the Band.

Section 1100.30 - Decreased Compensation

If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute or lawful order of the Band and are adequately maintained, and the use of which is reasonably enforced by the Band, or if the injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the Band for the safety of the employee by alcohol beverages, as defined in Wis. Stat. §125.02(1), or use of a controlled

substance, as defined in Wis. Stat. §961.01(4), or a controlled substance analog, as defined in Wis. Stat. §961.01(4m), the compensation provided in this chapter shall be reduced 15% but the total reduction may not exceed \$15,000.

Section 1100.31 - Sovereign Immunity

By enacting this ordinance the Tribe in no way waives its inherent sovereignty and with all rights and privileges, including but not limited to sovereign immunity.

CHAPTER 1300 - CHAPTER OF NON-PROFIT ECONOMIC ORGANIZATIONS

Section 1300.1 - Introduction

The following is the ordinance authorizing the charter of subordinate non-profit economic organizations for the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 1300.2 - Purpose

The Bad River Band seeks to encourage the formation of charitable organizations within the exterior boundaries of the Bad River Reservation its works both on and off the Bad River Reservation. By this ordinance the Bad River Band authorizes the charter and regulation of charitable organizations.

Section 1300.3 - Scope

The chartering of charitable organizations applies to specifically designated tribally sanctioned non-profit operations and/or enterprises subordinate to the Bad River Tribal Government.

Section 1300.4 - Authority

This Ordinance is enacted pursuant to Article VI, Section 1(o) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians. Economic enterprises chartered under this chapter are enacted under the auspice of Section 16 of the Indian Reorganization Act of 1934, 25 United States Code Section 476 (governmental powers) and shall not be deemed to be managed or otherwise formed pursuant to the Band's Corporate Charter pursuant to 25 United States Code Section 477.

Section 1300.5 - Severability

If any portion of this ordinance is found to be invalid for any reason, the remaining portions of this ordinance shall remain in effect.

Section 1300.6 - Non-Profit Charter Authorization

Under this chapter the Tribal Council shall have the authority to charter subordinate non-profit organizations.

Section 1300.7 - Approval Authority

The Tribal Council shall have the authority to approve organizational by-laws and any amendment made thereto. The Tribal Council shall require at a minimum the following from all economic entities chartered under this chapter:

- (a) By-laws outlining the composition of the board of directors and officers, the powers and duties of said directors and officers. Proposed terms of office, provisions for the replacement and succession of directors and officers. Quorum requirements, and provisions for meetings.
- (b) Creation of separate bank account done under the auspices of the Bad River Accounting Department.
- (c) A three year business plan including a market analysis concerning prospective

business and a budget for the enterprise, board and officers, salaries, wages, fringe benefits.

(d) Insurance plan, including unemployment, worker's compensation, liability, bonding, and other applicable insurance.

(e) Space and warehousing area and cost analysis.

(f) Employment policies (hiring, firing overtime, vacations, sick leave, health insurance

etc.)

(g) Evaluation plan to determine profitability, success of business, criteria for continuing business operation.

(h) A plan to wrap up the organization and dispose of business assets and/or liabilities.

(i) Any other market study, informational requirement deemed necessary by the Tribal Court.

Section 1300.8 - Appointment Authority

The Tribal Council shall have the authority to appoint board members to any non-profit organization chartered under this chapter. The boards shall serve at the pleasure of the Tribal Council. Board members may be removed without cause at any time by a majority vote of the Tribal Council.

Section 1300.9 - Authorization To Contract

Subject to this chapter, the Tribal Council may delegate the authority to enter into and otherwise bind any non-profit organization chartered under this chapter and may also limit said authority.

Section 1300.10 - Wavier of Sovereign Immunity

The Tribal Council may authorize officials representing any non-profit organization chartered under this chapter to waive immunity on behalf of the non-profit organization only from suit attendant up to a contract or obligated amount but not over a stated contract amount and shall not attach to Tribal assets other than those designated to the non-profit organization. In instances where the Tribal Council authorizes an organization chartered under this chapter, a specific contract shall be extended to the organization by the Tribal Council under separate letter. In no instance shall the contract limit be extended without the express written consent and authorization of the Tribal Council.

Section 1300.11 - Dispute Resolution

Unless otherwise authorized beforehand by the Tribal Council, all non-profit organizations chartered under this chapter shall only consent to settle disputes in the Bad River Tribal Court.

Section 1300.12 - Tort Liability

Non-profit organizations chartered under this chapter shall maintain sufficient tort liability insurance commensurate with the risk involving their respective activity and specifically approved by the Tribal Council and shall not allow the insurer to invoke the defense of sovereign immunity up to the limit of such insurance coverage.

Section 1300.13

The chartered organization shall include the phrase “Non-Profit Business Organization Chartered by the Bad River Band” in it logo and letterhead.

Section 1300.14

Non-profit organizations chartered under this chapter may seek tax-exempt status under section 501.C of the United States Internal Revenue Code.

Passed by the Bad River Tribal Council via Resolution # 5-30-02-285

CHAPTER 1500 -BAD RIVER BAND OF WISCONSIN CHIPPEWA MOTOR VEHICLE LICENSING ORDINANCE

Section 1500.1 - Introduction

This ordinance of the Bad River Tribal Code Chapter 1500 is enacted by the Bad River Band to provide for the establishment of standards for the registration of motor vehicles, the establishment of lawful regulations for the operation of motor vehicle and other related purposes.

Section 1500.2 - Purpose

The Bad River Tribal Council of the Bad River Band finds that the issuance of motor vehicle license plates within the boundaries of the Reservation has a direct affect on the political integrity, economic security and health and welfare of its members. Pursuant to the inherent powers of the Bad River Band to exercise civil regulatory authority in such matters and pursuant to the authorities vested in the Bad River Tribal Council, the Bad River Band Tribal Council has enacted this Bad River Band Licensing Ordinance regulating motor vehicle licensing within the exterior boundaries of the Bad River Reservation.

Section 1500.3 - Application

The provisions of the Bad River Band Motor Vehicle Licensing Chapter 1500 shall apply to
to
vehicle owners who are enrolled members of the Bad River Tribe and who reside or are domicile within the exterior boundaries of the Bad River Reservation, and to vehicles owned and operated by the governing body of the Bad River Band.

Section 1500.4 - Authority

This ordinance is enacted pursuant to Article VI, Sections 1(j) (m) and (q) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 1500.5 - Definitions

In this Ordinance the following words and phrases have the designated meanings unless a different meaning is expressly provided or the content clearly indicates a different meaning. For the purpose of effectuating the terms of this Ordinance, any terms not defined herein shall have the meanings given to them in the statutes of the State of Wisconsin, as amended from time to time, except where the context otherwise indicates or requires.

(a) “Court” means the Bad River Tribal Court or any other court having jurisdiction over matters that arise from the application of this Ordinance.

(b) “Bad River Band” means Bad River Band of Lake Superior Chippewa.

(c) Bad River Reservation – means all lands within the boundaries of the Bad River Reservation as established by the Treaty of September 30, 1854.

(d) Manufacturer – means every person engaged in the business of constructing or assembling vehicles of a type for which a certificate of title is required hereunder.

(e) Manufacturer’s or Importer’s Certificate of origin – means a certificate over the authorized signature of the manufacturer or importer of a vehicle, describing and identifying the vehicle, giving the name and address of the person to whom the vehicle is first sold by the manufacturer or importer, and containing assignments, duly executed, assigning the same to an applicant for a certificate of title on the vehicle for the Bad River Band.

(f) “Mobile Home” means a vehicle designated to be towed as a single unit or in sections upon the highway by a motor vehicle and equipped and used or intended to be used,

primarily for human habitation, with walls of rigid uncollapsible construction.

(g) “Owner” means a person, other than a secured party, having the property in or title to a vehicle. This term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. An Owner also means any person, firm, association, or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

(h) “Register” means the act of assigning registration plates and validation stickers to a vehicle, and to renew the same.

(i) “Registrar” means the duly appointed Registrar of Motor Vehicles of the Bad River Band and any designees of the Registrar.

(j) “Secured Party” means a lender, seller or other person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party having an interest in the vehicle.

(k) “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway or roadway.

Section 1500.6 - Application Process: Forms

Application for original registration and for renewal or registration shall be made to the Registrar of Motor Vehicles of the Bad River Band upon forms prescribed by the Registrar and shall be accompanied by the required fee.

Section 1500.6.1 - Required Information

Applications for original registration of a vehicle shall contain the following information:

- (a) The full name of the owner.
- (b) The address of the owner.
- (c) A description of the vehicle, including make, model and year, identifying number and any other information which the Bad River Band may reasonably require for the proper identification of the vehicle.
- (d) Such further information as the Registrar may reasonably require to determine whether the vehicle is by law entitled to registration or to determine the proper registration fee for the vehicle.

Section 1500.7 - Application by Person under the age of 18

If the applicant for a certificate of registration is under 18 years of age, with the minimum age being 16 years of age, the application shall be accompanied by a statement made and signed by the applicant's father or mother if he or she has custody of the applicant; or if neither parent has custody, then by the person or guardian having such custody, stating that the applicant has the consent of such person or guardian to register such vehicle in the applicant's name. The signature of such statement shall not impute any liability for the negligence or misconduct of the applicant while operating such motor vehicle on the highways. Any person who violates this Section may be fined not more than \$500.00 or given same equivalency in community service, or both.

Section 1500.8 - Ground for Refusing Registration

The Registrar shall refuse registration of a vehicle under the following circumstances:

- (d) No registration shall be issued unless the applicant is residing or domicile within the boundaries of the Bad River Reservation;
- (e) The required fee has not been paid;

(f) The applicant has failed to furnish the information or documents required by the Bad River Band pursuant to this ordinance;

(d) Because certificate of title is a prerequisite to registration of the vehicle and the applicant does not hold a valid certificate of title and is not entitled to the issuance of a certificate of title, because of court order or death;

Section 1500.9 - Vehicles Exempt from Registration

A vehicle, even though operated upon roads within the boundaries of this Reservation, is exempt from registration when such vehicle:

(a) Is operated in accordance with the provisions exempting nonresident or foreign-registered vehicles from registering;

(b) Is an implement of husbandry used exclusively in or incidental to agricultural operations, not to include trucks;

(c) Is a trailer or semi-trailer permanently equipped with a well-drilling outfit and used exclusively for such purposes;

(d) Is a forklift truck, a specially constructed road or truck tractor used for shunting trailers or semi-trailers in terminal areas;

(e) Is a fixed trailer or semi-trailer which is not to be operated in conjunction with a motor vehicle;

(f) Is a motor vehicle being towed;

(g) Is a piece of road machinery;

(h) Is a motor truck which is operated upon a highway only when directly crossing such highway; or

(i) Is a motor vehicle currently registered in another Jurisdiction.

Section 1500.10 - Twenty-One Day Permit; Temporary Registration Certificate

A vehicle may be operated by a private person after the date of purchase of such vehicle by such private person, or after the date such person moved to this reservation or lands subject to the jurisdiction of the Band, once the person has obtained a temporary 21-day registration certificate from the Registrar. The owner shall make application upon forms prescribed by the Registrar and remit the required fee of \$5.00. All temporary certificates shall be affixed to the interior rear window of the vehicle, on the driver's side of the car and in a position as not to obstruct the rear-view of any driver. The Registrar shall issue no other temporary registration certificate upon expiration of the first 21-day permit.

Section 1500.11 - Penalty for operating Unregistered or Improperly Registered Vehicle(s)

It is unlawful for any person to operate or for an owner to consent to being operated on any public roads within the boundaries of the Bad River Reservation, any motor vehicle, trailer, or semi-trailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question either is registered with the Bad River Reservation another jurisdiction or is exempt from registration.

Section 1500.11.1

All vehicles subject to renewal or registration may be operated provided that application of re-registration has been made.

Section 1500.11.2

Any person violating Section 1500.6 shall forfeit not less than \$5.00 and not more the \$50.00 or given the same in equivalent community service, or both. In addition to imposing the

penalty, the Court shall order the offender to make application for registration or re-registration and to pay the fee thereof.

Section 1500.11.3

If upon order of the Court to register or re-register a vehicle, the owner fails to comply, the Court shall have the power to order any Law Enforcement Officer of the Band to seize and impound any unregistered or unlawfully registered vehicle and to hold the same until such time as the owner complies with the provisions of the Ordinance. All costs incurred in the holding, seizure by order of the Court shall be the responsibility of the owner of the vehicle. Any vehicle held, under seizure order of the Court, shall be sold at public auction to the highest bidder, including all costs incurred, after thirty (30) days from the date of seizure. The owner of the vehicle shall have the right to petition the Court to halt any public auction of the said vehicle at any time prior to the sale. The Registrar shall have the right to reject any and all bids received which are less than the appraised value of the vehicle. All proceeds derived from the sale of the vehicle, less all costs incurred by the Band, including monetary assessments shall become the property of the legal owner as defined in Section 2.07. If, in the event the sale does not realize sufficient proceeds to pay off any security interest, the owner prior to auction shall be obligated to the secured party for any balance remaining. The secured party shall have the right to be listed as a secured party on any other certificate of title for a vehicle registered in the Band and owned by the person prior to the auction. Nothing herein shall limit the rights of any secured party in any vehicle registered with the Bad River Band.

Section 1500.12 - Removal of Registration

Applications for removal of registration shall contain the information required in Section

3.01 for application or such parts thereof as the Registrar deems necessary to assure the proper registration of the vehicle.

Section 1500.13 - Design, Procurement and Issuance of Registration Plates

The Band shall determine the size, color, and design of registration plates provided the plates contain visible evidence of the period for which the vehicle is registered, as well as being a means of identifying the specific vehicle or owner that the plates were issued to.

Section 1500.13.1

The Registrar upon registering a vehicle pursuant to this ordinance shall issue and deliver prepaid to the applicant two registration plates for each automobile, motor truck, motor bus, school bus or self-propelled mobile home registered.

Section 1500.13.2

The Registrar upon registering a trailer or motorcycle pursuant to this Ordinance shall issue and deliver prepaid to the applicant one registration plate.

Section 1500.13.3

All registration plates shall have displayed upon the following:

- (a) The registration number or letter assigned to the vehicle or owner.
- (b) The name “Bad River Band” or an abbreviation thereof.
- (c) An indication of the period for which the specific plates are issued or the date of expiration of registration.
- (d) All registration plates issued shall be treated with a reflective material.

Section 1500.14 - Issuance of Replacement or Duplicate Plates

Whenever current registration plates are illegible, lost or destroyed the owner of the vehicle

shall immediately apply to the Registrar for replacements. Upon satisfactory proof of the loss or destruction of the plates and upon payment of a fee of \$5.00 and the cost of replacement, the Registrar shall issue a replacement.

Upon receipt of his replacement plates, the applicant shall forthwith surrender to the Registrar his illegible plates. When issuing replacement plates, the Registrar may assign a new number and issue new plates rather than a duplicate of the original if in his judgment that is in the best interest of the economy or prevention of fraud. In such event, the person receiving the replacement plates shall surrender current plate(s).

Section 1500.15 - Penalty for Failure to Surrender Illegible Plates

Any person issued replacement plates who fails to surrender his or her illegible plates as required by Section 1500.14 may be required to pay a forfeiture of not less than \$5.00 and not more than \$100.00.

Section 1500.16 - Disposition of Plates Upon Sale of Vehicle

Registration plates shall remain with the owner upon sale or disposal of the vehicle.

Section 1500.17 - Transfer of Registration Plates

Registration plates may be transferred upon application as prescribed in Section 1500.6.1 of this ordinance, including additional information as the Registrar may deem necessary, and upon payment of transfer fees and any additional registration fees. Transfer of staggered registration may require a pro-rating of registration fees at 1/12th the total cost of registration for the remaining portion of previous registration, with a credit allowed for the unused portion of previous registration.

Section 1500.18 - Display of Registration Plates

Plates issued to an automobile, motor truck, motor bus, school bus or self-propelled mobile home shall be attached firmly and rigidly in a horizontal position, one to the rear of the vehicle and one to the front. Plates issued to a trailer or motorcycle shall be attached firmly and rigidly in a horizontal position to the rear of said trailer or motorcycle. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

SECTION 1500.19 - Penalty for Improper Display of Registration Plates

Any of the following may result in a forfeiture of not less than \$50.00 and not more than \$100.00 for each occasion:

- (a) A person who operates a vehicle for which current registration plates or insert tags have been issued without such plates or tags being attached to the vehicle;
- (b) A person who operates a vehicle with registration plates attached in a non rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plates; or
- (c) A person who operates a vehicle with registration plates in an illegible condition due

to the accumulation of dirt or other foreign matter as the deterioration or mutilation of the plates.

Section 1500.20 - Annual Registration Fees

A registration fee as herein set forth shall be paid for all motor vehicles, not exempted by Section 1500.0, using the public streets or roads within the boundaries of the Bad River Reservation for each calendar year as set forth by the Tribal Council.

Section 1500.21 - Additional Fees

The following additional charges must be included when computing registration costs, as set forth by the Tribal Council:

- (a) Filing Fee for each application.
- (b) Late Transfer Penalty for all vehicles that are registered ten (10) days after purchase.
- (c) Filing Fee for each renewal application.
- (d) 1/12 of the annual registration fee for every month or part thereof that registration renewal is late.

Section 1500.22 - Other Fees to be Set Forth by the Tribal Council

- (a) Duplicate Validation Sticker - (each).
- (b) Duplicate Registration Renewal Card -
- (c) Duplicate Registration Certificate -
- (d) Duplicate Registration Plates - plus the cost of replacement.

Section 1500.23 - Motorcycle Registration Fee

A registration fee for each calendar year shall be paid for all motorcycles using the public streets and roadways within the boundaries of the Bad River Reservation, as set forth by the Tribal Council.

Section 1500.24 - Trailer Registration Fee

A registration fee as herein set forth shall be paid for all trailers drawn upon the public streets and roadways within the exterior boundaries of the Bad River Reservation, as set forth by the Tribal Council.

(a) A fee shall be paid for all two-wheel utility and recreational trailers with a gross weight of less than 1,500 pounds.

A fee shall be paid for all other two-axle trailers with a gross weight of more than 1,500 pounds, but less than 25,000 pounds.

Section 1500.25 - Refundable Fees

The Bad River Band shall not refund a fee paid to it except when expressly authorized or directed by this Section.

Section 1500.25.1

The Bad River Registrar shall refund the unused portion of the registration fee paid for the registration of a vehicle upon application for such refund upon a form prescribed by the Registrar and upon furnishing of such proof as the Registrar may require that the vehicle will not be operated within the exterior boundaries of the Bad River Reservation during the remainder of the period for which the vehicle is registered, and registration plates. The refund shall be computed on a monthly basis, one-twelfth of the annual registration fee for each calendar month or fraction thereof, during which the motor vehicle will not be used on any road within the exterior boundaries of the Bad River Reservation.

Section 1500.26 - Contents, Issuance and Display of Certificates of Registration; Issuance of Duplicate Certificate

The Registrar upon registering a vehicle shall issue and deliver to the owner a certificate of registration. The certificate shall contain the name and address of the owner, the make, model and year of the vehicle, the registration number assigned and the date of expiration of registration. The certificate shall be in such form and may contain such additional information as the Registrar

deems advisable. A Vehicle Seller's Report of Sale form shall be on the reverse side of the Certificate of Registration.

Section 1500.27

The Registrar shall issue a duplicate certificate of registration upon application thereof by any person in whose name the vehicle is registered and upon payment of a fee, set by the Tribal Council.

Section 1500.28 - Fraudulent Application for Registration or License

A person who with fraudulent intent uses a false or fictitious name or address, or makes a materially false statement, or fails to disclose a security interests, or conceals any other material fact in an application for a registration or submits a false, forged, or fictitious document in support of an application for a registration and/or license plate, shall face legal action and may be adjudged a forfeiture of not less than \$50.00 and not more than \$500.00.

Section 1500.29 - Odometer Reading

A person who knowingly tampers with or alters a motor vehicle odometer reading, or causes another person to alter or tamper with a motor vehicle odometer reading, shall be liable to any person injured by a violation. Any person injured by a violation of the section shall recover the actual damages sustained together with costs and disbursements, including a reasonable attorney's fee provide that the court in its discretion may increase the award of damages to an amount not to exceed three times the actual damages sustained, or \$1,500, whichever is greater.

Section 1500.30 - Improper Use of Registration.

Any person who does any of the following shall forfeit at least \$25.00 and not more than \$300.00:

(b) Lends to another a registration plate, knowing that the person borrowing the plate is not authorized by law to use it;

(c) Displays upon a vehicle a registration plate not issued for such vehicle, or not otherwise authorized by law to be used thereon; or

(d) Willfully twists, paints, alters or adds to, or cuts off any portion of a registration plate or sticker; or who places or deposits or causes to be placed or deposited on such plate or sticker any substance to hinder the normal reading of such plate; or who defaces, disfigures changes or attempts to change any letter or figure thereon.

(e) Sells, trades, barter, or otherwise disposes of the plates in a manner which is prohibited by provisions of this Ordinance.

Section 1500.31 - False Evidence of Registration

Whosoever operates or has in his or her possession of a motor vehicle, motor home, trailer or semi-trailer or other vehicle registration which attached thereto any plates or similar device fashioned in the imitation of or altered so as to resemble the current registration plates issued by the Bad River Band may be fined not less than \$50.00 and not more than \$250.00.

Section 1500.32 - Suspension/Revocation of Registration

The Registrar of the Bad River Band shall suspend and/or revoke the registration when:

(a) The registration was complete through fraud or error and the person who registered the vehicle does not or cannot register vehicle properly; or

(b) The required fee has not been paid and the same is not paid with interest at the rate of 12 percent per annum upon reasonable notice and demand.

(c) The registered owner is in violation of any provision of this ordinance.

Section 1500.33 - Period of Suspension

Any registration suspended pursuant to this Section continues to be suspended until reinstated by the Registrar. The Registrar shall reinstate the registration when the reason for the suspension has been removed.

Section 1500.34 - Return of Registration Plates; Penalty for Non-Compliance

Whenever the registration of a vehicle is suspended under this Section, the owner or person in possession of the registration plates shall forthwith return them to the Bad River Band. Any person who fails to return the plates as required by this Section may be required to forfeit not more than \$50.00.

Section 1500.35 - Revocation

Revocation of registration shall occur when the period of suspension exceeds 90 days. The State of Wisconsin and the owner shall be notified in writing that the registration has been revoked pursuant to this Section. The State of Wisconsin and the owner shall also be notified of the revocation of the Certificate of Title.

Section 1500.36 - Venue

Any disputes arising under this Section shall be brought before the Bad River Tribal Court.

Section 1500.37 - When Certificate of Title Required

The owner of a vehicle subject to registration on the Bad River Reservation, shall make application for certificate of title for the vehicle under the following circumstances:

- (a) if he has newly acquired the vehicle;
- (b) if he applies for registration of the vehicle for which he does not hold a valid

certificate of title previously issued to him by the Registrar for the vehicle in question, he shall at

the same time apply for a certificate of title; or

- (c) A vehicle which is presently in possession.

Section 1500.38 - Eligibility a Prerequisite

An applicant's eligibility for a certificate of title is a prerequisite to registration of the vehicle. If the applicant for registration holds a valid certificate of title previously issued to him by the Registrar for the vehicle in question, that is prima facie evidence that he is the record owner of the vehicle and he need not apply for a new certificate of title each time he or she applies for registration.

Section 1500.39 - Certificate of Title

The State of Wisconsin shall retain control of Certificates of Title to motor vehicles as evidenced in the Band/State Reciprocal Agreement.

Section 1500.40 - Cancellation of Title or Registration

The Registrar shall cancel registration whenever:

- (a) A transfer of title is set aside by the Court by order or judgment; or
- (b) It is subsequently discovered that the issuance or possession of a title or registration

is prohibited by law.

Section 1500.41 - New Title

When any person who dies testate or intestate and that person is the legal owner of a vehicle registered under the laws of the Bad River Band, the Registrar shall issue a new certificate of title, as follows:

- (a) Upon receipt of an order from the Bad River Tribal Court or a court of competent jurisdiction so directing any said issuance; or

(b) Upon receipt of a properly executed form(s) as prescribed by the Registrar and all required accompanying documents which provides for the transfer of interest and ownership to an individual (or individuals) stated thereon.

Section 1500.42 - Re-titling in Proper Jurisdiction

When a certificate of title is issued to a new owner and the new owner is not eligible to have said vehicle registered under the laws of the Band, said new owner shall promptly register the vehicle with the appropriate jurisdiction.

Section 1500.43 - When Registrar to Issue a New Certificate

The Registrar upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by Ordinance, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner.

Section 1500.44 - Perfection of Security Interests

A security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the vehicle unless perfected as provided by this ordinance.

Section 1500.45

A security interest is perfected by the delivery to the Registrar of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party and the date of the security agreement, with the required fee. It is perfected as of the time of its creation if such delivery is completed within 10 days hereafter.

Section 1500.46 - Duties on Creation of Security Interest

If an owner creates a security interest in a vehicle:

(a) The owner shall immediately execute, in the space provided therefore on the certificate of title or on a separate form prescribed by the Registrar an application to name the secured party on the certificate, showing the name and address of the secured party and the date of his or her security agreement, and cause the certificate, application and the required fee to be delivered to the secured party.

(b) The secured party shall immediately cause the certificate, application and the required fee to be mailed or delivered to the Registrar.

(c) Upon receipt of the certificate of title, application and the required fee, the Registrar shall issue to the secured party a new certificate which contains the name and address of the lien holder.

Section 1500.47 - Assignment of Security Interest

A secured party may assign, absolutely or otherwise, his security interest in vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party, as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate.

Section 1500.48

The assignee may not need to perfect the assignment, have the certificate of title endorsed or issue with the assignee named as secured party, upon delivering to the Registrar the certificate and an assignment by the secured party named in the certificate in the form the Registrar prescribes.

Section 1500.49 - Release of Security Interest

Whenever there is not outstanding obligation and not commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a vehicle under any security agreement between the owner and the secured party, the secured party shall execute and deliver to the owner, as the Registrar prescribes, a release of the security interest in the form and manner prescribed by the Registrar. If the secured party fails to execute and deliver such a release within 10 days after the receipt of the owner's written demand therefore he shall be liable to the owner for \$25.00 and for any loss caused to the owner by such failure.

Section 1500.49.1 - Delivery of Certificate

The owner, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the Registrar, which shall release the secured party's rights on the certificate and issue a new certificate of title to the owner.

Section 1500.50 - Secured Party's and Owner's Duties

A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it.

Section 1500.51 - Prompt Delivery of Title

An owner shall promptly deliver his or her certificate of title to any secured party who is named on it or who has a security interest in the vehicle described in it upon receipt of a notice from such secured party that his or her interest is to be assigned, extended or perfected.

Section 1500.52 - Maintenance of Records

The Registrar shall keep accurate and updated lists of all registration plates issued, the number thereof, the name of the owner and the description of the motor vehicle for a period of 7

years from the date of issuance.

Section 1500.53 - Police Powers

Any duly sworn Law Enforcement Officer, including Law Enforcement Officer of the State of Wisconsin are hereby authorized and empowered to enforce the provisions of this Ordinance and any other Ordinance of the Bad River Band and to execute and serve all warrants and processes issued by the Bad River Tribal Court under any law of the Bad River Band.

Section 1500.54 - Citations

When a person is cited for any violation of this ordinance, the officer shall prepare in quadruplicate, written notice to appear before the Court. This notice has the effect of, and serves as a summons and complaint. The written notice must be signed by the officer, describe the violation, the date and time of return or first appearance before the courts and the address of the court. In order to secure appearance, the cited person must give his written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy thereof marked "summons" to the person cited. If the person so summoned fails to appear on the day, the Court shall issue an order to show cause, and may subject the person to the court powers of contempt.

Section 1500.55 - Authorization to Enter Trust Land for Enforcement

Any duly sworn law enforcement officer is hereby authorized and empowered to enter upon any trust land within the jurisdiction of the Band for the purpose of carrying out the duties and functions of his office.

Section 1500.56 - Enforcement

It shall be illegal for any person to willfully hinder, resist or obstruct a law enforcement

officer in the performance of his official duty, or refuse to submit anything called for by him for his inspection when authorized by law.

Section 1500.57 - Jurisdiction for Violations Bad River Tribal Court

The Bad River Tribal Court is hereby granted jurisdiction for any cause of action which arises from this Chapter. Nothing in this Chapter shall operate or be construed as a waiver of the sovereign immunity of the Bad River Band or the Bad River Tribal Council.

Section 1500.58 - Enforcement by Registrar

The Registrar shall enforce all provisions of this chapter. He or she may prescribe all rules and regulation consistent with the provisions of this chapter through the issuance of Registrar Orders. He or she may call upon the Bad River Tribal Council or any Band law enforcement officer to aid him in the performance of his duties. He or she may appoint current employees of the Bad River Band as designees as may be required to administer the provisions of this Ordinance.

Section 1500.59 - Severability

If any provision of this Ordinance or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are declared severable.

Section 1500.60 - Limited Waiver of Sovereign Immunity

The Bad River Band hereby waives sovereign immunity to be used only in the Bad River Tribal Court or such other court as the Bad River Tribal Council may designate in any seizure of property matter pursuant to the provisions of this Ordinance. However, any such action shall only

be directed against the Registrar, in his/her official capacity in order to challenge any seizure action. Any and all seizure cause of action which arise pursuant to this Ordinance shall be limited to actions against the Registrar in his/her official capacity for an order returning any seized goods or the proceeds of a sale of such seized goods if in the possession of the Registrar or his/her office. All other causes of action which arise pursuant to this Ordinance shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees, shall be permitted. All causes of action arising must be commenced by service of complaint and filing same within 90 days of the first event giving rise to the cause of action.

Section 1500.61 - Reservation of Right

The Bad River Tribal Council hereby reserves the right to alter, amend or increase or decrease the fees, forfeiture and penalties imposed herein, amend or repeal the several provisions of this Ordinance, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Section 1500.62 - Revenue Distribution

All revenue derived from fees imposed by this Ordinance shall be deposited in the general revenue account of the Bad River Band.

Section 1500.63 - Band Attorney Obligations

The Attorney(s) designated by the Bad River Tribal Council shall represent the interests of the Bad River Band and the Registrar of Motor Vehicles in any matter arising from any provision of this Band Ordinance before the Bad River Tribal Court.

Section 1500.64 - American Association of Motor Vehicle Administrators: Policy Positions

The Bad River Tribal Council hereby declares that the implementation of the provisions of this Ordinance shall be accomplished, as much as feasible, according to the policies promulgated by the American Association of Motor Vehicle Administrators, which is hereby incorporated by reference into this Ordinance.

CHAPTER 1600 - REGULATION OF THE USE OF FIREWORKS

Section 1600.1 - Introduction

The following is the ordinance regulating the use of fireworks within the exterior boundaries of the Bad River Reservation.

Section 1600.2 - Purpose

The Bad River Band seeks to limit the noise and disruption caused by the indiscriminate use of fireworks at an inappropriate time.

Section 1600.3 - Scope

The ordinance applies to all tribally controlled lands within the exterior boundaries of the Bad River Reservation.

Section 1600.4 - Authority

This ordinance is enacted pursuant to Article VI, Section 1(q) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 1600.5 - Severability

If any portion of this ordinance is found to be invalid for any reason, the remaining portions of this ordinance shall remain in effect.

Section 1600.6 - Definitions

Section 1600.7 - Authorized Days and Hours of the Use of Fireworks

Under this chapter the Tribal Council shall establish days and hours which authorize or prohibit the use of fireworks on the Bad River Reservation.

Section 1600.8 - Retail and Wholesale of Fireworks

Reserved

Section 1600.9 - Age Limit for Purchase, Sale and Possession of Fireworks

Reserved

Section 1600.10 - Penalties

Violation of this ordinance shall carry a forfeiture of not more than \$50.00 for the first offense; \$100.00 for the Second offense within 3 years of the first offense; and \$500.00 for three or more offenses within 3 years of the first offense. Violators are also subject to immediate confiscation of all fireworks in the immediate possession of the violator or violators.

Section 1600.11 - Jurisdiction

The Bad River Tribal Court shall have exclusive jurisdiction over violations and disposition of matters arising from this ordinance.

CHAPTER 1700 - ESTABLISHMENT AND OPERATION OF THE BAD RIVER REPATRIATION COMMITTEE

Section 1 - Purpose

The purpose behind the creation of a Tribal Repatriation Committee is to appoint a body of individuals to directly engage in activities designed to locate, inventory and repatriate human remains, funerary objects, sacred objects and objects of cultural patrimony which should rightfully be repatriated to the Bad River Band of Lake Superior Tribe of Chippewa Indians and which are currently being held in museums, educational institutions, and other agencies, offices or locations.

Section 2 - Scope

This ordinance is applicable to Bad River Repatriation Committee as it relates to the Bad River Band's repatriation activities and efforts.

Section 3 - Authority

This ordinance is enacted pursuant to Article VI, Section 1(m) and 1(n) of the Constitution and Bylaws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

Section 4 - Severability

If any portion of this ordinance is found to be invalid for any reason, the remaining portions of this ordinance shall remain in effect.

Section 5 - Establishment and Composition

(A) Establishment of Repatriation Committee

The Bad River Band hereby establishes an entity to be known as the Bad River Repatriation Committee whose sole purpose shall be to engage in repatriation efforts and activities for and on behalf of the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(A) Composition of Repatriation Committee

The Committee shall consist of six permanent members, who shall be Bad River Tribal members appointed by the Bad River Tribal Council to serve a five year term. Tribal appointees shall be eligible for reappointment. Members of the Committee may simultaneously serve as members of the Tribal Council or on other Tribal boards, commissions or committees.

Section 6 - Removal

Members of the Repatriation Committee may be removed by the Tribal Council for just cause. Members shall not be removed except after given a fair and impartial hearing including the opportunity to respond to and rebut specific allegation or allegations of misconduct. Members facing removal shall be afforded due process including the right to present reliable evidence and witnesses, confront adverse witnesses with cross-examination and be represented by counsel at no expense to the Band. An affirmative vote of at least five Tribal Council members after the close of the a hearing is required to remove a member of the Repatriation Committee.

Section 7 - Substitutions

If a member to the Repatriation Committee is removed, resigns or is otherwise no longer a members of the Committee, he or she shall be replaced by his or her successor in the case of permanent member, or a reasonable substitute at the discretion of the Tribal Council if necessary, or succeeded by a new appointment made by the Tribal Council. When applicable, new appointees appointed pursuant to this section shall serve out the original term of their predecessor.

Section 8 - Expenses/Stipends

Members of the Repatriation Committee are authorized reimbursements for costs associated with official Committee business and shall be paid reasonable stipends at a rate to be

determined by the Tribal Council. The Tribal Council shall authorize a sufficient amount of funding to meet the needs of the Repatriation Committee subject to availability of funds and an approved budget, including any necessary education and training pertaining to the Native American Graves Protection and Repatriation Act.

Section 9 - Reports

The Repatriation Committee shall be invited to meet with the Tribal Council at least once per year and from time to time as necessary so as to report any information deemed important.

Section 10 - Oversight Powers and Duties

(A) Oversight.

It shall be the duty of the Repatriation Committee to meet at least quarterly, and more frequently if necessary so as to perform the following:

(1) Review current and future repatriation activities on behalf of the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(2) Review pertinent legislation, ordinances and regulations pertaining to the repatriation of human remains, funerary objects, sacred objects and objects of cultural patrimony which are affiliated with the Bad River Band of the Lake Superior Tribe of Chippewa Indians or the LaPointe Band of Chippewa Indians.

(3) Review potential funding sources which may be utilized in regards to the repatriation of human remains, funerary objects, sacred objects and objects of cultural patrimony which are affiliated with the Bad River Band of the Lake Superior Tribe of Chippewa Indians or the LaPointe Band of Chippewa Indians.

(4) Make reports and recommendations to the Bad River Tribal Council on the

following:

(a) Current status of any ongoing repatriation efforts and activities and the advisability of any future repatriation efforts and activities;

(b) The current state of pertinent laws, regulations, ordinances and the like pertaining to Bad River's repatriation activities; and

(c) The availability of pertinent potential funding sources and the advisability of pursuing same.

(B) Powers the Repatriation Committee shall have the following powers:

(1) The authority to act as the "Indian Tribal Official" for purposes of exercising the Tribe's rights and responsibilities under the Native American Graves Protection and Repatriation Act.

(2) The authority to meet, visit and consult with museums, educational institutions, and other agencies, offices and entities with regard to human remains, funerary objects, sacred objects and objects of cultural patrimony which are affiliated with the Bad River Band of the Lake Superior Tribe of Chippewa Indians or the LaPointe Band of Chippewa Indians.

(3) The authority to gather information, including inventories, lists, and any other documents and items which pertain to human remains, funerary objects, sacred objects and objects of cultural patrimony which are affiliated with the Bad River Band of the Lake Superior Tribe of Chippewa Indians or the LaPointe Band of Chippewa Indians.

Section 11 - By-Laws

The Repatriation Committee shall operate under the procedures listed below but may establish by-laws and procedures for the operation of the organization not inconsistent with those

set forth in this section.

- (1) A quorum shall consist of at least three members.
- (2) A tape recording of all official meetings shall be made and kept for a period of at least two years.
- (3) Official meetings shall be noticed and made public.
- (4) Official actions shall be carried or defeated by majority vote.
- (5) Roberts Rules of Order shall be generally followed at all official meetings.
- (6) Tape recordings of official meetings shall be provided to the Tribal Council upon demand but do not have to be provided to the public. The Tribal Council is empowered to release copies of the tape recordings or transcripts thereof to the public upon reasonable request. Reasonable and prudent attempts must be made to protect the confidentiality of the Repatriation Committee's activities where appropriate.
- (7) A chair and vice-chair shall be selected from within the members to officiate at meetings.
- (8) A secretary shall be selected from within the members to be responsible for producing and maintaining records of official meetings, minutes and so forth.