

Red Cliff Band of Lake Superior Chippewa Indians

RESOLUTION NO: 11/2/20C

PERTAINING TO: CHAPTER 40-EXCLUSION AND REMOVAL OF NON-MEMBERS

WHEREAS: The Red Cliff Band of Lake Superior Chippewa Indians is a federally recognized Indian Tribe, organized under a constitution adopted April 18, 1936, and approved June 1, 1936, pursuant to Sec. 16 of the Indian Reorganization Act, said Constitution having been amended by the Band on January 28, 1991, and said amendments approved by the Secretary on July 2, 1991, in accordance with the provisions of applicable federal law;

WHEREAS: The Red Cliff Tribal Council is charged with the responsibility of protecting and advocating for the health, safety and welfare of the Red Cliff Band members within the Red Cliff Reservation boundaries; and

WHEREAS: Pursuant to the Red Cliff Constitution Article VI, subsection (p), the Red Cliff Tribal Council is authorized promulgate and enforce ordinances governing the conduct of persons subject to the jurisdiction of the tribe, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers; and,

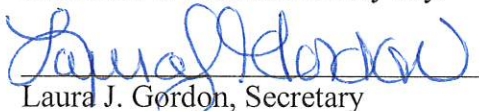
WHEREAS: The Red Cliff Tribal Council desires to adopt an ordinance for the Exclusion and Removal of Non-Members; and,

WHEREAS: The proposed ordinance has been posted as directed in resolution no. 8/7/95A and Chapter 27 of the Red Cliff Code of Laws.

NOW THEREFORE BE IT RESOLVED: Chapter 40-EXCLUSION AND REMOVAL OF NON-MEMBERS is hereby enacted and shall become effective immediately.

CERTIFICATION

I, the undersigned Secretary of the Red Cliff Tribal Council, do hereby certify that the council is composed of nine members (9), of whom 9 were present at a meeting duly called, convened and held this 2nd day of November, 2020, and that the foregoing resolution was adopted at said meeting by an affirmative vote of 8 members for, 0 against, and 0 members abstaining for the vote, and that said resolution has not been rescinded or amended in anyway.



Laura J. Gordon, Secretary
Red Cliff Tribal Council

CHAPTER 40-EXCLUSION AND REMOVAL OF NON-MEMBERS

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CHAPTER 40 - EXCLUSION AND REMOVAL OF NON-MEMBERS

- 40.1 **Purpose.** It is the purpose of this Chapter to provide a procedure for excluding and removing non-members from tribal lands and, in appropriate circumstances, from the entire Reservation when it is in the best interest of the Band to do so. This includes 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.
- 40.2 **Scope.** The Red Cliff Tribal Council is authorized to exclude non-members from tribal lands and, in appropriate circumstances, from the entire 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 Red Cliff Reservation or parts thereof as further detailed and provided herein. 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.
- 40.3 **Authority.** This ordinance is enacted pursuant to Article VI, Sections 1(i) and (p) of the Constitution and Bylaws of the Red Cliff Band of the Lake Superior Chippewa Indians and is also based on the Red Cliff Band's sovereignty and inherent power of exclusion.
- 40.4 **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.
- 40.5 **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.
- 40.6 **Definitions.**
- (a) "Band" means the Red Cliff Band of Lake Superior Chippewa Indians.
 - (b) "Member" means an enrolled member of the Red Cliff Band.
 - (c) "Person" refers to any individual, firm, corporation, public or private entity.
 - (d) "Reservation," for purposes of this ordinance, refers to those lands that are proclaimed as the reservation of the Red Cliff Band of Lake Superior Chippewa Indians, including lands held in trust for the Red Cliff Band and lands owned by the Band and its members in fee simple.
 - (e) "Tribal Council" refers to the governing body for the Red Cliff Band of Lake Superior Chippewa Indians as established under its Constitution.

- 40.7 ***Complaint for Exclusion.*** A complaint for exclusion shall be based upon one or more of the grounds specified under Section 40.9, and may be initiated by any member of the Tribal Council, the Red Cliff Chippewa Housing Authority Director, the Chief of Police, or the Red Cliff Tribal Attorney. A complaint for exclusion shall be made through the form attached as Appendix A of this Ordinance. A complaint for exclusion shall be valid only if it bears the signature of the complaining party.
- 40.8 ***Notice.*** Upon completion of a Complaint for Exclusion, the complaining party shall cause notice to be served personally or by registered mail upon the person proposed for exclusion, and shall immediately provide a copy of said notice to the Tribal Council. The notice shall state the reason for the proposed exclusion and shall state that the person has seven (7) days to show cause in writing to the Tribal Court as to why he or she should not be excluded from said land(s).
- 40.9 ***Consideration of Complaint for Exclusion by the Tribal Council.*** Upon receipt of a response from the person proposed to be excluded, or after seven (7) days have elapsed without the receipt of such response, the Tribal Court promptly schedule a hearing and shall determine whether the person shall be excluded from all or any portion of Band lands. Following fact-finding and due consideration, the Tribal Court may decide the matter in the following manner:
- (a) To grant a continuance of the matter pending further fact-finding, or for the purpose of requiring the attendance of the person for direct questioning, which shall be by notice as prescribed under Section 40.8;
 - (b) To dismiss the matter without prejudice;
 - (c) Upon the finding that the grounds for exclusion are supported by substantial evidence, the Tribal Court may issue an order of exclusion to exclude the person from any or all Band lands, which shall be drawn in accordance with Section 40.12.
- 40.10 ***Grounds for Exclusion and Removal.*** Upon consideration of a Petition, the Tribal Court 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 Court 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 Court 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 Red Cliff Reservation may include but are not limited to the following:

- (a) Doing or attempting to do any act upon the Reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the Red Cliff Band, its members, Reservation residents, or other persons;
- (b) Any act causing physical loss or damage of any nature to the property of the Band, any member or Reservation resident;
- (c) Entering an area in violation of any order of the Red Cliff Band or any entity thereof designating such area as closed;
- (d) Failing or refusing to pay any taxes, rents or other charges justly due the Red Cliff 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;
- (e) Mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;
- (f) 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;
- (g) Trading or conducting business within the Reservation in violation of tribal law;
- (h) 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 Red Cliff 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.
- (l) Possession, use or sale of a synthetic cannabinoid as defined in Chapter 39, section 39.7.4 of the Red Cliff Code of Laws.

40.11 **Standard of Proof.** In considering whether justifiable cause exists to exclude and remove an individual from the Reservation, the Tribal Court must be satisfied by a preponderance of the evidence given the totality of the circumstances.

40.12 **Order for Exclusion and Removal.** Upon finding that it is in the best interests of the Red Cliff Band, the Tribal Court shall issue an Order for Exclusion and Removal. If the individual is not present at the scheduled hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the individual, informing him or

her of the action of the Tribal Court. 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). The Order shall also specify whether the individual shall be excluded from tribal lands owned by the Band or whether, alternately, the Order excludes the individual from the entire reservation. 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 Court or the Tribal Council. An Order excluding an individual from the entire reservation shall not restrict that individual's ownership rights to real property within the reservation.

40.13 ***Enforcement of Orders of Exclusion and Removal.*** Upon the issuance of an Order for Exclusion and Removal, the Tribal Court 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:

- (a) 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;
- (b) Directing any law enforcement officer to remove the individual from the Reservation covered by the Order at the individual's expense;
- (c) Directing law enforcement to remove the individual bodily, using only so much force as is reasonable and necessary to effect the removal; and
- (d) 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.
- (e) Persons who are the subject of an exclusion order are considered to be trespassing when they refuse to comply with such exclusion order and may be subject to prosecution under applicable laws.

40.14 ***Implementation of Exclusion Order***

The Tribal Court shall include appropriate restrictions within its Order for Exclusion and Removal to address the subjects set out below in appropriate circumstances. Likewise, the Court may modify or amend its Order to address post-judgment issues that may arise. Requests to modify or amend an Order for Exclusion and Removal must be initiated by Petition to the Court, with formal notice to the Tribal Attorney or Presenting Officer, as the case may be.

- (a) Time to Vacate Reservation. While exclusion orders are effective upon issuance, persons normally shall be provided reasonable time to voluntarily vacate the Reservation in compliance with the exclusion order. However, if warranted by circumstances, a person may be immediately removed from the Reservation by law enforcement.
- (b) Personal Property. If a person requires time to remove or disposal of personal property from the Reservation following the issuance of an exclusion order, then that person must make arrangements with law enforcement to access the Reservation for such purpose.
- (c) Funerals. Persons subject to an exclusion order may enter the Reservation for purposes of a family member's funeral on the day of the funeral and during funeral hours. The person must notify the Red Cliff Police Department at least four hours prior to entering the Reservation for the funeral. The person is only permitted access to go directly to the funeral and must exit immediately after the funeral.
- (d) Employment. Unless specifically authorized by special condition of the exclusion order, persons subject to an exclusion order are not authorized to access the Reservation for the purpose of employment.
- (e) Business. Persons subject to an exclusion order are not authorized to conduct business with the Tribe or operate or conduct any other business activities on the Reservation.

40.15 ***Appeals.*** Any individual to whom an Order for Exclusion and Removal has been issued pursuant to this ordinance may appeal such Order to the Red Cliff 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 arrange a hearing at a regular or 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. 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 all appeals shall be final.

40.16 ***Revocation of Exclusion Order***

- (a) The Tribal Council may reconsider and revoke an exclusion order upon its own motion or based upon a request of a member or the person who is the subject of the exclusion.

- (b) The exclusion orders may be revoked by the Tribal Council by motion during open session of a regularly-scheduled Tribal Council meeting.
- (c) The Tribal Council may act to revoke an exclusion order at any time following its issuance.
- (d) A person who is the subject of the exclusion may not submit a request to the Tribal Council to have an exclusion order revoked until at least one (1) year has passed. In addition, the person must be able to show an on-going connection to the tribal community and that the person has successfully taken actions to rehabilitate the conduct that provided the grounds for the exclusion.

40.17 *Immunity*

- (a) The Band shall not be liable for claims of loss, damage or injury resulting from the exclusion or banning of a person.
- (b) A law enforcement officer may not be held criminally or civilly liable in carrying out the provisions of this ordinance, so long as the officer acts reasonably and in good faith.

APPENDIX A

IN THE TRIBAL COURT
OF THE RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Red Cliff Tribe,

Plaintiff

COMPLAINT FOR EXCLUSION

vs.

_____,
Defendant.

THE UNDERSIGNED COMPLAINANT SUBMITS THE INFORMATION CONTAINED HEREIN TO THE RED CLIFF TRIBAL COURT FOR ITS CONSIDERATION AS TO WHETHER THE SUBJECT INDIVIDUAL SHOULD BE CONSIDERED A THREAT TO THE HEALTH, SAFETY AND WELFARE OF THE RED CLIFF BAND AND SHOULD BE REMOVED OR EXCLUDED FROM LANDS OF THE BAND. ANY AVAILABLE DOCUMENTATION WHICH IS PROBATIVE OF THE CONDUCT AT ISSUE MUST BE ATTACHED TO THIS COMPLAINT. NO REMOVAL OR EXCLUSION OF ANY INDIVIDUAL FROM ANY LANDS OF THE RED CLIFF BAND SHALL BECOME EFFECTIVE UNTIL AN ORDER OR WRIT OF EXCLUSION HAS BEEN ISSUED BY THE TRIBAL COURT IN ACCORDANCE WITH RED CLIFF CODE OF LAWS CHAPTER 40.

NAME OF SUBJECT INDIVIDUAL:

ADDRESS OF SUBJECT INDIVIDUAL, IF KNOWN:

DESCRIPTION AND DATES OF CONDUCT AT ISSUE (RELEVANT DOCUMENTATION SHOULD BE REFERENCED AND ATTACHED, E.G. CRIMINAL HISTORY, POLICE REPORTS, ETC.):

THE UNDERSIGNED COMPLAINANT SUBMITS THIS INFORMATION IN THE BELIEF THAT IT IS A TRUE AND ACCURATE DESCRIPTION OF THE CONDUCT OF THE SUBJECT INDIVIDUAL.

Signature of Complainant

Date: _____

IN THE TRIBAL COURT
OF THE RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

Red Cliff Tribe,

Plaintiff

**ORDER OF EXCLUSION
FROM TRIBAL LANDS**

vs.

Defendant.

THIS ORDER OF EXCLUSION IS ISSUED PURSUANT TO RED CLIFF CODE OF LAWS CHAPTER 40 UNDER THE INHERENT SOVEREIGN AUTHORITY OF THE RED CLIFF BAND TO REGULATE THE USE OF ITS LANDS AND TO DETERMINE INDIVIDUAL RIGHTS OF ENTRY AND/OR OCCUPANCY OF BAND LANDS. FOR THE PURPOSES OF THIS ORDER, "BAND LANDS" ARE ANY LANDS WHICH ARE HELD IN TRUST OR FEE BY OR ON BEHALF OF THE RED CLIFF BAND WHICH LIE WITHIN THE BOUNDARIES OF THE RED CLIFF RESERVATION. THIS ORDER MAY BE APPEALED IN WRITING TO THE RED CLIFF TRIBAL COUNCIL WITHIN TEN (10) DAYS OF ITS DATE OF ISSUANCE AS PROVIDED IN RED CLIFF CODE OF LAWS CHAPTER 40.

NAME OF SUBJECT INDIVIDUAL(S):

TERMS OF EXCLUSION, INCLUDING EFFECTIVE DATE AND DURATION:

GROUNDS FOR EXCLUSION:

AUTHORIZATION

This Writ of Exclusion is hereby issued on _____, 20__.

DATE: _____

Hon. [Name of Judge]