

CHAPTER 68
STOCKBRIDGE-MUNSEE TRIBAL LAW
EXCLUSION ORDINANCE

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Section 68.1 Statement of Purpose, Findings, and Authority

(A) Purpose. The Stockbridge-Munsee Tribal Council enacts this ordinance to provide for the safety and well-being of the tribal community by providing parameters for the expulsion of persons who are considered to be a danger to the community from lands under the jurisdiction of the Stockbridge-Munsee Community.

(B) Findings. The Stockbridge-Munsee Tribal Council finds that this ordinance is necessary to protect the social, economic and political welfare of the Stockbridge-Munsee Community and tribal members, as well as to protect the lands and assets of the Stockbridge-Munsee Community.

(C) Authority.

(1) The ordinance is authorized under Article VII (f) of the Stockbridge-Munsee Constitution, which provides for the promulgation and enforcement of ordinance for the exclusion of nonmembers from its territory, as well as inherent tribal authority to govern the members of the Stockbridge-Munsee Community and the use, management and administration of lands under the jurisdiction of the Stockbridge-Munsee Community.

(2) In addition, the Stockbridge-Munsee Community has authority over lands that it owns in fee simple by virtue of its ownership of such land and may enforce this ordinance in relation to access to such lands consistent with such authority.

Section 68.2 Definitions

(A) “Banishment” refers to the temporary or permanent expulsion of a member from the Reservation. This ordinance does not authorize the banishment of members.

(B) “Ban” refers to a temporary or permanent expulsion of a person from the premises of tribal buildings and/or facilities. Bans may be issued to prevent access by either a member or a person who is not a member of the Tribe.

(C) “Drug-related criminal activity” refers to the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in 21 U.S.C. 802) or drug paraphernalia.

(D) “Exclusion” refers to the temporary or permanent expulsion of a person, other than a member, from the Reservation.

(E) “Member” refers an enrolled member of the Stockbridge-Munsee Community.

(F) “Non-member” refers to any person who is not an enrolled member of the Stockbridge-Munsee Community.

(G) “Person” refers to any individual, firm, corporation, public or private entity.

(H) “Public Right-of-Way” refers to any lawful right-of-way within the Reservation that is open to public access as a matter of law.

(I) “Reservation,” for purposes of this ordinance, refers to those lands that are proclaimed as the reservation of the Stockbridge-Munsee Community, lands held in trust for the Stockbridge-Munsee Community and lands owned by the Tribe in fee simple.

(J) “Tribal Council” refers to the governing body for the Stockbridge-Munsee Community as established under its Constitution.

(K) “Tribe” refers to the Stockbridge-Munsee Community.

(L) “Violent criminal activity” refers to activity that causes death or serious bodily harm to a person, causes substantial property damage, or involves the use, attempted use or threatened use of physical force likely to result in serious bodily injury or substantial property damage. Crimes such as homicide, battery, sexual assault, kidnapping or arson are considered to be violent criminal activity.

Section 68.3 Jurisdiction

(A) Territorial Jurisdiction. This ordinance shall apply on the Reservation.

(B) Personal Jurisdiction. This ordinance shall apply in relation to members of the Stockbridge-Munsee Community, as well as non-members who consent to the jurisdiction of the Stockbridge-Munsee Community by entering the Reservation.

(C) Subject Matter. The Tribal Council has exclusive jurisdiction in relation to actions under this ordinance. There is no right to appeal such actions through the Tribal Court.

Section 68.4 Grounds for Exclusion

(A) The Tribe may exclude non-members from the Reservation for any of the following reasons:

- (1) Commission of drug-related criminal activity that could result in a felony conviction.
- (2) Lifetime registration under a State sex offender registration program.
- (3) Commission of abuse or a sexually-based offense against a minor child, an elder or an incompetent person, which could result in a felony conviction.
- (4) Commission of violent criminal activity that could result in a felony conviction.
- (5) Commission of serious, illegal damage to the land or natural resources of the Tribe.

Section 68.5 Exclusion Process

(A) The Tribe has sovereign authority over lands under its jurisdiction and to control the access of persons to such lands in order to act in the best interests of the Tribe and its members. While the Tribal Council intends to provide due process in accordance with this ordinance to individuals prior to exclusion from such lands, the authority of the Tribal Council to exclude persons shall be broadly applicable and deviations from the process shall not nullify actions of Tribal Council properly taken as part of a duly-noticed and held meeting.

(B) Petition.

- (1) The process to exclude a person from the Reservation is initiated by the filing of a petition that is signed by at least fifteen (15) members.
- (2) A petition shall be in writing and include the following information:
 - (a) The name and address, if known, of the person to be excluded;
 - (b) The grounds for the exclusion;
 - (c) The factual basis for the petition;
 - (d) Whether it is believed that an immediate danger to health, safety or property exists and, if so, why; and
 - (e) The printed names and signatures of the members requesting the exclusion.
- (3) The petition shall be filed with the Tribal Council Secretary (or a person acting on the Secretary's behalf), who shall sign and date when it is received.

(C) Role of Tribal Council Secretary to Administer Exclusion Process.

- (1) Upon receipt of a petition, the Tribal Council Secretary shall have the person who is the subject of the petition served with the copy of the petition. With the petition, the Tribal Council Secretary shall include a cover letter informing the person that:

- (a) The petition may result in the person's temporary or permanent exclusion from the Reservation;
 - (b) The person may submit a written statement (to the Tribal Council Secretary on behalf of the Tribal Council) responding to the petition;
 - (c) The person will have an opportunity to present testimony as part of a hearing on the matter; and
 - (d) Notice of the date and time of the hearing will be provided at a later date.
- (2) The Tribal Council Secretary shall forward a copy of the petition to the Tribe's Compliance Department to complete a background check on the person that is the subject of the petition.
- (3) The Tribal Council Secretary shall forward a copy of the petition to the Tribe's Police Department, so that they can take such actions as appropriate and necessary to address any threat from the person who is the subject of the petition.
- (4) Following completion of any investigation(s), the Tribal Council Secretary shall schedule a hearing on the petition to be held at a duly-held Tribal Council meeting and send all appropriate notices.
- (a) The hearing will normally be scheduled no later than 45 days after the submittal of the petition.
 - (b) The hearing normally will be set for a date no sooner than 14 days from the date of the notice.
 - (c) The Tribal Council reserves the right to waive these time frames when in the best interests of the Tribe.
- (5) The Tribal Secretary shall have notice of the date, time and place of the hearing served on the person who is the subject of the petition.
- (6) Notice of the date, time and place of the hearing on the exclusion shall be posted and sent to the members who submitted the petition.
- (7) If the Tribal Council authorizes an exclusion order following a hearing, then the Tribal Council Secretary shall be responsible to facilitate the issuance of such order as provided hereunder.

(D) Service. For purposes of this ordinance, service may be either in person or certified U.S. mail, return receipt requested. If, after a good faith attempt at service, the Tribe cannot obtain either service in person or by mail, then the Tribe may obtain service by providing a copy of the papers to be served to a member of the person's household or taping the papers on the front door of the person's residence or place of business.

(E) Hearing.

- (1) The Tribal Council will consider the petition, any background investigation into the allegations, as well as testimony and evidence from interested parties as part of their determination of whether the person committed an act or omission that meets the grounds for exclusion.
- (2) Such hearing may be held during either open or closed session of the Tribal Council meeting as is appropriate based on the nature of the grounds for the exclusion (e.g., actions involving minors shall be discussed during closed session). Any action taken based on the petition must occur during open session.
- (3) The person who is the subject of the petition shall have an opportunity to present testimony and/or evidence on their own behalf as part of the hearing. That person shall have no right to be present for the testimony of any other party or to cross-examine any other person.
- (4) All persons appearing before the Tribal Council as part of these proceedings may be represented by counsel at their own expense.
- (5) Persons who fail to observe proper respect and decorum for the proceedings may be ejected from the hearing.
- (6) No formal rules of evidence shall apply to the proceedings; however, the Tribal Council has authority to restrict testimony or evidence that believes is irrelevant or excessively cumulative.
- (7) The Tribal Council has the sole responsibility to weigh the evidence presented as part of the proceedings and determine whether the proposed exclusion is in the best interests of the tribal community.
- (8) The Tribal Council shall act by motion to decide whether or not to issue an exclusion order and what, if any, special conditions shall apply to such order. Motions to exclude a person must have at least five (5) Tribal Council members voting in support of the motion. If the motion to exclude does not have at least five (5) votes in support, then the person shall not be excluded.

(F) Exclusion Order.

- (1) The Tribal Council may orally advise the parties of its decision at the hearing or may issue an opinion within five (5) business days of the hearing. In either case, the Tribal Council shall prepare a written order of its action.
- (2) Such written order shall identify the person who is subject of the order, the grounds for exclusion, the date the order was issued, whether the order is permanent or temporary (and, if temporary, the length of the exclusion), and any special conditions.

(3) The Tribal Council Secretary shall have the exclusion order served on the excluded person and send copies to the Police Department, the members filing the petition and any tribal departments directly impacted, if known.

(4) Exclusion orders shall be effective upon issuance.

(G) Records. A copy of the exclusion order, as well as other records related to the exclusion proceedings shall be maintained in secure storage by the Tribal Council Secretary or designee. Such records shall be maintained for at least the duration of the exclusion plus three (3) years.

Section 68.6 Implementation of Exclusion Order

(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 Tribe's Police Department at least 4-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. A person may be denied entry for a funeral if there is a substantial threat of harm or injury to the community or a person.

(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.

Section 68.7 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 upon 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.

Section 68.8 Bans from Access to Tribal Buildings and Facilities

(A) The Tribe may ban either members or non-members from accessing tribal buildings or facilities when such bans are in the best interests of the tribal community.

(B) Bans with a duration of one-week or longer shall be issued in writing by the Tribal President or Vice-President.

(1) The ban shall identify the buildings and facilities that are impacted by the ban.

(2) The written ban shall be served on the person who is the subject of the ban.

(3) Copies of the ban will be provided to the Police Department, as well as tribal employees responsible for buildings impacted by the ban.

(4) Bans may be issued by other designated individuals if the authority to issue such bans is delegated by the Tribal Council in approved policies.

(C) Tribal employees responsible for a building may issue a temporary ban for a timeframe of less than one-week if such employees believe that the ban is necessary to provide for the safety of the community, tribal employees or the facility.

(D) Bans issued under this section shall have a duration of one (1) year.

Section 68.9 Emergency Removal of Persons

(A) Law enforcement officers are authorized to remove persons from the Reservation if an officer observes that an immediate danger to health, safety or property exists and delay would result in irreparable harm.

(B) Such removals may be effective for up to 72-hours from the time of the removal.

(C) In the event such an emergency removal occurs, law enforcement shall promptly notify the Tribal Council of the action and the reason for the action. The Tribal Council shall consider whether the situation requires further action to exclude or ban the person in accordance with this ordinance.

Section 68.10 Enforcement

(A) Law enforcement officers are authorized to take reasonable measures to remove persons from the Reservation who are the subject of exclusion orders under this ordinance.

(B) Law enforcement officers are authorized to take reasonable measures to remove persons who have been banned from the premises of tribal buildings or facilities.

(C) Persons who are the subject of an exclusion order or a ban are considered to be trespassing when they refuse to comply with such exclusion order or ban and may be subject to prosecution under applicable laws.

Section 68.11 Immunity

(A) The Tribe 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.

Section 68.12 Severability

If a court of competent jurisdiction finds any portion of this ordinance illegal, the remaining portions of this ordinance shall remain unaffected and remain in force.

LEGISLATIVE HISTORY:

1. On October 11, 2014, the Tribe held an advisory referendum in relation to whether an ordinance authorizing the banishment of tribal members and/or the exclusion of non-members should be adopted. The majority of tribal members voting in the referendum supported an ordinance that provided for exclusion, but not banishment.
2. On July 7, 2015, the Tribal Council adopted a new ordinance, which is Chapter 68 - Exclusion Ordinance, by Resolution No. 054-15. The ordinance was approved by the BIA on July 15, 2015.