**Title PHS**

**Title ­­**

**Chapter PHS.3**

**FIRE INSPECTION CODE OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

**Preamble**

This ordinance is enacted pursuant to the inherent sovereign authority of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians to provide for the decent, safe and sanitary dwellings for the members of the Tribe which predates its Treaties of 1825, 1826, 1837, 1842, 1847 and 1854 with the United States Government. In the implementation of this inherent sovereign authority, the Amended Constitution and Bylaws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, empowers the Tribal Governing Board to: “organize, charter and regulate any association or group, including a Tribal Governing Board, for the purpose of providing social or economic benefits to the members of the Band or residents of the reservation.” (Article V, § 1(l)). Pursuant to this inherent sovereign authority, the Tribal Governing Board hereby enacts this ordinance.

**SUBCHAPTER PHS.3.1**

**GENERAL PROVISIONS**

**PHS.3.1.010 Title.**

This ordinance shall be known as the Fire Inspection Code of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

**PHS.3.1.020 Authority.**

This ordinance is enacted pursuant to the inherent sovereign authority of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. In the implementation of this inherent sovereign authority, Article V, §§ 1(l) and (m) of the Amended Constitution and Bylaws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, empowers the Tribal Governing Board to: “organize, charter and regulate any association or group, including a Tribal Governing Board, for the purpose of providing social or economic benefits to the members of the Band or residents of the reservation” Article V, § 1 (l); and “delegate to subordinate boards, officers, committees or cooperative associations which are open to all members of the Band any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers” Article V, § 1(m).

**PHS.3.1.030 Purpose.**

The purpose of this Fire Inspection Code is to assist the Lac Courte Oreilles Fire Department in the retention and maintenance of fire safety practices.

**PHS.3.1.040 Effective Date.**

Except as otherwise provided in specific sections, the provisions of this ordinance shall be effective on the date adopted by the Tribal Governing Board.

**PHS.3.1.050** **Interpretation.**

The provisions of this ordinance:

1. Shall be interpreted and applied as minimum requirements applicable to record retention activities subject to this ordinance;
2. Shall be liberally construed in favor of the Tribe;
3. Shall not be deemed a limitation or repeal of any other tribal power or authority;
4. Shall be interpreted to be in accordance with tribal customary law. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this ordinance, tribal law and custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a qualified tribal elder, tribal historian, or tribal representative. If the traditions and customs of the Tribe are inconclusive in any matter, the Court may use tribal law, federal law or the State law for guidance.
5. Nothing in this chapter is intended to prohibit or discourage the design and use of new materials or components, or new processes, elements or systems, provided written approval from the Department and Tribal Governing Board is obtained first.

**PHS.3.1.060 Severability and Non-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. 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.

**PHS.3.1.070 Relation to Other Laws.**

1. Applicable Law. Unless affected or displaced by this ordinance, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used as a guide to supplement and interpret this ordinance.
2. State Law. To the extent that the laws of any state may be applicable to the subject matter of this ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

**PHS.3.1.080 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 law, code, ordinance or regulation, the provisions of this ordinance shall govern.

**SUBCHAPTER PHS.3.2**

**DEFINITIONS**

**PHS.3.2.010 General Definitions.**

Any term not defined in this Section shall be given its ordinary meaning. The following terms, wherever used in this ordinance, shall be construed to apply as follows, except where the context indicates otherwise:

1. **“Administrative expenses”** for the appropriation under means expenditures for the direct costs and indirect costs of administering.
2. **“Direct costs”** means the cost of salaries, limited term employees, fringe benefits and supplies to administer.
3. **“Indirect costs”** means the cost, determined on a pro rata basis, of management and administrative services provided to administer.
4. **“Supplies”** means equipment, memberships, postage, printing, rent, subscriptions, telecommunications, travel, utilities and similar outfitting and services, directly related to administering.
5. **“Department”** means the Lac Courte Oreilles Fire Department who is organized and created for the purpose of extinguishing fires and preventing fire hazards.
6. **“Design requirements”** means any requirements that a designer would otherwise need to follow when specifying the permanent physical characteristics of a building. These include the materials of construction, structural members, fire-resistance and fire protection systems, means of egress and accessibility, energy efficiency, electrical systems, plumbing and other mechanical systems.
7. **“Fire chief”** means the chief or authorized representative of the fire department serving the Tribe who is granted the authority over fire safety of all tribal buildings. Fire chief also means the representative designated by the local unit of government to carry out the duties of this chapter.
8. **“Tribal building”** has the meaning as defined is any occupied commercial structure, public structure, dwelling house, residence, house trailer, mobile home, cabin, camp, cottage, barn, or other building on the Lac Courte Oreilles Reservation.
9. **“Substantial compliance”** means an ample amount of the required activity was performed through a concerted effort aimed at total compliance. A determination of substantial compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable statute or code requirements. Substantial compliance is not a specific number or percent of compliance. A determination of substantial compliance in any one year or regulatory standard does not mean that the same amount of compliance or effort in the following year or in another area of the code automatically equals substantial compliance.
10. **"Tribe"** shall mean the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.
11. **“Tribal Governing Board”** means the Tribal Governing Board of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

**SUBCHAPTER PHS.3.3**

**ADMINISTRATION**

**PHS.3.3.010 Scope.**

1. These are department rules:
2. This chapter applies to all buildings that exist within the LCO Reservation boundaries.
3. This chapter applies to the inspection, testing, and maintenance of all fire safety features as specified in this chapter, for all buildings within the LCO Reservation. In this section, “home occupation" means any business, profession, trade or employment conducted in a person's dwelling unit, that may involve the person's immediate family or household and a maximum of one other unrelated person, but does not involve any of the following:
4. Explosives, fireworks or repair of motor vehicles.
5. More than twenty-fife percent (25%) of the habitable floor area of the dwelling unit.
6. The requirements in sub. (11) apply to all fire responses, rather than only to fire responses for tribal buildings and places of employment.
7. The requirements in sub. (13) (d) 2. apply to fire responses to first alarms for all buildings, rather than only for tribal buildings.
8. This chapter applies to all facilities and structures which exist on Reservation and which involve flammable-, combustible- or hazardous-liquid storage, transfer, or dispensing.

**PHS.3.3.020 Temporary Use.**

A fire code official may allow a building or a portion of a building to be used temporarily in a manner that differs from the approved use for the building or space, or may approve a temporary building to be used by the Tribe, subject to all of the following provisions:

1. The Tribe shall determine the time frame within which the temporary use is permitted, based on the extent hazards are created by the temporary use. This time frame may not exceed 180 days, except the Tribe may grant extensions for demonstrated cause.
2. Buildings or spaces considered for temporary use shall conform to the requirements of this chapter as necessary to ensure the tribal safety, health, and general welfare, except as provided.
3. The Tribe may require additional safety requirements for a temporary use as a trade-off for any safety provisions that may be lacking.
4. The Tribe may terminate the approval for a temporary use at any time and order immediate discontinuance of the use or complete evacuation of the building or space.

**PHS.3.3.030 Local Ordinances.**

No city, village, or town may enact or enforce an additional or more restrictive local ordinance that establishes minimum standards for constructing, altering, or adding to tribal buildings.

**PHS.3.3.040 Enforcement.**

The Department may issue a warning, order, and or a citation for any violation of this chapter.

**PHS.3.3.050 Owner’s Responsibility.**

The owner of each building, structure and premises shall be responsible for maintaining the property in compliance with this chapter. Compliance with this chapter does not relieve the owner from compliance with the other administrative rules established by the Tribe.

**PHS.3.3.060 Appeals.**

Any person who owns or occupies a property that is affected by an order or receives a citations by the Department may petition the Lac Courte Oreilles Tribal Court for a hearing on the reasonableness of the order in compliance.

**PHS.3.3.070 Revocation of Approval.**

The Department may revoke any approval, issued under the provisions of this chapter, for any false statements or misrepresentation of facts on which the approval was based.

**PHS.3.3.080 Fire Incident Reports.**

1. For each fire, a report shall be compiled by the fire department within sixty (60) days after the fire occurred.
2. The report shall include all applicable information:

(1) the age of the building;

(2) purpose of the building for which the building was used at the time of the fire;

(3) If the building was used as a home, whether the building was a multifamily dwelling complex, a single-family dwelling, or a mixed-use building with one or more dwelling units;

(4) whether the building had an automatic fire sprinkler system at the time of the fire and, if so, whether the system was operational;

(5) whether the building had a fire alarm system at the time of the fire and, if so, whether the system was operational;

(6) the cause of the fire;

(7) an estimate of the amount of damages to the building as a result of the fire;

(8) the number of human deaths due to the fire, if any;

(9) the number of human injuries due to the fire, if any;

(10) any other relevant information concerning the building, as determined by the Department.

1. A report shall be submitted to the US Fire Administration for placement in the fire incident reporting system maintained by the US Fire Administration within sixty (60) days after the fire occurred.
2. In reporting the age of a building, only the age of the portion of the building where the fire occurred is required, and this age may be estimated.
3. In reporting the amount of damages to a building, either assessed values or expected replacement costs may be used, and either an estimated dollar loss or an estimated percentage of the building that is damaged may be used.

**PHS.3.3.090 Fire Department Duties.**

1. Fire prevention and inspections.
2. General. The chief of the fire department shall be responsible for having all tribal buildings within the Lac Courte Oreilles Reservation inspected for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of any law or ordinance relating to fire hazards or to the prevention of fires.
3. Determining the buildings that are to be inspected. The fire chief shall be responsible for determining those tribal buildings that are to be inspected, for which the fire department has responsibility.
4. Scheduling of inspections. Fire prevention inspections shall be conducted at least once in each non-overlapping six (6) -month period per calendar year, or more often if ordered by the fire chief.
5. Inspection reports. The fire chief shall make and keep on file reports of fire prevention inspections for at least seven (7) years, the reports shall be maintained in written form or in another form capable of conversion into written form within a reasonable amount of time.
6. Inspectors. Fire safety inspections shall be conducted by the fire chief or authorized representative of the fire chief.
7. Fire inspector training. All fire department personnel directly involved in conducting fire inspections are authorized by the department and by the fire chief to conduct the inspections upon completion of training approved by the fire chief.
8. Fire education. The fire department shall provide tribal fire education services within the Reservation. The services may be selected from the following fire education-related activities, or may be other activities acceptable to the Department:
9. Fire education services. Fire department may complete any combination of the following activities: children's poster contest; fire department open house; school visits to teach children fire safety; fire department fire safety demonstrations, including but not limited to firefighting demonstrations, fire extinguisher and smoke detector demonstrations, stop, drop and roll demonstrations, or an activity that specifically relates fire education.
10. Residential fire inspection program. Fire departments advertise and conduct residential fire inspections on a request basis.
11. Building plan review program. A floor plan of all new construction shall be provided to the Fire Department upon request.
12. School education program. Fire departments conduct approved fire safety education programs in the school districts for which they have responsibility.
13. Continuing fire education program. Fire departments conduct fire education programs, which may include monthly tribal service announcements for radio or television, monthly newspaper articles, booths at fairs, demonstrations at shopping centers, and billboards with fire safety messages.
14. Fire extinguisher training program. Fire departments conduct training programs for the Tribe in the operation of fire extinguishers.
15. Occupancy inspection program. Fire departments conduct inspections of tribal buildings prior to the issuance of local occupancy permits. Written documentation of the inspections is kept by each fire department.
16. Smoke detector awareness program. Fire departments conduct programs to inform people regarding the effectiveness and proper installation of smoke detectors in residential buildings and tribal buildings.
17. Record keeping. The following fire department dues entitlement records shall be generated and maintained:
18. Current roster of active fire department members.
19. Time, date, location, and number of firefighters responding, excluding the chief, for each first alarm for a building. For any of these responses that are in combination with another fire department under a mutual aid agreement, the record under this paragraph shall include the name of that department and the number of firefighters, excluding the chief, responding from that department.
20. Number and duration of, and attendance at, fire department meetings, if the fire department is a volunteer fire department. For the purposes of this requirement, a volunteer fire department does not have any member who is paid for 36 hours or more of work, on a weekly basis.
21. Number and duration of, topic of and attendance at fire department training sessions.
22. Number, type, and duration of, and attendance of fire department members at, tribal fire education related activities.
23. Audit.
    * 1. The Department shall annually complete and submit a self-certified audit to the Tribal Governing Board and shall be submitted on or before April 1.
24. The Department shall include in input the name of every fire department employee or volunteer that provided fire protection services and fire prevention services, to the Tribe in the last calendar year. The fire department may use mutual aid agreements as additional means of providing fire protection services.
    * 1. The chief of the fire department shall provide the input required by this paragraph, as to whether or not fire department is in substantial compliance with any mandatory tribal, state, or federal regulations regarding the fire department.
      2. The department shall examine fire department records, including the records of any and all fires, financial records, payroll, professional certifications, equipment lists, and any other relevant information, to verify that the required fire prevention and fire protection services were provided within the Reservation by the Department.

**SUBCHAPTER PHS.3.4**

**GENERAL FIRE SAFETY**

**PHS.3.4.010** Open Flames.

1. The fire chief shall have the authority to prohibit any or all open flames, and open, recreational, and cooking fires or other sources of ignition, or establish special regulations on the use of any form of fire or smoking material where circumstances make such conditions hazardous.
2. No open flame devices or pyrotechnic devices may be used in any occupancy, unless otherwise permitted.

PHS.3.4.020 Cooking Equipment .

1. No tribal building may store fuel for a hibachi, grill, or other similar device used for cooking may be stored with that equipment on a balcony.

(b) Neither an exhaust hood nor an automatic fire suppression system is required for a mobile kitchen where all of the following conditions are met:

(1) The kitchen is less than 365 square feet in size.

(2) The kitchen is used on fewer than 12 days in a calendar year, for the purpose of cooking.

(3) The owner or operator of the kitchen maintains a record demonstrating compliance with sub. (2), retains the record with the kitchen, and makes the record available to an inspector upon request.

**PHS.3.4.030 Fire service elevator keys.**

All elevators shall be equipped to operate with a standardized fire service elevator key.

**PHS.3.4.040 Portable unvented heaters.**

Portable, fuel-fired, unvented heating appliances are prohibited — except during construction or demolition of a building, provided adequate ventilation is supplied.

**PHS.3.4.050 Inspection, testing and maintenance of cross connection control devices.**

All cross-connection control devices installed in water-based fire protection systems shall be inspected, tested and maintained in accordance with this chapter.

**PHS.3.4.060 Credentials for testers of fire sprinkler systems.**

Chapter SPS 305 of the Wisconsin Administrative Code is adopted as to the credential requirements for testers of fire sprinkler systems. That chapter and this chapter do not preclude non-credentialed individuals from conducting the daily, weekly, monthly, quarterly or semiannual inspection and testing activities for automatic fire sprinkler systems.

**PHS.3.4.070 Maintenance of smoke detectors and alarms.**

1. The owner of a residential building shall maintain any such smoke detector that is located in a common area of that residential building.
2. The occupant and or the owner of a unit in a residential building shall maintain a smoke detector in that unit, and the occupant shall have five days upon notice of a non-functional unit to complete any maintenance necessary to make that smoke detector functional.
3. All smoke alarms must be replaced by the end of the service period specified by their manufacturer, and a replacement alarm that uses a battery as the primary power source must have a non-replaceable, non-removable battery which is capable of powering the alarm for at least ten (10) years.

**PHS.3.4.080 Manual wet sprinkler systems**.

Inspection, testing and maintenance of manual wet sprinkler systems shall comply with all of the requirements of NFPA 25, for an automatic fire sprinkler system, except that the main drain test specified in NFPA 25 is not required.

**PHS.3.4.090** **Hose Threads.**

All fire hose fittings, apparatus fittings, 1.5 and 2.5 inches in diameter purchased or procured by a fire department or fire company shall be of the national standard hose thread as adopted by the national fire protection association. No fire department shall utilize hose and equipment not in conformance with the requirement that all threads shall be national standard hose thread as adopted by the national fire protection association.