

BAY MILLS INDIAN COMMUNITY

**AN ORDINANCE REGULATING THE ISSUANCE OF RESIDENTIAL
AND COMMERCIAL LEASES ON THE RESERVATION OF
THE BAY MILLS INDIAN COMMUNITY**

Section 1. Purpose.

The purpose of this ordinance is to establish the terms and conditions under which the Bay Mills Indian Community shall issue leasehold interests for various purposes on land held in trust for its benefit by the United States.

Section 2. Policy.

It is the policy of the Bay Mills Indian Community to ensure that the lands held in trust for its benefit by the United States, which encompass its Reservation, are used for the benefit of its members, as follows:

- a. Adequate sites are available for governmental purposes, including, but not limited to:
 1. Provision of health, social services, education, law enforcement, cultural, recreation, senior citizen and youth services and programs.
 2. Provision of water, sanitation, electricity, heat, telephone and similar utility services to all locations.
 3. Protection of areas of cultural and historical significance to the Bay Mills Indian Community.
 4. Protection of the natural environment encompassing the Reservation.
 5. Provision of tribally-operated enterprises for the generation of revenue, employment, and services.
- b. Adequate land is provided for the establishment and maintenance of primary residences by members of the Bay Mills Indian Community.
- c. Establishment and maintenance of secondary, or seasonal, residences by members of the Bay Mills Indian Community is authorized, but subordinate to the policy expressed in subsec. (a) and (b), above.
- d. Establishment and maintenance of commercial enterprises owned and operated by members of the Bay

Mills Indian Community is authorized, but subordinate to the policies expressed in subsec. (a) and (b) of this section.

e. Leases shall not be issued to non-members of the Bay Mills Indian Community unless special circumstances exist which demonstrate to the satisfaction of the Executive Council that undue hardship would result to members of the Bay Mills Indian Community in the absence of such lease issuance. The procedures to demonstrate undue hardship are described in subsec. 11(a) of this ordinance.

Section 3. Reservation of Governmental Authority.

Nothing contained in this ordinance shall prohibit or limit the power of the Bay Mills Indian Community to set aside trust land for a specific purpose by any official action of the General Tribal Council, or by the Executive Council acting under authority delegated by the General Tribal Council.

Section 4. Compliance with Federal Law.

Nothing contained in this ordinance shall supersede or contravene the application of federal law relating to lands held in trust for an Indian Tribe or the regulations issued by the Secretary of the Interior regarding leasing of tribal lands contained in 25 C.F.R. Part 162, as it may from time to time be amended.

Section 5. Lease for Governmental Purpose.

The Executive Council may issue a lease upon written request to a department, agency or subordinate organization established by tribal ordinance for a governmental purpose, for the fee of One Dollar (\$1.00).

Section 6. Permit for Primary Residence.

The Executive Council may issue a permit for residential use by a member of the Bay Mills Indian Community under the following circumstances:

a. The member requests a lease, under the procedure described in subsec. 7(a)--(d) of this ordinance, and the permit is desired in order to obtain financing for construction of the member's planned residence.

b. Such permit shall identify the area by legal description and shall be issued for a period not more than two (2) years in duration.

c. The permit shall be canceled and a primary residential lease shall be authorized when:

1. A written commitment letter from a lender is provided to the Executive Council, that funds will be provided for construction of the member's residence on the premises subject to the permit; or

2. The Executive Council is satisfied that the member has made substantial progress in constructing a residence on the premises subject to the permit.

Section 7. Lease For Primary Residence.

The Executive Council may issue a lease for residential use by a member of the Bay Mills Indian Community upon the following terms:

a. The member requesting a lease shall do so in writing and may specify a particular parcel for such lease. In the absence of a specified location request, the Executive Council, in consultation with the Bay Mills Indian Community Housing Authority, shall identify the land to be leased.

b. The member shall affirm in writing that the lease is requested for land which will be the member's legal residence, and upon which the member will physically reside at least seven (7) months of each year.

c. The land to be leased shall not exceed one (1) acre in size.

d. The lease issued may contain restrictions on siting of structures, excavation, construction of access points, addition of fill material, and similar matters, as may be required by applicable federal law.

e. The member shall construct and occupy a residence on the leased site within one (1) year of lease issuance. Failure to comply with this requirement shall cause the termination of the lease, unless the lessee demonstrates to the satisfaction of the Executive Council that such failure was not due to circumstances solely within lessee's control. In such event, the Executive Council may extend the time period within which the member shall construct and

occupy a residence, but not for more than one (1) additional year.

f. The fee charged for the primary residential lease shall be One Dollar (\$1.00).

g. A lease issued to the Bay Mills Indian Community Housing Authority for the benefit of a member, pursuant to a home ownership financing program administered by said Authority, shall be considered a primary residence lease.

h. No member lessee shall be issued more than one primary residence lease. In the event that such a member shall seek another lease for a primary residence, the member shall do one of the following:

1. Relinquish the first primary residence lease to the Bay Mills Indian Community; or
2. Assign the first primary residence lease to another member within one (1) year of issuance of the second lease, with the approval of the Executive Council; or
3. Convert the first primary residence lease to a commercial lease within one year of issuance of the second lease, under the terms provided therefor in Section 9 of this ordinance.
4. Failure to dispose of the first primary residence lease as required in subsec. 1--3, above, shall cause the automatic relinquishment of the second lease to the Bay Mills Indian Community.

i. No commercial enterprise shall be located on land subject to a residential lease without the express, written authorization of the Executive Council, and subject to a determination by the Bureau of Indian Affairs as to the fair market rent such enterprise activity must be assessed as a portion of the lease fee. Payment of the fair market rent must be made in order for the Executive Council to authorize the commercial enterprise.

Section 8. Lease for Seasonal Use.

The Executive Council may issue a lease for seasonal, residential use by a member of the Bay Mills Indian Community upon the following terms:

a. The member requesting a seasonal use residential

lease shall do so in writing, and must specify a particular parcel for such lease.

b. No lease shall be issued for seasonal residential use if there is pending a request for a primary residence lease for the same parcel, unless the member requesting the primary residence lease shall consent to the issuance.

c. The land to be leased shall not exceed one (1) acre in size.

d. The lease issued may contain restrictions on siting of structures, excavation, construction of access points, addition of fill material, and similar matters, as may be required by federal law, or due to the lack of water and sanitary waste disposal amenities for the parcel.

e. The fee charged for the seasonal use lease shall be One Hundred Dollars (\$100.00) per year.

f. No member household shall be issued a seasonal use lease who holds a primary residence lease.

g. No commercial enterprise shall be located on land subject to a seasonal use lease without the express, written authorization of the Executive Council, and subject to a determination by the Bureau of Indian Affairs as to the fair market rent such enterprise activity must be assessed as a portion of the lease fee. Payment of the fair market rent must be made in order for the Executive Council to authorize the commercial activity.

h. A seasonal use lease may be converted to a primary residence lease upon the request of the lessee and subject to the provisions of sec. 7 of this ordinance.

Section 9. Lease for Commercial Purpose.

The General Tribal Council may issue a lease for commercial activity on the Reservation of the Bay Mills Indian Community, subject to the determination by the Bureau of Indian Affairs of the fair market rent to be collected for such lease. The General Tribal Council shall not issue a commercial lease for an activity which has an adverse impact on residential neighborhoods of the Bay Mills Indian Community.

Section 10. Lease for Private Utility Service.

The Executive Council may issue a lease to a privately owned enterprise for the purpose of providing telephone, television, and similar utility services to the residents of the Bay Mills Indian Community, subject to the determination by the Bureau of Indian Affairs of the fair market rent to be collected for such lease. Nothing contained in this section shall apply in the determination by the Executive Council and the Secretary of the Interior that the enterprise should be given a right of way under the provisions of 25 C.F.R. Part 169.

Section 11. Non-Commercial Lease Interests Issued to Non-Members.

a. **Undue Hardship Determination.** A lease interest may be granted to a non-member of the Bay Mills Indian Community for residential use, when undue hardship will result to a member of the Tribe in the absence of such issuance. Undue hardship exists when the non-member is married to a member, and financing of a home on trust land by a lender requires that the non-member be co-borrower and mortgagor.

b. **Lease Interest Not Required.** A non-member of the Bay Mills Indian Community may reside on trust land subject to a residential lease, without being named as a lessee, under the following circumstances:

1. The non-member is the surviving spouse of a member who was a named lessee during his or her lifetime, resided with the member on the leased land, and was named the beneficiary of the leased land by will or by order of the Tribal Court in probate proceedings. Under such circumstances, the non-member may continue to reside on the land for his or her lifetime, or until he/she may assign, sell, transfer or otherwise dispose of the non-member's interest in the leased land to a member of the Bay Mills Indian Community, subject to the terms set forth in this Ordinance.

2. The non-member is subject to a judgment of the Bay Mills Indian Community Tribal Court, which grants such non-member legal and or physical custody of the non-member's minor children who are members of the Bay Mills Indian Community, and which further grants the non-member the right to occupy and/or own a residence on the Bay Mills Reservation.

Section 12. Lease to Donor of Land to the Bay Mills Indian Community.

a. **Residential Lease.** The Executive Council may issue a residential lease to a member of the Bay Mills Indian Community for any use contemplated by this ordinance under the following circumstances:

1. The member requests a lease for a particular use, specifying a particular parcel for that purpose;
2. The lease shall not exceed two (2) acres in size;
3. The land for which a lease is requested was donated by the member to the United States in trust for the Bay Mills Indian Community;
4. The land is located within the boundaries of the Reservation set aside for the Sault Ste. Marie Bands of Chippewa in Article Third of the Treaty of March 28, 1836 (7 Stat. 491), described as follows:

A tract commencing at the mouth of the Pississowining river, south of Point Iroquois, thence running up said stream to its forks, thence westward, in a direct line to the Red water lakes, thence across the portage to the Tacquimenon river, and down the same to its mouth.
5. The terms of such lease shall be consistent with applicable federal law and tribal land use ordinances, as such may from time to time be established or amended.

b. **Commercial Lease.** A donor of land to the Bay Mills Indian Community who desires a commercial lease on some or all of the donated land shall submit a request to the General Tribal Council, as provided in sec. 9 of this ordinance.

CERTIFICATION

This is to certify that the above Ordinance was adopted and approved at a meeting of the Bay Mills Indian Community General Tribal Council held at Bay Mills, Michigan, on the 5th day of February, 2001, with a vote of 174 in favor, 2 opposed and 2 abstaining.


Terry E. Carrick, Secretary
Bay Mills Indian Community
Executive Council