

TITLE 8A BANISHMENT

CHAPTER 1. GENERAL PROVISIONS

Section 8A-1-1. Title. This Ordinance shall be entitled the “Banishment Ordinance” of the Flandreau Santee Sioux Tribe.

Section 8A-1-2. Legislative Findings. In enacting this Ordinance, the Executive Committee of the Flandreau Santee Sioux Tribe hereby finds that as the governing body of the Tribe, it has the duty and authority to protect all people who are within the jurisdiction of the Tribe from harassing, threatening, and violent behavior and to provide a safe living and working environment for all people on the Reservation. The Executive Committee further finds that it has a duty to protect the children of the Reservation from any mental, physical and emotional harm associated with or resulting from the criminal activity of individuals on the Reservation. Finally, the Executive Committee finds that it has the inherent sovereign power to ban individuals from the Reservation and that this inherent power stems from the traditional trial practices of the past wherein individuals were banished from the Reservation by their Tribes and tribal people when their conduct was found to be contrary to the lifestyle, practices, traditions, and customs of tribal peoples and communities. The Executive Committee recognizes the importance of keeping such traditional practices alive as a means of punishing those who conduct themselves in a manner that is contrary to our tribal traditions, practices and customs and who threaten the peace, safety and welfare of people within the Tribe’s jurisdiction.

Section 8A-1-2. Purpose. The purpose of this Title is to provide procedures for the partial or total banishment from the Reservation of individuals who engage in conduct which threatens the health, welfare, safety, and security of any member of the Tribe or of any non-member who is present or located on the Reservation, to protect and safeguard every individual who is lawfully within the Tribe’s jurisdiction, to ensure that Tribal business is not disrupted by unlawful or disorderly behavior, and to provide a safe and comfortable work environment for Tribal employees.

Section 8A-1-3. Authority. This Ordinance is adopted by the Tribal Executive Committee under the authority granted to the Executive Committee by Article VIII, Section 1 of the Constitution of the Flandreau Santee Sioux Tribe and pursuant to the Tribe’s inherent sovereign authority.

Section 8A-1-4. Definitions. The following definitions shall apply to terms used in this Ordinance:

- (1) Banishment: means an action by the Executive Committee which prohibits or restricts a person’s access to Tribal land and Tribal property.
- (2) Crime of violence: means any of the following crimes: murder, manslaughter, rape, aggravated assault, robbery, burglary, kidnapping, sexual assault or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device.

- (3) Court: means the Flandreau Santee Sioux Tribal Court.
- (4) Habitual criminal: means a person who has been convicted of three or more felonies in any court of competent jurisdiction within a ten year period.
- (5) Harassing: means a knowing and willful course of conduct directed at a specific person or persons which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose.
- (6) Partial banishment: means a banishment which restricts a persons access to Tribal land and Tribal property.
- (7) Stalking: means willfully, maliciously, and repeatedly following or harassing another person or making a credible threat to another person with intent to place the person in reasonable fear of death or great bodily injury.
- (8) Threatening: means words or conduct intended to intimidate another or a declaration of an intention or determination to injure or harm another person.
- (9) Total banishment: means a banishment which entirely prohibits a person from entering onto any Tribal land or Tribal property.
- (10) Tribal land: means any land owned by the Tribe, whether owned by the Tribe in fee or held in Trust by the United States on behalf of the Tribe, and regardless of any lease of said property made to any individual.
- (11) Tribal Property: means any real or personal property owned by the Tribe, including any buildings, structures, businesses, streets, roadways.
- (12) Tribe: means the Flandreau Santee Sioux Tribe.
- (13) Violent: means the use of physical force to injure or damage another person or another person's property.

CHAPTER 2. AUTHORITY TO BANISH

Section 8A-2-1. Executive Committee Authority to Banish-Procedure. The Tribal Executive Committee shall have the authority to banish any person from the Reservation who meets the grounds for banishment set out in Section 8A-2-3 of this Chapter. Any tribal member or the tribal prosecutor based on written reports from law enforcement may petition the Executive Committee to banish an individual who meets the grounds for banishment or the Executive Committee may act on its own initiative to banish an individual. Banishment shall be by Resolution of the Executive Committee after the notice and hearing requirements of Section 8A-2-5 have been met, except in the case of an emergency banishment under Section 8A-2-6. A banishment shall not be ordered until a determination is made that the individual meets the grounds for banishment and

that the individual poses a threat to the safety, moral, or welfare of the Tribal community or any individual residing within the Tribal community.

Section 8A-2-2. Tribal Court Authority to Banish. The Tribal Court shall have authority to banish individuals from the Reservation as provided in Section 3-2-4 of Title 3 of this Code.

Section 8A-2-3. Grounds for Banishment. Any person, whether the person is a tribal member or a non-tribal member, may be subject to a partial banishment or total banishment for any of the following reasons:

- (1) Conviction of a crime of violence whether on or off the reservation as that term is defined in Section 8A-1-4 (2).
- (2) Commission of an act on or within tribal land which would otherwise constitute a crime as defined by Section 8A-1-4(2.1).
- (3) Engaging in the distribution of illegal drugs within the Tribal community;
- (4) Engaging in gang activity which threatens the safety and security of residents of the Tribal community;
- (5) Engaging in threatening, harassing, violent, or disorderly conduct which threatens the safety, security or peace of any person within the Tribal community;
- (6) Engaging in conduct which disrupts Tribal business operations;
- (7) Stalking any individual residing within the Tribal community;
- (8) Physically, mentally, emotionally, or sexually abusing an elderly person or a child residing within the tribal community;
- (9) Being a habitual criminal.
- (10) Destroying or vandalizing tribal or personal property.
- (11) Committing an act of domestic abuse as those terms are defined in Sections 6A-2-2 and 6A-2-3 of the Domestic Violence Protection and Prevention Code against any person who resides within the tribal community.

Section 8A-2-4. Form of Banishment. A banishment may be either partial or total as those terms are defined by Section 8A-1-4 of this Title. If the banishment is a partial banishment, the banishment shall set out the specific restrictions placed on the individual land set forth all the terms of the banishment. A banishment may be perpetual or for a specific period. If the banishment is a total banishment, the individual shall be notified that he or she is required to immediately vacate the Reservation.

Section 8A-2-5. Notice and Hearing Requirements. Except as provided in Section 8A-2-6, a banishment shall not be ordered until the Executive Committee has given the individual notice and an opportunity to be heard. The Executive Committee shall give the individual written notification that he/she is being subject to banishment, the grounds for banishment and that he/she is entitled to a hearing before the Executive Committee upon written request. The individual shall have five days from the date he/she receives the notice to request a hearing. If the individual fails to make such a request within the five days provided for, the Executive Committee may then proceed with the banishment. Notice shall be given by personal service or certified mail, return receipt requested.

At the hearing, if one is requested, the individual shall have the opportunity to present evidence on his or her behalf and maybe represented by an attorney. After the hearing, the Executive Committee shall make a determination whether the individual meets the grounds for banishment as set out in the notice and that the individual poses a threat to the safety and welfare of the tribal community. If such a determination is made, the Executive Committee may then order the individual banished from the Reservation as set out in Sections 8A-2-1 and 8A-2-4. the individual shall be given notice of the final decision of the Executive Committee which shall include notice that violation of the order is a Class I Misdemeanor.

If the banishment is a total banishment, the person shall be notified that he or she is required to immediately vacate the Reservation.

Section 8A-2-6. Emergency Banishment. The Executive Committee shall have authority to order a temporary emergency banishment without notice and hearing when it is determined that an individual who meets the grounds for banishment poses an immediate threat to the safety and welfare of the tribal community or to an individual who resides within the tribal community and the notice and hearing requirements should be dispensed with to protect the safety and welfare of the tribal community. If an emergency banishment is ordered under this Section, the Executive Committee shall thereafter notify the individual and give him or her the opportunity to be heard as provided in Section 8A-2-5.

Section 8A-2-7. Respect for Lifting of Executive Committee Banishment. After a period of one year has expired, a person who has been banished by the Executive Committee may request that the Executive Committee lift the banishment. The banishment may be lifted at the discretion of the Executive Committee upon a showing that the person has rehabilitated his or herself and no longer poses a threat to the safety and welfare of the tribal community. The Executive Community may place any conditions it deems necessary on the individual and require that the individual follow such conditions as a condition to lifting the banishment.

CHAPTER 3. ENFORCEMENT OF BANISHMENTS AND PUNISHMENT

Section 8A-3-1. Violation of Banishment. Any person who knowingly violates the terms of a banishment shall be guilty of a Class I Misdemeanor as defined by Title 3 of this Code.

Section 8A-3-2. Enforcement of Banishments. It shall be the responsibility of Tribal Law Enforcement to enforce this Ordinance by arresting any person who violates the terms of a banishment. Upon arrest, the person shall be held in custody pending release on bond as provided in Section 8A-3-3 of this Chapter, unless the person is non-Indian, in which case the person shall be removed from the jurisdiction of the Tribe and advised that return to the jurisdiction will result in an arrest for trespass and prosecution in a court of competent jurisdiction.

Section 8A-3-3. Release on Bond. A person shall not be released from custody for a violation of this Chapter unless he or she shall post a minimum of a one-hundred dollar bond with the Clerk of Courts. As a condition of release the person shall agree not to further violate the banishment and shall forfeit his or her bond if the conditions of release are violated.

Section 8A-3-4. Accessories to Violation of Banishment. A person is an accessory to a violation of banishment, if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a banishment violation, he or she renders assistance to the banished person. Render assistance means to:

- (1) Harbor or conceal the other person;
- (2) Warn the other person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring the other person into compliance with the law;
- (3) Provide the other person with money, transportation, a weapon, a disguise or any other thing to be used in avoiding discovery or apprehension;
- (4) Obstruct anyone by force, intimidation or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of the other person; or
- (5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of the other person.

A violation of this section is a Class 1 misdemeanor.

LEGISLATIVE HISTORY

This Ordinance was enacted by the Flandreau Santee Sioux Tribal Executive Committee by Resolution number 00-08 on February 28th, 2000.

This Ordinance was amended by the Flandreau Santee Sioux Tribal Executive Committee by Resolution number 02-34 on June 10th, 2002; and by Resolution number 2023-01 on February 27, 2023.