

BAY MILLS UTILITY ORDINANCE

ARTICLE I: REPEALER

This ordinance repeals all prior ordinances adopted by the Bay Mills Indian Community General Tribal Council relating to the establishment and operation of a tribal utility. This ordinance is the exclusive authority by which the Bay Mills Indian Community will regulate public utilities located on the Bay Mills Indian Reservation.

ARTICLE II: GENERAL PROVISIONS

Section 2.01 Title and Date. This ordinance shall be titled, “the Bay Mills Utility Ordinance.” It shall become effective immediately upon adoption by resolution of the Executive Council.

Section 2.02 Purpose. The purpose of the Bay Mills Utility Ordinance is to establish the policies, regulations, and rules necessary for the operation and maintenance of the public utilities located on the Bay Mills Indian Reservation.

Section 2.03 Policy. The Bay Mills Indian Community will operate, maintain, and manage the public utilities on the Bay Mills Indian Reservation for the benefit of tribal members and residents of the Reservation. Public utilities shall be operated according to the following standards:

- A. Minimize conditions that harm the physical and mental health of tribal members and residents of the Reservation;
- B. Minimize conditions that harm the lands, waterways, air, and plant and animal life on the Reservation;
- C. Ensure that individuals responsible for operating public utilities are properly educated and trained for their duties;
- D. Ensure that infrastructure is maintained to preserve its effective operation; and,
- E. Ensure that public utilities are operated in a cost-effective and self-sufficient manner.

Section 2.04 Jurisdiction. The Bay Mills Indian Community has the authority to establish, maintain, and regulate the use of public utilities on the Bay Mills Indian Reservation.

ARTICLE III: DEFINITIONS

Section 3.01 “Financial information” means:

- A. The records maintained by the Tribe which delineate the revenue(s) and expenses of the Maintenance and Utilities Department in carrying out the purposes and activities described in this Ordinance; and
- B. The records maintained by the Tribe which delineate the amounts paid to vendors and/or contractors for goods or services deemed to constitute a public utility by the Bay Mills Utility Rate Board in the future.

Section 3.02 “Infrastructure” means the physical system of public works operated, maintained, or owned by the Tribe.

Section 3.03 “Public Utilities” means services provided by the Tribe, or procured by the Tribe on behalf of tribal members, which are available to persons living on the Reservation of the Tribe. Those services may include:

- A. Water;
- B. Sewer;
- C. Solid waste disposal;
- D. Recycling;
- E. Electricity;
- F. Natural gas;
- G. Telephone;
- H. Cable Television;
- I. Wi-Fi; and,
- J. Such other utility services as the Tribe may provide in the future.

Section 3.04 “Reservation” means lands held in trust by the United States for the benefit of the Bay Mills Indian Community, lands declared to be “Reservation” by proclamation of the Bureau of Indian Affairs, U.S. Department of the Interior, and published in the Federal Register, and other lands within the exterior boundaries of the Bay Mills Indian Community Reservation over which the Tribe exercises jurisdiction.

Section 3.05 “Tribe” means the Bay Mills Indian Community.

ARTICLE IV: BAY MILLS UTILITY RATE BOARD

Section 4.01 Establishment of Rate Board. The Bay Mills Indian Community establishes the “Bay Mills Utility Rate Board.”

Section 4.02 Composition of Rate Board. The Bay Mills Utility Rate Board shall be comprised of five (5) individuals appointed by a majority vote of the Executive Council. At least one member shall be a member of the Executive Council, and all members of the Bay Mills Utility Rate Board shall be members of the Bay Mills Indian Community who receive public utility services.

Section 4.03 Term of Appointment. The Bay Mills Utility Rate Board members shall serve for a period of three (3) years. The Executive Council shall appoint the initial members of the Utility Rate Board so as to ensure that their terms are staggered in a manner that no more than two members are appointed each year.

Section 4.04 Powers and Duties. The Bay Mills Utility Rate Board shall be responsible for establishing rates and fees for the use of public utilities on the Bay Mills Indian Reservation. In the exercise of these duties, the Utility Rate Board shall have access to financial information relating to the operation of public utilities. The Utility Rate Board shall have no other powers or responsibilities beyond establishing rates and fees.

Section 4.05 Meetings of the Utility Rate Board. The Bay Mills Utility Rate Board shall meet twice per year to review the costs of operation for public utilities located on the Reservation and to establish rates and fees for the following calendar year. Meetings shall be called with at least seven (7) days’ notice, and shall be open to all members of the Bay Mills Indian Community and residents on the Bay Mills Indian Reservation who receive public utility services. Four members of the Utility Rate Board shall constitute a quorum, and the Chairperson shall vote only in the event of a tie.

Section 4.06 Emergency Meetings. The Bay Mills Utility Rate Board may convene an emergency meeting on at least seven (7) days’ notice to the public to recommend an emergency rate adjustment to the Executive Council.

Section 4.07 Meeting Minutes. The Bay Mills Utility Rate Board shall keep minutes of its meetings, and shall provide copies of its minutes to the Executive Council.

Section 4.08 Compensation. Members of the Bay Mills Utility Rate Board may receive a stipend for attending meetings. The compensation must be approved by the Executive Council and shall be considered a cost of operation for public utilities. Stipends shall be paid from the proceeds generated by the public utilities.

ARTICLE V: ESTABLISHING FEES, PENALTIES, AND RATES

Section 5.01 Fees. The Bay Mills Utility Rate Board may establish fees for connections, service, and repairs of public utilities, as well as the amount of penalties for non-payment or misuse of public utilities. The Utility Rate Board may not increase fees more than once per calendar year, and may not increase fees by more than 5% at one time; *provided*, this limitation shall not apply to the initial fees established by the Utility Rate Board. Fees and penalties shall be established by majority vote of the Utility Rate Board.

Section 5.02 Rates. The Bay Mills Utility Rate Board shall establish rates for use of public utilities on an annual basis. The rates shall be based on the estimated average annual costs for operation of all utility services, and shall make the operation of public utilities self-sufficient; *provided*, the Utility Rate Board may not increase rates by more than 5% at one time; *provided*, this limitation shall not apply to the initial rate established by the Utility Rate Board. Rates shall be established by majority vote of the Utility Rate Board.

Section 5.03 Public Comment. The Bay Mills Utility Rate Board must consider public comment on any proposed changes to utility fees, penalties, and rates prior to approving fees, penalties, and rates.

Section 5.04 Executive Council Review. The Executive Council may review and override the Utility Rate Board's decision to modify fees, penalties, and rates by a majority vote held within twenty-one (21) days of the decision of the Utility Rate Board.

Section 5.05 Exclusive Authority to Establish Fees, Penalties, and Rates. The Bay Mills Utility Rate Board shall have the exclusive authority to establish fees, penalties, and rates for public utilities on the Bay Mills Indian Reservation. With the exception of its authority to review and override fee, penalty, and rate changes under Section 5.04, the Executive Council shall have no authority to modify fees, penalties, and rate changes for public utilities on the Bay Mills Indian Reservation.

Section 5.06 Exclusive Use of Funds. The funds received by the Bay Mills Indian Community under this ordinance shall be used exclusively for the operation, maintenance, and development of public utilities. Further, those funds shall not be transferred or loaned to the Bay Mills Indian Community General Fund, or any other accounts of the Tribe, except to pay for public utility services provided by the Tribe.

ARTICLE VI: OPERATION OF THE MAINTENANCE AND UTILITIES DEPARTMENT

Section 6.01 The Maintenance and Utilities Department. The Maintenance and Utilities Department shall be responsible for managing the public utilities located on the Reservation on a

day-to-day basis. The Executive Council may designate oversight responsibility to an appropriate official within the Tribal Government.

Section 6.02 Services. The Department shall provide domestic water, sewage, solid waste disposal, and recycling services to residents of the Bay Mills Indian Reservation. The Executive Council may require the provision of other services by amendment to this ordinance.

Section 6.03 Annual Budget. The Executive Council shall establish an annual budget for the operation, maintenance, administration, personnel, liability and other insurance, replacement, and capital reserves of the Department.

Section 6.04 Water Service. The Department is responsible for providing safe water in an adequate amount for houses, businesses, and entities connected to the mainlines of the Tribe's water system (including amounts needed for fire departments and emergency services). This responsibility shall include water sources, storage tanks, controls, mainlines, valves and hydrants, and service lines to the meter only. The service line from the meter to the house and interior house plumbing are the responsibility of the customer. The individual household water meters are owned by the Tribe and it is the responsibility of the Department to maintain the meters. The water system shall be managed to meet or exceed the regulatory standards under the United States Safe Drinking Water Act, as established by the United States Environmental Protection Agency.

Section 6.05 Sewage Service. The Department is responsible for the sanitary disposal of domestic liquid waste for a fee to those houses, businesses, and entities connected to the mainlines of the Tribe's sewage system. The Department shall also be responsible for the maintenance and repair of the Tribe's sewage disposal systems and stormwater collection/treatment systems. This responsibility includes: treatment facilities, pumping stations, manholes, and service lines to individual parcels. The sewage system shall be managed to meet or exceed the regulatory standards under the United States Safe Drinking Water Act and the National Pollution Discharge Elimination System.

Section 6.06 Solid Waste and Recycling. The Department shall provide services for the collection and disposal of solid waste for a fee for the residents of the Reservation. The Department may offer recycling services at no cost to residents of the Reservation and tribal members. The Department may contract with a qualified business or entity for the provision of these services.

Section 6.07 Future Services. The Tribe may require the Department to provide other public utility services in the future, including (but not limited to): electricity, gas, telephone, cable TV or other utility services.

Section 6.08 Inspection Schedule. The Department shall develop and follow a regular schedule of inspections for public utilities on the Reservation to ensure compliance with applicable federal standards. A copy of this schedule shall be provided to the Executive Council at the first regular meeting of each calendar year.

Section 6.09 Maintenance Schedule. The Department shall develop and follow a regular schedule of maintenance service for public utilities on the Reservation. A copy of this schedule shall be provided to the Executive Council at the first regular meeting of each calendar year.

Section 6.10 Employees. Employees of the Department shall be employees of the Bay Mills Indian Community, entitled to all of the rights and benefits of employees of the Tribe, and subject to the same policies and procedures as other employees of the Tribe. The Tribe may hire independent contractors to assist with certain activities of the Department as needed.

Section 6.11 Equipment. The Department's equipment shall be maintained according to the established maintenance schedule and be quickly repaired or replaced when necessary to avoid disruption to service.

- A. The Department's equipment shall not be used by any employee or person for personal or commercial use, and shall not be loaned to other departments of the Tribe.
- B. The Department shall maintain an accurate inventory for use and storage of equipment. The Department shall also maintain a reserve supply of repair parts and other equipment it regularly uses.

Section 6.12 Customer Relations. The Department shall keep utility customers notified about fees, schedules, maintenance, and repairs related to public utilities on the Reservation.

Section 6.13 Emergency Notification. The Department shall develop an Emergency Notification Plan to notify customers and Reservation residents of the following:

- A. Interruption in service lasting more than eight (8) hours
- B. Substandard water quality, including the presence of bacteria, chemicals, or other agents that may threaten the public health;
- C. Changes in scheduling for collection of waste, recycling, hours of operation; and,
- D. Any other conditions which may adversely affect the health of the Reservation residents.

The Department shall review the Emergency Notification Plan on an annual basis, and shall certify to the Executive Council prior to January 31st of each year that its plan complies with this ordinance.

Section 6.14 Professional Development. Department employees assigned to operate utility systems shall receive at least 40 hours of instruction prior to assuming responsibility for operations. Employees assigned to operate utility systems shall receive training relevant to operation of public utilities on an annual basis.

Section 6.15 Limitation of Responsibility. The Department shall not be responsible for the maintenance or repair of any private water or sewer system, except by agreement establishing a fair rate of compensation for the Department. The Department shall not be liable for any loss or

damage resulting from any action of the customer or defect in a customer's water or sewer lines, fixtures, driveways or parking lots, hydrants or lighting.

Section 6.16 Right of Entry. The Department, and its authorized employee(s), is authorized to make limited, reasonable inspections of any grounds, building or residence served by the Department to the extent necessary to ensure that customer utility fixtures, lines, and equipment are being operated in a manner consistent with the scope of utility service. Where possible, the Department shall provide reasonable notice to the customer in advance of any inspection.

Section 6.17 Disruption in Service. The Department may shut-off utility service, or disrupt traffic on public rights-of-way, to perform repairs and maintenance; provided, that advance notice is given to affected customers. The Department may shut-off utility service or disrupt traffic on public rights of way without advance notice when it is necessary to protect the public health, safety, and welfare.

The Department shall not be responsible or liable for any damage or injury resulting from an authorized disruption in service.

Section 6.18 Prohibition on Cross Connections. Cross connections with the public water supply are prohibited.

Section 6.19 Inspection for Cross Connections. The Department is authorized to inspect properties served by the public water system to determine whether a cross-connection exists. Public Utility customers shall supply pertinent information to the Department relating to utility systems on the property. Refusal to provide such information to the Department shall be deemed evidence that a cross connection exists.

The Department is authorized to take necessary steps to prevent contamination of the public water supply as a result of a cross connection, including shutting off the supply of water to a property where a cross connection exists (upon reasonable notice).

Section 6.20 Wasting Water. The Department reserves the right to terminate customer service of public water when the customer has repeatedly used water in a manner that is wasteful. Termination of service may only occur after providing the customer with forty-eight (48) hours notice, and an opportunity to remedy wasteful use of water. Service may be resumed after the waste has been remedied, including the payment of a fine.

Wasteful use of water includes, but is not limited to, allowing hydrants, taps, hoses, and other fixtures to run continuously when not in productive use.

Section 6.21 Shortages. The Department may declare a water shortage, and may limit service of water accordingly.

Section 6.22 Meters. All homes connected to the public water system shall install a water meter. All meters shall be installed in accordance with the Department's requirements, and in such locations as the Department may direct. Meters shall remain accessible to the Department,

and no person shall obstruct or tamper with any meter. Damage, tampering, or obstructing access to a meter shall be a violation of this Ordinance, subject to civil penalties.

Meters are the property of the Department, and the Department shall have responsibility to maintain meters.

Section 6.23 New Customer Services. Any residence or structure within the service area of the public utility shall be eligible for services, provided all of the following conditions are met:

- A. The facilities are adequate to meet additional demand;
- B. The new customer agrees to comply with this Ordinance;
- C. Approval by the Department.

ARTICLE VII: CUSTOMER OBLIGATIONS

Section 7.01 Conditions for Service, Payments. As a condition of receiving public utility services, customers agree to comply with this Ordinance and all fees, rates, and penalties established pursuant to this Ordinance.

Section 7.02 Maintenance, Repairs, and Liability. The customer shall be responsible for maintaining and repairing water and sewer lines located on or in the customer's grounds, building, or residence in compliance with applicable tribal law. The customer shall provide notice to the Department prior to undertaking significant maintenance or repairs planned for water or sewer lines.

The customer shall permit the Department to inspect the work for compliance with applicable laws and regulations.

The customer shall be liable for any damage caused to public utilities caused by the customer's activities, or any person acting on the authority or permission of the customer.

Section 7.03 Termination of Service and Abandonment. A customer planning to vacate any grounds, building, or residence served by the Department shall notify the Department in writing at least one week prior to the date the customer plans to vacate or terminate service. A customer who fails to give notice is responsible for all charges accrued up to one week after notice is received by the Department or up until service is terminated, whichever occurs first.

Section 7.04 Inspections. Customers shall not impede the Department in carrying out its duties to maintain and repair public utilities. The customer shall be liable for any costs or related expenses caused by impeding the Department in carrying out its duties.

Section 7.05 Solid Waste Facilities. Customers shall provide their own solid waste containers, and maintain those containers in a manner that prevents danger to the public health. Customers shall not allow solid waste, refuse, or garbage to accumulate near their individual homesites.

Section 7.06 Use of Sewage System. Customers shall use the sewage system solely for the disposal of normal household liquid waste, including waste from toilets, showers, and kitchens.

Section 7.07 Unauthorized Disposal. Customers shall not dispose any material into the sewage system which may cause the lines to become blocked or loaded with solids.

Customers shall not dispose of any toxic, radioactive or hazardous waste into private or public sewage systems.

Section 7.08 Consent to Jurisdiction. By agreeing to receive public utility services, customers consent to civil regulation and jurisdiction by the Bay Mills Indian Community, including the jurisdiction of the Bay Mills Tribal Court for the resolution of disputes. A customer shall not receive public utility services provided or regulated under this Ordinance without submitting to the civil jurisdiction of the Bay Mills Indian Community.

Article VIII: BILLING

Section 8.01 Billing Responsibility. The Department is responsible for billing customers on a monthly basis. The Department may contract with another Department of the Tribe to issue invoices and collect payments.

Section 8.02 Monthly Statement. The Department shall provide utility customers with a monthly statement detailing the following information:

- A. Customer name and account number;
- B. Type and level of service provided in the previous month;
- C. The invoice for the previous month's service, plus an accounting of bills or charges past due (if any);
- D. The date on which payment is due; and,
- E. The location at which payment may be made.

The Department shall provide the monthly statement by mail; provided, the Department may establish a system to allow customers to request and receive monthly statements through electronic communication.

Section 8.03 Due Date. Payments shall be due by the last business day of each month.

Section 8.04 Past Due Payments. Payments not received within 10 days after the established due date are considered past due. The Department shall issue a notice of past due payment to the customer, detailing the payment owed and any applicable late fees. A past due payment notice shall be issued no later than the date of the next monthly statement.

Section 8.05 Delinquent Accounts. If a payment is not received within 10 days after the established due date, the account shall be deemed delinquent. Customers with delinquent accounts may be subject to fees and penalties in accordance with this Ordinance. The Department shall notify customers when their accounts have become delinquent.

Section 8.06 Average Monthly Payment. The Department may establish a payment system allowing customers to pay a flat fee each month based upon the average monthly amount of invoices. The Department shall require a customer to receive service for one full and continuous calendar year prior to participating in such a payment system.

Section 8.07 Advance Deposits. The Department may require each new customer to pay an advance deposit equal to the amount of basic monthly rates and fees for the first month of service, prior to receiving services. The Department shall retain the deposit for no longer than one year, and the amount of the deposit (with accrued interest) shall be applied to the customer's account balance at the end of the deposit period. Remaining deposit funds shall be returned to the customer.

ARTICLE IX: ENFORCEMENT

Section 9.01 Authority to Enforce. The Department is authorized to collect fees and payments, and to impose sanctions and penalties established pursuant to this Ordinance. The Department shall enforce the provisions of this Ordinance, and may seek appropriate remedies in the Tribal Court.

Section 9.02 Authorized Sanctions. The Department may impose the following sanctions on customers that refuse to comply with any provisions of this Ordinance:

- A. Termination of service(s);
- B. Assessment of penalties at a rate established by the Rate Board;
- C. Assessment of late charges and fees based on a schedule established by the Rate Board;
- D. Assessment of damages resulting from a customer's non-compliance with this Ordinance;
- E. Forfeiture of all or part of a deposit (and accrued interest);
- F. Filing a lien against a customer's property after the account is declared delinquent; and
- G. Filing suit for damages in the Tribal Court.

Section 9.03 Sanctions Guidelines. The Department shall use the following guidelines when considering the appropriate sanctions to be imposed:

- A. Whether the sanction is mandatory or discretionary;

- B. The minimum sanction needed to effect compliance;
- C. The irreparable harm to the customer, and his/her family, if the sanction is imposed;
- D. The irreparable harm to the operation of the Department or the Tribe if the sanction is not imposed;
- E. The customer's past record of compliance or non-compliance, or good faith efforts to achieve compliance;
- F. The customer's statements or behavior indicating the likely success of a given sanction securing compliance;
- G. The irreparable harm to other persons or property if the sanction is not imposed; and
- H. The effectiveness of similar sanctions in securing compliance in other cases.

ARTICLE X: MISCELLANEOUS PROVISIONS

Section 10.01 Severability. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any part of this ordinance which can be given effect without such invalid part or parts.

Section 10.02 Amendments. The Executive Council has the power to amend this ordinance at any time.

Section 10.03 Sovereign Immunity. This Ordinance does not waive or limit the Bay Mills Indian Community's sovereign immunity from suit in any court or other forum.

Section 10.04 Authority of Agents. Agents and employees acting under the scope of this Ordinance shall exercise only those powers authorized by this Ordinance. Those agents and employees acting within their authority and scope of duties shall be cloaked with the immunities of the Bay Mills Indian Community. Agents and employees acting beyond the scope of authority delegated under this Ordinance shall not be cloaked with the immunities of the Bay Mills Indian Community.