

**LOWER SIOUX INDIAN COMMUNITY
COVID-19 ISOLATION AND QUARANTINE CODE**

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Chapter 1: General Provisions

Section 1.1 Policy

It is the policy of the Lower Sioux Indian Community Council to protect its citizens from the spread of COVID-19. The spread of COVID-19 is a threat to the health, safety, and welfare of the Lower Sioux Indian Community and threatens the ability of the Community's government to continue providing essential government services and programs to the Community's citizens and other Community residents. This Code shall be liberally construed to give effect its policies and purposes.

Section 1.2 Purpose

The purpose of this Code is to create provisions related to the isolation and quarantine of those individuals or groups of individuals with, or suspected to be, infected with COVID-19 that can be used by Community Health Officer and the Community COVID-19 Prevention Authority (CPA) to impose and enforce mandated isolation and quarantine orders.

Section 1.3 Definitions

Unless the context clearly requires otherwise, the definitions in this Section apply throughout this Code.

- A. "COVID-19" or "novel coronavirus disease 2019" means an illness caused by a virus, SARS-CoV-2, that can spread from person to person. COVID-19 is a new coronavirus that has spread throughout the world.
- B. "COVID-19 Community Health Officer" or "Community Health Officer" means licensed medical professional acting as an agent, authorized by the Lower Sioux Community Council, with limited authority to act on behalf of the Community for COVID-19 related public health matters.
- C. "COVID-19 Confinement" means the isolation, quarantine, or 'stay at home' directive of an individual or group of individuals believed to be infected with, or exposed to, the novel corona virus (COVID-19) or at reasonable risk of having COVID-19, in order to prevent or limit the transmission of COVID-19 to the general public of the Community;
- D. "COVID-19 Public health emergency" means an occurrence or imminent threat of COVID-19 that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability;
- E. "COVID-19 test" means a medically approved testing method to screen a patient for COVID-19 by a health/medical professional;
- F. "Community COVID-19 Prevention Authority" or "CPA" means a public health agency created by the Lower Sioux Indian Community Council that is responsible for COVID-19 related public health matters;
- G. "Contaminated" or "contamination" means contaminated or contamination by COVID-19 posing a risk of death or harm to other persons;
- H. "Directive" means official instruction from the Community Health Officer;

- I. “Infected” means infected by COVID-19 posing a risk of death or harm to other persons;
- J. “Isolation” means the physical separation and confinement of an individual, group of individuals or individuals within the jurisdictional authority of the Lower Sioux Indian Community whom the Community Health Officer and/or the CPA has reasonable grounds to believe to be infected with, or exposed to, the novel corona virus (COVID-19) or at reasonable risk of having COVID-19, in order to prevent or limit the transmission of COVID-19 to the general public of the Community;
- K. “Least Restrictive Alternative” means the least restrictive method of intervention that may be used to protect the freedom of the individual or group of individuals subject to an order of confinement;
- L. “Quarantine” means the physical separation and confinement of an individual, group of individuals or individuals within the jurisdictional authority of the Lower Sioux Indian Community whom the Community Health Officer and/or the CPA has reasonable grounds to believe to be infected with, or exposed to, the novel corona virus (COVID-19) or at reasonable risk of having COVID-19, in order to prevent or limit the transmission of COVID-19 to the general public of the Community;
- M. “Respondent” means an individual directed or ordered to ‘stay at home’, isolate, or quarantine under this code.
- N. “Stay at Home” means a directive and/or an order mandating an individual or group of individuals to remain in their current place of residence, whether permanent, temporary, or otherwise, until such time the directive or order has expired. This directive and/or order prohibits nonresidents from entering the residence, unless expressly authorized by the Community Health Officer or the CPA. This directive and/or order also prohibits entry/reentry on to the Lower Sioux Reservation unless expressly authorized by the Community Health Officer or the CPA or until the directive or order has expired.

Section 1.4 Specific Applicability

This Code shall apply to the COVID-19 pandemic and the March 2020 Lower Sioux Indian Community Declaration of Emergency isolation and quarantine authority and to other, future declarations as this pandemic could change or have subsequent waves; and shall take precedence over any general laws of applicability.

Section 1.5 Effective Date

This Code shall be in full force and effect on the date of formal approval and adoption by the Lower Sioux Indian Community Council.

Section 1.6 Immunity from Liability

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Lower Sioux Indian Community. Nor shall this Code be construed as superseding or abridging remedies provided by tribal law or the Community Council against any tribal officers, employees, or volunteers.

Section 1.7 Severability

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of this Code or application of the provision to other persons or circumstances is not affected.

Section 1.8 Effect of Headings

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

Section 1.9 Amendment

This Code may be amended upon an affirmative vote of a majority of the Community Council.

Chapter 2: Isolation and Quarantine Orders

Section 2.1 Declaration of State of Emergency

The Lower Sioux Indian Community Council, through its Constitutional enumerated powers, has declared a State of Emergency due to the public health threat of COVID-19. This declaration empowers the Community Council to perform actions, impose policies, or take any measures as necessary to protect the best interests of the Community in response to the COVID-19 pandemic.

Section 2.2 Authority of the Community Health Officer

The Community Health Officer has the authority, at his/her sole discretion, to issue a voluntary isolation, quarantine, and/or 'stay at home' directive if the Community Health Officer has reasonable grounds to believe any individual or groups of individuals to be infected with, or exposed to, COVID-19 or at reasonable risk of having COVID-19 or being contaminated or passing COVID-19 to other persons.

Upon receipt of any directive from the Community Health Officer, individuals or groups of individuals residing outside of the Lower Sioux Reservation may not be permitted to reenter the reservation until the directive is lifted or unless expressly authorized by the Community Health Officer.

The Community Health Officer shall issue the protocol for voluntary isolation, quarantine, and/or 'stay at home' directive to any individual who has tested positive for COVID-19 or who has been exposed to COVID-19.

All directives issued by the Community Health Officer shall be submitted to the CPA.

A. Application for COVID-19 Confinement Criteria with Testing Recommendation

The Community Health Officer may submit an *Application for COVID-19 Confinement* if the Community Health Officer has:

- 1) recommended to the individual or group of individuals submit to the COVID-19 test; and
- 2) offered the individual or group of individuals COVID-19 testing; and
- 3) the individual or group of individuals have refused or failed to submit to the COVID-19 test.

Testing shall be at no financial cost to the individual being tested.

B. Application for COVID-19 Confinement Criteria without Testing Recommendation

The Community Health Officer may submit an *Application for COVID-19 Confinement* if the Community Health Officer has:

- 1) received notice the individual has tested positive for COVID-19; or
- 2) reasonable grounds to believe any individual or groups of individuals to be infected with, or exposed to, COVID-19 or at reasonable risk of having COVID-19 or being contaminated or passing COVID-19 to other persons; and
- 3) determined that such individual or individuals pose a significant threat to the public health and that quarantine or isolation is necessary and the least restrictive alternative to protect or preserve the public health.

Section 2.3 Authority of the Community COVID-19 Prevention Authority to Issue Orders

Upon the declaration of the state of emergency and authorization by a Resolution of the Community Council, the CPA has the authority to implement measures to decrease the spread of COVID-19 on the Lower Sioux Reservation. These measures include, without limitation, to issue isolation or quarantine orders for individuals or groups of individuals when such orders are necessary to prevent a serious risk to the health and safety of the Lower Sioux Indian Community and prevent the spread of COVID-19.

The CPA may order into quarantine or isolation, as appropriate, any individual or group of individuals within the jurisdictional authority of the Lower Sioux Indian Community upon the *Application for COVID-19 Confinement* by Community Health Officer. Upon receipt of any Order issued by the CPA, individuals or groups of individuals residing outside of the Lower Sioux Reservation shall not be permitted to reenter the reservation until the directive is lifted or unless expressly authorized by the CPA.

No individual or group of individuals or individuals within the jurisdictional authority shall be quarantined or isolated unless they meet the conditions in Section 2.2 (A) or (B) of this Code.

Section 2.4 CPA Isolation and Quarantine Procedures

A. Order of Confinement

If the CPA finds by clear and convincing evidence the *Application for COVID-19 Confinement* is in the Community's best interest as a means to protect the health and safety of the Community from the spread of COVID-19, the CPA may either petition the Lower Sioux Tribal Court for an ex parte emergency 'stay at home' detention, isolation, or quarantine order, or may issue an emergency confinement order causing an individual or group of individuals to be immediately detained for purposes of 'stay at home' detention, isolation, or quarantine provided the CPA:

- 1) Has received a report from the Community Health Officer that the individual or group of individuals has refused a COVID-19 test; or
- 2) Has made a reasonable effort to gain voluntary compliance with a ‘stay at home’ directive, or an isolation or quarantine request; or has determined that seeking voluntary compliance would create a risk of serious harm to any person; and
- 3) Has reason to believe that an individual or group of individuals is, or suspected to be, infected with, exposed to, or contaminated with COVID-19 that could spread to contaminate others if remedial action is not taken; and
- 4) Has reason to believe that the individual or group of individuals would pose a serious and immediate risk to the health and safety of others if not detained for purposes of isolation, quarantine, or complying with a ‘stay at home’ directive.

B. Duration of the Confinement

The Order of Confinement issued by the CPA shall not be longer than twenty-one (21) days. The initial CPA Order of Confinement may be up to fourteen (14) days. The CPA may extend the Order of Confinement for an additional seven (7) days if:

- 1) The respondent has refused or failed to submit to the COVID-19 test; or
- 2) The respondent has tested positive for COVID-19.

C. CPA Order

If the CPA orders the immediate involuntary confinement of an individual or group of individuals for the purpose of isolation, quarantine, or complying with a ‘stay at home’ directive, the emergency confinement order shall specify the following:

- 1) The identity of all individuals or groups subject to isolation or quarantine; and
- 2) The premises subject to isolation or quarantine; and
- 3) The date and time at which isolation or quarantine begins; and
- 4) The measures taken by the Community Health Officer to seek voluntary compliance or the basis on which the Community Health Officer determined that seeking voluntary compliance would create a risk of serious harm; and
- 5) The basis on which isolation or quarantine is justified; and
- 6) Notice to the individual or group of individuals that they have the right to petition the Community Council for release from isolation or quarantine; and
- 7) Notice of COVID-19 test results, if applicable; and
- 8) Notice to the individual or group of individuals any additional testing requirements, if applicable.

Section 2.5 Procedures to Challenge the CPA Order

A. Respondent(s) Challenge to the CPA Order

Upon receiving an order of confinement from the CPA, the Respondent may request to challenge the order by requesting an administrative hearing with the CPA.

The CPA shall hold a hearing within fourteen (14) days, or a date based on a medical or safety justification, to determine whether the order of confinement should be vacated, modified, or maintained. The confined party or parties may be represented by an attorney at their expense and/or may appear telephonically.

The respondent may provide the CPA with any evidence or testimony the respondent deems relevant.

The Community Health Officer must demonstrate his/her burden of proof by clear and convincing evidence that the order of confinement is necessary to protect the health and safety of the Community.

B. Respondent(s) Request for Testing

If a confinement order is issued on the basis that the respondent initially refused or failed to submit to the COVID-19 test, the respondent may request another opportunity to submit to a COVID-19 test. A COVID-19 test may be provided at the discretion of the Community Health Officer. The Community Health Officer may consider the time in confinement, availability of test kits, medical recommendations, or any other relevant factor in its decision whether or not to order a COVID-19 test.

C. CPA Determination

After hearing the challenge and considering all testimony and evidence provided the CPA shall determine whether the order of confinement is vacated, modified, or maintained.

If the Community Health Officer has not demonstrated his/her burden of proof by clear and convincing evidence that the order of confinement is necessary to protect the health and safety of the Community the order shall be vacated.

If the CPA determines the Community Health Officer has demonstrated his/her burden of proof by clear and convincing evidence that the order of confinement is necessary to protect the health and safety of the Community the order shall be modified or maintained.

If the order is modified or maintain the CPA shall, within one business day, issue a written recommendation to the Community Council that is in the Community's best interest as a means to protect the health and safety of the Community from the spread of COVID-19 to modify or maintain an order of confinement.

D. Determination of Lower Sioux Community Council

The Community Council must consider the CPA's recommendation and shall make a formal determination whether or not the order of confinement is in the Community's best interest as a means to protect the health and safety of the Community from the spread of COVID-19 within three (3) business days after the receipt of the CPA's recommendation. If the CPA's recommendation to maintain or modify the order is accepted by the Community Council, it shall issue its decision by means of a Community Council Resolution. In the event the Community Council determines the order of confinement has not met the statutory requirements, it shall reject the CPA's recommendation and direct the CPA to vacate the order.

Section 2.6 Lower Sioux Tribal Court Procedures

A. Ex Parte Orders

If the CPA petitions the Lower Sioux Tribal Court ex parte for an emergency order authorizing detention of an individual or group of individuals for the purposes of isolation, quarantine, or compliance with a ‘stay at home’ directive, the petition shall be accompanied by:

- 1) The *Application for COVID-19 Confinement*, a declaration of the Community Health Officer attesting to the facts included in the petition;
- 2) If any, reports or documentation of any further information that may be relevant and material to the Court’s consideration.

The information included in the petition shall be substantially similar to what is required in the CPA’s orders and include anticipated duration of confinement. The Court shall issue the emergency order for the purposes of isolation, quarantine, or ‘stay at home’ directive if there is a reasonable basis to that an emergency order is necessary to prevent a serious and imminent risk to the health and safety of others. This order may be authorized for up to fourteen (14) days or longer, if the Community Health Officer has demonstrated a justifiable basis to extend the timeframe.

B. Hearing on Order

Upon receiving a petition, the Court shall hold a hearing within fourteen (14) days, or a date based on a medical or safety justification, to determine whether the emergency order should be vacated, modified, or maintained and issue a final order. The confined party or parties may be represented by an attorney at their expense and/or may appear telephonically.

C. CPA Petition for Extension of Confinement

The CPA may petition the Lower Sioux Tribal Court for one or more extensions of an emergency order authorizing the continued confinement for an individual or group of individuals for up to thirty (30) days each. The Court shall grant the petition if it finds that there is clear and convincing evidence that confinement is necessary to prevent a serious and imminent risk to the health and safety of others. Upon an order granting the extension, the Court shall hold a hearing within fourteen (14) days, or a date based on a medical or safety justification, to determine whether the extension of the emergency order should be vacated, modified, or maintained. The confined party or parties may be represented by an attorney at their expense and/or may appear telephonically.

D. Notice of Hearing

The Court shall schedule a hearing to review the petition for confinement or a for an extension of confinement pursuant to the timeframes provided in subsections 2.5 (B) and 2.5 (C) and shall provide the parties with notice of the date, time, and place or method of hearing.

E. Service

Service of orders and notices of hearing under this Code shall be done by mail to the last known address or affixing the order or notice of hearing to the respondent’s last known residence. The Court may also order service by any other reasonable method the Court deems effective so long as it does not involve direct contact with the respondent(s).

F. No Appeal of Lower Sioux Tribal Court Final Order

There shall be no right to appeal the Final Order of the Lower Sioux Tribal Court.

Chapter 3: Enforcement and Penalties

Section 3.1 Authority of the Community COVID-19 Prevention Authority to Issue Fines and Penalties

Orders issued by the CPA pursuant to this Code shall be enforceable by the CPA. The CPA is authorized to impose a civil infraction for violation(s) of such an order with a fine of up to \$1,000, or up to \$500 per day in case of a continuing infraction, whichever is greater. Or Any monetary penalty imposed to the violator may be automatically garnished from their per capita payments.

Section 3.2 Enforcement by Lower Sioux Law Enforcement

Orders issued by the CPA pursuant to this Code shall have the same enforceability as orders issued by the Lower Sioux Tribal Court. The Lower Sioux Indian Community Law Enforcement is authorized to enforce, by any means within the confines of any applicable law, orders issued pursuant to this Code.

Adopted by Resolution 20-114 on May 29, 2020.

APPROVAL

The Lower Sioux Indian Community Quarantine Code enacted by Resolution No. 20-114 on May 29, 2020, by the Lower Sioux Community Council, is hereby approved, pursuant to Article V, Section 1(j) of the Constitution and Bylaws of the Lower Sioux Indian Community and the authority delegated to me as Regional Director.

Signed

TAMMIE POITRA  Digitally signed by TAMMIE POITRA
Date: 2020.07.16 10:47:37 -05'00'

Tammie Poitra
Midwest Regional Director