

PRAIRIE ISLAND INDIAN COMMUNITY
HOMESITE ASSIGNMENT ORDINANCE

Adopted After Publication And Comment By Resolution No. 05-03-15-48
Of The Prairie Island Indian Community Council
On March 15, 2005

**PRAIRIE ISLAND INDIAN COMMUNITY
HOMESITE ASSIGNMENT ORDINANCE**

Section 1.01 Purpose.

It is the purpose of this Ordinance to create a formalized system of land assignments to Community Members so that they may reside on lands owned by the United States in trust for the Prairie Island Indian Community. The system is intended to foster predictability and certainty for Members and their families who reside on such land.

Section 1.02 Definitions.

Subd. 1. "Assignee" means the recipient of a Community Homesite Assignment Document.

Subd. 2. "Assignment" shall mean a Community Homesite Assignment.

Subd. 3. "Community" means the Prairie Island Indian Community in Minnesota, a federally recognized Indian Tribe.

Subd. 4. "Community Council" means the Prairie Island Indian Community Council, the constitutionally authorized governing body of the Community.

Subd. 5. "Community Homesite Assignment" shall mean a written document entitled "Community Homesite Assignment," which grants to a Community Member a license to occupy land for residential purposes, subject to the provisions of this Ordinance, any further conditions that may be contained in the Community Homesite Assignment Document, and Community land use or other applicable regulations.

Subd. 6. "Community Member" means an enrolled Member of the Prairie Island Indian Community.

Subd. 7. "Community trust land" means all land that is held in trust by the United States of America for the Community.

Subd. 8. "Improvements" means all structures, movable and permanent, as well as all personal property that may be affixed to the Community Homesite Assignment.

Subd. 9. "Nonmember" means a person who is not a Community Member.

Subd. 10. "Vacate" means personally removing from the Community Homesite Assignment as well as the removal of all structures, movable or permanent as well as all personal property located on the Community Homesite Assignment.

Approved by Resolution 05-03-15-48
On March 15, 2005

Section 1.03 Granting of Community Homesite Assignments.

Subd. 1. The Community Council shall have the authority in its complete discretion to grant Community Homesite Assignments. Community Council decisions on whether to grant Assignments shall not be appealable to any court or administrative body.

Subd. 2. Unless otherwise specifically provided in this Ordinance, the Community Council shall grant an Assignment only to an adult Community Member.

Subd. 3. The maximum size of an Assignment shall be one acre, unless the Community Council in its discretion grants a written variance from the maximum size limit.

Section 1.04 Length of Community Homesite Assignments.

Unless otherwise provided in this Ordinance or in the Assignment Document, or unless terminated earlier pursuant to this Ordinance, the term of a Community Homesite Assignment shall be for the life of the Assignee.

Section 1.05 Conditions of Community Homesite Assignments.

All Community Homesite Assignments shall be subject to the following conditions, whether or not these conditions are contained in the Assignment Document itself:

Subd. 1. An Assignment shall be used solely for residential purposes; provided that the Community Council in its discretion may issue a written permit for specified commercial uses provided that the commercial use is consistent with the residential character of the Community.

Subd. 2. An Assignee shall promptly construct a dwelling on the assigned land. Unless the Assignment Document identifies a different time period, the Assignee shall work with the Tribal Engineer or other designated person to prepare a site plan for the placement of a dwelling on the assigned land within ninety (90) days of the granting of the Assignment, commence site preparations and the construction or placement of a dwelling on the Assignment within six (6) months of the granting of the Assignment, and the dwelling shall be substantially completed within one (1) year of the granting of the Assignment.¹

Subd. 3. An Assignment may only be issued to a Member of the Community who has reached the age of 18 years and who is legally competent.

Approved by Resolution 05-03-15-48
On March 15, 2005

¹

Approved by Resolution 11-09-12-09 On September 12, 2011.

Subd. 4. No family may hold at any time more than one Assignment. A family is defined as a husband and wife, living together as such, whether there be children or not.

Subd. 5. The Assignee shall use the dwelling on the Assignment as his/her residence. For the purposes of this Ordinance, residence shall mean the place where a person physically dwells or abides with the intent of dwelling or abiding there permanently, in such a manner that Community Members would reasonably conclude based on day-to-day observations that the person has made the place his/her permanent home. A person who merely visits a place, or stays there without intending to make the place a permanent home, shall not be construed as having his/her residence there. If the Assignee fails to use the Assignment as his/her residence for a period of twenty-four (24) consecutive months, the Community Council may declare the Assignment to be terminated and available for assignment under Section 1.06.

Subd. 6. The Assignee shall keep the land and all improvements in good repair and shall not engage in conduct, or permit another to engage in conduct that causes harm or destruction to the land and improvements thereon or to maintain a nuisance on the land and improvements.

Subd. 7. The Assignee shall not use the land or improvements for any unlawful purpose.

Subd. 8. The Assignee shall be at all times subject to the general power of the Community Council to impose regulations of general applicability for the welfare, health, or safety of the Community.

Section 1.06 Maintenance of the Community Homesite Assignment Priority List

Subd. 1. The Community Council shall maintain a Community Homesite Assignment Priority List that contains all of the names of Community Members who have applied in writing to be included on the List. Priority on the List will be based on the date a written request to be included on the List is received by the Community Council. The List shall be maintained by the Community's Records Clerk.

Subd. 2. If a Community Homesite Assignment is available, the Records Clerk shall notify in writing the Community Member with first priority on the List. That person will have thirty (30) days from the date of the Clerk's notice to accept or decline the offer of the Assignment in writing directed to the Community Council care of the Community's Legal Department. Acceptance may be delivered in person or may be mailed. In the event that acceptance is mailed, it shall be effective on the date of mailing as evidenced by the postmarked date on the envelope. If the Community Member accepts the Assignment in a timely fashion, the Records Clerk will prepare all necessary paper work and present the Assignment to the Community Council for approval.

Subd. 3. If the Community Member declines the Assignment, or fails to accept the Assignment in a timely fashion, the Community Member with the next highest priority on the

List shall be notified of the available Assignment. This process will be followed until a Community Member accepts the Assignment.

Subd. 4. The declining Community Member's name shall remain in place on the List, unless the Community Member requests that his or her name be removed. A request for removal of a Member's name must be in writing, signed by the Community Member and directed to the Community Council. Upon receipt of such a request, the Community Council will direct the request to the Legal Department, and the name will be removed from the List.

Subd. 5. Subsequent offers of Assignments shall be made to Members in order of priority following the declining Member and the declining Member shall only be offered an Assignment after offers have been made to all subsequent Members on the List.

Subd. 6. Upon the death of any Community Member on the List, the Records Clerk shall remove that Member's name. The Records Clerk shall conduct an annual audit of the List to confirm that all names on the list are living Community Members with a bona fide intent to take an Assignment if offered and shall report the results of such audit to the Community Council with recommendations for action, if any is necessary.

Subd. 7. The process for applying for inclusion in the List shall be printed in the Community newspaper at least quarterly.

Section 1.07 Forms.

The Community Council shall develop uniform forms for Community Homesite Assignments, and may approve changes to such forms from time to time. Such forms shall contain reference to the conditions required by this Ordinance, and may contain other special conditions as determined by the Community Council to be appropriate for particular Assignments.

Section 1.08 Records.

The Community Records Clerk shall maintain complete and accurate records of Community Homesite Assignments and all documents related to such Assignments. All time sensitive documents shall be file stamped bearing the date and time received. In the event that a deadline for a time sensitive filing falls on a weekend or legal holiday, the party making the filing shall have until the close of the next business day to make the proper filing.

Section 1.09 Transfer of Community Homesite Assignments.

Subd. 1. An Assignee may not sublet, sub-assign or otherwise transfer all or any part of his or her Community Homesite Assignment without the prior written consent of the Community Council.

Approved by Resolution 05-03-15-48
On March 15, 2005

Subd. 2. If an Assignment is transferred with the consent of the Community Council, the Community Council will issue a new Assignment to the transferee and upon that issuance, all rights of the original Assignee will be deemed fully relinquished. If the transferee's name appears on the Community Homesite Assignment Priority List, his or her name will be removed from the List upon the issuance of the Assignment to the transferee.

Subd. 3. An Assignee may not partition or subdivide an Assignment without the consent of the Community Council. If the Community Council permits the partitioning or subdivision of an Assignment, the Community Council shall issue new Assignments to each of the partitioning or subdividing parties, and specifically grant a variance on Assignment size as required by Section 1.03, Subd. 3. Upon the issuance of new Assignments to the partitioning or subdividing parties all rights existing under the partitioned Assignment shall be deemed fully relinquished.

Section 1.10 Termination of Community Homesite Assignments.

Subd. 1. A Community Homesite Assignment shall terminate automatically upon the death of the Assignee.

Subd. 2. An Assignment may be terminated by order of the Community Council for violation of the provisions of this Ordinance or violation of the provisions of the Assignment Document. Pursuant to Section 1.13 of this Ordinance, an Assignee shall have one hundred and twenty (120) days from the date of the termination of assignment to vacate the Assignment. In the event that an Assignee fails or refuses to vacate an Assignment after receiving a notice of termination of assignment, the Community Council may at its option take possession of the improvements on the Assignment or may take appropriate steps to remove improvements and any personal property in order to make the Assignment available for reassignment, and may assess the costs associated with that activity to the person failing or refusing to vacate the Assignment and may deduct that amount from the Community Member's per capita payment.

Subd. 3. A termination under this subdivision may be appealed to the Prairie Island Tribal Court, and the Community hereby waives its sovereign immunity from suit in such court for this limited purpose. For appeals under this subdivision, the Court shall be limited to affirming or reversing or modifying the Community Council's order of termination; the Court shall not have the jurisdiction to grant monetary relief. The Court shall affirm the Community Council's order of termination if the order is reasonable and is supported by substantial evidence and is not arbitrary or capricious.

Subd. 4. An Assignment may be terminated by the Assignee if the Assignee provides to the Community Council written and signed notice of his/her intent to terminate the Assignment and a date that the Assignee will vacate the Assignment, not to exceed one hundred and twenty (120) days, pursuant to the provisions of Section 1.10.

Subd. 5. If an Assignment is terminated, it will be deemed available to the Community Member with first priority on the Community Homesite Assignment Priority List, and notice and opportunity to accept the Assignment will be provided to that person pursuant to Section 1.06. If a Community Member who holds an Assignment accepts a new Assignment, that acceptance shall be subject to the voluntary written relinquishment of the existing Assignment.

Section 1.11 Reassignment Upon Death.

Subd. 1. An Assignee may designate a preferred Community Homesite Assignment beneficiary upon his/her death in the Assignment Document itself, or in a signed and notarized writing to the Community Council; provided that such preferred beneficiary must be a Community Member. If a preferred beneficiary is identified and is a Community Member, the Community Homesite Assignment will be reissued in the beneficiary's name.

Subd. 2. If the Assignee has not designated a preferred beneficiary, and the Assignee has a surviving Community Member spouse, the Community Council will reassign the Assignment to the surviving Community Member spouse.

Subd. 3. If the Assignee dies and is survived by a nonmember spouse and a Community Member child or children who were residing on the Assignment at the time of death, the Community Council will grant written permission to allow the spouse to continue to live on the Assignment until the youngest Community Member child reaches the age of majority. If the Community Council acts in this fashion, the Assignment shall be reassigned to the Community for the benefit of the spouse, and a new Assignment Document shall be created to reflect that fact. The Community Council in its discretion may also reassign the Assignment to the Community for the benefit of the minor child of the Assignee, provided that the minor child is a Community Member. When such minor child becomes an adult, the Community Council in its discretion may reassign the Assignment to him/her.

Subd. 4. If the Assignee has not designated a preferred beneficiary, and is not survived by a spouse or Community Member children, the Assignee's immediate family may, within thirty (30) days after the Assignee's death, make a unanimous written designation of preferred beneficiary to the Community Council, provided that the beneficiary must be a Community Member. If the Assignee's immediate family makes a timely and unanimous designation, the Assignment will be reissued in the designee's name, upon receipt by the Community Council of the Assignee's certificate of death.

Subd. 5. If the Assignee has not designated a preferred beneficiary, and the Assignee's family fails to make a unanimous written designation of a preferred beneficiary, the Community Council in its discretion may declare the Assignment terminated and available for assignment under the provisions of Section 1.06.

Section 1.12 Ownership of Improvements During Term.

During the term of a Community Homesite Assignment, all improvements on the Assignment, including but not limited to buildings and fixtures, shall be considered the separate property of the Assignee, and shall be considered to be the personal property of the Assignee regardless of the manner in which the improvement is affixed to the land.

Section 1.13 Ownership of Improvements After Termination.

Subd. 1. If a Community Homesite Assignment is terminated for reasons other than the death of the Assignee, the Assignee shall have one hundred and twenty (120) days after the effective date of termination to remove all improvements on the Assignment. Any improvement that is not removed within such one hundred and twenty (120) day period shall automatically become the property of the Community.

Subd. 2. If an Assignment is terminated because of the death of the Assignee, and if the Community Council reissues the Assignment to another Community Member who is not entitled to the improvements, the personal representative of the Assignee's estate or the Assignee's heirs shall have one hundred and twenty (120) days after the date of the reissuance to remove all improvements on the Assignment. Any improvement that is not removed within such one hundred and twenty (120) day period shall automatically become the property of the Community. In a case where the Community Council permits a non-member spouse to continue to live on the Assignment, or reassigns the Assignment to the Community for the benefit of a minor Community Member child, the Community Council shall not require removal of improvements during the time the spouse is permitted to remain or during the time the Assignment is held for the benefit of a minor Community Member child, if the improvements become the property of the spouse or minor children.

Subd. 3. The Community shall not be obligated to purchase any improvement that is not or cannot be removed from an Assignment in accordance with the provisions of this Ordinance or the Assignment Document.