

PRAIRIE ISLAND INDIAN COMMUNITY

TOBACCO ORDINANCE

SECTION 1. TITLE:

This Ordinance shall be known as the Prairie Island Indian Community Tobacco Ordinance.

SECTION 2. FINDINGS AND PURPOSE:

1. The introduction, possession and sale of tobacco on Indian reservations since treaty time have been clearly recognized as matters of special concern to Indian Tribes and to the United States. The control of tobacco on reservations remains exclusively subject to their legislative enactments.

2. There is no federal law prohibiting tobacco sales on the Prairie Island Indian Community.

3. Present day circumstances make a complete ban of tobacco sales within the Prairie Island Indian Community ineffective and unrealistic. At the same time, a need exists for strict tribal regulation and control over tobacco distribution.

4. The enactment of a Community Ordinance governing tobacco sales on the Reservation providing for exclusive purchase and sale through the Community enterprise will increase the ability of the Community government to control reservation tobacco distribution and possession, and at the same time will provide an important source of revenue for the continued operation of the Community government and delivery of governmental services.

5. In order to provide for increased Community control over tobacco distribution and possession on the reservation, and to provide for urgently needed additional revenue, the Prairie Island Indian Community Council adopts this Tobacco Ordinance.

SECTION 3. DEFINITIONS:

Unless otherwise required by the context, the following words and phrases shall have the following designated meanings:

1. Sale and Sell, includes exchange, barter, and traffic; and also the selling or supplying or distribution by any means whatsoever, of tobacco or of any products known or described as cigarettes, cigars, chewing tobacco and any name whatever commonly used to describe a tobacco product, by any person to any person, and also includes a sale or selling within the state to a foreign consignee or his agent in the state.

2. Wholesale Price, shall mean the established price for which tobacco, cigarettes, cigars and tobacco products are sold to the Prairie Island Indian Community by the manufacturer or distributor, exclusive or any discount or other reduction.

3. Tobacco, shall mean the various products prepared from tobacco leaves as cigarettes, cigars, snuff, and chewing tobacco.

4. Tobacco Products, include cigarettes, cigars, loose tobacco, snuff, and chewing tobacco.

5. Tobacco Outlet, shall mean a Community owned retail sales business selling cigarettes, cigars, and chewing tobacco on the Prairie.

6. Operator, shall mean an enrolled member of the Prairie Island Indian Community employed by the Prairie Island Indian Community to operate a tobacco outlet.

SECTION 4. RELATION TO OTHER COMMUNITY LAWS:

All prior ordinances and resolutions of the Prairie Island Indian Community regulating, authorizing, prohibiting or in any way dealing with the sale of tobacco are hereby repealed and of no further force and effect. No Community business licensing law or other Community law shall be applied in a manner inconsistent with the provisions of the Ordinance.

SECTION 5. PROHIBITIONS:

1. The introduction, purchase, sale and dealing in tobacco other than by the Prairie Island Indian Community through its Community Enterprise is prohibited within the Prairie Island Indian Community, and is hereby prohibited under Community law. Possessions of tobacco by any person now prohibited by federal law shall be lawful so long as the possession is in conformity with this Ordinance.

2. Federal Tobacco laws shall remain applicable to any act or transaction which is not authorized by this Ordinance and violators of this Ordinance shall be subject to federal prosecution as well as to legal action in accordance with Community law.

SECTION 6. CONFORMITY WITH STATE LAW:

Community authorized tobacco transactions shall comply with Minnesota State Tobacco Law Standards to the extent required by the federal government, by 18 U.S.C. 1161.

SECTION 7. TOBACCO ENTERPRISE CREATED.

1. The Prairie Island Indian Community Tobacco Enterprise is hereby established. The Tobacco Enterprise is constituted as an agency of the Prairie Island Indian Community government.

2. The Tobacco Enterprise shall be responsible for the management, distribution and control of all tobacco products and authorized in this Ordinance within the Prairie Island Indian Reservation.

3. The Prairie Island Indian Community Council shall appoint a Tobacco Enterprise manager who shall have the following powers and duties:

- a. to manage the Tobacco Division for the benefit of the Community.
- b. to purchase, in the name of the Community, tobacco products from wholesale distributors and distribute them to such Community outlets as appropriate.

c. to establish with the Tobacco Commission and subject to its approval, such administrative procedures as are necessary to govern the operation of the Tobacco Enterprise which shall be the Community Council of the Prairie Island Indian Community.

d. to report and account to the Community Council at least twice a year regarding the operation and financial status of the Tobacco Enterprise. The Community Council shall establish the dates on which such accounting shall take place. The Council may require more frequent accounting if it deems necessary. The manager's reports and all written reports, accounts and records of the Council's proceedings in regard to the Tobacco Enterprise shall be available for inspection by any Prairie Island Indian Community member, upon request.

e. with Council approval, hire and set the salaries of additional personnel, as the manager determines are necessary to the successful operation of the Tobacco Enterprise.

f. to supervise all Tobacco Enterprise employees.

g. to purchase, with Community Council approval, and maintain the Tobacco Enterprise real and personal property.

h. to collect the Prairie Island Indian Community Tobacco excise taxes.

i. to transfer all tax revenue to the Community Treasurer for deposit in the Community tax fund.

j. to maintain all other Tobacco Enterprise revenues in a special account, under direction from the Community Treasurer. Funds may be withdrawn from this account by the manager for the wholesale purchase of tobacco products to be sold pursuant to this Chapter, for payment of salaries, and business expense of employees of the Tobacco Enterprise, and for the purchase and upkeep of real and personal property required for the Tobacco Enterprise's operation.

k. to set the retail price for all tobacco products sold pursuant to this Ordinance in cooperation with the Commission, *on Prairie Island Reservation (handwritten in)*.

l. to obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Community Council. The policy shall contain the stipulation that the Prairie Island Indian Community shall be given ten (10) days notice of the proposed cancellation or expiration of such policy and shall have available for inspection a complete copy of such policy.

m. the manager shall be bonded for such additional amount and for such additional purposes as the Council shall determine to be appropriate in managing the Tobacco Enterprise.

SECTION 8. PRAIRIE ISLAND INDIAN COMMUNITY TOBACCO COMMISSION:

There is hereby created a Prairie Island Indian Community Tobacco Commission. The members of the Prairie Island Indian Community Council shall serve as the Prairie Island Indian Community Tobacco Commission. The Commission is empowered to:

1. administer this Ordinance, by exercising general control, management, and supervision, of all tobacco sales, tobacco control prices, places of sale, and sale outlets as well as exercising all powers necessary to accomplish the purpose of the Ordinance.

2. adopt and enforce rules and regulations in furtherance of the purposes of this Ordinance and the performance of its administration functions.

SECTION 9. INDEPENDENT OPERATORS LICENSE:

No member or nonmember of the Prairie Island Indian Community may apply to the Prairie Island Indian Community Tobacco Commission for a license to operate a Community Tobacco Products Outlet on trust property owned by the applicant within the Prairie Island Indian Reservation and no license will be granted.

SECTION 10. DISTRIBUTION OF TOBACCO PRODUCTS FOR RETAIL SALE:

1. The Community Tobacco Commission shall establish one (1) or more tobacco products outlets within the Prairie Island Indian Community as the Commission in its discretion deems necessary. Outlets shall be managed by the Prairie Island Indian Community.

2. All tobacco products to be sold at retail shall be purchased from the Prairie Island Indian Community Tobacco Enterprise, which shall be the sole and exclusive wholesale outlet for the Prairie Island Indian Community, and sold through an authorized Community Tobacco Products Outlet.

3. Title to the entire stock of tobacco products distributed hereunder and located in the outlet shall remain in the Community until sale to the ultimate consumer, but shall be held by the operator at his/her sole risk in the event of any loss whatsoever.

4. Wholesale distribution of tobacco products by the Community to a tobacco product outlet shall be upon a cash basis for the wholesale distribution price which will have added to it all excise taxes levied by the Community pursuant to Section 11. Payment by the operator of the wholesale distribution price as provided in this Section shall entitle the operator to retain possession of distributed tobacco products for sale to the ultimate consumer.

SECTION 11. EXCISE TAX LEVY:

1. There is hereby levied and shall be collected an excise tax upon each retail sale of cigarettes in the amount of fifty-four (54) cents per carton. There is hereby levied and shall be collected an excise tax upon each retail sale of cigars, snuff, and chewing tobacco in the original package in the amount of five percent (5%) of the selling price. Said taxes shall be added to the sales price of the tobacco sold and shall be paid by the buyer to the tobacco product outlet which shall collect the same and hold them in trust for the Prairie Island Indian Community until deposited as provided in Section 7(3) of this Ordinance. The taxes provided for herein shall be the only taxes applicable to activities of the Prairie Island Indian Community Tobacco Enterprise.

2. These taxes which shall be deposited, through the Community Treasurer, as provided in Section 7(3) i, and shall be used for the benefit of the Community. In appropriating these tax revenues, the Council shall give priority to:

a. Strengthening Tribal government, which shall include but not be limited to, strengthening the tribal justice system enforcing this Ordinance.

b. Health, education, and other social services programs.

c. Alcohol and drug abuse community services which relate specifically to the needs of the Prairie Island Indian Community. The Community Council shall in its discretion determine which of the above-priorities shall receive an appropriation and the amount of the appropriation for a given priority.

3. The amount and type of taxes levied by this Section may be modified from time to time by the Prairie Island Indian Community with the approval of the Prairie Island Indian Community Council.

SECTION 12. SOVEREIGN IMMUNITY PRESERVED:

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Prairie Island Indian Community. No manager or employee of the division shall be authorized, nor attempt to waive the immunity of the Community.

SECTION 13. OTHER BUSINESS:

Other business may be conducted on the same premises as a Community tobacco outlet.

SECTION 14. OPERATING WITHOUT A LICENSE:

No person shall operate a tobacco product outlet on the Prairie Island Indian Community unless he/she is an employee of the Tribal tobacco product outlet established by the Tobacco Enterprise of the Prairie Island Indian Community.

SECTION 15. PENALTY:

Any person, or entity, selling, bartering, or manufacturing tobacco products in violation of any part of this Ordinance, rule or regulation adopted pursuant to this Ordinance shall be subject to a civil fine of not more than three hundred (\$300) dollars for each violation. All contraband merchandise shall be confiscated by the Prairie Island Indian Community.

Enacted and to become effective this 14th day of May, 1988.

CERTIFICATION

The undersigned certify that the foregoing Tobacco Ordinance was duly enacted at a meeting of the governing body of the Community, at which a quorum was present, by a vote of 5 for and 0 against, and 0 abstaining.

By _____
Chairman

ATTEST:
By _____
Secretary