

PRAIRIE ISLAND INDIAN COMMUNITY
ALCOHOL AND CONTROLLED SUBSTANCE ORDINANCE

Adopted After Publication And Comment By Resolution No. 05-03-15-51
Of The Prairie Island Community Council
On March 15, 2005

**PRAIRIE ISLAND INDIAN COMMUNITY
ALCOHOL AND CONTROLLED SUBSTANCE ORDINANCE**

CHAPTER I

POLICY, ENFORCEMENT AND GENERAL PROVISIONS

Sec. 1.1. Purpose; Policy. It is the policy of the Prairie Island Indian Community Council to protect the safety and welfare of persons within the Reservation and to ensure the maintenance of law and order on the Reservation by regulating the purchase, possession and consumption of alcoholic beverages by persons under the age of 21 years, by regulating the possession or consumption of alcoholic beverages by all Community Members in public places during Community events including but not limited to the annual Summer and Winter Pow Wows, and by prohibiting the purchase, possession or use of controlled substances by all persons on the Reservation.

Sec. 1.2. Scope. The provisions of this Ordinance apply to all persons who purchase, possess or consume alcohol or controlled substances on the Reservation in violation of this Ordinance.

Sec. 1.3. Definitions. Unless otherwise clearly indicated herein, the terms used in this Ordinance shall have the meanings given them in Minn. Stat., Section 340A.101 (1998), as that Section may be amended from time to time. If a definition for a term is not provided by the text of this Ordinance, or by Minn. Stat., Section 340A.101 (1998), then the term is to be given its ordinary and plain meaning.

A. Alcoholic Beverage means any beverage as defined by Part I, Section 2(a) of the Community's Liquor Control Ordinance, published in the Federal Register on December 1, 1992.

B. Consume means both the ingestion of an alcoholic beverage or controlled substance and the physical condition of having ingested an alcoholic beverage or controlled substance.

C. Controlled Substance means a drug, substance, or immediate precursor as identified in Schedules I through V of Section 152.02 of Minnesota Statutes.

D. Drug Paraphernalia means all equipment, products and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

E. Law Enforcement Officer means any full or part-time officer employed by the Prairie Island Indian Community Police Department, including the Chief of Police, unless the context clearly indicates otherwise. It also includes "Peace Officers" as defined in Minnesota Statutes, Section 626.84, subd. 1(c)(1998), subject to the limitations contained in Section 1.5 of this Ordinance.

F. Possess includes, but is not limited to, being in a room, any motorized vehicle, including snowmobiles and ATVs, a boat, trailer, or public or private place where Alcoholic Beverages are openly displayed and accessible. Lack of knowledge of the

existence or lack of accessibility to such Alcoholic Beverage shall be an affirmative defense that must be asserted and established by a preponderance of the evidence.

G. The Reservation means the area depicted as the Prairie Island Indian Community on the map attached hereto (or all lands held by the United States in trust for the benefit of the Prairie Island Indian Community).

H. The Tribal Council means the Prairie Island Indian Community Tribal Council.

I. The Tribal Court means the Prairie Island Indian Community Tribal Court.

Sec. 1.4. Enforcement Authority.

A. Authorized Law Enforcement Officers. The Following Law Enforcement Officers are empowered and authorized to enforce this Ordinance:

- (1) The Prairie Island Community Chief of Police and Officers of the Prairie Island Indian Community Police Department;
- (2) Peace Officers employed by jurisdictions that meet the requirements of paragraph B of this Section.

B. Limitation of Authority as to Peace Officers. The authority granted to Peace Officers in paragraph A, clause 2 of this Section will be effective only if and when a cooperative agreement is in effect between the Prairie Island Indian Community and the relevant state or local law enforcement agency.

C. Entry of Dwellings. Authorized Law Enforcement Officers shall have the authority to enter private dwellings for the purpose of enforcing this Ordinance if the Officer has probable cause to believe that the Ordinance is being violated, either subject

to the authority of a Tribal or State Court search warrant, or as permitted by Minnesota law regarding warrantless searches.

D. Process. A copy of each citation issued pursuant to this Ordinance shall be promptly submitted to the Clerk of the Tribal Court of the Prairie Island Indian Community. The recipient of the citation then has twenty (20) days from the filing of the citation with the Court to respond. The defendant may mark the citation with a plea of guilty and pay the associated fine or may mark the citation with a plea of not guilty and return it to the Tribal Court within the specified time, in which case a date for trial will be set. The failure of a defendant to respond to the citation within the specified time will be considered a plea of guilty and a waiver of the right to a trial, unless the defendant can show that the failure to respond was due to excusable neglect or exigent circumstances beyond her or his control.

Sec. 1.5. Jurisdiction. The Tribal Court shall have the exclusive jurisdiction to enforce the provisions of this Ordinance and impose the penalties provided for therein upon the presentation of a complaint by the Tribal Council, an Officer of the Prairie Island Community Police Department or other Authorized Law Enforcement Officer. The prosecution of a complaint may be carried out by the Complainant, including an Authorized Law Enforcement Officer, notwithstanding whether such person is an attorney and notwithstanding whether such person has been admitted to appear before the Tribal Court, or by a prosecutor assigned by the Tribal Council.

Nothing in this Section shall be construed to preclude or limit a State court's ability to afford full faith and credit to an order of the Tribal Court issued under the authority of this Ordinance.

Sec. 1.6. Penalties.

A. Fine Categories. For the purposes of this Ordinance the following penalties are associated with the following fine categories:

<u>Violation</u>	<u>Fine</u>
Level 1 Offense	a civil fine not greater than \$500
Level 2 Offense	a civil fine not greater than \$1000

The Tribal Court shall impose all fines under this Ordinance, and all fines collected under this Ordinance shall be payable directly to the Clerk of the Tribal Court. No Law Enforcement Officer may accept payment of a fine under this Ordinance.

B. Nonpayment of Fines. If a fine levied by the Tribal Court under this Ordinance against a Member of the Community is not paid within thirty (30) days, the Tribal Court shall have the authority to order garnishment of the Member's per capita distributions in the amount of the fine. If the fine levied by the Tribal Court under this Ordinance against a Community Member who is a minor is not paid within 30 days, the Tribal Court shall have the authority to order the garnishment of the per capita distributions of the minor's parent or legal guardian in the amount of the fine, if such parent or legal guardian is a Member of the Community, or to impose the fine or Community service or both against a parent or legal guardian who is not a member of the Community.

C. Fines -- Repeat Offenders. Unless otherwise provided in this Ordinance, if a person is convicted of a second offense under this Ordinance within a twelve (12) month period, the Tribal Court may, in its sole discretion, double the dollar amount of the applicable fine.

D. Other Penalties Authorized.

(1) Banishment/Trespass. If a non-member is convicted of a controlled substance offense, the Tribal Court shall also have the authority to banish non-members from the Community for a fixed period, or permanently as the Court may deem appropriate in its sole discretion.

(2) CD and Alcohol Assessments. If a Community Member is convicted of a controlled substance violation, the Court shall also have the authority to require that the Community Member submit to a CD assessment and to follow all recommendations resulting from that assessment. If a Community Member is convicted of a second alcohol-related offense in a twelve (12) month period, the Tribal Court shall also have the authority to require that the Community Member submit to an alcohol assessment and to follow all recommendations resulting from that assessment.

E. Records.

(1) The Tribal Court shall keep a full record of every case in which a person is convicted of a violation of any part of this Ordinance and shall make that record, or an abstract thereof, available to the Department of Public Safety of the State of Minnesota upon request.

(2) No record of the conviction of any person under this Ordinance shall be admissible as evidence in any court in any civil action, nor shall such record impair the credibility of such persons as a witness in any legal proceeding.

Sec. 1.7. Severability. If any part of this Ordinance is found to be invalid by any court of competent jurisdiction or by the United States Department of the Interior, it shall be severed and the remaining parts shall remain in effect.

Sec. 1.8. Penalties Civil in Nature; Applicability of Indian Civil Rights Act. The penalties authorized by this Ordinance are civil in nature and do not preclude or affect the ability of the State of Minnesota to criminally prosecute offenders in the Courts of the State of Minnesota based on the same occurrence. This Ordinance will be enforced in compliance with the protections afforded by the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 – 1341.

CHAPTER II

ALCOHOL

Sec. 2.1. Consumption. It is a violation of this Ordinance for any person under the age of 21 years to consume alcoholic beverages. A violation of this Section shall constitute a Level 1 Offense.

Sec. 2.2. Purchase. It is a violation of this Ordinance for any person:

- A. to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age;
- B. under the age of 21 years to purchase or attempt to purchase any alcoholic beverage; or
- C. to induce a person under the age of 21 years to purchase or procure any alcoholic beverage or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification, or other form of identification by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage.

A violation of paragraph A or C of this Section shall constitute a Level 2 Offense.

A violation of paragraph B of this Section shall constitute a Level 1 Offense.

Sec. 2.3. Possession. It is a violation of this Ordinance for a person under the age of 21 years to possess any alcoholic beverage. A violation of this Section shall constitute a Level 1 Offense.

Sec. 2.4. Misrepresentation of Age. It is a violation of this Ordinance for a person under the age of 21 years to claim to be 21 years old or older for the purpose of purchasing, possessing or consuming alcoholic beverages. A violation of this Section shall constitute a Level 1 Offense.

Sec. 2.5. Community Events. It is a violation of this Ordinance for any person to possess or consume Alcoholic Beverages on the Reservation (with the exception of home site assignments and business enterprises of the Prairie Island Indian Community, including but not limited to, Treasure Island Resort & Casino and Mount Frontenac Golf & Ski) during Community events, including specifically, but not limited to, the Community's annual Summer and Winter Pow Wows and such other events as the Community Council may identify by formal Resolution that has been published in the Tinta Wita. A violation of this Section shall constitute a Level 1 Offense.

CHAPTER III

CONTROLLED SUBSTANCES

Sec. 3.1. It is a violation of this Ordinance for any person to manufacture, deliver, receive, sell, possess or consume, without a valid pharmacist license or without a valid prescription from a medical doctor, a controlled substance. A violation of this Section shall constitute a Level 2 Offense.

Sec. 3.2. It is a violation of this Ordinance for any person to possess Drug Paraphernalia. A violation of this Section shall constitute a Level 1 Offense.

CHAPTER IV

EFFECTIVE DATE

Sec. 4.1. Effective Date. This Ordinance shall become effective the day following adoption by the Tribal Council.

Approved By Resolution 05-03-15-51
On March 15, 2005