

**PRAIRIE ISLAND MDEWAKANTON SIOUX COMMUNITY
BUILDING CODE ORDINANCE
ORDINANCE NO. 92-82**

TITLE:

This Ordinance shall be known and may be cited as the Prairie Island Building Code.

Declaration of Policy:

The Council declares the purpose of this Ordinance is to protect, preserve, and promote the health and welfare of the members of the Community through the regulation of public and private building projects, and to promote the general welfare of the Community by legislation applicable to all buildings which:

1. Establishes standards for basic buildings and materials used in the construction of structures within the boundaries of the reservation or on lands hereinafter acquired which are held in trust for the Community by the United States government;
2. Establishes specifications for buildings and materials used in the construction of structures within the boundaries of the reservation or on lands hereinafter acquired which are held in trust for the Community by the United States;
3. Determines the responsibilities of owners and builders of structures on the reservation or lands hereinafter acquired which are held in trust for the Community by the United States government; and
4. Provide for the administration and enforcement thereof.

1.01 Definitions:

- (a) Approved: Approved shall mean designed, constructed and installed in accordance with the provisions of this Ordinance and any regulations or provisions promulgated in pursuance thereof or hereinafter adopted by the Council.
- (b) Building: Building shall mean the act of erecting, constructing, modifying, enlarging, repairing, moving, removing, demolishing, converting, equipping, using, or maintaining a structure, and shall also mean the structure resulting from the act of building.
- (c) Improvements: Improvements shall mean proposed project will take place, and shall also mean the owner or owners of the improvements made upon real property where the title to the real property is held in trust for the Community, whether or not the real property is leased from the Community or some other person under terms which permit the occupation and improvement of the leasehold interest.

(d) Person: Person shall mean any natural person, corporation, association, partnership or government entity.

1.02 Coverage:

This Ordinance shall be applicable to structures erected, constructed, modified, enlarged, altered, repaired, moved, demolished, converted, occupied, equipped, used and maintained within the boundaries of the Prairie Island Mdewakanton Sioux Reservation or any land hereinafter acquired which is held in trust for the Community by the United States government.

1.03 Specifications:

The specifications applicable to structures erected, constructed, modified, enlarged, altered, repaired, moved, demolished, converted, occupied, equipped, used, and maintained shall be those defined in the Uniform Building Code, 1991 Edition, published by the International Conference of Building Officials, including the generic fire-resistive assemblies listed in the Fire Resistance Design Manual, Twelfth Edition, dated August, 1988, published by the Gypsum Association as referenced in Tables Nos. 43-A, 43-B, and 43-C of the specified Uniform Building Code, including Appendix Chapters 57 to 70.

1.04 Standards:

The standards applicable to structures erected, constructed, modified, enlarged, altered, repaired, moved, demolished, converted, occupied, equipped, used and maintained shall be those defined in the Uniform Building Code Standards, 191 Edition, published by the International Conference of Building Officials, including (i) Structural Welding Code -- Reinforced Steel, AWS D1.479 (U.B.C. Standard No. 26S); and (iii) Structural Welding Code -- Sheet Steel, ANSI/AWS D1.3-81 (U.B.C.) Standard No. 27-13) published by the American Welding Society, Inc.; and Standards for Buildings and Facilities -- Providing Accessibility and Usability for Physically Handicapped People, A117.1-1986 (U.S.C. Standard No. 31-1_ published by the American National Standards Institute, as modified or amended in the Uniform Building Code as referenced herein.

1.05 Permits:

The constructions, erection, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment; use, height, area, and maintenance of all buildings or structures on lands within the boundaries of the reservation or on lands hereinafter acquired which are held in trust for the tribe by the United States shall require the issuance of a permit from the Council. The permit shall conform to the permit requirements of the Uniform Building Code, 1991 Edition and shall:

(a) State the consent of the property owner or owners and the person or persons responsible for the proposed project to the periodic inspection of the project; and

(b) Serve as prima facie evidence of the jurisdiction of the Tribal Council to hear all complaints raised in association with the proposed project, all requests for a variance from compliance with this ordinance, together with all responses to a Notice of Violation as defined herein.

1.06 Fees:

All persons proposing projects subject to this Ordinance shall pay, at the time the permit is issued, a fee assessed for purposes of deferring the inspection costs, administrative costs, and enforcement costs associated with the proposed project; and

The fees assessed for the proposed project shall be those deemed reasonable by the Tribal Council and shall be based on the fees proposed in Table No. 3-A of the Uniform Building Code, 1991 Edition, but may also take into consideration the nature, complexity, and duration of the proposed project, together with the oversight required, the number of expected visits by the Tribal Council shall from time-to-time deem appropriate or necessary for the purposes of this Ordinance.

1.07 Inspection:

All activities regulated by this Ordinance shall be subject to periodic inspection by the Tribal Inspector, acting as the designated representative of the Tribal Council, who shall determine if such projects conform to the requirements of this Ordinance; and

(a) It shall be unlawful for any person, owner, occupant, or lessee to deny the Tribal Inspector free access to any property for purposes of inspecting that property, whether:

(i) to determine if a regulated activity is being conducted without the required permit; or

(ii) to determine compliance with the standards and specifications set forth in a permit.

(b) Notice of inspection shall not be required.

1.08 Violations:

Whenever the Tribal Inspector determines there has been a violation of any provision of this ordinance or any rule or regulation adopted pursuant to this ordinance, the tribal

Inspector shall issue a Notice of Violations to the person or persons responsible for this project. Such notice shall:

- (a) be in writing;
- (b) particularize the violations alleged to exist or to have been committed;
- (c) provide a reasonable time within which to remedy the violations;
- (d) be served in person upon the person or persons named in the permit, or by registered, certified mail to the person or persons named in the permit at the addresses indicated in the building permit; and
- (e) conform in all other respects to the requirements set forth in the Uniform Building Code, 1991 Edition.

1.09 Penalties for Violations:

The penalties for violations shall be those deemed reasonable by the Tribal Council.

1.10 Right to Hearing Regarding Violation:

All persons alleged to have committed a violation of the provisions of this Ordinance or the rules and regulations adopted in pursuance of this Ordinance, shall be entitled to a hearing before the Tribal Council regarding the alleged violations and shall:

- (a) be permitted to present oral testimony on their own behalf regarding the alleged violation;
- (b) be permitted to present witnesses who may give oral testimony regarding the alleged violations; and
- (c) be permitted to show good cause why the alleged violations would come within the recognized exceptions to the requirements of this article as is permitted in Section 1.11, Variances.

1.11 Variances:

The Tribal Council may authorize, upon appeal in specific cases or in response to testimony at a Notice of Violations hearing, a variance from the requirements of the Prairie Island Building Code or the rules and regulations promulgated pursuant thereto, subject to the terms and conditions fixed by the Tribal Council. Such a variance shall only be granted due to exceptional and unusual circumstances whether the Tribal Council determines that compliance is not necessary to protect the enforcement would work a substantial and unnecessary hardship. The burden of showing such unusual and exceptional circumstances where literal enforcement would work a substantial and

unnecessary hardship. The burden of showing such unusual and exceptional circumstances shall rest in all cases with the applicant, or in the case of a Notice of Violation hearing, with the person or persons responsible for the violations. The applicant, or the person charged with the violation, shall be required to show by clear and convincing evidence that:

- (a) the variance will not substantially reduce the safety of the proposed project, and will not endanger the health or welfare of the Community;
- (b) the variance is in harmony with the spirit and purposes of the Building Code; and
- (c) the variance will protect, preserve, and promote the health, welfare, and safety of the Community to the same extent and in the same manner as would literal enforcement of the Building Code.

1.12 Supremacy:

This Ordinance and all other rules, regulations, and provisions adopted in pursuance thereof shall supersede any other ordinances, parts of ordinances, or provisions which conflict with it, and any such conflicting ordinances, parts of ordinances, rules or regulations are hereby repealed.

1.13 Severability:

If any provision of this Ordinance or of any rule, regulations, or provision adopted or promulgated under this Ordinance, or its application to any person is held to be invalid, unconstitutional, void or inoperative, such holding shall not affect other provisions or applications of the ordinance or the rules and regulations adopted and promulgated thereunder. The Council hereby declares that in this regard the provisions of this Ordinance and the rules and regulations adopted in pursuance thereof are severable, and that the Council would have in enacted the remaining provisions hereof or authorized the adoption promulgation of the remaining provisions of the rules and regulations notwithstanding such a holding.

1.14 Saving Clause:

The repeal of any section of the Building Code or any rule, regulation, or provision adopted or promulgated thereunder shall not affect, abridge, or impair or deny any right, action, or cause of action accruing or arising under that provision, and such right, action, or cause of action may be prosecuted to a final determination under provisions so repealed. No fine or other penalty shall be abrogated by any amendment to this Building Code.

1.15 Publication:

The Tribal Council Secretary is hereby directed and ordered to cause this Ordinance to be published and to provide the Community with notice of the adoption of this Ordinance according to the provisions of the Constitution and Bylaws of the Community.

1.16 Effective Date:

This Ordinance shall become effective immediately upon passage or the Tribal Resolution adopting this Ordinance, together with the publication of the Ordinance.