

PRAIRIE ISLAND INDIAN COMMUNITY
AMENDED TOBACCO ORDINANCE 5A

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 of 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 retail/non-retail sales business selling cigarettes, cigars, and chewing tobacco.

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:

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 and for such other purposes that the Community and Prairie Island Tribal Council deem appropriate.
- k. To set the retail price for all tobacco products sold pursuant to this Ordinance in cooperation with the Commission.
- 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. NON TRIBAL TOBACCO OUTLETS:

1. The Prairie Island Community Council shall allow other tobacco outlets as deemed appropriate.
2. Said outlets must comply with all licensing and/or Ordinance requirements.
3. Nothing in this Ordinance shall restrict any person or entity from applying for a license and/or purchasing for a tobacco outlet if properly approved by the Commissioner and Prairie Island Community Council.

SECTION 9. PRAIRIE ISLAND INDIAN COMMUNITY TOBACCO COMMISSION:

There may be created a Prairie Island Indian Community Tobacco Commission. The members of the Prairie Island Indian Community Council may 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 10. DISTRIBUTION OF TOBACCO PRODUCTS FOR RETAIL AND NON-RETAIL SALE:

1. All tobacco products to be sold at retail and non-retail shall be purchased from the Prairie Island Indian Community Tobacco Enterprise Commission. Said Commission authority is outlined in the attached Appendix "A".
2. 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 applicable taxes. 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.

SECTION 11. EXCISE TAX LEVY:

1. There may be levied and shall be collected an excise tax upon each retail sale of tobacco products.
2. Such taxes that may be collected 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. OPERATING WITHOUT A LICENSE:

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 2nd day of January, 1990

APPENDIX "A" TO TOBACCO ORDINANCE

SECTION 1. DEFINITIONS:

- A. "License" shall mean permission to operate a cigarette retail outlet on the Prairie Island Indian Reservation issued under the provisions of this ordinance.
- B. "Vendor" shall mean a person holding a current valid license.
- C. "Tobacco Commissioner" shall mean a person appointed by the Prairie Island Indian Community Council to oversee cigarette operations.

SECTION 2. TOBACCO COMMISSIONER:

- A. The term of the Tobacco Commissioner shall be two years from the date of his/her appointment.
- B. The Tobacco Commissioner must be a member of the Prairie Island Indian Community and 21 years of age or older.
- C. The Tobacco Commissioner shall report at least monthly to the Community Council on cigarette operations within the reservation, shall promptly upon receipt remit any excise tax, application or license fees collected to the Treasurer of the Prairie Island Indian Community Council, and shall perform all other duties as set forth in this Ordinance.

SECTION 3. LICENSES:

- A. There is hereby authorized to be issued _____ annual licenses to operate as vendors under the terms and conditions of this ordinance.
 - 1. Licenses shall be for the term of one year or less, running from the date of issuance to December 31 of the calendar year of issuance.
 - 2. A fee for issuance of a license shall be \$100.00 payable upon receipt of the license.
 - 3. Application process:
 - a. An applicant for a license must be 21 years of age or older.
 - b. The applicant shall complete and application form, as provided by the Tobacco Commissioner, and shall submit it to him/her within twenty days.
 - c. The applicant shall accompany his/her application with:
 - i. A non-refundable application fee of \$10.00
 - ii. Proof that the applicant's financial assets exceed his/her liabilities by an amount equal to or greater than \$5,000.00.

d. Twenty days after the application, the Tobacco Commissioner shall declare the application period closed, shall promptly bring all applications before the Prairie Island Indian Community Council, who shall reject any incomplete application notifying the applicant at once, and shall proceed to evaluate the balance of the applications for the available licenses, according to the information contained therein and accompanying documents. The Tobacco Commissioner shall then be directed to issue the available license (2) to the applicant(s) most qualified to operate as a vendor under the terms and conditions of this ordinance.

4. Upon receipt of a license hereunder, an applicant shall post a bond in an amount, to be established by the Tobacco Commissioner annually, sufficient to ensure payment to the Community of the projected annual excise tax.

B. There is hereby issued to the Community, without the necessity for payment of fees of an application therefor, an annual license to operate as a vendor under the terms and conditions of this ordinance, save only that payment of excise taxes shall not be required, since all net proceeds of the Community's operation under the license shall belong to the Community.

SECTION 4. EXCISE TAX:

A. There may be imposed an excise tax on the sale of each carton of cigarettes sold by a vendor.

B. Each vendor must file, with the Tobacco Commissioner, a complete report of purchase during a month and remit the applicable taxes on such sales. Remittance must be made no later than the 15th day of the month following that to which the report applies.

C. The Community, in its capacity as vendor, shall be exempt from this tax but not from the requirement to report.

SECTION 5. OPERATION UNDER LICENSE:

A. The license issued hereunder shall authorize the vendor to operate a retail sales outlet for the sale of tobacco products.

B. A vendor must keep complete and accurate records of inventory, sales, payroll, taxes paid and withheld, and all other facets of business operations. The books and records maintained by each vendor operating under a license shall be open for inspection by the Tobacco Commissioner at all times during normal business hours.

SECTION 6. REVOCATION OR SUSPENSION OF LICENSE:

A. The Tobacco Commissioner may suspend a license issued under this ordinance for violation of any of the terms of this ordinance.

1. For failure to submit the report or remit the applicable taxes as required, or for refusal to permit inspection of books or records as required by Section 5(B), such suspension shall cease upon compliance with the indicated section.

2. No suspension shall continue for more than ninety days, provided, however, that the Tobacco Commissioner may make a recommendation at any time to the Community Council that a license be revoked.

B. The Community Council may revoke a licensee issued under this Ordinance for violation of any of the terms of this Ordinance.

1. Upon receiving a request from the Tobacco Commissioner or any other Community Member(s) to consider revocation of a license, the Community Council shall schedule the matter for a hearing at a regular or special meeting of the Community Council.

2. The Community Council shall provide written notice at least three days in advance to the vendor that revocation of his/her license(s) will be considered.

3. The Community Council shall permit statements or testimony by any person wishing to give such at the revocation hearing.

4. The Community Council, may by majority vote, revoke a license.

C. One prior license revocation shall not prevent a person, otherwise qualified, from applying for a subsequent license under Section 3. Two prior license revocations which are upheld by Prairie Island Community Council shall render a person ineligible from applying for subsequent licenses.

Enacted and to become effective this 2nd day of January, 1990