

FLANDREAU SANTEE SIOUX TRIBE

ORDINANCE NO. 89-03

LIQUOR CONTROL

Chapter 1 - Alcoholic Beverages

Section 1 - Definition of Terms.

Terms used in this Ordinance, unless the context otherwise plainly requires, shall mean as follows:

(a) "Alcoholic Beverages" shall mean any intoxicating liquor, beer or any wine as defined under the provisions of this Ordinance.

(b) "Application" shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(c) "Bulk Container" shall mean any package, or any container within which container are one or more packages.

(d) "Distillery", "Winery", and "Brewer" shall mean not only the premises wherein alcohol is distilled, or rectified wine is fermented or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of intoxicating liquor or beer in any form.

(e) "Intoxicating Liquor" shall mean any liquid either commonly used, or reasonably adopted to use, for beverage purposes, containing in excess of three and two-tenths per centum of alcohol by weight. This shall include any type of wine, regardless of alcohol content.

(f) "Legal Age" shall mean the age requirements as defined in Chapter VI.

(g) "Liquor Store" shall mean any store, established for the sale of alcoholic beverages.

(h) "On-Sale Dealer" shall mean the Flandreau Santee Sioux Tribe, or tribal member that sells, or keeps for sale, any alcoholic beverages authorized under this Ordinance for consumption on the premises where sold.

(i) "On-Sale" shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold.

(j) "Off-Sale" shall mean the sale of any alcoholic beverage for consumption off the premises where sold.

(k) "Package" shall mean the bottle or immediate container of any alcoholic beverage.

(l) "Package Dealer" shall mean the Flandreau Santee Sioux Tribe, or tribal member as distinguished from a distiller, manufacturer, or wholesaler, that sells, or keeps for sale, any alcoholic beverage authorized under the Ordinance for consumption off the premises where sold.

(m) "Public Place" shall mean any place, building, or conveyance to which the public has or is permitted access.

(n) "Retailer" shall mean Flandreau Santee Sioux Tribe or tribal member that sells alcoholic beverages authorized under this Ordinance for other than resale.

(o) "Sacramental Wine" shall mean wines for sacramental purposes only and used by ordained Rabbis, Priests, Ministers or Pastors, or any church or established religious organization.

(p) "Sale" shall mean the transfer of bottled or canned liquor for a consideration of currency exchange and of title to any alcoholic beverage.

(q) "Stamp" shall mean the various stamps required by this Ordinance to be affixed to the package or bulk container, as the case may be, to evidence payment of the tax prescribed by this Ordinance.

(r) "Committee" shall mean the Executive Committee of the Flandreau Santee Sioux Tribe.

(s) "Vendor" shall be defined as Chapter 1, Section 17 and, in the case of a tribal member, a vendor shall mean any person employed and under the direct supervision of such tribal member to conduct and manage tribal member's liquor stores.

(t) "Wholesaler" shall mean any person other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating liquor or beer; no wholesaler shall be permitted to sell for consumption upon the premises.

(u) "Wine" shall mean any beverage containing alcohol obtained by the fermentation of the natural sugar content of fruits or other agricultural products, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica.

(v) The terms, "the provisions of this Ordinance", "as provided in this Ordinance" or similar terms shall include all rules and regulations of the department adopted to aid in the administration or enforcement of this Ordinance.

### Section 2 - Public Policy Declared

This Ordinance shall be cited as the "Flandreau Santee Sioux Tribal Liquor Control Ordinance" and under the inherent sovereignty of the Flandreau Santee Sioux Tribe, shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the traffic in alcoholic beverages if it affects the public interest of the people, should be regulated to the extent of prohibiting all traffic of liquor, except as provided in this Ordinance.

### Section 3 - General Prohibition.

It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess or transport intoxicating liquor or beer except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

#### Section 4 - Director Appointed.

The Flandreau Santee Sioux Executive Committee shall appoint one of the trustees to serve as Director of Liquor Control. The Director shall not have an interest directly or indirectly in the transportation or sale of intoxicating liquor or beer, or in any building or property used in connection with such a business. The Director shall review liquor licenses, applications for liquor licenses and shall report to the Council on such matters. The Director shall serve at the pleasure of the Executive Committee.

#### Section 5 - Removal.

The Director shall be removed for cause and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of the Tribe or the United States. The Director so removed shall be entitled to an opportunity to be heard before the Flandreau Santee Sioux Executive Committee before removal.

#### Section 6 - Tribal Control of Importation of Liquor.

The Committee shall have the sole and exclusive right of authorizing importation, into the reservation, of all forms of intoxicating liquor and beer, except as otherwise provided in this Ordinance, and no person or organization shall so import any such intoxicating liquor or beer into the reservation, unless authorized by the Committee. No licensed wholesaler or distillery shall sell any intoxicating liquor or beer within the reservation to any person or organization unless authorized by the Committee and except as otherwise provided in this Ordinance. It is the intent of this section to retain in the Committee, exclusive control within the Flandreau Santee Sioux Reservation both as authorizer and controller of all alcoholic beverages sold by licensed wholesalers or distilleries within the state of South Dakota or other states or imported therein, and except as otherwise provided in this Ordinance.

#### Section 7 - Individual to Hold License.

An individual tribal member may hold a liquor license under the provisions of this Ordinance. It is the intent of this Ordinance to allow individual tribal members to hold liquor licenses, as provided by this Ordinance.

#### Section 8 - Tribal Liquor Stores.

Subject to the provisions of Chapter II, the Committee may establish and maintain anywhere on this reservation, the Committee may deem advisable, a tribal liquor store or stores for storage and sale of alcoholic beverages in accordance with the provisions of this Ordinance. The Committee may, from time to time, fix the prices of the different classes, varieties, or brands of alcoholic liquor and beer to be sold.

### Section 9 - Vendor-Cash Sales.

In the conduct and management of tribal liquor stores, the Committee is empowered to employ a person who shall be under the direct supervision of the Director, who shall be known as a "vendor" and who shall observe all provisions of this Ordinance and rules and regulations that may be prescribed by the Committee under this Ordinance. No vendor shall sell alcoholic beverages to any person or organization except for cash.

### Section 10 - Storage of Beverages.

The Flandreau Santee Sioux Tribe shall not keep or store any alcoholic beverages at any place within the Flandreau Santee Sioux reservation other than on the premises where they are authorized to operate and except as otherwise provided by this Ordinance.

### Section 11 - Payment of Fee.

There shall be a filing fee on applications for any licenses under this Ordinance, as established by the Committee.

### Section 12 - Request for Notice of Hearing.

If any tribal member shall file with the Committee, a written request that he or she be notified of the time and place of hearing upon any specified application or applications for licenses for the On-or Off Sale at retail of alcoholic beverages, the Director shall give notice to such person by certified mail and within a sufficient length of time prior to the hearing upon such application as to allow such person a reasonable opportunity to be present. For the purpose of this section, the certified letter must be deposited with the U.S. Post Office at least five (5) days before the scheduled date of the hearing.

### Section 13 - Time and Place for Hearing

The Committee shall fix a time and place for hearing upon all such applications which may come before the Committee, and the Director shall publish notice once in the official newspaper of the Tribe which notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverage" and shall state the time and place, when and where such applications will be considered by the Committee and that any person interested in the approval or rejection of any such application may appear and be heard, which notice shall be published at least one week prior to such hearing. At the time and place so fixed, the Committee shall consider such applications and all objections thereto, if any, prior to final decision thereon.

### Section 15 - Transfer of License.

No license granted pursuant to the provisions of this

Ordinance shall be transferred to another person or organization. If a transfer to a new location is requested by a licensee, the licensee must make application showing all the relevant facts as to such new application, which application shall take the same course and be acted upon as if an original application. No fee shall be required of a licensee who desires to transfer to a new location; however, such licensee must pay the actual costs involved in the Notification of Hearing as published in the official newspaper.

Section 16 - Sale of Stock on Termination.

Any licensee authorized to deal in alcoholic beverages upon termination of its license may at any time within twenty (20) days thereafter sell the whole or any part of the alcoholic beverages included in its stock in trade at the time of termination, to any licensed wholesaler approved under the provisions of the Ordinance to deal in alcoholic beverages as a wholesaler. A complete report of such purchase and sale must be made by both the wholesaler and licensee to the Committee. At the discretion of the committee, an additional twenty (20) days extension to sell may be granted to the licensee by the Council.

Section 16 - Complaints Authorized.

Any person may file with the Committee, a duly notarized complaint as to any violations of the provisions of this Ordinance and immediately upon receipt thereof, the Committee shall cause the director to make a thorough investigation and, if there is evidence to support the charge made in such complaint, the Committee must cause revocation of the license in question and/or take other appropriate action.

Section 17 - Revocation Proceedings.

The Committee shall on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked.

Section 18 - Subpoena by Council.

For the purpose of conducting the hearing as prescribed above, the Committee shall have the power to subpoena witnesses and to administer oaths. Witnesses so subpoenaed shall be paid at the then prevailing witness rate for the Flandreau Santee Sioux Tribal Court and said witness fee shall be paid from the Tribal Liquor Control Fund.

Criminal proceedings must be filed in the Tribal Court and may be instituted by the Committee or director as Complainant against any violator except the Flandreau Santee Sioux Tribe.

Section 19 - Dismissal or Acceptance of Complaint.

If the Committee determines the license should not be revoked, it shall dismiss the complaint. If the Committee

determines the license should be revoked and revokes such license, it must make in writing, findings of fact as to every such violation alleged in such complaint before it revokes such license, and must by the time of the next Executive Committee meeting, make a report available consisting of a transcript of the proceedings had, and all findings as every such violation alleged in such complaint.

#### Section 20 - Suspension in Lieu of Revocation.

The Committee may, if the facts warrant, mitigate the revocation to a suspension.

When in any proceedings upon verified complaint, the Committee is satisfied that the nature of such violation and the circumstances thereof were such that a suspension of license would be adequate, it may suspend the license for a period not exceeding sixty (60) days, which suspension shall become effective twenty-four (24) hours after service of notice thereof upon the license. During the period of such suspension, such licensee shall exercise no rights or privileges whatsoever under the license.

#### Section 21 - Public Hearing Required.

All hearings under the provisions of this Ordinance shall be public, and place of hearing shall be specifically designated in the notice and place of hearing shall be specifically designated in the notice of hearing.

#### Section 22 - Order of Revocation.

In any case where the Committee approves a revocation of a license, it shall forthwith make an order for such revocation and upon service of notice thereof on the licensee, all of such licensee's rights under such license shall terminate three (3) days after such notice, except in the event of a Stay on Appeal.

#### Section 23 - Waiting Period for New Licensee.

Any licensee, except the Flandreau Santee Sioux Tribe, whose license is revoked, shall not for a period of two (2) years thereafter, be granted any license under the provisions of this Ordinance.

#### Section 24 - Appeal to Tribal Court.

Any licensee whose license is revoked by the Committee regardless of how the proceedings were instituted, may appeal from such revocation to the Flandreau Santee Sioux Tribal Court, within five (5) days after notice to the licensee of such revocation, and such appeal operate to stay all proceedings for a period of fifteen (15) days thereafter and for such an additional period of time that the Flandreau Santee Sioux Tribal Court may in its discretion extend. Under no circumstances may the Tribal Court extend the stay for a period of more than twenty-five (25) days including the original fifteen (15) day stay period. The Committee shall forthwith,

upon such appeal being made, certify to the tribal Court the complete record in the proceedings and the Court shall thereupon fix a time and place for hearing, due notice of such hearing shall be given to all concerned parties involved in the appeal.

For the purpose of appeal under this Ordinance, the appeal shall be heard by the duly qualified and selected Judge of the Flandreau Santee Sioux Tribal Court.

#### Section 25 - Bootlegging.

Any person whom by himself, or through another acting for him, shall keep or carry on his person, or in a vehicle, or leave in a place for another to secure, any alcoholic liquor or beer with intent to sell or dispense of such liquor or beer or otherwise in violation of law, or who shall, within this reservation in any manner, directly or indirectly solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or beer in violation of law, or aid in the delivery and distribution of any alcoholic liquor or beer so ordered or shipped, or who shall in any manner procure for, sell, or give any alcoholic liquor or beer to any person under legal age, for any purpose except as authorized and permitted in this Ordinance, shall be guilty of bootlegging and upon conviction thereof shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and to a jail sentence of not less than three (3) months, nor more than six (6) months, or both such fine and jail sentence plus costs.

#### Section 26 - General Penalties.

Any person violating any provision of this Ordinance for which a specific penalty is not provided, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the tribal jail for not more than six (6) months, or by both such fine and imprisonment, plus costs.

#### Section 27

Nothing in this Ordinance shall be construed to require or authorize the criminal trial and punishment by the Flandreau Santee Sioux Tribal Court of any non-Indian except to the extent allowed by any applicable present or future Act of Congress or any applicable decision of the Supreme Court.

### Chapter II - Liquor Licenses and Sales

#### Section 1 - Power to License and Tax.

The power to establish licenses and levy taxes under the provisions of this Ordinance is vested exclusively with the Flandreau Santee Sioux Executive Committee.

Section 2 - Classes of Licenses.

Classes of licenses under this chapter with the fee for each class shall be as follows:

- (a) Class A Package Dealers
- (b) Class B On-Sale Dealers
- (c) Class C Solicitors
- (d) Class D Transportation Companies-fees shall be established by the Committee

Section 3 - One License Per Application.

No more than one Class C or Class D license under this chapter shall be issued to any one licensee, except by approval of the Flandreau Santee Sioux Executive Committee. Nothing in this section shall be construed to apply to the Flandreau Santee Sioux Tribe when it is in a license.

Section 4 - Domestication Requirement for Corporate Licenses.

Any corporate Class C or Class D licensee under this chapter must be a corporation organized under the laws of the Flandreau Santee Sioux Tribe, provided that if the applicant is a foreign corporation, the applicant shall be deemed eligible if, prior to the application, it has complied with all the laws of the United States and the Tribe concerning doing business within the Flandreau Reservation. Individuals, partnerships, and other forms of association shall be eligible to obtain Class C and D licenses under this chapter.

Section 5 - Ownership of Business.

Any Class C or Class D licensee under this Ordinance must be the sole owner of the business to be operated under the license.

Section 6 - Discretion of the Committee.

Application for licenses under this chapter shall be submitted to the Committee as specified in Chapter I of this Ordinance and the Committee shall have absolute discretion to approve or disapprove the same in accordance with the provisions of this Ordinance.

Section 7 - Cancellation of Surety Bond.

Any surety may cancel any bond required under this Ordinance as to future liability by giving thirty (30) days notice to the Committee. Unless the licensee gives other sufficient surety by the end of the thirty (30) day period, the license shall be revoked automatically at the end of the thirty (30) days.

### Section 8 - Surety Bond.

(a) Every application for a license under this Ordinance, unless exempted by the Executive Committee, must be accompanied by a bond, which shall become operative and effective upon the issuing of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of \$10,000.00 and must be in a form approved by the Committee and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this Ordinance and all existing laws relating to the conduct of its business and will promptly pay to the Flandreau Santee Sioux Tribe when due, all taxes and license fees payable by it under the provisions of this Ordinance and also any costs and cost penalty assessed against it in any judgment for violation of the terms of this Ordinance.

(b) All bonds required by this Ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account within a legally chartered bank.

### Section 9 - Action of Bond for Injury.

Any person injured by reason of the failure of any licensee to faithfully obey and abide by all the provisions of this Ordinance shall have a direct right of acting upon the bond in Tribal Court for the purpose of recovering the damage sustained by such person, which action may be prosecuted in the name of the injured.

### Section 10 - Agreement by Licensee to Grant Access.

Every application for a license under this Ordinance must include an agreement by the applicant that his premises, for the purpose of search and seizure laws of the Flandreau Santee Sioux Tribe, shall be considered public premises, and that such premises and all buildings, safes, cabinets, lockers, and store rooms thereon will at all times on demand of the Committee or a duly appointed tribal or federal policeman, be open to inspection, and that all its books and records dealing with the sale of ownership of alcoholic beverages shall be open to said person or persons for such inspection, and that the application and the license issued thereon shall constitute a contract between the licensee and the Flandreau Santee Sioux Tribe entitling the Tribe for the purpose of enforcing the provisions of this Ordinance to inspect the premises and books at any time.

### Section 11 - Duration of Licenses.

The period covered by the licenses under this Ordinance shall be from 12 o'clock midnight on the 31st day of December to 12 o'clock midnight on the 31st of the following December.

except that the license shall be valid for an additional three (3) days provided that proper application for a new license is in the possession of the Committee prior to midnight on the 31st day of December when the license expires. A full fee shall be charged for any license for a portion of a period, unless otherwise provided by this Ordinance.

Section 12 - Refilling Prohibited.

No licensee shall buy or sell any package which has previously contained alcoholic beverages sold under the provisions of this Ordinance or refill any such package.

Section 13 - Deliveries.

No licensee under this Ordinance shall make any delivery of alcoholic beverages outside the premises described in the license.

Section 14 - Prohibited Sales.

No vendor shall sell any intoxicating liquor;

- (a) to any person under legal age,
- (b) to any person who is intoxicated at the time, or who is known to the vendor to be a habitual drunkard,
- (c) to any person to whom the vendor has been requested in writing not to make such sale, where such request is by the Executive Committee, any police or peace officer, or the husband or wife of the person,
- (d) to any mentally ill or mentally retarded person.

Any vendor that violates any of the provisions of this section shall be guilty of an offense and punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment with costs.

Section 15 - Minors Barred.

No vendor shall permit any person under legal age on the premises where the business under the license is authorized, unless accompanied by an adult who is the legal guardian or parent of said minor.

Section 16 - After Hours Sales.

No vendor shall sell, serve or allow to be consumed on the premises covered by the license, alcoholic beverages other than in the hours permitted by its license.

Section 17 - Prohibited Activity.

No licensee shall allow any gambling or gambling devices on its premises unless authorized by the Flandreau Santee

Sioux Executive Committee, or permit any lewd or indecent entertainment on said premises.

Section 18 - Prohibited Sales.

No license of an On Sale establishment shall allow to be sold any alcoholic beverages in a package, whether sealed or unsealed, or whether full or partially full.

Section 19 - Unsealed Packages in Public.

No person shall have an unsealed package containing intoxicating liquor in his possession in any public place, other than in a duly licensed facility authorizing such broken seal.

Section 20 - Prohibited Use.

No person shall be permitted either to consume any intoxicating liquor or to mix or blend any intoxicating liquor or alcohol with any other beverage whether or not such other beverage is an alcoholic beverage, in any public place other than upon the premises of a licensed on-sale dealer as defined and authorized by this Ordinance, and any vendor who knowingly permits such violation to occur upon the premises shall be equally responsible with the person performing the act for the violation of the terms thereof.

Chapter III - Sales Tax

Section 1 - Sales Tax Levies.

There shall be a sales tax imposed on any licensee licensed under the provisions of this Ordinance in accordance with rates established by the Committee.

Chapter IV - Age Requirements

Section 1 - Furnishing Beverage to Child.

It shall be unlawful to sell or give any alcoholic beverage to any person under the age of twenty-one (21) years, or sell or give to any person under the age of twenty-one (21). Any person who violates this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment in the tribal jail for not less than thirty (30) days nor more than one hundred eighty (180) days, or by both such fine and imprisonment with costs.

Section 2 - Purchase, Possession by Minor.

It shall be unlawful for any person under the age of twenty-one (21) years of age to purchase, attempt to purchase or possess or consume intoxicating liquor, or to misrepresent

his age for the purpose of purchasing or attempting to purchase such intoxicating liquor. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment in the tribal jail for a period not less than thirty (30) days nor more than one hundred twenty (120) days, or by both such fine and imprisonment with costs.

### Section 3 - Evidence of Legal Age Demanded.

Upon attempt to purchase any alcoholic beverages in any tribal or Indian liquor store by any person who appears to the vendor to be under legal age, such vendor shall demand, and the prospective purchaser upon such demand, shall display satisfactory evidence that he or she is of legal age.

Any person under legal age who presents to any vendor, falsified evidence as to his age shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties specified in Section 1 above.

## Chapter VI - Revision

### Section 1 - Severability.

If any section of any chapter of this Ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the chapter or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

### Section 2 - All Prior Ordinances and Resolutions Repealed.

All prior Ordinances and Resolutions or provisions thereof that are repugnant or inconsistent to any provision of this Ordinance are hereby repealed.

### Section 3 - Amendment or Repeal of Ordinance.

This Ordinance may be amended or repealed only by majority vote of the Executive Committee in regular session.

FLANDREAU SANTEE SIOUX TRIBE

ORDINANCE NO. 89-03

LIQUOR CONTROL

ORIGINAL

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(c) "Bulk Container" shall mean any package, or any container within which container are one or more packages.

(d) "Distillery", "Winery", and "Brewer" shall mean not only the premises wherein alcohol is distilled, or rectified wine is fermented or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of intoxicating liquor or beer in any form.

(e) "Intoxicating Liquor" shall mean any liquid either commonly used, or reasonably adopted to use, for beverage purposes, containing in excess of three and two-tenths per centum of alcohol by weight. This shall include any type of wine, regardless of alcohol content.

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The Flandreau Santee Sioux Executive Committee shall appoint one of the trustees to serve as Director of Liquor Control. The Director shall not have an interest directly or indirectly in the transportation or sale of intoxicating liquor or beer, or in any building or property used in connection with such a business. The Director shall review liquor licenses, applications for liquor licenses and shall report to the Council on such matters. The Director shall serve at the pleasure of the Executive Committee.

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There shall be a filing fee on applications for any licenses under this Ordinance, as established by the Committee.

Section 12 - Request for Notice of Hearing.

If any tribal member shall file with the Committee, a written request that he or she be notified of the time and place of hearing upon any specified application or applications for licenses for the On-or Off Sale at retail of alcoholic beverages, the Director shall give notice to such person by certified mail and within a sufficient length of time prior to the hearing upon such application as to allow such person a reasonable opportunity to be present. For the purpose of this section, the certified letter must be deposited with the U.S. Post Office at least five (5) days before the scheduled date of the hearing.

Section 13 - Time and Place for Hearing

The Committee shall fix a time and place for hearing upon all such applications which may come before the Committee, and the Director shall publish notice once in the official newspaper of the Tribe which notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverage" and shall state the time and place, when and where such applications will be considered by the Committee and that any person interested in the approval or rejection of any such application may appear and be heard, which notice shall be published at least one week prior to such hearing. At the time and place so fixed, the Committee shall consider such applications and all objections thereto, if any, prior to final decision thereon.

Section 15 - Transfer of License.

No license granted pursuant to the provisions of thi

Ordinance shall be transferred to another person or organization. If a transfer to a new location is requested by a licensee, the licensee must make application showing all the relevant facts as to such new application, which application shall take the same course and be acted upon as if an original application. No fee shall be required of a licensee who desires to transfer to a new location; however, such licensee must pay the actual costs involved in the Notification of Hearing as published in the official newspaper.

Section 16 - Sale of Stock on Termination.

Any licensee authorized to deal in alcoholic beverages upon termination of its license may at any time within twenty (20) days thereafter sell the whole or any part of the alcoholic beverages included in its stock in trade at the time of termination, to any licensed wholesaler approved under the provisions of the Ordinance to deal in alcoholic beverages as a wholesaler. A complete report of such purchase and sale must be made by both the wholesaler and licensee to the Committee. At the discretion of the committee, an additional twenty (20) days extension to sell may be granted to the licensee by the Council.

Section 16 - Complaints Authorized.

Any person may file with the Committee, a duly notarized complaint as to any violations of the provisions of this Ordinance and immediately upon receipt thereof, the Committee shall cause the director to make a thorough investigation and, if there is evidence to support the charge made in such complaint, the Committee must cause revocation of the license in question and/or take other appropriate action.

Section 17 - Revocation Proceedings.

The Committee shall on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked.

Section 18 - Subpoena by Council.

For the purpose of conducting the hearing as prescribed above, the Committee shall have the power to subpoena witnesses and to administer oaths. Witnesses so subpoenaed shall be paid at the then prevailing witness rate for the Flandreau Santee Sioux Tribal Court and said witness fee shall be paid from the Tribal Liquor Control Fund.

Criminal proceedings must be filed in the Tribal Court and may be instituted by the Committee or director as Complainant against any violator except the Flandreau Santee Sioux Tribe.

Section 19 - Dismissal or Acceptance of Complaint.

If the Committee determines the license should not be revoked, it shall dismiss the complaint. If the Committee

determines the license should be revoked and revokes such license, it must make in writing, findings of fact as to every such violation alleged in such complaint before it revokes such license, and must by the time of the next Executive Committee meeting, make a report available consisting of a transcript of the proceedings had, and all findings as to every such violation alleged in such complaint.

Section 20 - Suspension in Lieu of Revocation.

The Committee may, if the facts warrant, mitigate the revocation to a suspension.

When in any proceedings upon verified complaint, the Committee is satisfied that the nature of such violation and the circumstances thereof were such that a suspension of license would be adequate, it may suspend the license for a period not exceeding sixty (60) days, which suspension shall become effective twenty-four (24) hours after service of notice thereof upon the license. During the period of such suspension, such licensee shall exercise no rights or privileges whatsoever under the license.

Section 21 - Public Hearing Required.

All hearings under the provisions of this Ordinance shall be public, and place of hearing shall be specifically designated in the notice and place of hearing shall be specifically designated in the notice of hearing.

Section 22 - Order of Revocation.

In any case where the Committee approves a revocation of a license, it shall forthwith make an order for such revocation and upon service of notice thereof on the licensee, all of such licensee's rights under such license shall terminate three (3) days after such notice, except in the event of a Stay on Appeal.

Section 23 - Waiting Period for New Licensee.

Any licensee, except the Flandreau Santee Sioux Tribe, whose license is revoked, shall not for a period of two (2) years thereafter, be granted any license under the provisions of this Ordinance.

Section 24 - Appeal to Tribal Court.

Any licensee whose license is revoked by the Committee regardless of how the proceedings were instituted, may appeal from such revocation to the Flandreau Santee Sioux Tribal Court, within five (5) days after notice to the licensee of such revocation, and such appeal operate to stay all proceedings for a period of fifteen (15) days thereafter and for such an additional period of time that the Flandreau Santee Sioux Tribal Court may in its discretion extend. Under no circumstances may the Tribal Court extend the stay for a period of more than twenty-five (25) days including the original fifteen (15) day stay period. The Committee shall forthwith,

upon such appeal being made, certify to the Tribal Court the complete record in the proceedings and the Court shall thereupon fix a time and place for hearing, due notice of such hearing shall be given to all concerned parties involved in the appeal.

For the purpose of appeal under this Ordinance, the appeal shall be heard by the duly qualified and selected Judge of the Flandreau Santee Sioux Tribal Court.

#### Section 25 - Bootlegging.

Any person whom by himself, or through another acting for him, shall keep or carry on his person, or in a vehicle, or leave in a place for another to secure, any alcoholic liquor or beer with intent to sell or dispense of such liquor or beer or otherwise in violation of law, or who shall, within this reservation in any manner, directly or indirectly solicit, take, or accept any order for the purchase, sale, shipment, or delivery of such alcoholic liquor or beer in violation of law, or aid in the delivery and distribution of any alcoholic liquor or beer so ordered or shipped, or who shall in any manner procure for, sell, or give any alcoholic liquor or beer to any person under legal age, for any purpose except as authorized and permitted in this Ordinance, shall be guilty of bootlegging and upon conviction thereof shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and to a jail sentence of not less than three (3) months, nor more than six (6) months, or both such fine and jail sentence plus costs.

#### Section 26 - General Penalties.

Any person violating any provision of this Ordinance for which a specific penalty is not provided, shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the tribal jail for not more than six (6) months, or by both such fine and imprisonment, plus costs.

#### Section 27

Nothing in this Ordinance shall be construed to require or authorize the criminal trial and punishment by the Flandreau Santee Sioux Tribal Court of any non-Indian except to the extent allowed by any applicable present or future Act of Congress or any applicable decision of the Supreme Court.

### Chapter II - Liquor Licenses and Sales

#### Section 1 - Power to License and Tax.

The power to establish licenses and levy taxes under the provisions of this Ordinance is vested exclusively with the Flandreau Santee Sioux Executive Committee.

## Section 2 - Classes of Licenses.

Classes of licenses under this chapter with the fee for each class shall be as follows:

- (a) Class A Package Dealers
- (b) Class B On-Sale Dealers
- (c) Class C Solicitors
- (d) Class D Transportation Companies-fees shall be established by the Committee

## Section 3 - One License Per Application.

No more than one Class C or Class D license under this chapter shall be issued to any one licensee, except by approval of the Flandreau Santee Sioux Executive Committee. Nothing in this section shall be construed to apply to the Flandreau Santee Sioux Tribe when it is in a license.

## Section 4 - Domestication Requirement for Corporate Licenses.

Any corporate Class C or Class D licensee under this chapter must be a corporation organized under the laws of the Flandreau Santee Sioux Tribe, provided that if the applicant is a foreign corporation, the applicant shall be deemed eligible if, prior to the application, it has complied with all the laws of the United States and the Tribe concerning doing business within the Flandreau Reservation. Individuals, partnerships, and other forms of association shall be eligible to obtain Class C and D licenses under this chapter.

## Section 5 - Ownership of Business.

Any Class C or Class D licensee under this Ordinance must be the sole owner of the business to be operated under the license.

## Section 6 - Discretion of the Committee.

Application for licenses under this chapter shall be submitted to the Committee as specified in Chapter I of this Ordinance and the Committee shall have absolute discretion to approve or disapprove the same in accordance with the provisions of this Ordinance.

## Section 7 - Cancellation of Surety Bond.

Any surety may cancel any bond required under this Ordinance as to future liability by giving thirty (30) days notice to the Committee. Unless the licensee gives other sufficient surety by the end of the thirty (30) day period, the license shall be revoked automatically at the end of the thirty (30) days.

### Section 8 - Surety Bond.

(a) Every application for a license under this Ordinance, unless exempted by the Executive Committee, must be accompanied by a bond, which shall become operative and effective upon the issuing of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of \$10,000.00 and must be in a form approved by the Committee and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this Ordinance and all existing laws relating to the conduct of its business and will promptly pay to the Flandreau Santee Sioux Tribe when due, all taxes and license fees payable by it under the provisions of this Ordinance and also any costs and cost penalty assessed against it in any judgment for violation of the terms of this Ordinance.

(b) All bonds required by this Ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account within a legally chartered bank.

### Section 9 - Action of Bond for Injury.

Any person injured by reason of the failure of any licensee to faithfully obey and abide by all the provisions of this Ordinance shall have a direct right of acting upon the bond in Tribal Court for the purpose of recovering the damage sustained by such person, which action may be prosecuted in the name of the injured.

### Section 10 - Agreement by Licensee to Grant Access.

Every application for a license under this Ordinance must include an agreement by the applicant that his premises, for the purpose of search and seizure laws of the Flandreau Santee Sioux Tribe, shall be considered public premises, and that such premises and all buildings, safes, cabinets, lockers, and store rooms thereon will at all times on demand of the Committee or a duly appointed tribal or federal policeman, be open to inspection, and that all its books and records dealing with the sale of ownership of alcoholic beverages shall be open to said person or persons for such inspection, and that the application and the license issued thereon shall constitute a contract between the licensee and the Flandreau Santee Sioux Tribe entitling the Tribe for the purpose of enforcing the provisions of this Ordinance to inspect the premises and books at any time.

### Section 11 - Duration of Licenses.

The period covered by the licenses under this Ordinance shall be from 12 o'clock midnight on the 31st day of December to 12 o'clock midnight on the 31st of the following December,

except that the license shall be valid for an additional three (3) days provided that proper application for a new license is in the possession of the Committee prior to midnight on the 31st day of December when the license expires. A full fee shall be charged for any license for a portion of such period, unless otherwise provided by this Ordinance.

Section 12 - Refilling Prohibited.

No licensee shall buy or sell any package which has previously contained alcoholic beverages sold under the provisions of this Ordinance or refill any such package.

Section 13 - Deliveries.

No licensee under this Ordinance shall make any delivery of alcoholic beverages outside the premises described in the license.

Section 14 - Prohibited Sales.

No vendor shall sell any intoxicating liquor;

- (a) to any person under legal age,
- (b) to any person who is intoxicated at the time, or who is known to the vendor to be a habitual drunkard,
- (c) to any person to whom the vendor has been requested in writing not to make such sale, where such request is by the Executive Committee, any police or peace officer, or the husband or wife of the person,
- (d) to any mentally ill or mentally retarded person.

Any vendor that violates any of the provisions of this section shall be guilty of an offense and punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment with costs.

Section 15 - Minors Barred.

No vendor shall permit any person under legal age on the premises where the business under the license is authorized, unless accompanied by an adult who is the legal guardian or parent of said minor.

Section 16 - After Hours Sales.

No vendor shall sell, serve or allow to be consumed on the premises covered by the license, alcoholic beverages other than in the hours permitted by its license.

Section 17 - Prohibited Activity.

No licensee shall allow any gambling or gambling devices on its premises unless authorized by the Flandreau Santee

Sioux Executive Committee, or permit any lewd or indecent entertainment on said premises.

Section 18 - Prohibited Sales.

No license of an On Sale establishment shall allow to be sold any alcoholic beverages in a package, whether sealed or unsealed, or whether full or partially full.

Section 19 - Unsealed Packages in Public.

No person shall have an unsealed package containing intoxicating liquor in his possession in any public place, other than in a duly licensed facility authorizing such broken seal.

Section 20 - Prohibited Use.

No person shall be permitted either to consume any intoxicating liquor or to mix or blend any intoxicating liquor or alcohol with any other beverage whether or not such other beverage is an alcoholic beverage, in any public place other than upon the premises of a licensed on-sale dealer as defined and authorized by this Ordinance, and any vendor who knowingly permits such violation to occur upon the premises shall be equally responsible with the person performing the act for the violation of the terms thereof.

Chapter III - Sales Tax

Section 1 - Sales Tax Levies.

There shall be a sales tax imposed on any licensee licensed under the provisions of this Ordinance in accordance with rates established by the Committee.

Chapter IV - Age Requirements

Section 1 - Furnishing Beverage to Child.

It shall be unlawful to sell or give any alcoholic beverage to any person under the age of twenty-one (21) years, or sell or give to any person under the age of twenty-one (21). Any person who violates this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment in the tribal jail for not less than thirty (30) days nor more than one hundred eighty (180) days, or by both such fine and imprisonment with costs.

Section 2 - Purchase, Possession by Minor.

It shall be unlawful for any person under the age of twenty-one (21) years of age to purchase, attempt to purchase or possess or consume intoxicating liquor, or to misrepresent

his age for the purpose of purchasing or attempting to purchase such intoxicating liquor. Any person who violates any of the provisions of this section shall be guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment in the tribal jail for a period not less than thirty (30) days nor more than one hundred twenty (120) days, or by both such fine and imprisonment with costs.

Section 3 - Evidence of Legal Age Demanded.

Upon attempt to purchase any alcoholic beverages in any tribal or Indian liquor store by any person who appears to the vendor to be under legal age, such vendor shall demand, and the prospective purchaser upon such demand, shall display satisfactory evidence that he or she is of legal age.

Any person under legal age who presents to any vendor, falsified evidence as to his age shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties specified in Section 1 above.

Chapter VI - Revision

Section 1 - Severability.

If any section of any chapter of this Ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the chapter or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 2 - All Prior Ordinances and Resolutions Repealed.

All prior Ordinances and Resolutions or provisions thereof that are repugnant or inconsistent to any provision of this Ordinance are hereby repealed.

Section 3 - Amendment or Repeal of Ordinance.

This Ordinance may be amended or repealed only by majority vote of the Executive Committee in regular session.