

4 BE IT ENACTED:

5
6 **Section One. Title**
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8 This article shall be known as “The _____ Tribe Commercial Tobacco-Free Air Act” and is
9 dedicated to all the _____ tribal members who have died or who suffer from commercial
10 tobacco related illnesses.
11

12 **Section Two. Findings and Intent**
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- 14 A. The _____ Tribe is committed to improving the Health and Welfare of all tribal members, to
15 promote a healthy environment, and has an obligation to enact policies that protect members from harm.
16
17 B. The _____ Tribe finds that the United States Surgeon General has found that massive and
18 conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults,
19 including cancer and cardiovascular disease in adults, and adverse respiratory effects in children and
20 adults.
21
22 C. The _____ Tribe finds that there are no safe levels of exposure to secondhand smoke and
23 there is no available adequate ventilation technology based upon scientific studies that can ensure the
24 protection and prevention of secondhand smoke health-related illnesses.
25
26 D. The _____ Tribe recognizes that everyone has the right to breathe clean air and be free from
27 the pollution of commercial tobacco products.
28
29 E. The _____ Tribe finds _____ (insert data that tribal members support smoke-free air) _____.
30
31 E. The _____ Tribe finds use of commercial tobacco products are a leading cause of preventable
32 death on the _____ Reservation.
33
34 F. The _____ Tribe finds that exposure to environmental tobacco smoke (ETS) places non-
35 smoking adults at significantly increased risk for heart disease, hypertension, stroke, and respiratory
36 diseases, all of which lead to the disproportionately higher death rates among American Indians as
37 compared to the general population.
38
39 G. The _____ Tribe finds children who breathe ETS are more likely to suffer from ear
40 infections, decreased lung function, decreased cognitive function, experience more frequent trips to the
41 hospital, and are at a significantly increased risk for sudden infant death syndrome (SIDS), which is
42 disproportionally high among the Northern Plains tribes.
43
44 H. The _____ Tribe finds children are sacred and therefore steps should be taken to ensure that
45 they have good quality of air to breathe and that they are sufficiently protected from ETS, which is a health
46 hazard that is beyond their control.
47
48 I. The _____ Tribe finds that smoking prevalence, and therefore the incidence of ETS, is
49 disproportionately higher amongst _____ Tribal members at a rate _____ (insert data on adult
50 smoking rate for your tribe) _____ as compared to _____ (insert data on adult smoking rate for your state),

1 putting American Indian non-smokers and children at great risk for the health consequences caused by
2 ETS exposure.

- 3
- 4 J. The _____ Tribe finds ETS causes diseases of the respiratory system, which is the leading
5 cause of hospitalization for American Indians throughout the Northern Plains tribes.
- 6
- 7 K. The _____ Tribe finds heart disease, of which ETS is a major risk factor, is the leading cause
8 of death for American Indians throughout the Northern Plains Tribes.
- 9
- 10 L. The _____ Tribe finds over the entire Indian Health Service (IHS) service population, the
11 Northern Plains region experiences the highest rate of lung cancer, of which ETS exposure is a significant
12 risk factor.
- 13
- 14 M. The _____ Tribe finds the financial burden imposed upon the _____ Tribe
15 health care and IHS systems for direct medical expenditures due to ETS exposure can be significantly
16 reduced by the provisions of this ordinance.
- 17
- 18 N. The _____ Tribe finds commercial tobacco disrespects the fundamental cultural traditions of
19 the Sioux.
- 20
- 21 O. The _____ Tribe finds that the quality of commercial tobacco products has been
22 compromised due to the chemical engineering by the tobacco industry. This engineering has contaminated
23 commercial tobacco with 7,000 chemical additives (such as rat poison, formaldehyde, ammonia, acetone,
24 arsenic and many more). These chemicals are used to purposefully increase the addictive properties of the
25 products. As a result, commercial tobacco, whether smoked or chewed, is a highly toxic substance altered
26 to promote addiction and is linked to disease and death of American Indian people.
- 27
- 28 P. The _____ Tribe finds that an individual's use of traditional tobacco shall not be restricted.
- 29
- 30 Q. The _____ Tribe finds and declares that the purposes of this ordinance are (1) to protect the
31 public health and welfare by prohibiting smoking in public places and places of employment; and (2) to
32 guarantee the right of nonsmokers to breathe smoke-free air.
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34 **Section Three. Definitions**

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36 The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- 37
- 38 A. "Commercial tobacco" means all forms of commercial tobacco use including but not limited to cigarettes,
39 cigars, smokeless, electronic cigarettes or any other form of commercial tobacco products.
- 40
- 41 B. "Traditional tobacco use" as defined by the _____ Tribe means _____.
- 42 Traditional tobacco is never abused because it is in its natural form without additives.
- 43
- 44 C. "Indoor area" means all space between a floor and a ceiling that is bounded by walls, doorways, or
45 windows, whether open or closed, covering more than 50 percent of the combined surface area of the
46 vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door,
47 or other physical barrier, whether temporary or permanent.
- 48
- 49 D. "Place of Employment" means an area under the control of a public or private employer including, but not
50 limited to auditoriums; cafeterias; classrooms; conference and public meeting rooms; elevators; employee
lounges; hallways; medical facilities; private offices; restrooms; stairways; vehicles used in whole or in

1 part for work purposes; and work areas. A private residence is not a “workplace” unless it is used as a
2 child care, adult day care, or health care facility.
3

- 4 E. “Public place” means any enclosed area to which the public is permitted or invited, including but not
5 limited to, aquariums; banks; bars; bingo facilities; child and adult care facilities; common use areas in
6 apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple
7 unit residential facilities; convention facilities; educational facilities (both public and private); elevators;
8 galleries; gaming facilities; health care facilities; hotels and motels excluding designated sleeping rooms
9 rented to guests; laundromats; libraries; museums; offices; places of public meeting or assembly including
10 school buildings, service lines, shopping malls, and enclosed sports arenas; polling places; public
11 restrooms; public transportation vehicles and facilities including buses, taxi cabs, and ticket, boarding, and
12 waiting areas of public transit depots; reception areas; restaurants and other facilities which provide food
13 and/or beverage service; retail food production and marketing establishments; retail service
14 establishments; retail stores; shopping malls; sports arenas; theaters and other facilities used primarily for
15 exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances; veteran,
16 fraternal, and similar clubs; and waiting rooms.
17
- 18 F. “Smoking” of commercial tobacco means inhaling, exhaling, burning, carrying or possessing any lighted or
19 heated commercial tobacco product, including but not limited to cigars, cigarettes, pipe tobacco, hookah
20 pipes, or using any battery operated “Electronic cigarettes” or other gadget oral smoking devices promoted
21 with the purpose of circumventing public anti-smoking laws.
22
- 23 G. “Secondhand smoke” means the particulate matter, gases, and other by-products of combustion emitted
24 from a lighted pipe, the lit end of a cigarette or cigar, or an other form of commercial tobacco and also the
25 exhaled by-products of tobacco combustion previously inhaled during the smoking of a pipe, cigarette, or
26 cigar, or any other form of commercial tobacco.
27

28 **Section Four. Prohibition of Smoking in Enclosed Public Places**
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30 The smoking of commercial tobacco products shall be prohibited in all enclosed public places within the
31 _____ Reservation. This does not include a private residence, unless it is used as a child care,
32 adult day care, or health care facility.
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34 **Section Five. Prohibition of Smoking in Places of Employment**
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- 36 A. The smoking of commercial tobacco products shall be prohibited in all enclosed places of employment
37 within the _____ Reservation. This does not include a private residence, unless it is used as
38 a child care, adult day care, or health care facility.
39
- 40 B. This prohibition on the smoking of commercial tobacco products shall be communicated to all existing
41 employees both orally and in writing by the effective date of the Article and to all prospective employees
42 upon their application for employment. This will be the responsibility of the owner, manager, operator, or
43 employee of the establishment.
44

45 **Section Six. Reasonable Distance**
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47 The smoking of commercial tobacco products is prohibited within 50 feet of outside entrances, operable
48 windows, and ventilation intakes (such as air conditioners) of enclosed areas where smoking is prohibited
49 (enclosed public places and places of employment), so as to ensure that secondhand smoke does not enter
50 those areas.
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Section Seven. Public Awareness

- A. “No Smoking” signs or the international “No Smoking” symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- B. All ashtrays, matchbooks, or similar smoking equipment intended for use on the premises shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of the area.

Section Eight. Where Commercial Tobacco Use is Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the restrictions of this Act.

- A. Private residences unless made available to the general public for commercial business uses, including but not limited to child, adult or health care facilities.
- B. Outdoors, except as described in Section Six.
- C. Hotel or motel sleeping rooms rented to guests, provided the rooms are designated as smoking areas.
- D. The _____ Tribe hereby continues to recognize the fundamental use of traditional tobacco.

Section Nine. Enforcement

- A. This Article shall be enforced by Law Enforcement or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ Tribe of South Dakota.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the appropriate Law Enforcement.
- D. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform any person violating this Article of the appropriate provisions thereof, and shall ask the person to refrain from smoking. If the person does not refrain from smoking after being asked to do so, the owner, manager, operator, or employee shall ask the person to leave. If the person refuses to leave, the owner, manager, operator, or employee shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.
- E. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- F. In addition to the remedies provided by the provisions of this Section, Law Enforcement or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section Ten. Civil Violations

- 1 A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall pay a
2 civil penalty not exceeding fifty dollars (\$50) for each violation.
3
- 4 B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and
5 who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine
6 not exceeding one hundred dollars (\$100) for each violation.
7
- 8 C. In addition to the fines established by the Section, violation of this Article by a person who owns,
9 manages, operates, or otherwise controls a public place or place of employment may result in the
10 suspension or revocation of any permit or license issued to the person for the premises on which the
11 violation occurred.
12
- 13 D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by Law
14 Enforcement by restraining order, preliminary and permanent injunction, or other means provided for by
15 law, and the _____ Tribe may take action to recover the costs of the nuisance abatement.
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- 17 E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
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- 19 F. Ignorance of the requirements of this ordinance is not a defense to the civil penalties.
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21 **Section Eleven. Public Education**

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23 The (insert appropriate tribal employee title, ex. Health Educator) shall engage in a continuing
24 program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to
25 guide owners, operators, and managers in their compliance with it. The program may include publication of a
26 brochure for affected business and individuals explaining the provisions of this ordinance.
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28 **Section Twelve. Liberal Construction**

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30 This Article shall be liberally construed so as to further its purposes.
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32 **Section Thirteen. Amendment**

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34 This Act shall not be amended except by recommendation by the _____ Committee of the
35 _____ Tribe.
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37 **Section Fourteen. Effective Date.**

38 This Article shall be effective 30 days following the date of this Article's adoption.