

TITLE TEN

LIQUOR ORDINANCE

Chapter 1 - Alcoholic Beverages

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CHAPTER ONE

ALCOHOLIC BEVERAGES

10-1-1 This ordinance shall be cited as the "Rosebud Sioux Tribal Liquor Ordinance", and under the inherent sovereignty of the Rosebud Sioux Tribe shall be deemed an exercise in the police power of the Tribe 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 its purpose, and it is declared to be public policy that the sale of alcoholic beverages is so affected with the public interest that it should be regulated to the extent of prohibiting all traffic in it, except as provided in this ordinance.

10-1-2 It shall be unlawful to sell, offer, keep for sale, or possess intoxicating liquor or low-point beer except upon the terms, conditions, limitations, and restrictions specified in this ordinance.

10-1-3 There is hereby created a Rosebud Sioux Tribal Liquor Commission to administer and enforce the laws of the Tribe concerning intoxicating liquor and low-point beer. The principal place of business of the Department shall be at Rosebud, South Dakota and suitable quarters or offices shall be provided for the Department by the Rosebud Sioux Tribal Council.

10-1-4 There is hereby created with the Department a Rosebud Sioux Liquor Commission composed of three members. No person may be a member of the Commission if such person or any member of his or her immediate family is also a member of the Rosebud Sioux Tribe governing body or has an interest directly or indirectly in the production, transportation, or sale of intoxicating liquor or low-point beer, or in any building or property in any way used in connection with any such business. The Commission shall be held strictly accountable for the enforcement of all the provisions of this Code and shall be directly responsible to the Rosebud Sioux Tribal Council.

a. Appointment-term-qualification-compensation

Appointment to the Commission shall be for terms of three (3) years and shall be made by a majority vote of the Rosebud Sioux Tribal Council. Members of the Commission shall be appointed so that one member's term of office expires on January 1st of each year. Members of the Commission shall be chosen on the basis of ability and may be reappointed for one additional term. Each member appointed shall receive full compensation for their services in addition to reasonable and necessary expenses incurred while attending meetings. Vacancies shall be filled by a majority vote of the Rosebud Sioux Tribal Council only for the unexpired portion of the vacant position.

b. Bonds

Each member of the Commission shall post a bond in such amount and with such sureties as the Tribal Council shall approve to guarantee to the Tribe the proper handling and accounting of such monies, merchandise, and other properties as may be required in the administration of this ordinance.

c. Commission Meetings

The Commission shall meet at least once per month and once each year shall select one of its members as Chairman, which member shall serve in such capacity for the succeeding year. Special meetings of the Commission may be called by the chairman or when any two (2) members file with the chairman a written request for a meeting. Written notice of the time and place of each meeting shall be given to each member of the Commission and the President of the Rosebud Sioux Tribe. All Commission meetings shall be held within the Reservation. Two members of the Commission shall constitute a quorum.

10-1-5 The Tribal Council shall hire under contract a Director who in no event shall be a member of the Commission nor shall such a person be appointed if he or a member of his or her immediate family is a member of the Rosebud Sioux Tribe governing body or has an interest directly or indirectly in production, transportation, or sale of intoxicating liquor or low-point beer, or in any building or property in any way used in connection with any such business. Such Director's original contract shall be for a duration of one year and may be renewed on a yearly basis thereafter. The Director's salary shall be in such amount as may be determined by the Rosebud Sioux Tribal Council. The Director shall be qualified, in a managerial ability or in experience to perform his duties; and shall act in the name of and serve at the pleasure of the Tribal Council, but shall be responsible to the Commission.

The Director shall devote such time as necessary to the discharge of his duties. He shall not accept or sollicit, directly or indirectly, contributions or anything of value in behalf of himself, any special interest group on the reservation, any political party, or any person seeking an elective or appointed office nor use his official position in advance of the candidacy of anyone seeking an elective or appointive office. The Director must physically reside on the Rosebud Reservation. A violation of this section may subject the Director to removal from office.

10-1-6 Members of the Commission, the Director and other employees of the Department shall be allowed their actual and necessary expenses while traveling on business of the Department outside of their place of residence on the Reservation, however, an itemized account of such expenses shall be verified by the claimant and certified by the Director. If such account is paid, copies of the same shall be filed with the Department and be and remain a part of its permanent records. All expenses (and salaries) of Commission members, the Director and other employees, shall be paid from appropriations for such purpose.

10-1-7 Any Commission member or 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. Any member or Director so removed shall be entitled to an opportunity to be heard before the Tribal Council before removal.

10-1-8 No Commission member, Director or employee of the Department shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of his duties in accordance with the provisions of this ordinance:

10-1-9 No Commission member, Director or employee of the Department shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of his duties in accordance with the provisions of this ordinance.

10-1-10 No person responsible for the administration or enforcement of this chapter and any other provisions of this ordinance, shall accept or solicit donations, gratuities, political advertising, gifts, or other favors directly or indirectly, from any liquor control licensee or vendor.

10-1-11 The Commission shall have the following duties and powers:

- (1) To direct the Director to perform any of the functions specified in this ordinance or by the Tribal Council;
- (2) To purchase alcoholic beverages for resale by the Department in the manner set forth in this ordinance;
- (3) At the direction of the Tribal Council, to establish, maintain, or discontinue Tribal liquor stores and determine the location of such stores;
- (4) To rent, lease or equip any building or any land necessary to carry out the provisions of this ordinance.
- (5) To lease all plants and lease or buy equipment necessary to carry out provisions of this ordinance.
- (6) To appoint vendors, clerks, agents, or other employees required for carrying out the provisions of the Chapter; to dismiss such employees for cause; to designate their title, duties and powers;
- (7) To accept applications and grant licenses provided for by this ordinance
- (8) To investigate any violation of the provisions of this Code within twenty (20) days from receipt of information or complaint of such violation.
- (9) The Commission shall have such other powers and duties necessary and proper to carry out the provisions of this ordinance.

10-1-11 The Commission may adopt and promulgate, with the approval of the Tribal Council, such rules and regulations that are necessary to carry out the provisions of this ordinance.

10-1-12 The Rosebud Sioux Tribal Council shall, when it deems advisable to do so, direct the Tribal Liquor Commission to establish and maintain anywhere on the Rosebud Sioux Indian Reservation a tribal liquor store or stores for the sale of alcoholic beverages in accordance with the provisions of this ordinance. The Commission may, from time to time, fix the prices of the different classes, varieties, or brands of alcoholic liquor and low-point beer to be sold.

10-1-13 In directing the Rosebud Sioux Tribal Liquor Commission to operate a liquor store within a particular geographical area, the Rosebud Sioux Tribal Council shall indicate whether or not any other liquor stores shall be permitted to operate in the same area. If other licenses are not permitted, no other licenses shall be granted for that area.

10-1-14 Upon the granting of an application for a license by the Rosebud Sioux Tribe, all similiar licenses existing in that area terminate thirty days thereafter. No similiar licenses shall be granted thereafter for that area unless the Rosebud Sioux Tribal Council specifically permits.

10-1-15 The Rosebud Sioux Tribe shall acquire the stock, equipment, and fixtures from any licensee whose license has been terminated by reason of the tribal monopol, such acquisition to be by purchase, condemnation, or arbitration.

10-1-16 In the conduct and management of Tribal liquor stores the Commission is empowered to employ a person who shall be under the direct supervision of the Director, and who shall observe all provisions of this ordinance and rules and regulations that may be prescribed by the Commission under this ordinance.

10-1-17 There shall be charged a filing fee of \$300 for an application for a Class A license, \$250 for a Class B license, and \$125 for a Class C license.

10-1-18 No license for a Class A, B, or C license as the same are defined and classified under the provisions of this ordinance shall be granted to an applicant for any such license, except after public hearing, upon notice, as provided hereinafter in this Chapter.

The Commission shall make findings of fact in either rejecting or granting the application.

Any person whose application for license is rejected shall have the right to appeal such decision to the Rosebud Sioux Tribal Court. The appeal must be filed within five days after receipt of notice from the Commission. The Commission shall forthwith, upon such appeal being made, certify to the Tribal Court the complete record and findings of fact. The Court shall thereupon fix a time and place for hearing and notice of which hearing shall be given to all the parties of the appeal.

The appeal shall be conducted by the Tribal Court in the same manner as an appeal from the termination of a license.

If any reason under law exists for rejection of the application for license, the decision of the Commission must be affirmed.

10-1-19 If any tribal member of any Community as recognized by the Constitution or By-Laws or Ordinance of the Rosebud Sioux Tribe shall file with the Commission a written request that he or she be notified of the time and place of hearing upon any specified application for a liquor license, 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 purposes 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.

10-1-20 The Commission shall fix the time and place for hearing upon all such applications which may come before the Commission and the Director shall publish notice once in the official newspaper of such community which notice shall be headed "Notice of Hearing Upon Application for Sale of Alcoholic Beverages," and shall state the time and place when and where such applications will be considered by the Commission 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 Commission shall consider such applications and all objections thereto, if any, prior to final decision thereon.

10-1-21 No license granted pursuant to the provisions of this ordinance shall be transferred. 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 location, 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.

10-1-22 Any licensee authorized to deal in alcoholic beverages upon termination of its licence 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 licensee under the provisions of this ordinance. A complete report of such purchase and sale must be made by both the purchaser and licensee to the Commission. At the discretion of the Commission, an additional twenty (20) days extension to sell may be granted to the licensee by the Commission.

10-1-23 Any person may file with the Commission a duly notarized complaint as to any violations of the provisions of this ordinance and immediately upon receipt thereof, the Commission shall cause the Director to make a thorough investigation and, if there is evidence to support the charge made in such complaint, the Commission must cause a revocation of the license in question and/or take other appropriate action.

10-1-24 The Commission shall upon complaint or its own motion, on due notice to such licensee, conduct a hearing and on the basis thereof determine whether such license should be revoked.

10-1-25 For the purpose of conducting the hearing as prescribed above, the Commission 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 Rosebud Sioux Tribal Court. Criminal proceedings must be filed in Tribal Court and may be instituted by the Commission or Director as complainant against any violator.

10-1-26 If the Commission determines the license should not be revoked, it shall dismiss the complaint. If the Commission 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. It must, in addition, by the time of the next Tribal Council meeting, make a report to the Tribal Council.

10-1-27 The Commission may, if the facts warrant, mitigate the revocation to a suspension.

When in any proceeding upon a verified complaint, the Commission is satisfied that the nature of such violation and the circumstances thereof are such that a suspension of the 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 licensee. During the period of such suspension such license shall exercise no rights or privileges whatsoever under the license.

10-1-28 All hearings under the provisions of this ordinance shall be public and place of hearing shall be specifically designated in the notice of hearing. It shall be permissible, when due notice has been given, for the Commission to hold hearings in the Community Hall of the Community wherein the license is operative.

10-1-29 In any case where the Commission approves the 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 right under the license shall terminate three (3) days after such notice, except in the event of a stay of appeal.

10-1-30 Any licensee, except for the Rosebud 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.

10-1-31 Any licensee whose license is revoked by the Commission regardless of how the proceedings were instituted may appeal from such revocation to the Rosebud Sioux Tribal Court within five (5) days after notice to the licensee of such revocation, and such appeal operates to stay all proceedings for a period of fifteen (15) days thereafter and for such an additional period of time that the Rosebud

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) days stay period. The Commission 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 and notice of which 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 all duly qualified and selected judges of the Rosebud Sioux Tribal Court sitting as one body.

10-1-32 Upon appeal the Tribal Court Judges shall review the record as certified by the Commission and shall then immediately during that Court date enter an order either affirming or reversing the decision revoking such license. In reaching its determination the Tribal Court Judges shall not hear any testimony, but shall examine the record as certified by the Commission as to whether it disclosed evidence of any violation of law or rules or regulations charged in the complaint, and if the certified record so disclosed a violation of law, the Court is bound to affirm the decision of the Commission.

An appeal will be denied unless a clear majority of the Tribal Judges sitting on the appeal vote for reversal. In the event of a tie vote, the actions of the Commission shall be affirmed and the license revoked.

10-1-33 Any person who, 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 low-point beer with the intent to sell or dispense of such liquor or low-point beer with the intent to sell or dispense of such liquor or low-point 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 low-point beer in violation of law, or aid in the delivery and distribution of any alcoholic liquor or low-point 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 \$300 nor more than \$500 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.

10-1-34 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 \$150 nor more than \$500 or by imprisonment in the Tribal jail for not more than six (6) months, or by both such fine and imprisonment plus costs.

10-1-35 Terms used in this ordinance, unless the context otherwise plainly requires, shall mean as follows:

- (1) Alcoholic beverages - any intoxicating liquor, low-point beer or any wine.
- (2) Application - a formal written request for the issuance of a license supported by a verified statement of facts.
- (3) Foreign corporation - any corporation not incorporated under the laws of the Rosebud Sioux Tribe.

- (4) Immediate family - shall mean and include as defined under both the Anglo-American and Lakota systems of juris prudence but is not limited to, the following relationships: grand-parents, parents, spouses, sons, daughters, grandchildren, father-in-law, mother-in-law, brothers-in-law, sisters-in-law, aunts, uncles, and cousins, in addition to all lineal and collateral relatives whether in the whole or half blood or adopted.
- (5) Low-point beer - any liquid commonly used or readonably adapted to use for beverage purposes and which is produced wholly or in part from brewing of any grain or grains or malt substitute, and which contains any alcohol whatsoever but no more than three and two-tenths per centum of alcohol by weight.
- (6) Low-point license - authority to sell only low-point beer.
- (7) On sale - the selling of any alcohol beverage for consumption only on the premises where sold.
- (8) On sale license - authority to sell any alcoholic beverage for consumption on the premises where sold.
- (9) Package dealer - any person or corporation that sells or keeps for sale any alcoholic beverage for consumption off the premises where sold.
- (10) Package dealer license - authority to sell any alcoholic beverage off the premises where sold.
- (11) Public place - shall mean any place, building or conveyance to which the public has or is permitted access.
- (12) Sale - the transfer, for consideration, of title to any alcoholic beverage.
- (13) Wine - any beverage containing alcohol obtained by the fermentation of natural sugar contents of fruits or other agricultural products.

CHAPTER TWO

LIQUOR LICENSES AND SALES

10-2-1 The power to establish categories or licenses and levy taxes with respect to the sale of alcoholic beverages is vested exclusively with the Rosebud Sioux Tribal Council.

10-2-2 Classes of licenses under this chapter, with the fee for each class, shall be as follows:

- (a) Class A - Package dealer - \$2,500
- (b) Class B - On sale - \$1,500
- (c) Class C - Low point - \$750

10-2-3 In accepting or rejecting a request for a license, the Tribal Liquor Commission shall consider the need of the area to be served for such liquor sales, the number of existing licensed businesses covering the area, the desires of the community within the area to be served, any law enforcement problem which may arise because of the sale of liquor, the character and reputation of the person seeking the license, suitability of the physical premises and plan of operation of the person seeking the license, and any other consideration relevant to the request.

10-2-4 Any corporation seeking a license for the sale of liquor must be a corporation organized under the laws of the Rosebud Sioux Tribe, provided, however, that if the applicant is a foreign corporation, it shall be eligible if, prior to the application, it has complied with the laws of the Rosebud Sioux Tribe and the United States concerning doing business within the Rosebud Reservation. Both corporations and individuals, prior to making applications for a liquor license, must have secured an Indian Traders license.

10-2-5 Any license issued must be in the name of one person only.

10-2-6 Applications for licenses under this chapter shall be submitted to the Tribal Liquor Commission as specified and established. The Commission shall have absolute discretion to approve or disapprove the same in accordance with the provisions governing its administration.

10-2-7 Every application for a license, unless exempted by the Tribal Council for good reason, 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 and must be on a form approved by the Tribal Liquor Commission. 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 Rosebud Sioux Tribe when due all taxes and license fees payable by it under the provisions of this ordinance and any costs assessed against it in any judgement or violation of the terms of this ordinance.

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.

10-2-8 Every application for a license must be accompanied by a policy of insurance indicating that the insurance company will promptly pay all sums, not exceeding \$100,000 per person, which the applicant shall become legally obligated to pay as damages because of bodily injury, property damage, or death proximately caused to himself or others by any person intoxicated by the consumption of alcohol sold by the applicant.

10-2-9 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 person injured.

Any person suffering bodily injury, property damage, or death proximately caused by any person becoming intoxicated by the consumption of alcohol sold by the applicant have a cause of action against the application for such damage sustained.

10-2-10 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 Rosebud 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 Tribal Liquor Commission or a duly appointed tribal or federal policeman, be open to inspection, and that all its books and records dealing with the sale or ownership of alcohol 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 licensee and the Rosebud Sioux Tribe entitling the Tribal Liquor Commission, for the purpose of enforcing the provisions of this ordinance, to inspect the premises and books at any time.

10-2-11 The period covered by licenses under this ordinance shall be for a period of one year from the date that the license was first issued.

10-2-12 The provisions of this ordinance, except as otherwise provided, shall not apply to the purchase and sale of sacramental wine. Ordained rabbis, priests, ministers, or pastors of any church or established religious organizations within the Rosebud Sioux Indian Reservation may buy sacramental wines from any person in such quantities as necessary for their religious purposes only.

10-2-13 No licensee under this ordinance shall make any delivery of alcoholic beverages outside the premises described in the license.

10-2-14 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.

10-2-15 No licensee shall sell any alcoholic liquor to: (1) any person under the age of 19 years (2) any person who is intoxicated at the time or who is known to the licensee or his help to be a habitual drunkard (3) any person to whom the licensee has been requested in writing not to make any sale of alcoholic liquor, where such request is by the Tribal Court or the husband or wife of the person (4) any mentally ill or mentally retarded person.

10-2-16 No licensee shall permit any person under the age of 19 years on the premises covered by the license.

10-2-17 No licensee 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.

10-2-18 No licensee shall allow any gambling or gambling devices on its premises or permit any lewd or indecent entertainment on said premises.

10-2-19 No fighting shall be allowed on the premises covered by the license.

10-2-20 All sales of alcoholic liquor shall be for cash only. No licensee shall engage in any pawn business of any kind.

10-2-21 No licensee 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. Licensee herein includes low-point beer.

10-2-22 No licensee of a package establishment shall allow to be consumed on the premises covered by the license any alcoholic beverages.

10-2-23 No licensee shall sell liquor within 500 feet of any elementary or secondary educational institution.

CHAPTER THREE

AGE REQUIREMENTS

10-3-1 *Furnishing Beverages to Child.* It shall be unlawful to sell or give any alcoholic beverage, except low-point beer, to any person under the age of 21 years, or sell or give to any person under the age of 19 years any low-point beer. 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 \$100 nor more than \$360 or by imprisonment in the Tribal Jail for not less than 30 days nor more than 180 days, or by both such fine and imprisonment with costs.

10-3-2 *Purchase, Possession by Minor.* It shall be unlawful for any person under the age of 21 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 \$50 nor more than \$360 or by imprisonment in the Tribal Jail for a period not less than 30 days nor more than 120 days, or by both such fine and imprisonment with costs.

10-3-3 *Purchase or Possession of Low-Point Beer.* It shall unlawful for any person under the age of 19 years to purchase, attempt to purchase, possess or consume low-point beer, or to misrepresent his age for the purpose of purchasing or attempting to purchase low-point beer. Any person who violates the provisions of this section shall be guilty of an offense and upon conviction shall be punished by a fine or not less than \$50 nor more than \$360 or by imprisonment in the Tribal Jail

10-3-4 *Evidence of Legal Age Demanded.* Upon attempt to purchase any alcoholic beverages in any Tribal or Community liquor store by any person who appears to the vendor to be under legal age, such vendor shall and het prospective purchaser upon such demand shall display satisfactory evidence that he is of legal age.

Any person under legal age who represents 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 10-3-3 above.