

**FLANDREAU SANTEE SIOUX TRIBAL  
LAW AND ORDER CODE**

**VOLUME V**

**TITLE 13: ANIMAL CONTROL**

**TITLE 14: ~~HUNTING AND FISHING~~ *Fireworks/FIRE  
ARMS CONTROL***

**TITLE 15: LIQUOR CONTROL**

**TITLE 16: (RESERVED) SOLID WASTE**

1999 AMENDED

TITLE 13  
ANIMAL CONTROL

CHAPTER 1  
GENERAL PROVISIONS

**Section 13-1-1. Purpose.** The purpose of this Ordinance is to provide provisions for animal control, on the Reservation to ensure the safety of tribal members and other individuals living on the Reservation and to ensure that animals are properly cared for.

**Section 13-1-2. Definitions.** For the purposes of this Title, the following definitions shall apply:

**ANIMAL POUND** - Building and facilities therein which is approved by the Tribe for the impoundment of animals.

**AT LARGE** - An animal shall be deemed to be running at large when off or away from the owner's premises and not under control of the owner, possessor, keeper, agent, servant, or a member of his immediate family.

**LEASH** - A cord, thong, or chain by which an animal is controlled by the person accompanying it.

**OWNER** - Any person harboring or keeping an animal and the occupant of any premises on which an animal remains or to which it customarily returns to daily for a period of ten (10) days.

**ANIMAL CONTROL OFFICER** - A person or agency designated by the Executive Committee to be responsible for the enforcement of this Title and who shall work with other law enforcement officials in the enforcement of this Ordinance.

**LICENSED DOG** - A dog having a collar and tag issuance by the Flandreau Santee Sioux Tribe.

NON-LICENSED DOG - A dog having no collar or tag indicating issuance by the Flandreau Santee Sioux Tribe.

**Section 13-1-3. Licensing requirements.** It shall be unlawful for any person or persons within the Reservation to keep, possess, or have in his custody or under his control, any dog or animals of the dog kind, without first having obtained a license to do so from the Clerk of Courts, as hereinafter provided and without having paid the license fee therefor. Violation of this section shall result in a fine to be set by the court.

**Section 13-1-4. License application.** Any person or persons desiring to keep, possess or have in his custody or control within the Reservation, any dog, shall on or before the 1st day of January of each year make an application to the Clerk of Courts for a license to keep such dog. Such application shall be in writing stating the name, sex, color and other distinguishing characteristics of the dog, and the name of the owner thereof, and that said dog has no vicious propensities far as known to the applicant. The application shall be made on a form provided by the Clerk of Courts and shall be filed with the court.

**Section 13-1-5. Fee/tag.** An applicant for a license shall at the time of making such application, pay to the Clerk of Courts as a license fee the sum of three dollar (\$3.00) for each dog. A certificate by a registered veterinarian showing that such dog has been inoculated or has a continuing immunity against rabies within six (6) months of such application shall accompany the application. It shall be the duty of the Clerk of Courts at the time of the issuance of the license herein provided for, to furnish and deliver to said applicant, a metallic fiber or plastic tag for each dog for which such license is issued, upon which tag shall be stamped or engraved the registered number of the dog and the year when registered. It shall then be the duty of the owner of the dog to place a collar around the neck of such dog so owned and kept by him, on which collar shall be securely fastened a tag so furnished by the Clerk of Courts. In case of the loss of any tag so issued, the Clerk is authorized to issue a duplicate thereof.

**CHAPTER 2  
GENERAL PROHIBITIONS**

**Section 13-2-1. Running at Large Prohibited.** No owner of any dog shall permit such dog to run at large within the Flandreau Santee Sioux Reservation at any time.

Any dog found at large shall be impounded by the Animal Control Officer or Law Enforcement, and the owner shall be subject to a fine as set by the court.

**Section 13-2-2. Vicious Dogs.** A dog may be declared vicious by the Animal Control Officer, Law Enforcement, or by the Court, upon proof that it has demonstrated a vicious propensity. Vicious propensity is so defined as any dog which, in a vicious or terrorizing manner approaches in an apparent attitude of attack, or bites, inflicts injury, assaults or otherwise attacks a person or other animal whether on public or private property, provided that the dog has not been provoked to do so by teasing, tormenting, abusing or assaulting the animal. No dog may be declared vicious if the injury or damage is sustained to any person or animal who is committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal.

**Section 13-2-3. Vicious Dog.** If a dog is declared to be vicious as provided for above, the Tribe shall notify the owner or keeper of such declaration in writing that such animal is vicious which notice shall be served either in person or by mailing such notice by certified mail.

The owner or keeper of an animal that has been declared vicious then must comply with the following:

- b. If the animal is kept indoors, the animal shall be under the control of a person over 18 years of age.
- c. If the animal is outdoors and attended, the animal shall be muzzled, on a leash no longer than six (6) feet and under the control of a person over 18 years of age.
- d. If the animal is outdoors and unattended, the animal must be locked in an escape-proof kennel approved by the Animal Control Officer. Minimum Standards shall include the following:
  - a. Fencing materials shall not have openings

- with a diameter of more than two (2) inches, and in the case of a wooden fence the gaps shall not be more than two (2) inches.
- b. Any gates within such pen or structure shall be lockable and of such design to prevent the entry of children or the escape of the animal.
  - c. The required pen or structure shall have a top and bottom with both secured to the sides.
  - d. The pen or structure shall protect the animal from the elements.
  - e. The pen or structure may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects within reach of the animal.
  - f. A sign denoting a vicious animal shall be displayed on the kennel or enclosure and on a place visible from the sidewalk or road adjacent to the property where the animal is kept.
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- e. The vicious animal may be impounded by the Animal Control Officer at the owner's or keeper's expense until such time as all provisions outlined above are complied with.
  - f. If the conditions outlined above are not complied with, the animal shall be euthanized in a humane manner by the owner or keeper and proof of euthanasia filed with the Tribal Office.
  - g. Any vicious animal found off the premises of its owner or keeper, other than as provided for in this Ordinance, may be seized by Animal Control Officer, or Law Enforcement Officer, impounded. If the animal cannot be captured, it may be destroyed.

**Section 13-2-4. Certain Breeds Specifically prohibited.**  
The following dogs are hereby declared vicious and shall not be allowed, owned or kept within the exterior boundaries of the Flandreau Santee Sioux Reservation:

- a. Pitbull Terriers and any mixture of pedigree which includes Pitbull Terriers.
- b. Rottweiler
- c. Any dog with Wolf breeding.

- d. All animals of any mixture of pedigree of the above-named breeds.

Any person found to be in violation of this section of the Ordinance shall be subject to a fine to be set by the court. Any vicious dog shall be confiscated and impounded by the Animal Control Officer and shall not be returned to the Flandreau Santee Sioux Reservation.

**Section 13-2-5. Disturbance of peace.** The owner of any dog shall not allow the dog to disturb the peace and quiet of the Flandreau Santee Sioux Tribal Reservation by continuous barking or by making other loud or unusual noises, or by becoming a public nuisance by destroying or defacing property or causing injury to person or persons, or domestic animals. Violation of this section shall result in a fine to be set by the court.

**Section 13-2-6. Cruelty of animals.** No person shall willfully or negligently mistreat, abuse, or neglect in a cruel or inhumane manner any animal. Violation of this section shall be a Class I misdemeanor.

**Section 13-2-7. Humane care of animals.** An owner shall provide their animal with sufficient food and water, proper shelter, humane care and treatment and veterinary care when needed to prevent suffering. No person shall mistreat any animal nor shall any animal be abandoned. An owner may take an animal they no longer desire to care for, to the animal control shelter.

**Section 13-2-8. Unlawful to poison.** It shall be unlawful for any person to willfully or maliciously administer or cause to be administered, poison of any sort whatsoever to any animal, with the intent to injure or destroy such animal, or to willfully or maliciously place any poison or poisoned food where the same is accessible to any animal. Violation of this section shall be a Class I misdemeanor.

**Section 13-2-9. Immunization required.** Every dog, cat, or other warm blooded animal held as a domestic pet on the Flandreau Santee Sioux Reservation, three (3) months of age or older, is hereby required to be immunized against rabies by a licensed veterinarian or other qualified person. Immunization against rabies shall be given by such intervals to guarantee immunity, and the minimum time period between vaccinations shall be determined by the available vaccine

and based upon the recommendations and approval of a veterinarian. Any owner acquiring a dog, cat, or other warm blooded animal by purchase, gift, birth, or otherwise shall have such animal immunized against rabies immediately after acquisition or when the animal reaches the age of three (3) months. Violation of this section shall result in a fine to be set by the court.

**Section 13-2-10. Immunization tag.** All veterinarians or other qualified persons designated to immunize animals against rabies shall provide the owner at the time of immunization with a metallic tag bearing the date of the immunization. All animals shall wear the above tag on a collar, harness, or chain when off the premises of the owner.

**Section 13-2-11. Keeping rabid animals.** No person shall knowingly harbor or keep any animal infected with rabies or any animal known to have been bitten by an animal known to have been infected with rabies. Violation of this section shall result in a fine to be set by the court.

**Section 13-2-12. Report of suspected cases - generally.** Any person who shall suspect that any animal on the reservation is infected with rabies shall report said animal to the Animal Control Officer or law enforcement, describing the animal and giving the name and address of the owner if known.

**Section 13-2-13. Destruction of rabid animals.** Any animal reasonably believed to have rabies, and if, under the circumstances, it is not reasonable to impound or to attempt to seize that animal for the purpose of further observation, may be destroyed by Law Enforcement or the Animal Control Officer. Any expense incident to the impoundment, destruction, or diagnosis of rabid animals shall be paid by the owner thereof. Neither the Tribe nor any person authorized by this section shall be liable for the destruction of any animal when done under circumstances as set forth in this section.

**Section 13-2-14. Nuisance.** Any animal may be declared a nuisance by the court when there have been repeated violations of the ordinance by the animal or the owner. Any animal declared a nuisance shall be impounded and removed from the reservation.

**Section 13-2-15. Injured or ill animals.** Whenever an animal control officer encounters a stray animal suffering pain, the animal control officer shall take the animal to a veterinarian where the cost of any care or treatment shall be borne by the owner. If ownership of the animal cannot be determined, the animal control officer shall impound the dog for five (5) days unless it appears that a longer impoundment will lead to identification of the owner, and if the owner cannot be located, the animal may be disposed of by humane means without notice.

### CHAPTER 3 IMPOUNDMENT

**Section 13-3-1. Impounded animals.** Law Enforcement and the Animal Control Office shall be authorized to impound any animal if a violation of this ordinance has occurred and impounding is necessary to ensure the ordinance is enforced. Any impounded animal shall not be released by the animal shelter to any person until such animal so impounded shall be immunized if owner can present a certificate of current immunization having been previously performed.

**Section 13-3-2. Impoundment for observation.** When any person owning or harboring a dog, cat, or other animal has been notified that said animal has bitten or attacked any person, the owner must immediately place the animal under the care and observation of the Animal Control Officer or a licensed veterinarian, there to be held for a period of not less than (10) days. If there is no indication of rabies, the animal may be reclaimed by the owner upon payment of all costs. Any animal impounded or placed for observation showing active signs of rabies, suspected of having rabies, or know to have been exposed to rabies, shall be destroyed pursuant to Section 13-2-11.

**Section 13-3-3. Redemption of impounded animals/Impound Cost.** Before any person may redeem any animal impounded under the provision of this Ordinance, he shall pay to the person or proper authority an impoundment fee set by the impoundment facility. The person redeeming such impounded animal under the provision of this Ordinance shall receive a dated receipt signed by the representative of the animal



shelter. The receipt for payment of impoundment and boarding costs must be presented to the person, association, or corporation housing the impounded animal before such animal may be redeemed. The owner of the impounded dog which has not been vaccinated or licensed under this Chapter, upon satisfactory proof of ownership, may redeem his dog by payment of the fees determined above. If such owner fails to procure a certificate of vaccination and license within forty-eight (48) hours, said deposit shall be forfeited and turned over to the Clerk of Courts to be placed in the General Fund and the dog may be impounded again. Upon presentation within forty-eight (48) hours of a license issued under this Chapter, the deposit shall be refunded.

Section 13-3-4. Impound Redemption by person other than owner. If the owner of any animal impounded under the provisions of this Ordinance shall fail to redeem such animal within three (3) days after such impoundment, any other person may, upon complying with the provisions of this Ordinance, redeem such animal from the pound and be the lawful owner thereof.

Section 13-3-5. Disposition of Impounded unredeemed animals. All animals impounded under the provisions of this Ordinance and remaining unredeemed after three (3) days of impoundment, unless impounded for a longer specified time, may be disposed of by the Humane Society by any humane means.

Section 13-3-6. Stray animals. The animal control officer or Law Enforcement shall impound any stray animals.

#### CHAPTER 4 ENFORCEMENT

Section 13-4-1. Enforcement of Ordinance. It shall be the duty of the Animal Control Officer and/or Law Enforcement Officer to carry out and enforce all the provisions of this Chapter. Complaints of violations of this ordinance shall be made to the Animal Control Officer or Law Enforcement.

Section 13-4-2. Authority. The Animal Control Officer or

any Law Enforcement Officer is hereby authorized and empowered to impound any animal in accordance with Chapter 3 of this Ordinance.

**Section 13-4-3. Interference with Performance of duties.** No person shall hinder, delay, or obstruct the Animal Control Officer, his assistant, or any Law Enforcement Officer when engaged in capturing, securing, or impounding any animal or animals. Violation of this section is a Class I misdemeanor.

**Section 13-4-4. Citation system.** Except as otherwise provided, upon a violation of this code, the Animal Control Officer or Law Enforcement shall issue a citation stating the section violated, amount of the fine and date to appear in court. If the owner does not contest the matter, he/she can pay the fine to the Clerk of Courts by the date given by the Animal Control Officer or Law Enforcement. If the owner does contest the matter, a court date shall be scheduled.

**Section 13-4-5. Penalties.** Violation of this Ordinance may result in the impoundment of the animal if such is required by this Ordinance. Criminal charges can be filed against the owner when applicable, and a fine may be imposed as set by the court.

**Section 13-4-6. Repeal of all ordinances in conflict.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**Section 13-4-7. Notice to Owner.** The owner of any animal impounded under the provision of this Ordinance, if his identity and location can be obtained by reasonable means, shall be notified within twenty-four (24) hours that his animal has been impounded.

This amended Title 13 was enacted by the Flandreau Santee Sioux Tribe Executive Committee on May 24, 1999 by Resolution 99-56, dated May 24, 1999

# Flandreau Santee Sioux Tribe

Box 283 Flandreau, SD 57028

Phone 997  
Fax 997



## RESOLUTION # 99-56

WHEREAS, the Flandreau Santee Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act with a Constitution and By-Laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24th, 1936, and amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 23, 1990, and further amended May 12, 1997, and

WHEREAS, Article III, Section 1 of said revised Constitution and By-Laws provides that the governing body of the Tribe shall be the Executive Committee, and

WHEREAS, pursuant to Article VIII, Section 1 (f) of said Constitution the Executive Committee has the power to promulgate ordinances governing and regulating animal control on the Reservation, and to ensure enforcement of such ordinances by law enforcement and the humane society, and

WHEREAS, the Executive Committee enacted Title 13 of the Flandreau Santee Sioux Tribe Law and Order Code, Animal Control Ordinance, on October 10, 1995, and

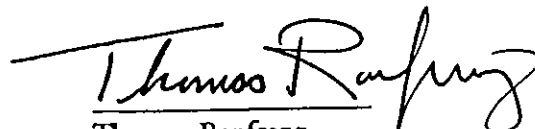
WHEREAS, the Executive Committee has determined that Title 13 needs to be amended to add additional procedures, and

NOW THEREFORE BE IT RESOLVED, that the Executive Committee hereby enacts the attached 1999 Amended Title 13, Animal Control Ordinance of the Flandreau Santee Sioux Tribe Law and Order Code, effective the date this Resolution is passed.

### CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 24 day of May, 1999, by the Executive Committee at which a quorum was present of 5 for, 0 against, and 1 not voting. *absent*

  
Leah Fyten  
Tribal Secretary

  
Thomas Ranfranz  
Tribal President

# Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

Ph. 605-997-3891

Fax 605-997-3878

Website: [www.santeesioux.com](http://www.santeesioux.com)

## RESOLUTION NO. 07-42

WHEREAS, the Flandreau Santee Sioux Tribe is a recognized Indian tribe organized pursuant to a Constitution and By-laws approved by the Secretary of the Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 17, 1997, and

WHEREAS, Article III of said Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee, and

WHEREAS, the Flandreau Santee Sioux Tribe (FSST) Executive Committee deems it necessary to update Title 14 Fireworks for the benefit of the Tribe and its Members.

NOW THEREFORE, Title 14, as enacted by Resolution 87-08, 1988, is hereby repealed and new Title 14 enacted; to wit:

TITLE 14

FIREWORKS

Chapter 14

14-01-01 Definition of terms. As used in this Chapter, unless the context otherwise requires:

- (1) Class C (common fireworks means fireworks designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition and labeling regulations promulgated by the U.S. Consumer Product Safety Commission. Class C (common) fireworks are defined by the U.S. Department of Transportation.
- (2) Retailer includes every person engaged in the business of making sales of fireworks at retail.

(3) Retail sales means the sale of fireworks to any person not licensed to sell fireworks or for any purpose other than for resale.

(4) Sale means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(5) Wholesaler means any person engaged in the business of making sales of fireworks to retailers for resale to consumers.

14-01-02 License required for sale of fireworks -- application -- fee -- duration -- display. No person may sell, hold for sale, or offer for sale, as wholesaler or retailer any fireworks on the Flandreau Santee Sioux Tribal Reservation unless such person has first obtained a license as a wholesaler or retailer. The wholesaler or retailer shall obtain permission from the Flandreau Santee Sioux tribal Council and pay a fee of \$25.00 before authorization will be granted to sell fireworks on the Reservation, together with obtaining a sales tax license from the FSST Tax Commission.

14-01-03. Minimum age for sale or dispensing of fireworks. No person under the age of eighteen (18) years shall be licensed under this Chapter and no licensee shall employ or permit any individual under the age of eighteen (18) to sell, dispense, or offer for sale, within the boundaries of the Flandreau Santee Sioux Tribal Reservation, any permissible fireworks enumerated in this Chapter.

14-01-04. Prohibited firecrackers -- manufacture or use as misdemeanor. Any person who manufactures, uses or disposes to another, with or without consideration, so as to endanger the safety of others, any firecrackers more than one and one-half (1-1/2) inches long or made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a Class 1 Misdemeanor.

14-01-05. Possession, sale or use of unauthorized fireworks unlawful. No person shall possess, sell, offer for sale, bring onto the Flandreau Santee Sioux Tribal Reservation, or discharge any pyrotechnics commonly known as fireworks, other than permissible fireworks.

14-01-06. Permissible fireworks enumerated and described. Permissible fireworks includes:

(1) Roman candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams each in weight, The inside tube diameter may not exceed three-eighths inch.

(2) Skyrockets with sticks, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter may not

exceed one-half (1/2) inch. The rocket sticks shall be securely fastened to the tubes.

(3) Helicopter type rockets, total pyrotechnic composition not to exceed twenty (20) grams each in weight. The tube diameter shall not exceed one-half (1/2) inch.

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five (75) grams each in weight. The inside tube diameter may not exceed three-fourths inch.

(5) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight.

(6) Wheels, total pyrotechnic composition not to exceed sixty (60) grams for each driver unit or two hundred and forty grams for each complete wheel. The inside tube diameter of driver units may not exceed one-half (1/2) inch.

(7) Illuminating torches and colored fire, in any form, except items in subdivision (12 below), total pyrotechnic composition not to exceed one hundred grams each in weight.

(8) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate may not exceed five (5) grams.

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty (40) grams each in weight.

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one-half (1-1/2) inches in length and one-quarter (1/4) inch in diameter, total pyrotechnic composition not to exceed two grains in weight.

(11) Combinations consisting of two or more devices enumerated in this section.

(12) Novelties and trick noisemakers, to include glow worm snakes, trick matches, and cigarette loads.

(13) All Class C (common) fireworks unless specifically prohibited by this Chapter.

14-01-07.

Exemptions from Chapter. Nothing in this Chapter shall be construed as applying to toy paper caps containing not more than twenty-five

hundredths of a grain of explosive composition per cap, nor applying to the military forces of the United States or Employees of this Tribe, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical or athletic events.

14-01-08. Importation by unlicensed persons prohibited retailer to purchase from licensed wholesaler. No person who is unlicensed as a wholesaler or retailer shall bring any fireworks onto the Flandreau Santee Sioux Tribal Reservation. No retailer shall sell any fireworks which have not been purchased from a wholesaler licensed under the provisions of this Chapter.

14-01-09. Period and times during which retail sales permitted. No person, firm, or corporation may offer fireworks for sale to individuals at retail before the twenty-seventh (27<sup>th</sup>) day of June and after the fifth (5<sup>th</sup>) day of July. However, any person obtaining a special three hundred sixty-five (365) day retail licenses may sell fireworks to non-Tribal members for the periods of time so specified. Retail sales are not permitted after twelve o'clock (12:00) a.m. or prior to seven o'clock (7:00) a.m.

14-01-10 Sale from vehicle prohibited. No retailer shall sell fireworks from any motor vehicle on the Flandreau Santee Sioux Tribal Reservation.

14-01-11. Exits from structures where fireworks sold. All buildings or structures wherein fireworks are sold at retail shall have at least two (2) separate door exits.

14-01-12. "NO SMOKING" signs where fireworks sold. Signs must be prominently posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three (3) inches in height. "NO SMOKING WITHIN TWENTY-FIVE FEET".

14-01-13. Minimum distance for igniting of fireworks. In all buildings or structures wherein fireworks are being offered for sale the licensee shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty (150) feet of the licensee's premises.

14-01-14. Open flame prohibited where fireworks sold – fire extinguisher required. No licensee may have on his premises any device, apparatus, receptacle, or burner from which an open flame is emitted including, but not limited to any type of outdoor grill. Each licensee shall in the conduct of his/her business of selling fireworks keep and maintain upon the premises a fire extinguisher bearing an Underwriter Laboratories, Inc. rated capacity of at least 2-A.

14-01-15. Public display of fireworks. Nothing in this Chapter may prohibit the use of public display of fireworks at any time. However, any individual,

group of individuals, association, firm, partnership, or corporation, before making such public display of fireworks shall secure a written permit from the Tribal Council, and shall have purchased fireworks for the display from a licensed wholesaler under this Chapter.

14-01-16. Violation of Chapter as Misdemeanor. Except where a punishment is specifically provided, a violation of the provisions of this Chapter is a Class 1 Misdemeanor.

14-01-17. Subsequent conviction as ground for revocation or suspension of license. If a person is found guilty of violating any of the provisions of this Chapter at subsequent time, such violation may constitute cause for revocation or suspension of the license held by that person and for refusal to renew license upon expiration thereof.

14-01-18. Possession of unauthorized fireworks unlawful – seizure and destruction. No person shall possess any fireworks, other than those enumerated in Section 14-01-06 of this Chapter. If any person shall have in his possession any fireworks in violation of said section, a warrant may be issued for the seizure of such fireworks, and such fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found, provided, however, that nothing in this Chapter shall apply to the transportation of fireworks by regulated carriers.

14-01-19. Period during which discharge of fireworks permitted – violation as Misdemeanor. Except as otherwise provided in this Chapter, it is unlawful for a person to discharge fireworks on the Flandreau Santee Sioux Tribal Reservation after the fifth (5<sup>th</sup>) day of July or prior to the twenty-seventh (27<sup>th</sup>) day of June, except New Years Eve. It is also unlawful to discharge fireworks on the Reservation prior to the hour of ten o'clock (10:00) a.m. and after the hour of ten o'clock (10:00) p.m., except for July 4<sup>th</sup>, which shall be 12:00 o'clock midnight. A violation of this section is a Class 2 Misdemeanor and fireworks of the violator(s) will be confiscated by law enforcement officers.

14-01-20. Enforcement by the Tribe and law enforcement officers. The Tribe, together with all law enforcement officers of this Tribe, shall be charged with the enforcement of the provisions of this Chapter.

14-01-21. Punishments and fine. Except as otherwise provided in this Chapter, a person(s) found guilty of violating any section of this Chapter will be subject to the following:

- (1) Class I Misdemeanor violation – six (6) months in jail, \$500.00 fine, or both.



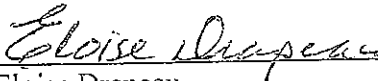
(2) Class 2 Misdemeanor violation – thirty (30) days in jail, \$100.00 fine, or both; and

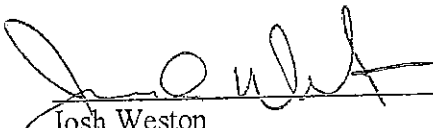
(3) All fireworks found at the crime scene will be confiscated.

TITLE 14 WAS ADOPTED BY THE TRIBAL COUNCIL ON MAY \_\_\_\_, 2007 AS:  
TRIBAL ORDINANCE NO. 07-\_\_\_\_\_.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 30 day of May, 2007 by the Flandreau Santee Sioux Executive Committee at which a quorum was present by a vote of 4 for, 0 against, 1 not voting. 2 absent

  
\_\_\_\_\_  
Eloise Drapeau  
Tribal Secretary

  
\_\_\_\_\_  
Josh Weston  
Tribal President

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

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 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.