

# Flandreau Santee Sioux Tribe

P.O. Box 283 Flandreau, SD 57028

Ph. 605-997-3891

Fax 605-997-3878

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



## RESOLUTION NO. 17-100

- WHEREAS,** the Flandreau Santee Sioux Tribe (the “Tribe”) is a federally recognized Indian Tribe organized pursuant to the Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941; further amended November 16, 1967, further amended November 14, 1984, and finally amended May 17, 1997; and
- WHEREAS,** Article III of the Tribe’s Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and
- WHEREAS,** Article VIII Section 1(f) of the Constitution provides that the Executive Committee may promulgate and enforce ordinances governing and regulating the conduct of persons on the reservation; and
- WHEREAS,** Article VIII Section 1(h) of the Constitution provides that the Executive Committee has the authority to adopt resolutions consistent with the Constitution and By-Laws regulating the procedures of the Executive Committee and other tribal agencies, officials, or organizations of the Flandreau Santee Sioux Tribe; and
- WHEREAS,** the Tribe has a long history of providing benefits to the tribal community, and these Tribal benefit programs are fundamental to the sovereignty and cultural integrity of the Tribe; and
- WHEREAS,** the Executive Committee is committed to continuing to provide benefits to the tribal community, including benefits that assist with expenses of housing, education, special assistance to elderly and disabled individuals, cultural and religious activities, and other assistance for the general welfare of the tribal community; and
- WHEREAS,** the Tribe, and not the federal government, is in the best position to determine the needs of the Tribe’s members and to provide for the general welfare of such members and the tribal community; and
- WHEREAS,** both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, Public Law 113-168, 26 U.S.C. (Internal Revenue Code) § 139E (“Tribal General Welfare Exclusion Act” or “IRC 139E”), and the IRS, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments

to provide financial assistance to individuals under certain circumstances on a non-taxable basis; and

**WHEREAS,** the Executive Committee hereby desires to create a new title to the Tribe's Law and Order Code numbered "Title 30" and entitled "General Welfare Benefit Ordinance" to create a policy to ensure that the general welfare benefits the Tribe provides to Tribal members and, in some instances, to nonmembers, are excluded from the recipients' gross income for tax purposes, to the fullest extent permitted by law and to establish a procedure for the Tribal government to assess the general welfare needs of the tribal community on a regular basis and to adjust the Tribe's tax treatment of benefits accordingly; and

**NOW THEREFORE BE IT RESOLVED** that the Executive Committee hereby approves the attached ordinance numbered "Title 30" and entitled the "General Welfare Benefit Ordinance" to be effective upon passage of this resolution; and

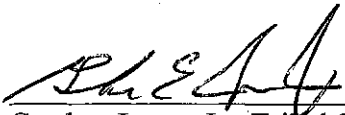
**BE IT FURTHER RESOLVED** that Title 30 shall be in full force and effect until a time it which it is amended or revoked by resolution of the FSST Executive Committee.

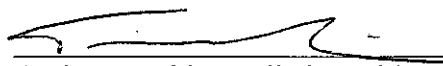
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#### CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 29<sup>th</sup> day of November, 2017 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 3 In Favor, 0 Opposed, 0 Abstaining, and 3 Not Voting, as follows:

Vice President, Andrew Weston:	YES	NO	ABSTAIN	<u>NOT PRESENT</u>
Secretary, Gordon Jones, Jr.:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee I, Jean Paul Roy:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	YES	NO	ABSTAIN	<u>NOT PRESENT</u>
Trustee III, Norman Kitto:	YES	NO	ABSTAIN	NOT PRESENT
Trustee IV, John Jason Armstrong:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider ( <i>If Required</i> ):	YES	NO	ABSTAIN	NOT PRESENT

  
Gordon Jones, Jr., Tribal Secretary

  
Anthony Reider, Tribal President

**TITLE 30  
GENERAL WELFARE BENEFIT ORDINANCE**

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## CHAPTER 1 - GENERAL PROVISIONS

### Section 30-1-1. Title.

This Ordinance shall be entitled the "General Welfare Benefit Ordinance" (herein, the "Ordinance").

### Section 30-1-2. Authority.

The Executive Committee of the Flandreau Santee Sioux Tribe enacts this Ordinance pursuant to the authority vested in it by Article VIII, Section 1(f) of the Tribe's Constitution, to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation and providing for appropriation of available funds for public purposes.

### Section 30-1-3. Findings.

(a) The Tribe, acting through the Executive Committee and designated agencies of the Tribal government, exercises its inherent sovereignty to authorize and administer programs to benefit the general welfare of the tribal community.

(b) The Constitution of the Tribe confirms the sovereign duty and responsibility of the government established by the Tribe's members to exercise the right of local self-government and to promote the general welfare of the Tribe.

(c) The Tribe has a long history of providing benefits to the tribal community, and these Tribal benefit programs are fundamental to the sovereignty and cultural integrity of the Tribe.

(d) The Executive Committee is committed to continuing to provide benefits to the tribal community, including benefits that assist with expenses of housing, education, special assistance to elderly and disabled individuals, cultural and religious activities, and other assistance for the general welfare of the tribal community.

(e) The Tribe, and not the federal government, is in the best position to determine the needs of the Tribe's members and to provide for the general welfare of such members and the tribal community.

(f) Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, Public Law 113-168, 26 U.S.C. (Internal Revenue Code) § 139E ("Tribal General Welfare Exclusion Act" or "IRC 139E"), and the IRS, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis.

(g) The Tribe provides a broad range of benefits to its members and, in some instances, to nonmembers, which serve general welfare needs, and the recipients of such benefits should not be taxed for their receipt of such benefits.

**Section 30-1-4. Purposes; Intent.**

(a) The purposes of this Ordinance are to:

(1) Ensure that the general welfare benefits the Tribe provides to Tribal members and, in some instances, to nonmembers, are excluded from the recipients' gross income for tax purposes, to the fullest extent permitted by law; and

(2) Establish a procedure for the Tribal government to assess the general welfare needs of the tribal community on a regular basis and to adjust the Tribe's tax treatment of benefits accordingly.

(b) It is the Tribe's intent that all benefits provided to any Tribal member or, in some instances, to nonmembers, pursuant to a Tribal government program shall qualify as General Welfare Benefits or shall otherwise qualify as benefits that are excluded from the gross income of the recipient for tax purposes, to the maximum extent permitted by law. Without limitation, the following benefits shall be treated as non-taxable hereunder:

(1) Benefits that satisfy the requirements of IRC 139E;

(2) Benefits that satisfy the requirements for "safe harbor" under applicable law, including IRS Revenue Procedure 2014-35;

(3) Benefits that qualify for exclusion from gross income under the traditional general welfare doctrine used by the IRS; and

(4) Benefits that meet any other express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under IRC 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 U.S.C. §§ 117a-b, 1407, and 1408.

**Section 30-1-5. Construction.**

(a) This Ordinance shall be liberally construed to accomplish its purposes and intent and to preserve the principles of tribal law, customs, and traditions.

(b) Tribal laws under which general welfare benefits are provided shall be liberally construed to accomplish the purposes and intent of this Ordinance, to the fullest extent such construction is consistent with such tribal laws.

## **CHAPTER 2 - GENERAL WELFARE BENEFITS**

### **Section 30-2-1. Non-taxable Benefits.**

(a) "General Welfare Benefits" are excluded from the recipient's gross income for purposes of federal income tax. Benefits provided by the Tribe shall be treated as General Welfare Benefits, provided that the benefits satisfy applicable federal standards. This Ordinance reflects the current federal standards. This Ordinance is subject to subsequent changes in federal law, which shall be controlling.

(b) Benefits that do not satisfy such standards shall not be treated as General Welfare Benefits. They are not excluded from the recipient's gross income unless they qualify for exclusion on some other basis.

### **Section 30-2-2. Benefit Program Eligibility.**

Nothing in this Ordinance shall alter the eligibility criteria, or the amount of benefits for which recipients are eligible, established by the Tribal law or program under which benefits are provided.

### **Section 30-2-3. Benefit Program Requirements.**

Benefits shall qualify as General Welfare Benefits only if:

(a) The benefits are provided under a Tribal program (including a program established by tribal custom or government practice) that is administered under specified guidelines; and

(b) The program's guidelines do not discriminate in favor of members of the Executive Committee; and

(c) The benefits are available to any tribal member who meets such guidelines; and

(d) The benefits are for the promotion of the general welfare; and

(e) The benefits are not lavish or extravagant; and

(f) The benefits are not compensation for services.

### **Section 30-2-4. Compensation Exemption.**

Any items of cultural significance, reimbursement of costs, or cash honoraria for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

### **Section 30-2-5. Benefit Availability.**

Benefits are considered "available to any tribal member" who meets a program's guidelines even though, as a practical matter, budgetary constraints may make the benefits unavailable to all eligible members.

### **Section 30-2-6. Safe Harbor.**

(a) The IRS has published Revenue Procedure 2014-35, "Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members," which provides categorical "safe harbors" under which the IRS will "conclusively presume" that "individual need" exists for payments made under certain programs of Tribal governments. Following Congress' enactment of the Tribal General Welfare Exclusion Act (IRC 139E), the IRS published Notice 2015-34, which stated that "Section 139E codifies (but does not supplant) the general welfare exclusion for certain benefits provided under Indian tribal government programs. . . . Taxpayers may continue to rely on Rev. Proc. 201-35, which is broader than § 139E in some respects . . . ."

(b) Benefits qualifying for "safe harbor" treatment meet a general welfare need. Such benefits are General Welfare Benefits if they also meet the other criteria set forth in Section 3 of this Chapter.

(c) Benefits that do not come within a "safe harbor" category are General Welfare Benefits if they meet all the criteria set forth in Section 3 of this Chapter.

### **Section 30-2-7. Specific Safe Harbor Programs.**

Benefits provided under the following Tribal programs qualify for "safe harbor" treatment. The benefits listed within parentheses are illustrative only rather than an exhaustive list.

(a) Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that –

(1) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;

(2) Enhance habitability of housing, such as be remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), or heating or cooling issues;

(3) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and

(4) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(b) Educational programs. Programs to –

(1) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;

(2) Provide tuition payments for students (including but not limited to

allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;

(3) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and

(4) Provide job counseling and programs for which the primary objective is job placement or training, including but limited to allowances for –

(A) Expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food);

(B) Tutoring; and

(C) Appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training).

(c) Elder and disabled programs. Programs for individuals who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including Tribal law) that provide –

(1) Meals through home-delivered meals programs or at a community center or similar facility;

(2) Home care such as assistance with preparing meals or doing chores, or day care outside the home;

(3) Local transportation assistance;

(4) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(d) Other qualifying assistance programs. Programs to –

(1) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);

(2) Pay for the cost of transportation, temporary meals, and lodging of a tribal member or qualified nonmember while the individual is receiving medical care away from home;

(3) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;



(4) Pay costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster);

(5) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and

(6) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

(e) Cultural and religious programs. Programs to –

(1) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances;

(2) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the tribe, including but not limited to other Indian reservations;

(3) Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music and dances);

(4) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and

(5) Pay transportation costs and admission fees to attend education, social, or cultural programs offered or supported by the Tribe or another tribe.

## **CHAPTER 3- TRIBAL GENERAL WELFARE BENEFIT PROGRAMS**

### **Section 30-3-1. Tribal Programs Providing General Welfare Benefits.**

Benefits which Tribal members and, in some instances, nonmembers, receive under the Tribal programs listed below meet the standards for General Welfare Benefits. Such benefits are provided under Tribal programs administered under specific guidelines which do not discriminate in favor of the Executive Committee, to all who qualify to receive them, for the purpose of providing for the recipients' general welfare, and they are not compensation for services. The Tribal benefit programs are listed as follows:

- (a) Funeral Assistance
- (b) Title 19 Distributions
- (c) Medical Assistance
- (d) Cultural Activity Donations
- (e) Emergency Assistance
- (f) Programs not listed above, including programs that are not now established or are inactive, may be designated by the Tribal Treasurer as General Welfare Benefit programs if they meet the standards set forth in this Ordinance. Programs so designated shall be treated as though they were specifically identified herein.

### **Section 30-3-2. Not Lavish or Extravagant.**

The extent to which Tribal benefits are General Welfare Benefits, however, is limited by the requirement that the benefits are not lavish or extravagant. Benefits provided under the programs listed in this Chapter are not lavish or extravagant to the extent they do not exceed, for each individual recipient during the Tribe's fiscal year, the amount of average general welfare expenses as determined under Chapter IV of this Ordinance.

### **Section 30-3-3. Income Tax Withholding.**

Benefits provided under a program listed in Section 1 of this Chapter, not exceeding the amount referenced in Section 2 of this Chapter, are General Welfare Benefits. The Tribe, or the administrator of the program under which such benefits are provided, shall not withhold income taxes from the payment of such benefits. All other payments are subject to such tax withholding requirements as may apply.

### **Section 30-3-4. Past Years.**

Nothing in this ordinance prohibits any person from retroactively excluding from his or her gross income any qualifying General Welfare Benefits received in the preceding three years, or for the maximum applicable look-back period permitted by the Internal Revenue Code. For purposes of determining gross revenue exclusions for any years prior to the enactment of this Ordinance, the

“not lavish or extravagant” standard is met for benefits not exceeding the average general welfare expenses in effect at the time of enactment, as adjusted according to the Consumer Price Index.

**Section 30-3-5. Tribe Not Responsible for Audits of Penalties.**

Although the Tribe intends the most favorable income tax treatment available under federal and state tax laws, the Tribe will not provide or pay for professional assistance to complete tax returns if benefit recipients are audited or reviewed by federal or state taxing authorities. The Tribe will not be responsible for or pay any tax penalties or interest incurred by benefit recipients in connection with their receipt of Tribal benefits. It is the responsibility of each recipient of Tribal benefits to consult his or her own tax advisor regarding the taxability or reporting obligations of Tribal benefits.

**Section 30-3-6. Tax Reporting.**

If a determination is made that benefits provided do not constitute General Welfare Benefits or otherwise do not qualify for favorable tax treatment under applicable laws, then the Tribe may file any required report(s) to the appropriate taxing authorities regarding all such amounts unless said benefits are timely reimbursed to the Tribe.

## **CHAPTER 4 - ASSESSMENT OF GENERAL WELFARE EXPENSES IN THE TRIBAL COMMUNITY**

### **Section 30-4-1. Annual Survey.**

There shall be conducted, no less frequently than once every 12 months, a survey of each tribal member in the tribal community to assess the average general welfare expenses within the community. To encourage participation, return of a completed survey may be made a condition for receipt of benefit payments. Respondents shall be required to state an oath or affirmation that their responses are true and correct. Survey responses shall be subject to audit for accuracy.

### **Section 30-4-2. Household Expense Information.**

The survey shall ask respondents to state their approximate monthly household expenses, if any, in the following categories, or categories substantially similar to the following. The survey shall instruct respondent not to state the same expenses in more than one category.

- (a) Mortgage payment
- (b) Rent payment
- (c) Residential interest/taxes
- (d) Gas/heat/propane
- (e) Electricity
- (f) Sewer/water
- (g) Home improvements
- (h) Internet/cable
- (i) Home phone
- (j) Cell phone
- (k) Medical care
- (l) Non-prescription medicine
- (m) Vision care
- (n) Dental care
- (o) Prescription medicine
- (p) Medical appointment costs
- (q) Elderly/special needs care

- (r) Social/cultural events
- (s) Clothing for work or school
- (t) Education expenses
- (u) Funeral expenses

**Section 30-4-3. Demographic Information.**

The survey shall request respondents to provide demographic information including at least the following:

- (a) the number of individuals in the household,
- (b) the age of each household individual, and
- (c) the number of household individuals attending college.

**Section 30-4-4. Average General Welfare Expenses.**

The survey information shall be used to determine the average general welfare expenses. High and low outliers in each expense category may be discarded in accordance with sound statistical practices. Average general welfare expenses shall be the total of all monthly expenses (after any discarding of outliers) multiplied by 12.

**Section 30-4-5. Confidentiality.**

The confidentiality of any personally identifying information appearing in survey responses shall be strictly maintained.

## **CHAPTER 5 - MISCELLANEOUS PROVISIONS**

### **Section 30-5-1. Governing Law.**

All rights and liabilities associated with the enactment of this Ordinance, or the Assistance provided hereunder, shall be construed and enforced according to the laws of the Tribe.

### **Section 30-5-2. Sovereign Immunity.**

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action of any Tribal employee or official acting pursuant to the Ordinance. The Tribe has not waived its tribal sovereign immunity from unconsented suit and has not consented to suit or the jurisdiction of any state or federal court or administrative body.

### **Section 30-5-3. Severability.**

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

### **Section 30-5-4. Effective Date.**

This Ordinance shall be effective as of the date it is duly adopted by the Executive Committee.

## **LEGISLATIVE HISTORY**

This Title was passed by the Flandreau Santee Sioux Tribe Executive Committee on November 28, 2017 by Tribal Resolution 17-100.