

# Flandreau Santee Sioux Tribe

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## RESOLUTION NO. 19-50

**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,** Article VIII, Section 1(a) of the Constitution provides that the Tribal Council may enter into negotiations with Federal, States, and local Governments on behalf of the Tribe; and

**WHEREAS,** hemp is a strain of cannabis that has grown naturally in North America, that predates the foundation of the United States of America and continues to grow in the wild; and

**WHEREAS,** hemp has been utilized for a variety of functions including paper, cloth, and rope, and now its use has been shown to be effective for these functions plus as medicine, fuel, insulation, and fiber that rivals the strength of steel; and

**WHEREAS,** the cultivation of hemp has been a staple of the American agriculture until it was outlawed because it is derived from the same plant as hemp through state law and the Marijuana Tax Act in the 1930s, and the Controlled Substances Act of 1970, 21 U.S.C. section 801 *et seq.* (“Controlled Substances Act”); and

**WHEREAS,** the federal Controlled Substances Act, 21 U.S.C. section 801 *et seq.*, classifies

hemp as a Schedule I drug and prohibits any possession or use of hemp except in the course of federally approved research projects. The Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, hemp; and

**WHEREAS,** the Controlled Substances Act defines hemp, a Schedule I controlled substance, as all parts of the *Cannabis sativa L.* plant regardless of THC content, but excludes the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, other compounds made of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. 21 U.S.C. § 802(16); and

**WHEREAS,** under applicable federal law, hemp products made from the stalk, fiber, non-viable seed, and oil are legal to import into the United States, but illegal to grow. *See Monson v. Drug Enforcement Admin.*, 589 F.3d 952, 962 (8th Cir. 2009); and

**WHEREAS,** The first glimpse of legalization came in Section 7606 of the Agricultural Act of 2014, entitled “Legitimacy of industrial hemp research,” provided:

Notwithstanding the Controlled Substances Act (21 U.S.C. 801 *et seq.*), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 *et seq.*), chapter 81 of Title 41, or any other Federal law, an institution of higher education (as defined in section 1001 of Title 20) or a State department of agriculture may grow or cultivate industrial hemp if--

- (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- (2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located, and such research occurs.

7 U.S.C. § 5940(a); and

**WHEREAS,** In 2016, in *Menominee Indian Tribe of Wisconsin v. Drug Enforcement Administration*, 2016 WL 3097499, the United States District Court in the Eastern District of Wisconsin determined that a federally recognized tribe is not a “State” in accordance with the Agricultural Act of 2014, and that exception to the Controlled Substances Act for hemp cultivation applies only if the laws of the state in which the hemp is being cultivated allows for such. This ruling left the Menominee’s hemp operation without a legal basis to proceed; and

**WHEREAS,** at least seventeen states have passed law allowing for the cultivation of hemp, and many of these legalized states do not comport to the provisions of the 7 U.S.C. § 5940(a), or other federal law, and many more actively consider the legalization on an annual basis; and

**WHEREAS,** in 2018, the U.S. Congress enacted certain provisions in the 2018 Farm Bill that amend the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled “Hemp Production” thereby allowing for the controlled cultivation of hemp in accordance with the Act, and a State or Tribal plan approved by the Secretary of Agriculture.

**WHEREAS,** the Tribe has decided to open specific lands within its jurisdiction to the cultivation, processing, and distribution of hemp by enacting this Title to the Flandreau Tribal Law and Order Code; and

**WHEREAS,** the Executive Committee found that the development of hemp with further the economy of the Tribe, will provide jobs to tribal members and the community, and would further the Tribe’s interest in self-determination and self-governance, and therefore approved Resolution Number 19-23 passing the Tribe’s Hemp Ordinance; and

**WHEREAS,** the Tribe is the primary regulator of hemp production on its Reservation, and will participate in the cultivation of hemp absent USDA consideration of its March 8, 2019-submitted plan and the USDA promulgation of regulations, and will cultivate in accordance with 297B(f) of the 2018 Farm Bill, this ordinance, and other federal law and regulations; and

**NOW THEREFORE BE IT RESOLVED** that the Flandreau Santee Sioux Tribe Executive Committee hereby approves the attached amended Title 30 of the Flandreau Santee Sioux Tribe Law and Order Code entitled “Industrial Hemp” to be effective immediately; and

**BE IT FURTHER RESOLVED** that all laws, regulations, ordinances, and policies that are inconsistent with this resolution and ordinance are hereby repealed; and

**BE IT FURTHER RESOLVED** that the Tribe authorizes the following parcels of tribal land to continue to be utilized for hemp cultivation:

1. The Southwest Quarter (SW1/4) of Section Three (3), Township One Hundred Seven (107) North, Range Forty-Eight (48) West of the Fifth Prime Meridian, Moody County, South Dakota.
2. The Southeast Quarter (SE1/4) of Section Five (5), Township One Hundred Six (106) North, Range Forty-Eight (48) West of the Fifth Prime Meridian, Moody County, South Dakota.

3. The Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW/14SW1/4SW1/4) of Section Twenty-Eight (28), Township One Hundred Seven (107) North, Range Forty-Eight (48) West of the Fifth Prime Meridian, Moody County, South Dakota.

**BE IT FURTHER RESOLVED** that the Executive Committee directs the Tribal Attorney to publish this resolution, ordinance, maps, and other documents to the Tribal website; and

**BE IT FURTHER RESOLVED** that the Executive Committee hereby appoints Trustee III to the position of Hemp Control Officer in accordance with Chapter 4 of this ordinance, and finds that the FSST Election Board background check for the position of Trustee III is sufficient for “Qualifications” in Section 30-4-3; and

**BE IT FINALLY RESOLVED** that the Executive Committee hereby dedicates the necessary funds to the cultivation of hemp, and certifies that it has the resources and personnel to carry out the practices and procedures contained within this ordinance.

**CERTIFICATION**

The foregoing Resolution was duly enacted and adopted on this 13<sup>th</sup> day of June, 2019 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 6 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Andrew Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Secretary, Donalda Montoya:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee I, Kristi Bietz:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee III, Kenneth Weston:	<u>YES</u>	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

Donalda Montoya  
 Donalda Montoya, Tribal Secretary

Anthony Reider  
 Anthony Reider, Tribal President

**TITLE 30**

**INDUSTRIAL HEMP ORDINANCE**

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## CHAPTER 1. GENERAL PROVISIONS

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

This Title may be cited as the “Industrial Hemp Ordinance”.

### Section 30-1-2. Findings and Purpose.

The Flandreau Santee Sioux Tribe hereby finds and declares that:

- (a) The United States recognizes Indian tribes as unique nations with sovereignty over their members and territories.
- (b) The Preamble and Article VIII of the Flandreau Santee Sioux Tribal Constitution authorizes the governing body of the Tribe to engage in business activities which promote the economic well-being of the Tribe and its members.
- (c) Hemp is a strain of cannabis that has grown naturally in North America that predates the foundation of the United States of America and continues to grow in the wild.
- (d) Hemp has been utilized historically for a variety of functions including paper, cloth, and rope, and now its use has been shown to be effective for these functions plus as medicine, fuel, insulation, and fiber that rivals the strength of steel.
- (e) The cultivation of hemp has been a staple of American agriculture until it was outlawed through state law and the Marijuana Tax Act in the 1930s, and the Controlled Substances Act of 1970, 21 U.S.C. section 801 *et seq.* (“Controlled Substances Act”), because hemp is derived from the same plant as marijuana.
- (f) The Controlled Substances Act classifies hemp as a Schedule 1 drug and prohibits any possession or use of hemp except in the course of federally approved research projects. The Controlled Substances Act makes it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess (with intent to manufacture) hemp.
- (g) The Controlled Substances Act defines hemp as all parts of the *Cannabis sativa L.* plant regardless of THC content, but excludes the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, other compounds made of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. 21 U.S.C. § 802(16).
- (h) Under applicable federal law, hemp products made from the stalk, fiber, non-viable seed, and oil are legal to import into the United States, but illegal to grow. See *Monson v. Drug Enforcement Admin.*, 589 F.3d 952, 962 (8th Cir. 2009).
- (i) The first glimpse of legalization came in Section 7606 of the Agricultural Act of 2014, entitled “Legitimacy of industrial hemp research,” which provided:

- a. Notwithstanding the Controlled Substances Act (21 U.S.C. 801 *et seq.*), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 *et seq.*), chapter 81 of Title 41, or any other Federal law, an institution of higher education (as defined in section 1001 of Title 20) or a State department of agriculture may grow or cultivate industrial hemp if:
  - i. the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
  - ii. the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located, and such research occurs.

7 U.S.C. § 5940(a).

- (j) In 2016, in *Menominee Indian Tribe of Wisconsin v. Drug Enforcement Administration*, 2016 WL 3097499, the United States District Court in the Eastern District of Wisconsin determined that a federally recognized tribe is not a “State” in accordance with the Agricultural Act of 2014, and that exception to the Controlled Substances Act for hemp cultivation applies only if the laws of the state in which the hemp is being cultivated allows for such. This ruling left the Menominee’s hemp operation without a legal basis to proceed.
- (k) At least seventeen states have passed law allowing for the cultivation of hemp, and many of these legalized states do not comport to the provisions of the 7 U.S.C. § 5940(a), or other federal law, and many more actively consider the legalization on an annual basis.
- (l) In 2018, the U.S. Congress enacted certain provisions in the 2018 Farm Bill that removed hemp from the Controlled Substances Act, amended the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled “Hemp Production” thereby creating an audit procedure and reporting requirements for controlled cultivation of hemp.
- (m) The 2018 Farm Bill also upholds protections to the interstate commerce of hemp and hemp products, setting forth that nothing “in this title . . . prohibits the interstate commerce of hemp . . . . No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with [the AMA] through the State or the territory of the Indian Tribe, as applicable.” 2018 Farm Bill, §10114; note following 7 U.S.C. § 1639o.
- (n) The Tribe is the primary regulatory of hemp production, and of all agricultural products, on its Reservation in accordance with its internal laws and practices, and an existing farm program, and has decided to open specific lands within its jurisdiction to the cultivation, processing, and distribution of hemp by enacting this Title to the Flandreau Santee Sioux Tribe Law and Order Code.

### **Section 30-1-3. Scope of the Industrial Hemp Ordinance.**

- (a) This Title shall govern the cultivation, processing, and distribution of hemp on the Reservation, will be the basis of the “tribal plan” described in the Farm Bill, and will provide an additional source of revenue for tribal operations to provide funding for its members and the community.
- (b) Tribal regulation of the possession, cultivation, processing and distribution of hemp on the Reservation is necessary to protect the health, security, and general welfare of the Tribal community. In order to further these goals, the Tribe has adopted this Title, which shall be liberally construed to fulfill the purposes for which it has been adopted.
- (c) Nothing in this Title shall be deemed to be in positive conflict with the Controlled Substances Act.
- (d) The regulations and penalties imposed by this Ordinance extend to any person within the reservation, whether licensed or not.

### **Section 30-1-4. Sovereign Immunity.**

Nothing in this Title shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or tribal law enforcement personnel, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents, or authorize any form a prospective waiver of such sovereign immunity.

### **Section 30-1-5. Exemption from Prosecution for Certain Acts.**

No employee of a hemp business shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, or distribution of hemp when acting in accordance with this Title and federal law.

### **Section 30-1-6. Effective Date.**

This Ordinance shall be effective upon enactment by the Executive Committee.

### **Section 30-1-7. Savings Clause.**

In the event that any phrase, provision, part, paragraph, subsection, or section of this Ordinance is found by a court of competent jurisdiction to violate the Constitution or laws of the Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Ordinance. The entirety of the balance of this Ordinance shall remain in full and binding force and effect.

## CHAPTER 2. DEFINITIONS

### Section 30-2-1. Definitions.

Within this Ordinance, the following definitions apply:

- (a) “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application for a license or permit.
- (b) “Brokering” means engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.
- (c) “Cannabis” means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts, and does not mean "publicly marketable hemp product", as defined by this Ordinance.
- (d) “CBD” means cannabidiol.
- (e) “Certified seed” means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a tribe, state, territory, or possession to officially certify seed, and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.
- (f) “DEA” means the United States Drug Enforcement Administration.
- (g) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9-THC. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
- (h) “Delta-9-THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).
- (i) “Directly related to” means immediate family relations as defined in the Tribe's Constitution or any other ordinance defining nepotism.
- (j) “Executive Committee” means the duly elected Executive Committee of the Flandreau Santee Sioux Tribe, which is the governing body of the Tribe.
- (k) “Financial Interest” is a person or entity that has more than a five (5) percent interest, share, or ownership in an operation(s).
- (l) “Handling” means possessing or storing industrial hemp for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process industrial hemp. "Handling" also includes possessing or storing industrial hemp in a vehicle for any period of time other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person.

- (m) “HCO” shall mean the Tribe’s Hemp Control Officer as established by this Ordinance. The term may include employees, agents, and designees of the HCO.
- (n) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (o) “Grower licensing agreement” means a document executed by a person and the HCO authorizing the person to grow, handle, and store hemp at one (1) or more specified locations.
- (p) “GPS” means Global Positioning System.
- (q) “Hemp business” means a growing facility, cultivating facility, processing facility, distribution facility, or any combination thereof.
- (r) “Industrial hemp products” means products derived from, or made by, processing industrial hemp plants or plant parts.
- (s) “Law enforcement agency” means the Flandreau Santee Sioux Tribe Police Department, DEA, or other federal law enforcement agency or drug suppression unit, but does not include any state law enforcement agency.
- (t) “License” means a valid license issued by the Flandreau Santee Sioux Tribe to grow, handle, store, process, transport, or market hemp.
- (u) “Licensed grower” means a person authorized by the HCO to grow, handle, store, and market hemp under the terms established by this Ordinance.
- (v) “Licensed processor” means a person authorized by the HCO to process, handle, store, and market hemp under the terms established by this Ordinance.
- (w) “License agreement” means an agreement between the Flandreau Santee Sioux Tribe and licensed grower or producer that regulates the conduct of that licensee.
- (x) “Location” or “Land” means the particular land, building, or buildings where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (y) “Location ID” means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a legal description, field name, or building name.
- (z) “Nonviable seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

- (aa) “Permit” means a tribally issued certificate/license that authorizes a licensed grower to plant, grow, or store hemp, any part of hemp, or hemp related products in a specifically described location.
- (bb) “Person” means a human being, or a business entity created by law and given certain rights and duties of a human being.
- (cc) “Pesticide” means any substance or mixture of substances intended to:
- (1) Prevent, destroy, control, repel, attract, or mitigate any pest.
  - (2) Be used as a plant regulator, defoliant, or desiccant. Or
  - (3) Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
- (dd) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.
- (ee) “Ppm” means parts per million.
- (ff) “Post-harvest sample” means a sample taken from the harvested hemp from a particular plot’s harvest in accordance with the procedures as by the HCO. The entire plot’s harvest is in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another plot.
- (gg) “Pre-harvest sample” means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established by this Ordinance or regulation promulgated pursuant thereto.
- (hh) “Prohibited variety” means a variety or strain of cannabis excluded by this Ordinance or regulation promulgated pursuant thereto.
- (ii) “Processing” means the harvesting of the plant cannabis or the use of any process or equipment, including, but not limited to, dehydrators or humidifiers that may be necessary to convert raw hemp plants or plant parts into a consumable product.
- (jj) “Processor” or “Processor Facility” means a commercial entity that purchases hemp from a grower and that extracts resin from the hemp or creates a hemp-infused product for sale and transfer in packaged form.
- (kk) “Processor licensing agreement” means a document executed by a person and the HCO authorizing the person to process, handle, and store hemp at one (1) or more specified locations.
- (ll) “Program” means the HCO’s Industrial Hemp Program.
- (mm) “Propagule” means a plant or plant part that can be utilized to grow a new plant.

- (nn) “Publicly marketable hemp product” means a hemp product that meets one (1) or more of the following descriptions:
- (1) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent, and does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent).
  - (2) The product is CBD that was derived from hemp as defined by this Ordinance, or
  - (3) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (oo) “Regulations” means the official regulations, policies, and procedures related to the enforcement of this Ordinance, adopted by the Executive Committee. The Regulations may also be referred to in this Ordinance as the “Hemp Regulations”.
- (pp) “Reservation” means the reservation of the Flandreau Santee Sioux Reservation.
- (qq) “Secondary pre-harvest sample” means a pre-harvest sample that is taken:
- (1) In a given plot after the first pre-harvest sample is taken; and
  - (2) On a different day than the initial pre-harvest sample.
- (rr) “Seed source” means the origin of the seed or propagules as determined by the HCO.
- (ss) “Signing authority” means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.
- (tt) “Tribal Court” means the courts of the Flandreau Santee Sioux Tribe as established pursuant to the Tribe Constitution, and the Tribe’s Law and Order Code.
- (uu) “Tribe” means the Flandreau Santee Sioux Tribe of South Dakota, which is recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as a federally recognized tribe and are recognized as possessing powers of self-governance.
- (vv) “Tribal Police” or “Tribal Law Enforcement” shall mean the Flandreau Santee Sioux Tribal Police.
- (ww) “Variety” means a subdivision of a species that is:
- (1) Uniform, in the sense that the variations in essential and distinctive characteristics are describable,

- (2) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties, and
  - (3) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.
- (xx) “Variety of concern” means any variety of hemp that tests above 3,000 ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.
- (yy) “Volunteer cannabis plant” means any cannabis plant that grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop and is not intentionally planted.



## **CHAPTER 3. AUTHORIZATION AND REGULATION OF HEMP**

### **Section 30-3-1. Exemption from Prosecution for Certain Acts.**

No employee of a hemp business shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, or distribution of hemp in accordance with this Title and federal law.

### **Section 30-3-2. Hemp Regulations.**

Policies and procedures related to the regulation of hemp on the reservation shall further the purposes of this Ordinance and shall be approved by the Executive Committee. The Hemp Regulations shall set forth, at a minimum, the following provisions to regulate:

- (a) Licensing of applicants
- (b) Permitting locations where hemp is authorized
- (c) Reporting and recordkeeping
- (d) Agreements between growers and processors
- (e) Procedures for sampling, THC testing, and post-testing actions
- (f) Pre-harvest and post-harvest retesting
- (g) Procedures for destruction of hemp
- (h) Pesticide use
- (i) Prohibited products or activities
- (j) Penalties
- (k) Remedies

## **CHAPTER 4. HEMP CONTROL OFFICER**

### **Section 30-4-1. Position Establishment; Attributes.**

The Tribe hereby establishes the “Hemp Control Officer” as an instrumentality of the Tribe and will hereafter be referred to as “the HCO.” The HCO is under the directive of the Executive Committee, and may fulfill any and all obligations of the Executive Committee under this Ordinance. In carrying out its purposes under this Ordinance, the HCO shall function as an arm of the Tribe.

### **Section 30-4-2. Duration.**

There is no term limit on the duration the HCO may serve the Tribe.

### **Section 30-4-3. Qualifications.**

The HCO shall be one person appointed by the Executive Committee and must:

- (a) be a member of the Flandreau Santee Sioux Tribe.
- (b) Not have any felony convictions in any tribal, state, or federal jurisdictions.
- (c) Not have a financial interest in any hemp operation.

The following persons are ineligible to serve as HCO: employees of any hemp operation, hemp contractors (including any principal of a management or other contracting company), or persons directly related to or sharing a residence with any of the above.

### **Section 30-4-4. Removal.**

The Executive Committee may remove the HCO for the following reasons: conviction of a felony, neglect of duty, malfeasance in office, misfeasance, misconduct in office, any conduct that threatens the honesty or integrity of the position or otherwise violates the letter or intent of this Ordinance or other applicable Tribal law, or for other good cause shown.

### **Section 30-4-5. Vacancies.**

The Executive Committee shall appoint an HCO when the position becomes vacant.

### **Section 30-4-6. Training, Equipment; Staff.**

The Tribe will provide the HCO with adequate training, equipment, staff and compensation to fully carry out its duties.

### **Section 30-4-7. Powers and Duties.**

- (a) The HCO shall have the power and responsibility to enforce the provisions of this Ordinance and the Hemp Regulations. These shall include:
- (b) Issuing licenses, consistent with a suitability determination.
- (c) Approving permits for sites, locations, or lands on the reservation.
- (d) Assessing and evaluating the potential environmental impacts of a hemp business' proposed operations.
- (e) Inspecting, examining and monitoring all hemp and hemp-related operations. This includes performing testing and inspecting and copying relevant records.
- (f) Ensuring compliance with all Tribal and Federal laws, rules and regulations regarding hemp. This includes investigating any suspicion of wrongdoing associated with any hemp activities and reporting any potential criminal violations to law enforcement.
- (g) Supervise the destruction of all hemp crops that are to be destroyed pursuant to the provisions of this Ordinance or federal law.
- (h) Complying with reporting and recordkeeping requirements.
- (i) Providing written notice of adverse decisions to applicants and licensees.
- (j) Imposing and collecting necessary relevant fees and/or penalties.
- (k) Adopting departmental procedures to support the enforcement of this Ordinance and the Hemp Regulations.

**Section 30-4-8. Limitation of HCO Powers.**

- (a) The HCO shall not regulate the Tribe or any entities except with respect to the activities of cultivating, processing, and distributing hemp.
- (b) The HCO shall not regulate the Surplus Funds of the cultivation, processing, and distribution of hemp once the Net Revenues have been distributed to the Tribe or to an entity of the Tribe utilizing funds.
- (c) The HCO shall not require members of the Executive Committee to obtain an employee License.

**Section 30-4-9. Compensation of the HCO.**

The HCO shall be paid an equal amount out of the HCO's operating budget at the rate set by the Executive Committee. If no action is taken by the Executive Committee, the compensation for the HCO shall remain the same as the previous year.

**Section 30-4-10. Sovereign Immunity of HCO.**

When acting under the color of his authority, the HCO shall enjoy all of the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in the state, federal, or tribal court.

- (a) The HCO shall have no authority to waive the sovereign immunity of the Tribe, or any other Tribal entity.
- (b) Nothing in this Ordinance shall be deemed or construed to be a waiver of the HCO's sovereign immunity from suit.
- (c) Nothing in this Ordinance shall be deemed or construed as consent of the HCO to the jurisdiction of the United States, any state, or any other Tribe with regard to the business or affairs of the HCO.
- (d) Notwithstanding any other provision herein, as an entity of the Tribe, the HCO's immunity from suit shall at all times be deemed waived for actions against the HCO initiated by the Executive Committee of the Tribe.

## **CHAPTER 5. LICENSING APPLICATIONS**

### **Section 30-5-1. License Required to Grow or Process Hemp.**

Any person who wishes to grow, process, handle, transport, or store hemp within the Tribe's jurisdiction, must possess a valid license to do so.

### **Section 30-5-2. Licenses to be Issued and Regulated by the Tribe.**

The Executive Committee shall determine the appropriate number of hemp businesses. The Tribe or its designee shall adopt a uniform licensing application and process for approval or denial of licenses. These forms and processes shall be incorporated into the Hemp Regulations. The HCO retains the discretion to issue or deny licenses in accordance with the Hemp Regulations.

### **Section 30-5-3. Licensing Entities.**

Businesses that provide products or services related to the hemp industry shall be organized under the Flandreau Santee Sioux Tribe Tribal Law and Order Code.

### **Section 30-5-4. Waiting Period.**

A person who has had a license terminated shall not be eligible to reapply to the program for a period of five (5) years from the date of termination.

### **Section 30-5-5. Background checks.**

Applicants for a license must undergo a criminal background check as part of an application for licensing. The Tribe may require other background checks. When a person applies for a license, the owners, directors, and managers must each submit to relevant background checks.

### **Section 30-5-6. Indian Trader Designation Required.**

All business licensees, if not owned by the Tribe, are required to obtain an Indian Trader license as contemplated by the Code of Federal Regulations, Title 25 § 140.9 or by similar federal legislation as amended.

### **Section 30-5-7. Fees.**

The Tribe may collect fees that are reasonable to the processing of license applications. Failure to pay the fees will result in the denial of an application.

### **Section 30-5-8. Application Contents.**

(a) Applications shall include at a minimum:

- a. Full name, residential address, telephone number, and email address, if an email address is available.
  - b. If the applicant represents a business entity, the full name of the business, the principal business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person
  - c. Documentation showing either a valid tenancy, ownership or other legal interest in the proposed property.
  - d. Street address, location ID, legal description and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, processed or stored.
  - e. Information regarding any other hemp growing or processing facility that is licensed in any other jurisdiction.
  - f. Proof of Insurance that includes worker's compensation insurance, and general liability insurance.
  - g. A business plan and operations plan shall be included with the application that includes at a minimal the following:
  - h. The proposed acreage or greenhouse or indoor square footage to be planted or used for processing.
  - i. A description of the type of facility proposed and the anticipated or actual number of employees. The name of the proposed Manager of the Facility.
  - j. A security plan which shall include a general description of the security systems(s) and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements.
  - k. A list of pesticides, and other chemicals proposed for use.
  - l. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including assurances that no odor will be detected from outside the Location.
  - m. A plan for the disposal of hemp and related byproducts.
  - n. A statement of previous farming experience.
  - o. Planned source of seeds or propagules.
- (b) Any License Application that is missing required information shall be subject to denial.

- (c) The HCO shall notify applicants by letter or email whether the application has been denied or conditionally approved.

## CHAPTER 6. LICENSE AGREEMENTS

### Section 30-6-1. License Agreement Required.

An applicant shall not be licensed until the applicant is approved and the applicant and the HCO have executed a grower or processor/handler license agreement.

### Section 30-6-2. Agreement Contents.

Any License Agreement shall contain at a minimum:

- (a) The agreement shall have a consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by the HCO, representatives of the HCO and law enforcement agencies, with or without cause, with or without advance notice.
- (b) The Applicant consents to forfeiture and destruction, without compensation, of:
  - (1) Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis.
  - (2) Plants located in an area that is not licensed by the Tribe.
  - (3) Plants not accounted for in required reporting to the HCO.
- (c) The applicant agrees to apply for registration of all growing, processing, handling, and storage locations, including a legal description of the location, GPS coordinates, and receive approval for those locations prior to having hemp on those premises.
- (d) The applicant acknowledges that licensed growers or processors/handlers shall submit a Site Modification Request Form, and obtain prior written approval from a representative of the HCO before implementing any change to the licensed sites stated in the grower licensing agreement.
- (e) Acknowledgement by the applicant that hemp shall not be grown, processed, handled, or stored in any location other than the location listed in the grower licensing agreement.
- (f) Agreement by the applicant not to interplant hemp with any other crop without express written permission from the HCO.
- (g) Acknowledgement by the applicant that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with regulations or the agreement.
- (h) Acknowledgement by the applicant that the applicant shall comply with restrictions established by the Tribe limiting the movement of hemp plants and plant parts.
- (i) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower and/or processor.



- (j) Agreement that any time hemp is in transit, a copy of the grower and/or processor licensing agreement shall be available for inspection upon the request of a representative of the HCO or a law enforcement agency.
- (k) Agreement that, upon request from a representative of the HCO or a law enforcement agency, a licensed grower and/or processor shall immediately produce a copy of his or her grower licensing agreement for inspection.
- (l) Agreement to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the HCO to which the grower and/or processor has agreed, on or before the deadlines established in this Ordinance.
- (m) Agreement to scout and monitor unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the HCO.
- (n) Agreement not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the program for one (1) or both of the following reasons:
  - (o) Failure to obtain an acceptable criminal background check or
  - (p) Failure to comply with an order from a representative of the HCO.
- (q) Agreement that land used for the cultivation or storage of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the program for one (1) or both of the following reasons:
  - (r) Failure to obtain an acceptable criminal background check or
  - (s) Failure to comply with an order from a representative of the HCO.
- (t) Agreement to notify the HCO of any interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence.
- (u) Agreement to notify the HCO of any theft of cannabis materials, whether growing or not.
- (v) Agreement to pay all fees imposed by the Tribe.
- (w) Failure to agree or comply with terms and conditions established in the grower licensing and/or processor agreement shall constitute grounds for appropriate HCO or Executive Committee action, up to and including termination of the grower licensing agreement and expulsion from the Commission's program.
- (x) Failure to agree and sign the grower licensing and/or processor agreement shall terminate conditional approval and a licensing agreement shall not be executed.
- (y) The signatures of the Tribe and licensee(s).

**Section 30-6-3. Operating Fees.**

- (a) Every hemp business shall pay quarterly to the Tribe an operating fee equal to 6% percent of its total income from all sources derived from or attributable to the Tribe for the quarter. For purposes of this section, “total income from all sources derived from or attributable to the Tribe” means gross income minus the cost of goods sold that are paid or incurred in connection with the hemp business.
- (b) The operating fee assessed under this section shall be due and payable on the fifteenth day following the close of the fiscal quarter and shall be subject to interest and applicable penalties. A penalty of 20% percent of the amount of any underpayment shall be added to the fee. For purposes of this section, the underpayment amount shall be equal to the difference between the total amount of the operating fee imposed by this section less the amount paid.
- (c) All operating fees shall be remitted to the Executive Committee, which shall keep accurate records of all such receipts, and shall be subject to distribution by the Executive Committee in accordance with its usual appropriation procedures for governmental and social services.
- (d) Non-payment of fees after 30 days shall be considered a violation of the license agreement.

## **CHAPTER 7. PERMITS**

### **Section 30-7-1. Permits Required.**

A permit is required for each location or site that hemp is planted, grown, handled, processed, or stored.

### **Section 30-7-2. Permits to be Issued and Regulated by the Tribe.**

The Tribe or its designee shall adopt a uniform permitting application and process for approval or denial of permits. These forms and processes shall be incorporated into the Hemp Regulations. The HCO retains the discretion to issue or deny permits in accordance with the Hemp Regulations.

### **Section 30-7-3. License Required.**

Permits may only be issued to individuals and entities with a license.

### **Section 30-7-4. Prohibited Locations.**

Permits may not be issued for the following sites or locations:

- (a) Any place that is not listed in the grower licensing agreement.
- (b) Within 1,000 feet of any structure that is used for residential purposes.
- (c) Within 1,000 feet of a school or a public recreational area.
- (d) On property that is not owned or completely controlled by the applicant for the permit.
- (e) On property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied a license.

### **Section 30-7-5. Co-Locating Permitted.**

Permits may be issued to licensed growers and licensed processors to co-locate at the same location.

### **Section 30-7-6. Site Modifications.**

A licensed grower who elects to grow or process hemp in a new location or store or handle at a site other than the sites specified by the legal description and GPS coordinates listed in the grower and/or processor licensing agreement shall submit a Site Modification Request Form, and obtain written approval from a representative of the HCO, prior to planting, processing or storing at the proposed location.

**Section 30-7-7. Site Access.**

No person shall have an expectation of privacy with respect to any location or site that is permitted under this Chapter. Licensees, whether present or not, shall allow representatives of the HCO and tribal and/or federal law enforcement agencies to enter the premises with or without cause and with or without advanced notice.

**Section 30-7-8. Fees.**

The Tribe may collect fees that are reasonable to the processing of permit applications and site modifications. Non-payment of fees shall result in an application for a permit to be denied.

## **CHAPTER 8. REPORTING AND RECORDKEEPING**

### **Section 30-8-1. Reporting Requirements of HCO.**

At a minimum, the HCO must report and maintain records on the following information:

- (a) Retain Information about Growing Locations. The legal description and Location ID information for every site or location where the Tribe has approved hemp to be grown.
- (b) Information about approved growing, processing, handling, and storage site locations to the Flandreau Santee Sioux Tribe and Flandreau Santee Sioux Tribe Public Safety Commission, DEA, and other law enforcement agencies whose representatives request registered site information, including legal description and GPS coordinates.
- (c) All applications for licensure, grants or denials of licenses, receipts of fees, distribution of fees and revenues to the Tribe.
- (d) A quarterly report to the Executive Committee summarizing the HCO's official actions, activities, investigative reports, and reports received from any hemp business as it deems necessary to keep the Executive Committee fully informed as to the status of the HCO's activities.

### **Section 30-8-2. HCO to Submit Growing locations and Grower License Information to United States Secretary of Agriculture.**

Not more than thirty (30) days after receiving and compiling the following information, the HCO shall provide it to the United States Secretary of Agriculture or the Secretary's designee:

- (a) The licensed grower's legal and common name;
- (b) The licensed grower's telephone number, email address, residential address, mailing address, or another form of contact information;
- (c) The Location ID for each field, facility, or other place where hemp is licensed to be grown; and
- (d) An indication whether the person's license is currently in good standing.

### **Section 30-8-3. Harvesting Reports.**

Pre and post-testing reports grower shall submit a complete and current Harvest/Destruction Report form to the HCO at least fifteen (15) days prior to the intended harvest date or intended destruction of a failed crop

### **Section 30-8-4. Planting Reports for Outdoor Plantings.**

A licensed grower shall submit to the HCO a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location. Each Field Planting Report shall identify the:

- (a) Correct variety name as designated upon approval of the acquisition request or as approved by the HCO.
- (b) Field location ID as listed in the grower licensing agreement.
- (c) Primary intended use of the harvest for each planting.

A licensed grower who does not plant hemp in an approved outdoor site listed in the grower license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall not be planted at that site.

#### **Section 30-8-5. Planting Reports for Indoor Plantings.**

A licensed grower shall submit to the HCO a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location. Each Greenhouse/Indoor Planting Report shall identify the:

- (a) Correct hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the HCO.
- (b) Greenhouse or indoor growing location ID as listed in the grower licensing agreement.
- (c) Primary intended use for the harvest of each planting.
- (d) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the HCO, such Reports shall be due no later than March 31, June 30, September 30, and December 31.

#### **Section 30-8-6. Other Required Reports.**

A licensed grower shall submit a completed production report form annually. A licensed grower's failure to submit an accurate and complete report that is required by the HCO before the deadline established by the HCO shall constitute grounds for the HCO to terminate the grower licensing agreement and deny future applications for licensure.

#### **Section 30-8-7. Harvest/Destruction Reports.**

A completed Harvest/Destruction Report Form from a grower shall be provided to the HCO at least 15 days prior to the expected harvest date.

#### **Section 30-8-8. Recordkeeping.**

All forms, reports, and records required to be submitted to the Tribe by this Ordinance and by the Hemp Regulations shall be kept for a minimum of three (3) calendar years. Licensees and the HCO are each responsible for storing such records.

## **CHAPTER 9. SEED ACQUISITION**

### **Section 30-9-1. Seed Acquisition Within the United States.**

- (a) A person shall not acquire seeds or propagules from a source within the United States without first submitting a complete Domestic Seed/Propagule Request form and obtaining written approval of the Domestic Seed/Propagule Request from a representative of the HCO.
- (b) The HCO shall not approve a Domestic Seed/Propagule Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person.

### **Section 30-9-2. Seed Acquisition from a Source Outside of the United States.**

- (a) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the HCO.
- (b) If approved, the HCO shall request the Drug Enforcement Administration (DEA) Permit to Import under the Commission's DEA registration.
- (c) A person shall not acquire seeds from a source outside the United States unless the HCO first obtains a Permit to Import from the DEA.
- (d) A person shall not acquire propagules other than seeds from outside the United States.
- (e) All licensed growers intending to plant the requested seed shall be listed on the request form.
- (f) The HCO shall not approve an International Seed Request form unless the licensed grower affirms in writing that the licensed grower's planned activities shall not infringe on the intellectual property rights of any person.
- (g) A person submitting an International Seed Request form shall submit to the HCO documentation showing that mature plants grown from that seed variety have a floral material delta-9-THC content of not more than 3,000 ppm on a dry weight basis.
- (h) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the Commission's facility, for inventory and distribution.
- (i) Upon request from a representative of the HCO, a licensed grower shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the Commission's facility.

### **Section 30-9-3. Seeds of Wild, Landrace, or Unknown Origin.**



- (a) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the HCO.
- (b) The HCO shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the HCO first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the HCO or its designee.
- (c) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the HCO shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

## CHAPTER 10. HARVESTING

### Section 30-10-1. Grower Responsibilities.

Growers shall:

- (a) Submit a complete and current Harvest/Destruction Report form to the HCO at least fifteen (15) days prior to the intended harvest date or intended destruction of a failed crop prior to harvest of hemp.
- (b) Allow the HCO to collect samples of any cannabis material prior to harvest at any time. The grower or an authorized representative shall be present at the growing site for the sample collection. All samples become the property of the Tribe and are non-returnable.
- (c) Representatives of the HCO shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the grower licensing agreement.
- (d) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the HCO, unless specifically authorized in writing by the HCO.
- (e) Harvested materials from varieties of concern shall not be commingled with other harvests without prior written permission from the HCO.
- (f) Floral materials harvested for phytocannabinoid extraction shall not be moved outside the Commonwealth or beyond a processor, nor commingled, nor extracted, until the HCO releases the material in writing.

A licensed grower who fails to submit a Harvest/Destruction Report or who does submit a Harvest/Destruction Report and proceeds to harvest a crop prior to a sample being collected by the HCO shall be subject to revocation of his or her license.

### Section 30-10-2. Pre-Harvest Sampling Equipment.

The equipment used shall include:

- (a) Inspection Form,
- (b) Pruning shears,
- (c) Alcohol wipes to clean shears before each sample,
- (d) Paper sample bags,
- (e) Stapler,

- (f) Sharpie marker to write sample ID on bag,
- (g) Bucket to transport bagged samples,
- (h) Harvest/Destruction Report forms, and
- (i) Maps.

### **Section 30-10-3. Process for Pre-Harvest Sampling.**

The material selected for Pre-Harvest Sampling will be determined by the HCO, not the growers. Cuttings will be collected to make one representative sample in the following manner:

- (a) Clip the top 20 cm of hemp plant's primary stem, including female floral material.
- (b) Take cuttings from at least five (5) hemp plants within the plot.
- (c) Place the complete sample in a paper bag.
- (d) Seal the bag by folding over the top once and stapling the bag shut.
- (e) A separate sample must be taken from each non-contiguous plot of a given variety.
- (f) A separate sample must be taken for each variety.
- (g) Samples shall be secured in a paper bag (to allow for air-drying during transport).
- (h) Label the sample container with a sample ID. The sample ID shall include the last four numerical digits of the License number, Date (MMDDYY), and a two-digit sequential sample number assigned by the inspector. Example: License# 17-80-11G, Sample Date March 30, 2017, Sample 03 Translates to Sample ID: 8011-033017-03
- (i) The sample shall be transported to the HCO for drying and storage and will be tested for analysis of THC thresholds.

### **Section 30-10-4. Secondary Pre-Harvest Sampling.**

- (a) If the licensed grower fails to complete harvest within fifteen (15) days, the HCO may order a secondary pre-harvest sample of the plot, and the licensed grower shall be assessed a secondary pre-harvest sample fee per plot in the amount by the HCO prior to collecting the sample.
- (b) If three (3) or more harvests are taken from the same plot, the licensed grower may be required to pay a secondary pre-harvest sample fee. The secondary pre-harvest sample fee shall be paid to the HCO within fifteen (15) days of invoice by the HCO.
- (c) The licensed grower shall not harvest the remaining crop until the HCO collects a secondary pre-harvest sample if one is required as established in this subsection.

- (d) The HCO will set the secondary pre-harvest sample fee annually.

**Section 30-10-5. Handling Procedures of Pre-Harvest Samples.**

- (a) Samples will be taken to the HCO for drying and storage.
- (b) Samples should be arranged in a single layer for drying.
- (c) Drying oven will be used when possible.
- (d) Samples in the oven will be left in the labeled sample bag.
- (e) If selected for testing, the entire sample will be sent to the designated testing lab for analysis.

**Section 30-10-6. Post-Harvest Sampling Equipment Used.**

- (a) Inspection Form.
- (b) Pruning shears (if necessary).
- (c) Alcohol wipes to clean shears before each sample.
- (d) Paper sample bags for solid material.
- (e) Plastic sample containers for ground material.
- (f) Stapler.
- (g) Sharpie marker to note sample ID on sample container.
- (h) Bucket to transport samples.
- (i) Harvest/Destruction Report forms.
- (j) Maps.
- (k) Results notification letter.

**Section 30-10-7. Process for Post-Harvest Sampling.**

- (a) The plot selected for sampling shall be designated by the Pre-Harvest Sample results. The material selected for Post-Harvest Sampling from this plot will be determined by the HCO, not the grower.
- (b) All post-harvest samples of floral material shall be taken from the designated harvested plot materials in the form (intact-plant, flowers, ground materials, etc.) in which the material will be sent to the processor. An inspector must inventory the entire harvest to determine the form in which it exists and follow the protocol as appropriate in part a), b), or c) below.

- (c) If, upon inventory, the inspector determines that the entire harvest is not in a homogenous form (intact-plant, flowers, ground materials, etc.), the inspector shall notify the HCO. A Licensee who refuses to complete post-harvest processing preparations waives the right to a post-harvest test and the pre-harvest test results shall stand, and the plot materials shall be ordered destroyed.
- (d) For intact-plant post-harvest samples:
  - (e) Ensure that the entire harvest is accounted for and in the same form (i.e., intact-plants).
  - (f) Clip the top 20 cm of hemp plant, primary stem, including female floral material.
  - (g) Take cuttings from at least five (5) non-adjacent hemp plants within the harvest's storage/drying area at the discretion of the inspector.
  - (h) Place the complete sample in a paper bag.
  - (i) Seal the paper bag by folding over top once and stapling to keep closed.
  - (j) Complete sampling procedures in part (6) – (8).
- (k) For ground plant or ground floral material Post-Harvest Samples:
  - (l) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
  - (m) Sample material from bag or container.
  - (n) Sample from a minimum of four locations within the containers from a given harvest.
  - (o) Place the complete sample in a plastic sample container.
  - (p) Seal the plastic sample container.
  - (q) Complete sampling procedures in part (6) – (8).
  - (r) For Post-Harvest Samples in other forms (e.g., trimmed floral material, or floral material and stems, etc.):
    - (s) Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material must be uniform).
    - (t) Randomly collect at least one cup of material by volume.
    - (u) Place the complete sample in a paper bag or plastic container and seal the container, as appropriate.

(v) Complete sampling procedures in part (6) – (8). A separate sample must be taken for each plot designated for Post-Harvest Sampling.

(w) Samples shall be labeled and prepared for transport to the lab.

(x) Label the sample container with a sample ID. The sample ID shall include the last four numerical digits of the License number, Date (MMDDYY), and a two-digit sequential sample number assigned by the inspector. Example: License#17-80-11G, March 30, 2017, Sample 03 Translates to Sample ID: 8011-033017-03

(y) The sample shall be transported to the HCO for storage.

#### **Section 30-10-8. Post-Harvest Retest.**

A licensee may request the HCO to order a post-harvest THC retesting of a plot if the results of an initial THC test on the pre-harvest sample indicate a delta-9-THC concentration in the pre-harvest sample in excess of what is permitted by the HCO. A licensed grower shall pay any post-harvest retest fees.

#### **Section 30-10-9. Handling of Post-Harvest Samples.**

All samples become the property of the Tribe and are non-returnable. Samples will be taken to the HCO for storage and the entire sample will be sent to the testing lab for analysis of THC thresholds.

#### **Section 30-10-10. Fees.**

The Tribe may collect fees that are reasonably related to the costs of regulating hemp harvests, including the cost of pre- and post-harvest sampling. Non-payment of fees after 30 days shall be considered a violation of the grower license agreement.

## **CHAPTER 11. THC TESTING**

### **Section 30-11-1. THC Prohibited to Exceed Threshold set by Congress.**

The delta-9-THC content for hemp produced on the reservation may not exceed the 0.3% delta-9-THC threshold set by Congress. If testing reveals the content exceeds the threshold, the HCO may report to law enforcement agencies and the licensee must surrender without compensation any viable seeds, live plants, stock plants, and all germplasm of this variety, to the Tribe for destruction.

### **Section 30-11-2. THC Testing Threshold.**

Hemp shall be tested for a quantitative determination of delta-9-THC levels will be measured using gas chromatography with flame ionization detector (GC-FIDQ).

### **Section 30-11-3. When Testing is Necessary.**

The HCO's receipt of a harvest notification shall trigger a site inspection and sample collection by the HCO.

### **Section 30-11-4. Testing Procedures.**

Testing shall be completed in accordance with the Hemp Regulations for pre-harvest and post-harvest hemp samples. The HCO shall report the results to licensees.

#### **(a) Selecting Samples for Testing.**

- (1) The Tribe reserves the right to test all industrial hemp and other cannabis plants crop produced by any License Holder for THC compliance. The Tribe intends to inspect and sample 100% of all industrial hemp and other cannabis plots to be harvested, but not every sample will be tested. The HCO will prioritize testing by using the following criteria.
- (2) Industrial hemp crops generated from Certified seed will incur pre-harvest testing of at least five percent (5%) of growing plots per variety, per seed source.
- (3) Industrial hemp crops from planting materials other than Certified seed will incur pre-harvest testing of at least fifty percent (50%) of growing plots per variety, per seed source.
- (4) 100% of post-harvest samples will be tested.

#### **(b) Testing Procedures.**

- (1) Testing shall be completed by the designated testing lab.

- (2) Quantitative determination of delta-9-THC levels will be measured using gas chromatography with flame ionization detector (GC-FID).
- (3) The HCO shall report test results to licensees.

**Section 30-11-5. Post-Testing Actions.**

(a) The delta-9-THC content for hemp produced on the Reservation shall not exceed the 0.3% delta-9-THC threshold set by Congress. The HCO shall report the details of the test results including an exact measurement in parts per million (ppm). Table 1 (below) provides a summary of the post-testing actions detailed in the following numbered points.

Table 1: Post-Testing Action Summary			
Pre-Harvest Test Results	Material allowed to market	Material not allowed to move – triggers Post-Harvest Sampling and testing or verification of leaf and floral destruction	Material Destroyed
	≤ 3,999 ppm ((a), below)	≥ 4,000 ppm – 9,999 ppm ((b), below)	≥ 10,000 ppm ((c), below)
Post-Harvest Test Results	Material Allowed to Market	Material Destroyed	
	≤ 3,000 ppm, compliant ((d), below)	≤ 3,999 ppm ((e), below)	≥ 4,000 ppm ((f), below)

(b) For Pre-Harvest Test Results of less than or equal to 3,999 ppm (or 0.3999%) delta-9-THC:

- (1) The HCO will report results to grower.
- (2) Material allowed to market.
- (3) Any variety testing above 3,000 ppm shall become designated as a Variety of Concern.
- (4) Any marketing of materials testing between 3,001 ppm and 3,999 ppm is at the License Holder’s risk.

(b) Pre-Harvest Test Results of greater than 3,999 ppm, but less than 10,000 ppm delta-9-THC:

- (1) The HCO will report results to grower.
- (2) The License Holder is not allowed to transfer an Individual plot’s harvest. The harvest must remain segregated from other harvested plots until released in writing by the HCO.



- (3) License Holder is allowed to complete harvest activities, which may include drying, chopping, and/or grinding, in preparation for transfer to a processor.
  - (4) If harvesting leaf or floral material from the plot, the grower can elect between (1) a post-harvest sample and retest or (2) complete destruction. License Holders must complete harvest activities, which may include drying, chopping, and/or grinding, on the entire harvest before the material is eligible for post-harvest sample collection.
  - (5) If harvesting only grain, seed or fiber from the plot, the HCO shall verify the complete destruction of all leaf and floral material from the plot. The grain or seed must be processed and cannot remain as a viable seed for planting. Bare stalk for fiber that is free of leaf, seed, or floral material is eligible for processing.
  - (6) This hemp variety becomes designated as a Variety of Concern and the HCO shall run additional tests on the samples collected from other plots of this variety.
  - (7) If more than 50% of Pre-Harvest Samples' test results for a given Variety of Concern are above 3,000 ppm, then this variety may be designated as a Prohibited Variety and excluded from the Tribe's Industrial Hemp program.
  - (8) If a variety is designated as a Prohibited Variety, the HCO shall require the License Holder to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Tribe for destruction.
- (c) Pre-Harvest Test Results equal to or greater than 10,000 ppm delta-9-THC:
- (1) The HCO will report results to grower.
  - (2) The HCO may report to law enforcement agencies.
  - (3) The HCO may collect samples of and test post-harvest material in the interest of furthering research efforts. However, a post-harvest retest is not required.
  - (4) The variety may be labeled a Prohibited Variety and excluded from the Tribe's hemp program.
  - (5) The HCO may terminate the license or license agreement and exclude licensee from future involvement in the Tribe's hemp program.
  - (6) The licensee must surrender without compensation the entire harvest and any unharvested crop of this variety from this plot, to the Tribe for destruction.
- (d) Post-Harvest Test Results of less than or equal to 3,000 ppm (or 0.3000%) delta-9-THC:
- (1) The HCO will report results to grower.

- (2) Compliant material; no action required.
  - (3) Material allowed to market.
- (e) Post-Harvest Test Results of greater than 3,000 ppm, but less than 3,999 ppm delta-9-THC:
- (1) The HCO will report results to grower.
  - (2) Material allowed to market.
  - (3) Any marketing of materials testing between 3,001 ppm and 3,999 ppm is at the licensee's risk.
- (f) Post-Harvest Test Results equal to or greater than 4,000 ppm delta-9-THC:
- (1) The HCO will report results to grower.
  - (2) The HCO may report to law enforcement agencies.
  - (3) The Tribe reserves the right to run additional tests on post-harvest samples of that variety from that plot in the interest of furthering research efforts.
  - (4) Variety may be labeled a Prohibited Variety and excluded from the Tribe's hemp program.
  - (5) The HCO may terminate the license and exclude licensee from future involvement in the Tribe's hemp program.
  - (6) License Holders must surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety, to the Tribe for destruction.

**Section 30-11-6. Surrender and Destruction of Prohibited Varieties.**

When varieties are determined to be a Prohibited Variety, the HCO may report to law enforcement agencies and licensees must surrender without compensation any viable seeds, live plants, stock plants, and all germplasm of this variety, to the Tribe for destruction.

## **CHAPTER 12. CROP DESTRUCTION**

### **Section 30-12-1. Licensees Required to Submit Crops Destruction Report.**

A grower whose hemp crop must be destroyed under this ordinance shall submit to the HCO a Crops Destruction Report at least 15 days prior to the proposed crop destruction. In the event that a licensee fails to complete a destruction report, the HCO shall prepare it. The Report shall contain the following information:

- (a) The Location ID of the hemp plot to be destroyed;
- (b) The variety/strain of the hemp crop;
- (c) The date of the proposed destruction;
- (d) The proposed method of destruction;
- (e) Whether the destruction will be a complete destruction of all hemp in the plot;
- (f) Photos of the hemp plot proposed for destruction.
- (g) License number of the licensee
- (h) Signature of the licensee.

### **Section 30-12-2. Expense and Manner of Crop Destruction.**

The Licensee shall be responsible for the cost of crop destruction. The HCO may order a different method of destruction than proposed by the licensee.

### **Section 30-12-3. Penalty for Failing to Submit Crops Destruction Report.**

Any licensee that fails to submit a destruction report shall have his/her license revoked, shall be banned from holding a hemp license in the future, and shall be subject to a civil penalty of up to \$2,500.

## **CHAPTER 13. PROHIBITED PRODUCTS**

### **Section 30-16-1. Prohibited Products.**

A licensed processor shall not manufacture any of the following prohibited products: cigarettes, cigars, chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; and hemp leaf material or floral material teas.

### **Section 30-16-2. Prohibited Varieties of Hemp.**

Hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" is prohibited.

## **CHAPTER 14. PROHIBITED ACTIVITIES**

### **Section 30-14-1. Growing or Processing Prohibited Varieties of Hemp Prohibited.**

No person may grow, cultivate, handle, or process; or broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Tribe's jurisdiction.

### **Section 30-14-2. Restrictions on Sale or Transfer.**

Licensees shall not plant, process, etc. any cannabis that is not hemp.

### **Section 30-14-3. Operating Without a License Prohibited.**

No person may hold a license from the Tribe shall not: grow, cultivate, handle, or process; or broker, store, or market hemp or other cannabis.

### **Section 30-14-4. Intermingling Hemp With Other Crops.**

Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the HCO.

### **Section 30-14-5. Operating Minimum.**

A licensed grower shall not plant hemp or other cannabis plants in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the HCO.

### **Section 30-14-6. Restrictions on Sale or Transfer.**

The following restrictions apply:

- (a) No person may sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person without prior approval by the HCO. A licensed grower shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products listed in Section 30-x-x.
- (b) No person may transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed grower's current grower licensing agreement or within another research program.
- (c) No person may ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the HCO as a prohibited variety.

(d) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

**Section 30-14-7. Public Access to Hemp Restricted.**

The public may not access hemp plots for activities such as a maze. Licensees shall not allow the unsupervised public on permitted sites.

**Section 30-14-8. Tribal Business License Required.**

All individuals, corporations, partnerships, limited liability companies, joint ventures, other entities or licensees are acknowledged as “Indian Traders” within the provisions of 25 U.S.C. §§ 261-264 by the Tribe, the Indian Trader Statutes, and the regulations promulgated pursuant thereto. Any entity participating in hemp activities in accordance with this Title must obtain a business license from the Flandreau Santee Sioux Tribe Finance Department, and must comply with Resolution 2018-01 pertaining to business licensing, Title 23 of the Flandreau Santee Sioux Tribe Law and Order Code entitled “Tribal Tax Act”, and other applicable tribal law and regulations.

## CHAPTER 15. PENALTIES

### Section 30-15-1. Applicability.

Anyone who violates this Ordinance, whether intentionally or negligently, is subject to any of the penalties set forth within.

### Section 30-15-2. Immediate License Suspension.

The HCO shall immediately suspend a license, without an opportunity for a hearing, if:

- (a) The licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor.
- (b) The licensed person or his or her agent admits to having made any false statement to the HCO or its representative or failed to comply with any instruction or order from the HCO, a representative of the HCO, or any law enforcement officer.

### Section 30-15-3. License Suspension and Revocation.

The HCO shall notify a licensee in writing that the grower and/or processor licensing agreement has been temporarily suspended or revoked if a representative of the HCO receives information supporting an allegation that a licensed grower has:

- (a) Violated a Regulation.
- (b) Made a false statement to the HCO or a law enforcement agency.
- (c) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm.
- (d) Failed to comply with an order from a representative of the HCO or a law enforcement agency.
- (e) A temporary closure must also be signed by the Tribal President to be effective.

### Section 30-15-4. Consequences of License Suspension.

- (a) A person whose grower licensing agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the HCO issued its notice of temporary suspension, except as authorized in writing the HCO.
- (b) As soon as possible after the notification of temporary suspension, the HCO shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

### **Section 30-15-5. Corrective Action Plans for Negligent Violations.**

- (a) A person who is found by the HCO to have negligently violated any statute or administrative regulation governing that person's participation in the hemp program shall be subject to a corrective action plan at the discretion of the HCO. Corrective action plans issued by the HCO shall include, at a minimum, the following information:
- (1) A reasonable date by which the person shall correct his or her violation; and
  - (2) A requirement for periodic reports from the person to the HCO about the person's compliance with the corrective action plan, statutes, and administrative regulations for a period of at least three (3) years from the date of the corrective action plan.

### **Section 30-15-6. Termination of Licensing Agreement.**

The Tribe may unilaterally revoke licensing agreements upon the HCO's finding that a licensed grower and/or processor has committed any of the acts in violation of this Ordinance or the Hemp Regulations, or violated any provision of an applicable licensing agreement.

### **Section 30-15-7. Termination of Employment.**

Tribal employees, including the HCO, may be terminated for violating provisions of this Ordinance.

### **Section 30-15-8. Civil Penalties.**

If the HCO receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Ordinance or the Tribe's hemp Regulations, or the licensing agreement, then the HCO may assess a monetary civil penalty not to exceed \$2,500 per violation.

### **Section 30-15-9. Forfeiture.**

Any hemp on the reservation is subject to forfeiture and destruction, without compensation, if it is possessed without a license or at an unpermitted location. Equipment used for the business or personal use of hemp is subject to forfeiture if it is used by an individual who does not possess a license.

### **Section 30-15-10. Stacking of Penalties Allowed.**

If the HCO determines that an offense or offenses have been committed under this Ordinance, the HCO is permitted to stack various penalties.

### **Section 30-15-11. Advisement of Rights.**



Any time the HCO issues a penalty under this Chapter, he or she shall provide a written notice of rights, including the right to a hearing, if applicable.

**Section 30-15-12. Mandatory Reporting.**

For violations with a culpable mental state greater than negligence, any person who is found by the HCO to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be reported to Tribal and Federal Law Enforcement Agencies.

## **CHAPTER 16. REMEDIES**

### **Section 30-16-1. Burden of Proof.**

Prior to issuing a penalty or an adverse decision, the HCO must base decisions by a preponderance of the evidence.

### **Section 30-16-2. Right to Review of Adverse Decisions.**

Any person who has been issued an adverse decision under this Ordinance or the Hemp Regulations may seek the Executive Committee's review of such decision.

### **Section 30-16-3. Requesting a Review Hearing.**

A hearing will not be conducted unless a written petition for review is provided to the Tribal President within thirty (30) calendar days of service of the written notice of decision. The petition must state the bases that support the person's position. If no request is provided within the time allotted, the HCO's decision shall be deemed final.

### **Section 30-16-4. Review Hearing.**

At the review hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, the Executive Committee may overturn the decision of the HCO, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Tribe and its Tribal members, or the Executive Committee may affirm the decision of the HCO. The decision of the Executive Committee shall be provided in writing. It shall be final and is not subject to judicial review. Hearings shall be open to the public.

### **Section 30-16-5. Legal Standard.**

The legal standard for review shall be clear and convincing.

## **LEGISLATIVE HISTORY**

This Ordinance was enacted by the Flandreau Santee Sioux Tribe Executive Committee on March 7, 2019, by Resolution Number 19-23, and was further amended on June 13, 2019 by Resolution Number 19-50.