

1 TRIBAL ORDINANCE NO. XXXXXXXX
2 Cheyenne River Sioux Tribe
3

4 BE IT ENACTED:
5

6 **Section One. Title**
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8 This article shall be known as “The Cheyenne River Sioux Tribe Smoke-free Air Act of 2010” and is
9 dedicated to all the Cheyenne River Sioux tribal members who have died and suffer from commercial tobacco
10 related illnesses.
11

12 **Section Two. Findings and Intent**
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- 14 A. The Cheyenne River Sioux Tribe is committed to improving the Health and Welfare of all tribal members,
15 to promote a healthy environment, and has an obligation to enact policies that protect members from harm.
16
- 17 B. The Cheyenne River Sioux Tribe finds that the United States Surgeon General has found that massive and
18 conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults,
19 including cancer and cardiovascular diseases in adults, and adverse respiratory effects in both children and
20 adults.
21
- 22 C. The Cheyenne River Sioux Tribe finds that there are no safe levels of exposure to secondhand smoke and
23 there is no available adequate ventilation technology based upon scientific studies that can ensure the
24 protection and prevention of secondhand commercial tobacco smoke health-related illnesses.
25
- 26 D. The Cheyenne River Sioux Tribe recognizes that everyone has the right to breathe clean air and be free
27 from the pollution of commercial tobacco products.
28
- 29 E. The Cheyenne River Sioux Tribe finds use of commercial tobacco products including commercial smoking
30 are a leading cause of preventable death on the Cheyenne River Reservation.
31
- 32 F. The Cheyenne River Sioux Tribe finds exposure to environmental tobacco smoke (ETS) places non-
33 smoking adults at significantly increased risk for heart disease, hypertension, stroke, and respiratory
34 diseases, all of which lead to the disproportionately higher death rates among American Indians as
35 compared to the general population.
36
- 37 G. The Cheyenne River Sioux Tribe finds children who breathe ETS are more likely to suffer from ear
38 infections, decreased lung function, decreased cognitive function, experience more frequent trips to the
39 hospital, and are at a significantly increased risk for sudden infant death syndrome (SIDS), which is
40 disproportionally high among the Northern Plains tribes.
41
- 42 H. The Cheyenne River Sioux Tribe finds children are sacred and therefore steps should be taken to ensure
43 the quality of the air they breathe and that they are sufficiently protected from ETS, which is a health
44 hazard that is beyond their control.
45
- 46 I. The Cheyenne River Sioux Tribe finds that smoking prevalence, and therefore the incidence of ETS, is
47 disproportionately higher amongst Northern Plains Indians at 33.4% of the adult population, as compared
48 to a U.S. national average of 20.9%, putting American Indian non-smokers and children at great risk for
49 the health consequences caused by ETS exposure.
50

- 1 J. The Cheyenne River Sioux Tribe finds ETS causes diseases of the respiratory system, which is the leading
2 cause of hospitalization for American Indians throughout the Northern Plains tribes.
- 3 K. The Cheyenne River Sioux Tribe finds heart disease, of which ETS is a major risk factor, is the leading
4 cause of death for American Indians throughout the Northern Plains Tribes.
- 5
- 6 L. The Cheyenne River Sioux Tribe finds over the entire Indian Health Service (IHS) service population, the
7 Northern Plains region experiences the highest rate of lung cancer, of which ETS exposure is a significant
8 risk factor.
- 9
- 10 M. The Cheyenne River Sioux Tribe finds the financial burden imposed upon the Cheyenne River Sioux
11 Tribe health care and IHS systems for direct medical expenditures due to ETS exposure can be
12 significantly reduced by the provisions of this resolution.
- 13
- 14 N. The Cheyenne River Sioux Tribe finds commercial tobacco disrespects the fundamental cultural traditions
15 of the Sioux. Commercial tobacco abuses our people and harms the interconnectedness of our
16 environment resulting in disharmony with the body, mother earth, and father sky.
- 17
- 18 O. The quality of commercial tobacco products has been compromised due to the chemical engineering by the
19 tobacco industry. This engineering has contaminated commercial tobacco with thousands of chemical
20 additives and purposefully increased the addictive properties of the products. As a result, commercial
21 tobacco, whether smoked or chewed, is a highly toxic substance linked to disease and death of American
22 Indian people.
- 23
- 24 P. The Cheyenne River Sioux Tribe finds that the fundamental use of traditional tobacco shall not be
25 restricted.
- 26
- 27 Q. The Cheyenne River Sioux Tribe finds and declares that the purposes of this ordinance are (1) to protect
28 the public health and welfare by prohibiting smoking in public places and places of employment; and (2)
29 to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe
30 smokefree air shall have priority over the desire to smoke.
- 31

32 **Section Three. Definitions**

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

- 35
- 36 A. “Commercial tobacco” means all forms of commercial tobacco use including but not limited to cigarettes,
37 cigars, or any other commercial tobacco products.
- 38
- 39 B. “Traditional tobacco use” as defined by the CRST Cultural Preservation Office means plants for healing
40 the mind, body, and spirit. There are four plants that are used in Lakota ceremonies: tobacco, sage, sweet
41 grass and cedar. Traditional Tobacco is called “cansasa,” another name is ‘kinikinik’. Cansasa translates
42 to red willow. Tobacco is used: 1) in our sacred pipe in ceremonies and is not inhaled; 2) in its natural
43 form to make tobacco ties for prayer or thanksgiving in times of need; 3) only for special purposes in
44 prayer, offering or rituals; 4) as an offering to an elderly when we need his or her help, advice or prayer; 5)
45 as an offering when we see the sacred eagle in the sky, as the eagle is the intercessor to Tunkasila, Great
46 Spirit; 6) as an offering to the drum at pow-wows to give special blessing to the heartbeat of the nation and
47 onto the singers at the drum; 7) as an offering when a person asks someone to do a ceremony such as
48 naming – hunka-pipe ceremony, singing-sweat lodge or any of the Lakota ceremonies; 8) as an offering to
49 a person as a way to ask for forgiveness to heal bad feeling when emotions are hurt; 9) as an offering or to

1 an elderly to seek knowledge and to show appreciation to that person for sharing. Traditional tobacco is
2 never abused because it is in its natural form without additives.

- 3 C. "Indoor area" means all space between a floor and a ceiling that is bounded by walls, doorways, or
4 windows, whether open or closed, covering more than 50 percent of the combined surface area of the
5 vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door,
6 or other physical barrier, whether temporary or permanent.
7
- 8 D. "Place of Employment" means an area under the control of a public or private employer including, but not
9 limited to auditoriums; cafeterias; classrooms; conference and meeting rooms; elevators; employee
10 lounges; hallways; medical facilities; private offices; restrooms; stairways; and work areas. A private
11 residence is not a "workplace" unless it is used as a child care, adult day care, or health care facility.
12 Vehicles used in whole or in part for work purposes are places of employment during hours of operation if
13 more than one person is present, and: (1) the vehicle is located within "Indian Country," as defined in 18
14 U.S.C. § 1151, and (2) a tribal member, or a minor who is eligible for tribal enrollment but not yet
15 enrolled, is present in the car.
16
- 17 E. "Public place" means any enclosed area to which the public is permitted or invited, including but not
18 limited to, aquariums; banks; bars; bingo facilities; child and adult care facilities; common use areas in
19 apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple
20 unit residential facilities; convention facilities; educational facilities (both public and private); elevators;
21 galleries; gaming facilities; health care facilities; hotels and motels excluding designated sleeping rooms
22 rented to guests; laundromats; libraries; museums; offices; places of public meeting or assembly including
23 school buildings, service lines, shopping malls, and enclosed sports arenas; polling places; public
24 restrooms; public transportation vehicles and facilities including buses, taxi cabs, and ticket, boarding, and
25 waiting areas of public transit depots; reception areas; restaurants and other facilities which provide food
26 and/or beverage service; retail food production and marketing establishments; retail service
27 establishments; retail stores; shopping malls; sports arenas; theaters and other facilities used primarily for
28 exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances; veteran,
29 fraternal, and similar clubs; and waiting rooms.
30
- 31 F. "Smoking" of commercial tobacco means inhaling, exhaling, burning, carrying or possessing any lighted or
32 heated commercial tobacco product, including but not limited to cigars, cigarettes, pipe tobacco, hookah
33 pipes, or using any battery operated "Electronic cigarettes" or other gadget oral smoking devices promoted
34 with the purpose of circumventing public anti-smoking laws.
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- 36 G. "Secondhand smoke" means the particulate matter, gases, and other by-products of combustion emitted
37 from a lighted pipe, the lit end of a cigarette or cigar, or an other form of commercial tobacco and also the
38 exhaled by-products of tobacco combustion previously inhaled during the smoking of a pipe, cigarette, or
39 cigar, or any other form of commercial tobacco.
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41 **Section Four. Prohibition of Smoking in Enclosed Public Places**

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43 The smoking of commercial tobacco products shall be prohibited in all enclosed public places within the
44 Cheyenne River Reservation.
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46 **Section Five. Prohibition of Smoking in Places of Employment**

- 47
48 A. The smoking of commercial tobacco products shall be prohibited in all enclosed places of employment
49 within the Cheyenne River Reservation.
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1 B. This prohibition on the smoking of commercial tobacco products shall be communicated to all existing
2 employees both orally and in writing by the effective date of the Article and to all prospective employees
3 upon their application for employment.
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5 **Section Six. Reasonable Distance**
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7 The smoking of commercial tobacco products is prohibited within 50 feet of outside entrances, operable
8 windows, and ventilation intakes of enclosed areas where smoking is prohibited, so as to ensure that
9 secondhand smoke does not enter those areas.
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11 **Section Seven. Public Awareness**
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- 13 A. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted
14 in every public place and place of employment where smoking is prohibited by this Article, by the owner,
15 operator, manager, or other person in control of that place.
16
17 B. All ashtrays, matchbooks, or similar smoking equipment intended for use on the premises shall be removed
18 from any area where smoking is prohibited by this Article by the owner, operator, manager or other person
19 having control of the area.
20

21 **Section Eight. Where Commercial Tobacco Use is Not Regulated**
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23 Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to
24 the restrictions of this Act.
25

- 26 A. Private residences unless made available to the general public for commercial uses, including but not
27 limited to child, adult or health care facilities.
28
29 B. Outdoors, except as described in Section Six.
30
31 C. Hotel or motel sleeping rooms rented to guests, provided the rooms are designated as smoking areas.
32
33 D. The Cheyenne River Sioux Tribe hereby continues to recognize the fundamental use of traditional tobacco.
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35 **Section Nine. Enforcement**
36

- 37 A. This Article shall be enforced by Law Enforcement or an authorized designee.
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39 B. Notice of the provisions of this Article shall be given to all applicants for a business license in the
40 Cheyenne River Sioux Tribe of South Dakota.
41
42 C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the
43 appropriate Law Enforcement.
44
45 D. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform any
46 person violating this Article of the appropriate provisions thereof, and shall ask the person to refrain from
47 smoking. If the person does not refrain from smoking after being asked to do so, the owner, manager,
48 operator, or employee shall ask the person to leave. If the person refuses to leave, the owner, manager,
49 operator, or employee shall handle the situation consistent with lawful methods for handling other persons
50 acting in a disorderly manner or as a trespasser.
51

- 1 E. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action
2 to enforce this Article.
3
- 4 F. In addition to the remedies provided by the provisions of this Section, Law Enforcement or any person
5 aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a
6 place of employment to comply with the provisions of this Article may apply for injunctive relief to
7 enforce those provisions in any court of competent jurisdiction.
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9 **Section Ten. Civil Violations**

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- 11 A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall pay a
12 civil penalty not exceeding fifty dollars (\$50) for each violation.
13
- 14 B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and
15 who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine
16 not exceeding one hundred dollars (\$100) for each violation.
17
- 18 C. In addition to the fines established by the Section, violation of this Article by a person who owns,
19 manages, operates, or otherwise controls a public place or place of employment may result in the
20 suspension or revocation of any permit or license issued to the person for the premises on which the
21 violation occurred.
22
- 23 D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by Law
24 Enforcement by restraining order, preliminary and permanent injunction, or other means provided for by
25 law, and the Cheyenne River Sioux Tribe may take action to recover the costs of the nuisance abatement.
26
- 27 E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
28
- 29 F. Ignorance of the requirements of this ordinance is not a defense to the civil penalties.
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31 **Section Eleven. Public Education**

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33 The Cheyenne River Sioux Tribe Health Educator shall engage in a continuing program to explain and clarify
34 the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and
35 managers in their compliance with it. The program may include publication of a brochure for affected
36 business and individuals explaining the provisions of this ordinance.
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38 **Section Twelve. Liberal Construction**

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

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44 This Act shall not be amended except by recommendation by the Health and Human Service Committee of the
45 Cheyenne River Sioux Tribe of South Dakota.
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47 **Section Fourteen. Effective Date.**

48 This Article shall be effective on the first of the month following the first full calendar month following the
49 date of this Article's adoption.