

TITLE VIII – JUDICIARY; LAW & ORDER
CHAPTER 15 – COMMERCIAL TOBACCO-FREE BUILDINGS;
PUBLIC AND PRIVATE WORKSITES AND PUBLIC PLACES CODE

CHAPTER 1. AUTHORITY AND PURPOSE

SECTION 101. TITLE

This Code shall be known as the Nottawaseppi Huron Band of the Potawatomi (NHBP) Commercial Tobacco-Free Buildings; Public and Private Worksites and Public Places Code.

SECTION 102. AUTHORITY

The Tribal Council of the NHBP enacts this Code to ensure that all Tribal members, family, friends, employees and Tribal guests, and the next seven generations are not exposed to commercial tobacco use including secondhand smoke or to the uses of commercial tobacco products. The Tribal Council adopts this Code pursuant to the express grant of authority enumerated in Article VI, Section 1(a) to promote and protect the health, safety, education, and general welfare of the Band and its members.

SECTION 103. PURPOSE

- A. To restrict or prohibit the advertisement and/or promotion of any tobacco products (hereinafter referred to as “Tobacco Industry”) on NHBP land in order to promote the health of Tribal member’s and future generations.
- B. The goal of this Tribal Code is to ensure that exposure to commercial tobacco use including exposure to secondhand smoke as well as the uses of commercial tobacco products by Tribal members, family, friends, employees and Tribal guests are minimized or eliminated.
- C. This Code is not intended to restrict the use of ceremonial and/or traditional tobacco use.
- D. To keep Tribal adolescents and young adults from starting to use commercial tobacco for non-ceremonial/traditional recreational use.
- E. To prohibit the selling, giving, or furnishing of commercial and/or recreational tobacco products to minors and to regulate the retail sale of recreational commercial tobacco products by prohibiting their sale in most locations within the Nottawaseppi Huron Band of the Potawatomi Reservation.

SECTION 104. DEFINITIONS

As used in this Code, the singular includes the plural and the plural the singular when consistent with the intent of this Code. The following definitions apply:

- A. **Adult** – means a person eighteen (18) years of age or older, or otherwise emancipated by order of the Tribal Court or a court of competent jurisdiction.

- B. **Buildings** – all buildings owned by the NHBP including all businesses and all rental buildings.
- C. **Business** – means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional businesses and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- D. **Ceremonial Tobacco Use** – a use that is not prohibited by this Code includes ceremonial and/or traditional uses including but not limited to: smudging, carrying or passing tobacco ties, wearing tobacco pouches, possessing a single cigarette to be immediately used in a traditional ceremony, or using a traditional pipe in connection with recognized traditional spiritual or cultural protocols. Questions as to whether a particular practice is in accord with “traditional spiritual or cultural protocols” will be referred to a pipe carrier within the lodge the proponent claims to identify with.
- E. **Child** – means an individual who has not attained the age of eighteen (18) years of age.
- F. **Commercial Tobacco Product** – is commercially produced cigarettes, bidis, cheroots, stogies, cigars, pipe or other smoking tobacco, snuff, snuff flour, cavandish, plug and twist tobacco, smokeless, spit, chew, fine cut and other chewing tobacco, shorts, and any other kind and forms of tobacco prepared in such a manner as to be suitable for smoking in a pipe or otherwise are all subject to this Code.
- G. **Commercial Tobacco Use** – means chewing/dipping or inhaling, exhaling, burning or carrying any lighted commercial tobacco product.
- H. **Employee** - means any person who is employed by the NHBP in consideration for direct or indirect monetary wages, and any person who volunteers his or her services for any business of the NHBP.
- I. **Indian** – means any member of a federally recognized American Indian Tribe or Alaska Native, a Canadian Indian Tribe or First Nation, or any person from a non-federally recognized Indian Tribe.
- J. **Minor** – means an individual who is not married and has not attained the age of eighteen (18) years of age.
- K. **Parent** – means a person who is legally responsible for the control and care of a child, including a natural or adoptive parent, a legal guardian or custodian, excluding persons whose parental rights have been terminated.
- L. **Permanent Guardian** – means a guardian who has been granted long term guardianship status that is irrevocable unless the guardian is unsuitable as determined by the Tribal Court or the appointed guardian petitions for revocation.
- M. **Public Place** – means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to: educational events, health facilities, public transportation, reception areas, retail food production and marketing establishments, retail services establishments, retail stores, waiting rooms. A private residence is not a public place.
- N. **Recreational Tobacco Use** – means a use of any commercial tobacco product for a use that is not a recognized Ceremonial Tobacco Use.

- O. **Rental Housing** – means any residential house, duplex or apartment that is owned by the Tribe and rented to any person.
- P. **Tribal Council** – the elected governing body, exercising legislative and executive powers, of the Nottawaseppi Huron Band of the Potawatomi Indians as set forth in the NHBP Constitution.
- Q. **Tribal Court or Court** – means the Nottawaseppi Huron Band of the Potawatomi Tribal Court.
- R. **Worksite** – means any area under the control of the NHBP which employees normally frequent during the course of their employment, including but not limited to: work areas, employee lounges and restrooms, conference and class rooms, employee cafeteria, and hallways. A private residence is not a worksite unless it is used as a child care, adult care, or health care facility.

CHAPTER 2. PROHIBITION OF COMMERCIAL TOBACCO USE IN PUBLIC AND PRIVATE WORKSITES AND PUBLIC PLACES

SECTION 201. INSIDE OF BUILDINGS AND OTHER ENCLOSED AREAS

Commercial Tobacco Use shall be prohibited in all NHBP Buildings including the enclosed public and private worksites and public places within the jurisdiction of the NHBP, except as provided in Section 203 and 204. All such Buildings and other enclosed spaces shall remain free of all recreational tobacco use.

SECTION 202. OUTSIDE OF BUILDINGS

Except as provided in Section 203, commercial tobacco use shall be prohibited outside of all NHBP buildings and other worksites. No recreational commercial tobacco use is permitted within 50 feet of any building entry way or window. Commercial tobacco use shall be permitted at the cigarette urns located 50 feet away from buildings and on sidewalks and roads that are not within 50 feet from a building entryway or window. Because of the close proximity to buildings, commercial tobacco use on Mno Bmadzewen Way is not permitted between 1 ½ Mile Road and 50 feet past the Western edge of the Community Building located at the tobacco urn. “No Commercial Tobacco Use” and “No smoking” signs shall be placed on all current and future buildings. All used tobacco products and cigarettes must be disposed of in the cigarette urns or trash receptacles located at the designated smoking areas within NHBP land.

SECTION 203. LICENSED GAMING FACILITIES.

A Gaming Facility licensed by the NHBP Gaming Commission may allow commercial tobacco use in all designated gaming areas of the Gaming Facility, in other designated common areas open to the public, in designated smoking lounges established for employees of the Gaming Facility, and in designated areas located outside the Gaming Facility. The use of smokeless tobacco shall be permitted in the back of the house because no one under the age of 18 is permitted in the back of the house and will not be influenced by visualization of commercial tobacco use. A Gaming Facility may designate not more than twenty-five percent (25%) of the

hotel rooms at its location as designated “Smoking Rooms”. The manager or person having control of the Gaming Facility shall clearly and conspicuously post “no commercial tobacco use” signs or the international “no smoking” symbol in all areas of the Gaming Facility where commercial tobacco use is prohibited and remove all ashtrays and other smoking paraphernalia from such areas.

SECTION 204. PRIVATE RESIDENCES.

Nothing in this Code shall be construed to prohibit recreational commercial tobacco use by persons in privately-owned residences located on land owned by the Tribe or on the Reservation; however, this exception does not authorize recreational commercial tobacco use in rental homes owned by the Tribe.

CHAPTER 3. PROHIBITION OF COMMERCIAL TOBACCO ADVERTISING

SECTION 301. ADVERTISING

- A. It shall be unlawful for any person, business, or tobacco retailer to advertise any tobacco products, or distribute free or low cost tobacco industry materials on the NHBP land or in any NHBP buildings, with the exception of the specific retail outlet designated by the Tribal Council as being authorized to sell tax-exempt tobacco products under the Tribal-State Tax Agreement.
- B. It shall be a violation of this policy for any tribal group, organization, or agency to accept tobacco industry sponsorship to finance any community event.
- C. It shall be a violation of this policy for any non-casino employee of the NHBP to wear clothing or other items that bear tobacco company brand logos at schools or other community events and venues during work hours.

CHAPTER 4. PROHIBITING TOBACCO DISTRIBUTION

SECTION 401. SALE TO MINORS

- A. It shall be unlawful for any person, business, or tobacco retailer to sell tobacco products or provide tobacco products free of charge to anyone who is less than 18 years of age.
- B. No person, including but not limited to business, tobacco retailer, or owner, manager or operator, of any establishment subject to this policy shall sell, offer to sell, or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser’s age as 18 years or greater.
- C. Any person, including but not limited to business, tobacco retailer or other establishment subject to this policy shall post plainly visible signs at the point-of-purchase of tobacco products that state: “The sale of tobacco products to persons under 18 years of age is

prohibited by law. Photo ID is required to purchase tobacco.” The letters of these signs shall be at least one-quarter inch (1/4”) high.

- D. No person, including but not limited to business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises, any vending machine for the purpose of selling or distributing any tobacco product.
- E. It shall be unlawful for any person including but not limited to, business, or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale, any tobacco product or tobacco promotional product by means of self-service merchandising or by means other than vendor assisted sales.
- F. It shall be unlawful for any person including but not limited to, business, or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale, any tobacco packages containing fewer than 20 cigarettes, or un-packaged individual cigarettes.
- G. It shall be unlawful for any person, business, or retailer to sell, permit to be sold, offer for sale, or display for sale candy “cigarettes,” bubblegum packaged like chewing tobacco, or any other tobacco-like candy.
- H. It shall be unlawful for any person including but not limited to, business, or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale tobacco “blunts” (sweetened cigarette wrappers composed of fruit and tobacco), and other youth targeted tobacco products, including, but not limited to, bidis, cloves, or “sweet” flavored cigarettes or chew.
- I. It shall be unlawful for any person including but not limited to, business or tobacco retailer to sell or distribute any tobacco product for free or below the cost of such products to the sellers or distributors of the products for commercial or promotional purposes, to members of the general public in public places or at public events.

CHAPTER 5. PROHIBITING TOBACCO POSSESSION

SECTION 501. PROHIBITING MINOR POSSESSION OF TOBACCO

No minor under 18 years of age shall:

- A. Purchase or attempt to purchase a commercial or recreational tobacco product.
- B. Possess or attempt to possess a commercial or recreational tobacco product apart from that which is used for traditional and/or ceremonial purposes.
- C. Use a commercial or recreational tobacco product in a public place apart from that which is used for traditional and/or ceremonial purposes.

- D. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing attempting to purchase, or attempting to possess a tobacco product.

SECTION 502. EXCEPTION FOR CEREMONIAL AND/OR TRADITIONAL TOBACCO USE

There is an exception to this Code for minors under the age 18 regarding ceremonial and/or traditional tobacco use. Commercial tobacco may be used as follows: carrying tobacco ties, passing a traditional pipe, wearing a tobacco pouch, or possessing a single cigarette to be immediately used in a traditional manner (i.e. to ask for a blessing or a favor of someone), or as provided for in a traditional or ceremonial use.

CHAPTER 6. POSTING OF SIGNS

SECTION 601. NO TOBACCO USE SIGNS

No commercial tobacco use signs and the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with bars across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where commercial tobacco use is prohibited by this Code. The signage shall be posted by the NHBP or the other person having control of such area.

CHAPTER 7. ENFORCEMENT

SECTION 701. ENFORCEMENT

Enforcement of this Code shall be implemented by the NHBP Police Department and the NHBP Tribal Court. Anyone who desires to make a complaint for a violation of this Code may initiate enforcement through the NHPB Police Department.

CHAPTER 8. VIOLATIONS AND PENALTIES

SECTION 801. PENALTIES

- A. It shall be unlawful for any individual who is subject to jurisdiction under this Code to fail to comply with any of its provisions.
- B. It shall be unlawful for any individual to smoke or use commercial tobacco in any area where it is prohibited by the provisions of this Code. Any individual violating this Code shall be guilty of a civil infraction punishable by either or both of the following:
 - 1. A warning citation;
 - 2. A fine not exceeding one hundred dollars (\$100).
- C. It shall be unlawful for any individual to sell tobacco to minors as provided for in this Code. Any individual violating this Code shall be guilty of a civil infraction punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 2. A fine not exceeding five hundred dollars (\$500) for a second violation of this Code.
 3. A fine not to exceed one thousand dollars (\$1000) for each additional violation of this Code.
- D. Any individual who owns, manages, operates, or otherwise controls the use of any premises subject to jurisdiction under this Code and on whose premises a violation of any provision of this Code occurs shall be guilty of a civil infraction punishable by:
1. A warning citation for a first violation.
 2. A fine not exceeding one hundred dollars (\$100) for a second violation within one (1) year from a finding of the first violation, provided that adequate time has elapsed between the first and second violation for the alleged violator to have received notice of the first violation.
 3. A fine not exceeding five hundred dollars (\$500) for a third violation of this Code within one (1) year from a finding of the first violation.
 4. A fine not to exceed one thousand dollars (\$1000) for each additional violation of this Code within one (1) year from a finding of the first violation.
- E. Within ten (10) days after receipt of a citation issued under this section, the alleged violator may appeal the citation to the NHBP Tribal Court.

SECTION 802. VIOLATIONS BY MINORS

- A. It shall be unlawful for a minor who is subject to jurisdiction under this Code to fail to comply with any of its provisions.
- B. A minor who violates this Code is guilty of a civil infraction and punishable by a fine not to exceed fifty dollars (\$50) for each violation. Pursuant to a Court Order, the court may also require the minor to participate in a health promotion and risk reduction assessment program, if available. A minor who is ordered to participate in a health promotion and risk assessment program under this subsection is responsible for the costs of participation in the program. A minor violating this Code shall be guilty of a civil infraction punishable by and subject to any of the following:
1. For the first violation, the court may order the minor to do any of the following:
 - i. Perform not more than 16 hours of community service for Tribal Elders, or in a hospice, nursing home, or long-term care facility, or any other community service as ordered by the Court;
 - ii. Participate in one of the two following health promotion and risk reduction programs:
 - a. Complete a 90 minute Tobacco 101 Course with a NHBP RN and submit the Certificate of Completion to the Court; or if not available,
 - b. Complete a Five Session Tailored Course via 800 Quit Now and submit the Certificate of Completion to the Court.

2. For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the minor to perform not more than 32 hours of community service for Tribal Elders, in a hospice, nursing home, or long-term care facility, or any other community service as ordered by the Court.
 3. For a third or subsequent violations, in addition to participation in a health promotion and risk reduction program, the court may order the minor to perform not more than 48 hours community service for Tribal Elders, in hospice, nursing home, or long-term care facility, or any other community service as ordered by the Court.
- C. Within ten (10) days after receipt of a citation issued under this section, the alleged violator may appeal the citation to the NHBP Tribal Court.