

# TITLE 16: BUSINESSES

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# TITLE 16: BUSINESSES

## CHAPTER 1

### BUSINESS LICENSING

#### PART I: LEGISLATIVE FINDINGS AND PURPOSE

##### §16-1-101. Sovereign Power to Regulate Business

The power to regulate business conducted within the Rosebud Sioux Indian Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Rosebud Sioux Tribe except where it has been limited or withdrawn by applicable laws of the United States. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to the Constitution and Bylaws ratified on November 23, 1935, and approved by the Commissioner of Indian Affairs on December 20, 1935, as amended from time to time thereafter. Pursuant to the Constitution and Bylaws, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This Chapter is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1(f), (h), (i), (k), (m), (n), (t) and (u).

##### §16-1-102. Tribal Power to Impose Taxes and License Fees

The primary responsibility to determine the meaning of the tribal Constitution and Bylaws lies with the Tribal Council. The Council finds that the combined meaning of subsections (h) and (m) of Article IV, Section 1 of the Tribal Constitution is that the Tribal Council is entitled to regulate the conduct of trade on the Reservation by both members and non-members, that the terms "taxes" and "license fees" in subsection (h) are used interchangeably and that the Tribal Council has the authority to impose the license fees provided for in this Chapter as a form of taxation on tribal members and non-members alike.

The Rosebud Sioux Tribal Council further finds that the imposition of license fees as provided in this Chapter is consistent with Article IV, Section 1 of the Rosebud Sioux Tribe Constitution.

##### §16-1-103. Purpose

The Rosebud Sioux Tribal Council finds that the regulation of persons engaged in trade and business on the Rosebud Indian Reservation is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe. Accordingly, the Council declares

that the Tribe has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States.

#### §16-1-104. Definitions

The following terms, whenever used or referred to in this Chapter, shall have the following meanings, unless a different meaning clearly appears from the context:

- (1) "*Agent*" means the individual or individuals designated by any "*licensee*" to receive and accept "*service of process*."
- (2) "*Applicant*" means any "*person*" who submits an application to the Tribe for a business license and who has not yet received such license.
- (3) "*Business*" means any regular or "*temporary business*" activity engaged in by any "*person*" for the purpose of conducting a trade, profession or commercial activity involving the "*sale*" of any "*property*" or "*services*"; provided, however, that an isolated sale of property or services shall not be considered to be "*business*" under this Chapter.
- (4) "*Chapter*" means the Rosebud Sioux Business Licensing Chapter as enacted and amended by the "*Council*."
- (5) "*Company*" means any "*person*" or group of people engaged in "*business*."
- (6) "*Council*" means the Rosebud Sioux Tribal Council acting as the governing body of the Rosebud Sioux Tribe pursuant to its Constitution and Bylaws as approved and amended.
- (7) "*Director*" means the Tribal Revenue Director acting in his or her official capacity.
- (8) "*Governmental Entity*" means the United States, the "*Tribe*," a state or any political subdivision, agency, or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.
- (9) "*Licensee*" means any "*person*" who is granted a business license by the Tribe.
- (10) "*Notice*" means actual notice by hand delivery or by certified mail. For time computations as provided for in this Chapter, which are to begin upon "*notice*," such notice shall be at delivery, except that where delivery is not possible after three consecutive postal days due to the inaction of the "*agent*," notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Director, the forms shall be mailed by regular mail.
- (11) "*Person*" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, public utility, club, business trust, non-profit corporation, corporation, association, society, or any group of individuals

acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and includes any instrumentality thereof. The term includes members and non-members of the "*Tribe*," but excludes any "*governmental entity*".

- (12) "*Property*" means any existing and identified real or personal property, including, but not limited to "*goods*" as that term is defined by Section 105 of the Sales Chapter.
- (13) "*Reservation*" means the Rosebud Indian Reservation as now or hereafter constituted.
- (14) "*Sale*" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.
- (15) "*Service of Process*" includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the "*Director*" or "*Tribal Court*".
- (16) "*Services*" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.
- (17) "*Tribal Court*" means the Tribal Court of the Rosebud Sioux Tribe.
- (18) "*Tribal law*" means the tribal Constitution and all laws now and hereafter duly enacted by the "*Council*".
- (19) "*Tribal member*" or "*member of the Tribe*" means an enrolled member of the Rosebud Sioux Tribe. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Chapter only, if 51% or more of the entity is owned by Tribal members.

#### §16-1-105. Administration of Chapter

Because of the close interrelationship between the Tribe's inherent sovereign powers to regulate the conduct of business on the Reservation and the Tribe's inherent sovereign powers to collect taxes from persons engaged in business on the Reservation, the Tribal Revenue Department is hereby delegated the responsibility to administer the provisions of this Chapter. The Tribal Revenue Department is hereby delegated all powers which are specifically provided for in this Chapter, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

### §16-1-106. Administrative Actions

The Director shall promulgate regulations pursuant to this Chapter, formulate recommendations to submit to the Council for revisions of or amendments to this Chapter, and take other actions necessary for the administration of the provisions of this Chapter.

### §16-1-107. Agreements with Federal, State and Local Governments

In the event it is deemed appropriate to effectuate the provisions of this Chapter, the Tribal Council shall negotiate Memoranda of Agreement concerning this Chapter with federal, state and local governments.

## PART II: BUSINESS LICENSES

### §16-1-201. Applicability

This Chapter shall be applicable to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 204(1).

### §16-1-202. Application and Issuance

An application for a business license shall be submitted in writing to the Tribal Revenue Department, using forms which it shall provide. Any person engaged in business at the time this Chapter is enacted shall have 30 days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

- (1) A description of the type of business;
- (2) The name and address of the owner or owners of the business;
- (3) The trade name, if any, to be used by the company;
- (4) The locations on the Reservation at which the business will be conducted;
- (5) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (6) A statement that the applicant consents to Tribal Court jurisdiction and service of process in matters arising from the conduct of business;
- (7) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Director shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

### §16-1-203 Denial of License and Appeal

If it is determined that

- (1) the applicant has materially misrepresented facts contained in the application,
- (2) the applicant presently is in non-compliance with tribal law, or
- (3) the business will threaten the peace, safety, morals, or general welfare of the Tribe,

the Director shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three days from receipt of the order of denial to file a notice of appeal with the Tribal Revenue Department for an expedited administrative hearing under Section 305(1) of this Chapter, or 30 days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 305(2) of this Chapter.

### §16-1-204. Exemptions

- (1) The following shall not be required to obtain a license under this Chapter:
  - (a) governmental entities;
  - (b) tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
  - (c) tribal members engaged in the traditional practice of medicine; and
  - (d) employees of a person.
- (2) The following shall not be required to pay a fee for the issuance of a business license under this Chapter:
  - (a) any church engaged in raising funds for religious or charitable purposes;
  - (b) any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
  - (c) any accredited school, no part of the income of which accrues to the personal benefit of any individual.

### §16-1-205. Classes of Licenses

- (1) Temporary Business License: All persons engaged in business on the Reservation for a period of four days or less shall have a temporary business license. The fee for a temporary business license is \$10.00.

- (2) Seasonal Business License: All persons engaged in business on the Reservation for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$25.00.
- (3) Permanent Business License: All persons engaged in business for a period exceeding three months shall have a permanent business license. The fee for a permanent business license is \$50.00. A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Tribal Revenue Department of any change in the licensee's business activities, which render inaccurate the information previously provided to the Tribal Revenue Department under Section 202 of this Chapter.

#### **§16-1-206. Conditions of License**

Each licensee shall comply with all applicable tribal laws, including but not limited to: tax laws, Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortious acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court.

Each licensee shall respond in a timely manner to requests by the Tribal Revenue Department for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Chapter.

### **PART III: SANCTIONS**

#### **§16-1-301. Revocation of License; Failure to Obtain License; Show Cause Hearing**

- (1) Whenever it is brought to the attention of the Tribal Revenue Department that any person is in non-compliance with any condition of his license or has failed to obtain a license within the time requirements of this Chapter, the Director may serve upon such person or any agent of such person an order to show-cause why his license should not be revoked or why he should not be enjoined from doing business on the Reservation without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he shall deem appropriate as to why a revocation order or an injunction should

not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of the notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

- (2) In the event it is determined that any person's non-compliance with this Chapter is a direct and immediate threat to the peace, safety, morals, or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Court within three days for an expedited appeal under Section 305(3) of this Chapter, or within 30 days for a regular appeal to Tribal Court under Section 305(2) of this Chapter.

### **§16-1-302. Civil Penalties and Restitution**

- (1) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Chapter, the Director may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount of the penalty shall not exceed \$1,000.00 for each violation.
- (2) The Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his failure to comply with the conditions of his license or his failure to secure a license within the time requirements of this Chapter.
- (3) The Director may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his license or failure to secure a license within the time requirements of this Chapter.

If the Director submits a suggested penalty amount, the Director shall expressly address in writing each and all of the following criteria:

- (a) the good or bad faith of the violator;
- (b) the injury to the public resulting from the violation;
- (c) the benefits derived by the violator from the violation;
- (d) the violator's ability to pay;
- (e) the administrative costs of prosecution; and
- (f) the need to deter similar behavior by the violator and others and to vindicate the Tribe's authority and the integrity of the Director's orders.

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Chapter, and secondarily, to deter continued violations of this Chapter by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

#### **§16-1-303. Removal and Exclusion of Non-Indians**

If any non-Indian, except any person authorized by federal law to be present on tribal land or any person who owns real property on the Reservation, fails to comply with any order of the Director without appealing the order or fails to appear for any hearing, the Director may petition the Tribal Court for an order directing the Tribal police to remove the non-Indian physically from the Reservation in accordance with Tribal law. The Director may also petition the Tribal Court for an order permanently excluding the non-Indian, except any person authorized by federal law to be present on tribal land, or any person who owns real property on the Reservation, and an order authorizing the seizure and sale of any business property necessary to satisfy restitution and civil penalties imposed under this Chapter.

#### **§16-1-304. Other Remedies**

The Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Chapter, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include findings showing:

- (1) the basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (2) the order, judgment or decree was not obtained fraudulently; and
- (3) the defendant was afforded due process.

#### **§16-1-305. Appeals**

##### **(1) Expedited Administrative Appeal.**

- (a) If an applicant for a business license seeks an administrative hearing, the Tribal Revenue Department, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.
- (b) At the hearing the applicant shall be entitled to present testimony and cross examine opposing witnesses, and present any other evidence which

the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Director shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned. \*

- (c) The Director shall rule upon the appeal within three working days after the hearing, and shall set forth in writing the factual findings and the reasons for his decision. If the appeal is denied, the ruling shall state that the applicant has 30 days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.
- (d) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.
- (e) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Director. No new or additional evidence may be introduced during the appeal.
- (f) The Tribal Court shall uphold all factual findings of the Director unless the Court determines that such findings are not supported by substantial evidence in the record established before the Director. In reviewing reasons for denial of the license by the Director, the Court shall give proper weight to the Director's interpretation of this Chapter and any regulations promulgated hereunder.

## **(2) Direct Appeal to the Tribal Court.**

If any person entitled to an appeal pursuant to this Chapter seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

## **(3) Expedited Direct Appeal to the Tribal Court.**

- (a) Any person seeking an expedited appeal pursuant to Section 301(b) of this Chapter shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal the Tribal Court shall

notify the appellant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be held no later than five working days after receipt by the Tribal Court of the notice of appeal.

- (b) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedure of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within three working days after completion of the hearing.

#### **PART IV: SAVINGS CLAUSE**

In event that any provision of this Chapter shall be found or declared to be invalid, the remaining provisions of this Chapter shall be unaffected thereby, and shall remain in full force and effect.

## CHAPTER TWO

### CONSUMER PROTECTION

#### §16-2-101. Unfair & Deceptive Practices Unlawful

It shall be unlawful for any person to use any unfair or deceptive act or practice in the conduct of his or her business.

#### §16-2-102. Ambiguities In Documents Of Sale

Where a document related to a contract of sale of goods or services between a merchant seller and a non-merchant buyer contains language which is uncertain or is reasonably capable of being understood as having more than one meaning, any such ambiguity shall be resolved in favor of the buyer in a manner consistent with the understanding a reasonable buyer would have had at the time of the sale.

#### §16-2-103. Unsolicited merchandise

Unless otherwise agreed, where unsolicited merchandise is delivered in person or by mail or common carrier to a person, he or she has a right to refuse such merchandise and is not obligated to return such merchandise to the sender. Such unsolicited merchandise shall be deemed an unconditional gift to the recipient, who may use it in any manner without any obligation to the sender. This section shall not apply if there is evidence of an obvious mis-delivery, or the merchandise is offered in good faith in substitution for merchandise solicited.

#### §16-2-104. Home Solicitation Sale

In this chapter, unless the context otherwise requires, "home solicitation sale" means, except as provided by Section 103 of this Chapter, any sale, lease or rental of goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

#### §16-2-105. Transactions Not Considered Home Solicitation Sales

The term "home solicitation sale" shall not include any transaction:

- (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635); or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or

(4) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; provided, however, that this exception shall not apply if the seller initiated the contact by telephone; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property; or

(7) Pertaining to the sale, lease or repair of motor vehicles, metal buildings, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis.

#### **§16-2-106. Home Solicitation Seller's Failure to Inform Buyer of Right to Cancel**

It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller, in connection with any home solicitation sale, to:

(1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form: "YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.";

(2) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

(3) Misrepresent in any manner the buyer's right to cancel.

**§16-2-107. Cancellation Notice Form to be Furnished and Filled in by Home Solicitation Seller**

It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller, in connection with any home solicitation sale, to:

(1) Fail to furnish each buyer, at the time he signs the home solicitation sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information:

**NOTICE OF CANCELLATION**

(enter date of transaction)

(Date)

**YOU CAN CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, ON OR BEFORE \_\_\_\_\_ (DATE), WHICH IS WITHIN THREE BUSINESS DAYS FROM DATE OF THIS TRANSACTION.**

**IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT (CHECK, NOTE, ETC.) EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.**

**IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.**

**TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN**

NOTICE, OR SEND A TELEGRAM, TO (Name of seller) AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF \_\_\_\_\_  
(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

\_\_\_\_\_  
(Buyer's signature)

(2) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of transaction, by which the buyer may give notice of cancellation.

**§16-2-108. Deceptive to Include Confession of Judgment or Waiver of Rights in Home Solicitation.**

It is a deceptive act or practice, within the meaning of Section 101 of this Chapter, for any seller to include in any home solicitation contract or receipt any confession of judgment or any waiver or any of the rights to which the buyer is entitled under this chapter including specifically his right to cancel the sale in accordance with the provisions of this chapter.

**§16-2-109 Deceptive to Fail to Honor Notice of Cancellation of Home Solicitation Sale**

It is a deceptive practice within the meaning of Section 101 of this Chapter, for any seller, in connection with any home solicitation sale, to:

(1) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after the receipt of such notice, to refund all payments made under the contract or sale; return any goods or property traded in, in substantially good condition as when received by the seller; cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

(2) Fail, within ten business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

**§16-2-110 Criteria for Compliance of Home Solicitation Sales With Notice Requirements**

A home solicitation sale shall be deemed to be in compliance with the notice requirements of this chapter if:

(1) The buyer may at any time,

- (a) cancel the sale, or
- (b) refuse to accept delivery of the goods or services without incurring any obligation to pay for them, or
- (c) return the goods to the seller and receive a full refund for any amount the buyer has paid; and

(2) The buyer's right to cancel the sale, refuse delivery or return the goods without obligation or charge at any time is clearly and unmistakably set forth on the face or reverse side of the receipt or contract.

#### **§16-2-111 Advertising Media Exempt Without Knowledge of Unlawfulness**

Nothing in this chapter shall apply to publishers, broadcasters, printers, or other persons in so far as an unlawful act or practice as defined in Section 101 of this Chapter involves information that has been disseminated or reproduced on behalf of others without knowledge that is an unlawful act or practice.

#### **§16-2-112 Tribe May Restrain Prohibited Acts**

(1) The Tribe may cause a civil action to be brought in its name in Tribal Court against any person to restrain him or her and prevent the doing of any act or practice prohibited by Section 101 of this Chapter;

(2) In any action brought under this section, the court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property which may have been acquired by means herein declared to be unlawful.

#### **§16-2-113 Civil Action for Damages**

Any person who has been adversely affected by any act or practice which is unlawful under Section 101 of this chapter shall be permitted to bring a civil action in Tribal Court for rescission and for the recovery of actual damages together with the costs of suit and a reasonable attorney's fee. The court may in its discretion increase the award of damages in an amount not to exceed three times the amount of actual damages; provided, however, that the amount by which the award is increased shall not exceed One Thousand Dollars (\$1,000.00).

#### **§16-2-114 Limitation of Actions**

No action under this Chapter may be brought more than two years after the occurrence or discovery of the conduct which is the subject of the action.

## CHAPTER THREE

### FOOD SANITATION

#### §16-3-1 AUTHORITY

This Chapter is enacted pursuant to the authority of the Rosebud Sioux Tribe under Article IV, Sections K, M, and Q of the Rosebud Sioux Tribal Constitution.

#### §16-3-2 HEALTH BOARD

The final authority of any question of non-compliance with this Chapter shall rest with the Health Board of the Rosebud Sioux Tribe or its designee.

#### §16-3-3 LICENSE FEES

A fee of Twenty-five Dollars (\$25.00) shall be payable to the Tribe for each full-time food service license application and Ten Dollars (\$10.00) for each itinerant food service license, that any decision of non-compliance shall be full and just cause for revocation of any license granted under this Chapter.

#### §16-3-4 DURATION OF LICENSES

Each full-time food service license is valid for a period of one year, expiring on September 31 of each year. Each itinerant food service license is valid for ten (10) days after date of issuance.

#### §16-3-5 INSPECTION

Each full-time food service establishment will be inspected at least twice as year by the Indian Health Service's Office of Environmental Health staff in accordance with the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

#### §16-3-6 REINSTATEMENT AFTER REVOCATION

Any license revoked under this Chapter shall be reinstated only on determination of correction of the condition resulting in the finding of non-compliance and upon payment of a renewal fee not to exceed the original fee.

### §16-3-7 TRIBAL COURT JURISDICTION

License revocation and fines will be decided by the Rosebud Sioux Tribal Court upon refusal of the licensee to comply with the provisions of the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

### §16-3-8 CONDITION FOR ISSUANCE OF LICENSE

Prior to issuance of a food service license, the licensee must provide for proper water, sewer, and solid waste facilities; food protection equipment and practices; lighting, ventilation, and plumbing; and demonstrate the ability to operate a food service establishment properly by passing a food service inspection in accordance with the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration.

### §16-3-9 APPLICATION FOR LICENSE

The application for a temporary food service license for the Rosebud Sioux Tribal Reservation and Reserves, shall include the name and address of the individual, firm, association or organization, the type of food to be served, type of cooking facilities available, type of building to be utilized, a brief description of the sanitizing facilities to be used, a description of hand washing facilities available, waste disposal facilities, sources of all food supplies, and the names and addresses of all employees and a brief statement to the effect that the licensee has read and understands the provisions of the U.S. Public Health Service, Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration and agrees to abide by and adhere to the application sections of that document.

### §16-3-10 STANDARDS APPLICABLE

the inspection of food service establishments; the issuance, suspension and revocation of permits to operate food service establishments; the prohibiting of the sale of adulterated or misbranded food or drink; and the enforcement of this Chapter shall be regulated in accordance with the unabridged form of the U.S. Public Health Service, Model Food Service Sanitation Ordinance: 1976 Recommendations of the Food and Drug Administration. Three copies of which shall be on file in the Office of the Tribal Secretary, provided that the words "Municipality of" in said unabridged form shall be understood to refer to Rosebud Reservation of South Dakota.

### §16-3-11 VIOLATIONS

Any person who violates any of the provisions of this Chapter shall be guilty of a Class C offense. In addition thereto such persons may be enjoined from continuing such violations and have their food service license revoked. Each day upon such violation occurs constitutes a separate violation.

X.

TITLE 16: BUSINESSES

CHAPTER 1

BUSINESS LICENSING

PART I: LEGISLATIVE FINDINGS AND PURPOSE

§16-1-104. Sovereign Power to Regulate Business

The power to regulate business conducted within the Rosebud Sioux Indian Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Rosebud Sioux Tribe except where it has been limited or withdrawn by applicable laws of the United States. The Rosebud Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to the Constitution and Bylaws ratified on November 23, 1935, and approved by the Commissioner of Indian Affairs on December 20, 1935, as amended from time to time thereafter. Pursuant to the Constitution and Bylaws, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe. This chapter is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1(f),(h),(i),(m),(n),(t) and (u).

§16-1-102. Tribal Power to Impose Taxes and License Fees

The primary responsibility to determine the meaning of the tribal Constitution and Bylaws lies with the Tribal Council. The Council finds that the combined meaning of sub-sections (h) and (m) of Article IV, Section 1 of the Tribal Constitution is that the Tribal Council is entitled to regulate the conduct of trade on the Reservation by both members and non-members, that the terms "taxes" and "license fees" in subsection (h) are used interchangeably and that the Tribal Council has the authority to impose the license fees provided for in this Chapter as a form of taxation on tribal members and non-members alike.

The Rosebud Sioux Tribal Council further finds that the imposition of license fees as provided in this Chapter is consistent with Article IV, Section 1 of the Rosebud Sioux Tribe Constitution.

§16-1-103. Purpose

The Rosebud Sioux Tribal Council finds that the regulation of persons engaged in trade and business on the Rosebud Indian Reservation is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe. Accordingly, the Council declares that the Tribe has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States.

§16-1-104. Definitions

The following terms, whenever used or referred to in this Chapter, shall

have the following meanings, unless a different meaning clearly appears from the context:

- (1) "Agent" means the individual or individuals designated by any "licensee" to receive and accept "service of process."
- (2) "Applicant" means any "person" who submits an application to the Tribe for a business license and who has not yet received such license.
- (3) "Business" means any regular or "temporary business" activity engaged in by any "person" with the object of gain, benefit or advantage either direct or indirect, provided, however, that an isolated sale of property or services shall not be considered to be "business" under this chapter. A "ranch" or "farm" enterprise is not considered to be "business" under this chapter. Amended 10/12/89
- (4) "Chapter" means the Rosebud Sioux Business Licensing Chapter as enacted and amended by the "Council."
- (5) "Company" means any "person" or group of people engaged in "business."
- (6) "Council" means the Rosebud Sioux Tribal Council acting as the governing body of the Rosebud Sioux Tribe pursuant to its Constitution and bylaws as approved and amended.
- (7) "Director" means the Tribal Revenue Director acting in his or her official capacity.
- (8) "Governmental Entity" means the United States, a federally recognized Indian Tribe, a state or local government. It also includes any political subdivision, agency or department of the foregoing including any tribal entities as defined by Title 15 Chapter Four, Sec. 15-4-103 of the Law & Order Code. Amended 10/12/89
- (9) "licensee" means any "person" who is granted a business license by the Tribe.
- (10) "Notice" means actual notice by hand delivery or certified mail. For time computations as provided for in this Chapter, which are to begin upon "notice," such notice shall be at delivery, except that where delivery is not possible after three consecutive postal days due to the inaction of the "agent," notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Director, the forms shall be mailed by regular mail.
- (11) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm partnership, joint venture, club, business trust, non-profit corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and includes any instrumentality thereof. The term includes members and non-members of the "Tribe," but excludes any "governmental entity."

- (12) "Property" means any existing and identified real or personal property, including, but not limited to "goods" as that term is defined by Section 105 of the Sales Chapter.
- (13) "Reservation" means the Rosebud Indian Reservation as now or hereafter constituted.
- (14) "Sale" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.
- (15) "Services of Process" includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the "Director" or "Tribal Court."
- (16) "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.
- (17) "Tribal Court" means the Tribal Court of the Rosebud Sioux Tribe.
- (18) "Tribal Law" means the Tribal Constitution and all laws now and hereafter duly enacted by the "Council."
- (19) "Tribal Member" or "member of the Tribe" means an enrolled member of the Rosebud Sioux Tribe. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Chapter only, if 51% or more of the entity is owned by Tribal members.
- (20) "ranch" or "farm" means an operation where a "person" is in the primary business of raising or growing agriculture products.  
Amended 10/12/89

#### §16-1-104. Administration of Chapter

Because of the close relationship between the Tribe's inherent sovereign powers to regulate the conduct of business on the Reservation and the Tribe's inherent sovereign powers to collect taxes from persons engaged in business on the Reservation, the Tribal Revenue Department is hereby delegated the responsibility to administer the provisions of this Chapter. The Tribal Revenue Department is hereby delegated all powers which are specifically provided for in this Chapter, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

#### §16-1-106. Administrative Actions

The Director shall promulgate regulations pursuant to this Chapter, formulate recommendations to submit to the Council for revisions of or amendments to this Chapter, and take other actions necessary for the administration of the provisions of this Chapter.

§16-1-107. Agreements with Federal, State and Local Governments

In the event it is deemed appropriate to effectuate the provisions of this Chapter, the Tribal Council shall negotiate Memoranda of Agreement concerning this Chapter with federal, state and local governments.

PART II: BUSINESS LICENSES

§16-1-201. Applicability

This Chapter shall be applicable to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 204(1).

§16-1-202. Application and Issuance

An application for a business license shall be submitted in writing to the Tribal Revenue Department, using forms which it shall provide. Any person engaged in business at the time this Chapter is enacted shall have 30 days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

- (1) A description of the type of business;
- (2) The name and address of the owner or owners of the business;
- (3) The trade name, if any, to be used by the company;
- (4) The location on the Reservation at which the business will be conducted;
- (5) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (6) repealed 10/12/89
- (7) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Director shall notify the applicant by regular mail within 14 days after receipt whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

§16-1-203. Denial of License and Appeal

If it is determined that

- (1) the applicant has materially misrepresented facts contained in the application,
- (2) the applicant presently is in non-compliance with tribal law, or
- (3) the business will threaten the peace, safety, morals, or general welfare of the Tribe,

the Director shall issue an order of denial to the applicant by certified mail, return receipt, requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three days from receipt of the order of denial to file a notice of appeal with the Tribal Revenue Department for an expedited administrative hearing under Section 305(1) of this Chapter, or 30 days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 305(2) of this Chapter

§16-1-204. Exemptions

- (1) The following shall not be required to obtain a license under this Chapter:
  - (a) governmental entities;
  - (b) tribal members engaged in the creation of traditional Indian art or handicrafts in their homes;
  - (c) tribal members engaged in the traditional practice of medicine; and
  - (d) employee of a person.
- (2) The following shall not be required to pay a fee for the issuance of a business license under this Chapter:
  - (a) any church engaged in raising funds for religious or charitable purposes;
  - (b) any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual;
  - (c) any accredited school, no part of the income of which accrues to the personal benefit of any individual; and
  - (d) any non-profit corporation organized under SDCL 47-22 or organized under Title 15, Chapter Three of the Law & Order Code.

Amended 10/12/89

§16-1-205. Classes of Licenses

- (1) Temporary Business License: All persons engaged in business on the Reservation for a period of four days or less shall have a temporary business license. The fee for a temporary business license is \$10.00.
- (2) Seasonal Business License: All persons engaged on the Reservation for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$25.00.
- (3) Permanent Business License: All persons engaged in business for a period exceeding three months shall have a permanent business license. The fee for a permanent business license is \$50.00. A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Tribal Revenue Department of any changes in the licensee's business activities, which render inaccurate the information previously provided to the Tribal Revenue Department under Section 202 of this Chapter.

§16-1-206. Conditions of License

Each licensee shall comply with all applicable tribal laws, including but not limited to: tax laws, Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortious acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court.

Each licensee shall respond in a timely manner to requests by the Tribal Revenue Department for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Chapter.

PART III: SANCTIONS

§16-1-301. Revocation of License; Failure to Obtain License; Show-Cause Hearing

- (1) Whenever it is brought to the attention of the Tribal Revenue Department that any person is in non-compliance with any condition of license, the Director may,
  - (a) serve upon such person or any agent of such person an order to show cause why this license should not be revoked;

- (b) bring an action in Tribal Court for an order to institute a monetary penalty in accordance with §16-1-302;
  - (c) bring an action in Tribal Court for an order to show-cause why an injunction should not be issued.
- (2). Whenever it is brought to the attention of the Tribal Revenue Department that any person has failed to obtain a license within the time requirements of this Chapter, the Director may,
- (a) serve upon such person or any agent of such person an order to show-cause why a monetary penalty should not be imposed in accordance with §16-1-302;
  - (b) bring an action in Tribal Court for an order to show-cause why he should not be enjoined from doing business on the Reservation without a license.
- (3). Such notice shall state the reason for the order, the time and place for the show-cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he should deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.
- (4). In the event it is determined that any person's non-compliance with this chapter is direct or immediate threat to the peace, safety, morals or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with Tribal Court within three days for an expedited appeal under Section 305(3) of this Chapter, or within 30 days for a regular appeal to Tribal Court under Section 305(2) of this Chapter.

§16-1-302. Civil Penalties and Restitution

- (1). If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Chapter, the Director may bring an action in Tribal Court for an order requiring the person to appear and show-cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount of the penalty shall not exceed \$1,000.00 for each violation.
- (2). The Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his failure to comply with the conditions of his license or his failure to secure a license within the time re-

quirements of this Chapter.

- (3). The Director may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his license or failure to secure a license within the time requirements of this Chapter.

If the Director submits a suggested penalty amount, the Director shall expressly address in writing each and all of the following criteria:

- (a) the good or bad faith of the violator;
- (b) the injury to the public resulting from the violation;
- (c) the benefits derived by the violator from the violation;
- (d) the violator's ability to pay;
- (e) the administrative costs of prosecution.
- (f) repealed 10/12/89

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Chapter, and secondarily, to deter continued violations of this Chapter by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

#### §16-1-303. Removal and Exclusion of Non-Indians

If any non-Indian, except any person authorized by federal law to be present on tribal land or any person who owns real property on the Reservation, fails to comply with any order of the Director without appealing the order or fails to appear for any hearing, the Director may petition the Tribal Court for an order directing the Tribal police to remove the non-Indian physically from the Reservation in accordance with the Tribal law. The Director may also petition the Tribal Court for an order permanently excluding the non-Indian, except any person authorized by federal law to be present on tribal land, or any person who owns real property on the Reservation and an order authorizing the seizure and sale of any business property necessary to satisfy restitution and civil penalties imposed under this Chapter.

#### §16-1-304. Other Remedies

The Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Chapter, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include

findings showing:

- (1) the basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (2) the order, judgment or decree was not obtained fraudulently; and
- (3) the defendant was afforded due process.

§16-1-305. Appeals

- (1) Expedited Administrative Appeal.
  - (a) If an applicant for a business license seeks an administrative hearing, the Tribal Revenue Department, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.
  - (b) At the hearing the applicant shall be entitled to present testimony and cross examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Director shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.
  - (c) The Director shall rule upon the appeal within three working days after the hearing, and shall set forth in writing the factual findings and the reasons for his decision. If the appeal is denied, the ruling shall state that the applicant has 30 days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.
  - (d) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.
  - (e) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Director. No new or additional evidence may be introduced during the appeal.
  - (f) The Tribal Court shall uphold all factual findings of the Director unless the Court determines that such findings are

not supported by substantial evidence in the record established before the Director. In reviewing reasons for denial of the license by the Director, the Court shall give proper weight to the Director's interpretation of this Chapter and any regulations promulgated hereunder.

(2) Direct Appeal to the Tribal Court

If any person entitled to an appeal pursuant to this Chapter seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(3) Expedited Direct Appeal to the Tribal Court

(a) Any person seeking an expedited appeal pursuant to Section 301(b) of this Chapter shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal the Tribal Court shall notify the appellant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be held no later than five working days after receipt by the Tribal Court of the notice of appeal.

(b) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedure of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within three working days after completion of the hearing.

PART IV: SAVINGS CLAUSE

In the event that any provisions of this Chapter shall be found or declared to be invalid, the remaining provisions of this Chapter shall be unaffected thereby, and shall remain in full force and effect.

TRIBAL LAW 89 - 06

Section 1. Title

This Tribal law shall be cited as amendment(s) to Title Sixteen, Part II-  
Business Licenses.

Section 2. Amendment

Title 16-1-202(6) shall be deleted in its entirety.

Section 3. Amendment to §16-1-104(3)

§16-1-104(3) be amended to read as follows:

- (3) "Business" means any regular or "temporary business" engaged in by any "person" with the object of gain, benefit or advantage either direct or indirect, provided, however that an isolated sale of property or services shall not be considered to be "business" under this chapter. A "ranch" or "farm" enterprise is not considered to be "business" under this chapter.

Section 4. Amendment to §16-1-104(8)

§16-1-104(8) be amended to read as follows:

- (8) "Governmental Entity" means the United States, a federally recognized Indian Tribe, a state or local government. It also includes any political subdivision, agency or department of the foregoing including any tribal entities as defined by Title 15 Chapter Four, Sec. 15-4-103 of the Law & Order Code.

Section 5. Amendment to §16-1-204 Exemptions (1)

§16-1-204 Exemptions be amended to include the following:

- (2) (d) any non-profit corporation organized under SDCL 47-22 or organized under Title 15, Chapter Three of the Law & Order Code

Section 6. Amendment to §16-1-302 Civil Penalties and Restitution

§16-1-302 Civil Penalties and Restitution be amended by deleting §16-1-302(3) part (f) in its entirety.

Section 7. Amendment to §16-1-104

§16-1-104 be amended to read as follows:

- (20) "ranch" or "farm" means an operation where a "person" is in the primary business of raising or growing agriculture products.

Section 8. Amendment to §16-1-301

§16-1-301. Revocation of License; Failure to Obtain License; Show Cause Hearing be amended to read as follows:

- (1). Whenever it is brought to the attention of the Tribal Revenue Department that any person is in non-compliance with any condition of license, the Director may,
  - (a) serve upon such person or any agent of such person an order to show cause why this license should not be revoked;
  - (b) bring an action in Tribal Court for an order to institute a monetary penalty in accordance with §16-1-302;
  - (c) bring an action in Tribal Court for an order to show-cause why an injunction should not be issued.
- (2) Whenever it is brought to the attention of the Tribal Revenue Department that any person has failed to obtain a license within the time requirements of this Chapter, the Director may,
  - (a) serve upon such person or any agent of such person an order to show-cause why a monetary penalty should not be imposed in accordance with §16-1-302;
  - (b) bring an action in Tribal Court for an order to show-cause why he should not be enjoined from doing business on the Reservation without a license.
- (3). Such notice shall state the reason for the order, the time and place for the show-cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he should deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.
- (4). In the event it is determined that any person's non-compliance with this chapter is direct or immediate threat to the peace, safety, morals or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with Tribal Court

within three days for an expedited appeal under Section 305(3) of this chapter, or within 30 days for a regular appeal to Tribal Court under Section 305(2) of this chapter.

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