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**TRIBAL MEMORANDUM**

**DATE** : 5/8/15  
**TO** : SUPERINTENDENT, Cheyenne River Agency  
**FROM** : Ev Ann White Feather, Tribal Secretary *EvAnn White Feather*  
**SUBJECT** : Ordinance 77 – The CRST Smoke-Free Clean Air Act of 2015

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Transmitted herewith is one (1) original copy of the final approved Ordinance 77 – The Cheyenne River Sioux Tribe Smoke-Free Clean Air Act of 2015 which was duly adopted by the Cheyenne River Sioux Tribal Council during its Regular Session held on March 4, 2015 with a thirty (30) days publication period for public comment. A total of 157 written comments were received which were all in favor of the ordinance.

- Cc: Chairman  
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Tribal Health CEO  
Legal Department  
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Canli Coalition  
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File/2

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

ORDINANCE NO. 77  
The Cheyenne River Sioux Tribe Smoke-Free Clean Air Act of 2015

BE IT ENACTED:

**Section One. Title**

This article shall be known as "The Cheyenne River Sioux Tribe Smoke-free Air Act of 2015" and is dedicated to all of the Cheyenne River Sioux Tribal members who have died or who suffer from commercial tobacco related illnesses.

**Section Two. Findings and Intent**

- A. The Cheyenne River Sioux Tribe is committed to improving the Health and Welfare of all tribal members, to promote a healthy environment, and has an obligation to enact policies that protect members from harm.
- B. The Cheyenne River Sioux Tribe finds that the United States Surgeon General has found that massive and conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults, including cancer and cardiovascular disease in adults, and adverse respiratory effects in children and adults.
- C. The Cheyenne River Sioux Tribe finds that there are no safe levels of exposure to secondhand smoke and there is no available adequate ventilation technology based upon scientific studies that can ensure the protection and prevention of secondhand smoke health-related illnesses.
- D. The Cheyenne River Sioux Tribe recognizes that everyone has the right to breathe clean air and be free from the pollution of commercial tobacco products.
- E. The Cheyenne River Sioux Tribe finds that according to the American Indian Adult Tobacco Survey of 2012 76% of Cheyenne River Sioux Tribal members believe that smoking should not be allowed at all in indoor work places.
- E. The Cheyenne River Sioux Tribe finds use of commercial tobacco products are a leading cause of preventable death on the Cheyenne River Reservation.
- F. The Cheyenne River Sioux Tribe finds that exposure to environmental tobacco smoke (ETS) places non-smoking adults at significantly increased risk for heart disease, hypertension, stroke, and respiratory diseases, all of which lead to the disproportionately higher death rates among American Indians as compared to the general population.
- G. The Cheyenne River Sioux Tribe finds children who breathe ETS are more likely to suffer from ear infections, decreased lung function, decreased cognitive function, experience more frequent trips to the hospital, and are at a significantly increased risk for sudden infant death syndrome (SIDS), which is disproportionally high among the Northern Plains tribes.

- H. The Cheyenne River Sioux Tribe finds children are sacred and therefore steps should be taken to ensure that they have good quality of air to breathe and that they are sufficiently protected from ETS, which is a health hazard that is beyond their control.
- I. The Cheyenne River Sioux Tribe finds that smoking prevalence, and therefore the incidence of ETS, is disproportionately higher amongst Cheyenne River Sioux Tribal members at a rate of 50.9% of the adult population, as compared to a South Dakota average of 15.4%, putting American Indian non-smokers and children at great risk for the health consequences caused by ETS exposure.
- J. The Cheyenne River Sioux Tribe finds ETS causes diseases of the respiratory system, which is the leading cause of hospitalization for American Indians throughout the Northern Plains tribes.
- K. The Cheyenne River Sioux Tribe finds heart disease, of which ETS is a major risk factor, is the leading cause of death for American Indians throughout the Northern Plains Tribes.
- L. The Cheyenne River Sioux Tribe finds over the entire Indian Health Service (IHS) service population, the Northern Plains region experiences the highest rate of lung cancer, of which ETS exposure is a significant risk factor.
- M. The Cheyenne River Sioux Tribe finds the financial burden imposed upon the Cheyenne River Sioux Tribe health care and IHS systems for direct medical expenditures due to ETS exposure can be significantly reduced by the provisions of this ordinance.
- N. The Cheyenne River Sioux Tribe finds commercial tobacco disrespects the fundamental cultural traditions of the Sioux.
- O. They Cheyenne River Sioux Tribe finds that the quality of commercial tobacco products has been compromised due to the chemical engineering by the tobacco industry. This engineering has contaminated commercial tobacco with 7,000 chemical additives (such as rat poison, formaldehyde, ammonia, acetone, arsenic and many more). These chemicals are used to purposefully increase the addictive properties of the products. As a result, commercial tobacco, whether smoked or chewed, is a highly toxic substance altered to promote addiction and is linked to disease and death of American Indian people.
- P. The Cheyenne River Sioux Tribe finds that an individual's use of traditional tobacco shall not be restricted.
- Q. The Cheyenne River Sioux Tribe finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air.

### Section Three. Definitions

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

- A. "Commercial tobacco" means all forms of commercial tobacco use including but not limited to cigarettes, cigars, smokeless, electronic cigarettes or any other form of commercial tobacco products.
- B. "Traditional tobacco use" as defined by the CRST Cultural Preservation Office and the Great Plains Tribal Chairman's Health Board means plants for healing the mind, body, and spirit. There are four plants that are used in Lakota ceremonies: tobacco, sage, sweet grass and cedar. Traditional Tobacco is called "cansasa," another name is "kinikinik". Cansasa translates to red willow. Tobacco is used: 1) in our sacred pipe in ceremonies and is not inhaled; 2) in its natural form to make tobacco ties for prayer or thanksgiving in times of need; 3) only for special purposes in prayer, offering or rituals; 4) as an offering to an elderly when we need his or her help, advice or prayer; 5) as an offering when we see the sacred eagle in the sky, as the eagle is the intercessor to Tunkasila, Great Spirit; 6) as an offering to the drum at pow-wows to give special blessing to the heartbeat of the nation and onto the singers at the drum; 7) as an offering when a person asks someone to do a ceremony such as naming – hunka-pipe ceremony, singing-sweat lodge or any of the Lakota ceremonies; 8) as an offering to a person as a way to ask for forgiveness to heal bad feeling when emotions are hurt; 9) as an offering or to an elderly to seek knowledge and to show appreciation to that person for sharing. Traditional tobacco is never abused because it is in its natural form without additives.
- C. "Indoor area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- D. "Place of Employment" means an area under the control of a public or private employer including, but not limited to auditoriums; cafeterias; classrooms; conference and public meeting rooms; elevators; employee lounges; hallways; medical facilities; private offices; restrooms; stairways; vehicles used in whole or in part for work purposes; and work areas. A private residence is not a "workplace" unless it is used as a child care, adult day care, or health care facility.
- E. "Public place" means any enclosed area to which the public is permitted or invited, including but not limited to, aquariums; banks; bars; bingo facilities; child and adult care facilities; common use areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities; convention facilities; educational facilities (both public and private); elevators; galleries; gaming facilities; health care facilities; hotels and motels excluding designated sleeping rooms rented to guests; laundromats; libraries; museums; offices; places of public meeting or assembly including school buildings, service lines, shopping malls, and

enclosed sports arenas; polling places; public restrooms; public transportation vehicles and facilities including buses, taxi cabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants and other facilities which provide food and/or beverage service; retail food production and marketing establishments; retail service establishments; retail stores; shopping malls; sports arenas; theaters and other facilities used primarily for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances; veteran, fraternal, and similar clubs; and waiting rooms.

- F. "Smoking" of commercial tobacco means inhaling, exhaling, burning, carrying or possessing any lighted or heated commercial tobacco product, including but not limited to cigars, cigarettes, pipe tobacco, hookah pipes, or using any battery operated "Electronic cigarettes" or other gadget oral smoking devices promoted with the purpose of circumventing public anti-smoking laws.
- G. "Secondhand smoke" means the particulate matter, gases, and other by-products of combustion emitted from a lighted pipe, the lit end of a cigarette or cigar, or an other form of commercial tobacco and also the exhaled by-products of tobacco combustion previously inhaled during the smoking of a pipe, cigarette, or cigar, or any other form of commercial tobacco.

#### **Section Four. Prohibition of Smoking in Enclosed Public Places**

The smoking of commercial tobacco products shall be prohibited in all enclosed public places within the Cheyenne River Reservation. This does not include a private residence, unless it is used as a child care, adult day care, or health care facility.

#### **Section Five. Prohibition of Smoking in Places of Employment**

- A. The smoking of commercial tobacco products shall be prohibited in all enclosed places of employment within the Cheyenne River Reservation. This does not include a private residence, unless it is used as a child care, adult day care, or health care facility.
- B. This prohibition on the smoking of commercial tobacco products shall be communicated to all existing employees both orally and in writing by the effective date of the Article and to all prospective employees upon their application for employment. This will be the responsibility of the owner, manager, operator, or employee of the establishment.

#### **Section Six. Reasonable Distance**

The smoking of commercial tobacco products is prohibited within 50 feet of outside entrances, operable windows, and ventilation intakes (such as air conditioners) of enclosed areas where smoking is prohibited (enclosed public places and places of employment), so as to ensure that secondhand smoke does not enter those areas.



## **Section Seven. Public Awareness**

- A. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- B. All ashtrays, matchbooks, or similar smoking equipment intended for use on the premises shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of the area.

## **Section Eight. Where Commercial Tobacco Use is Not Regulated**

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the restrictions of this Act.

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

## **Section Nine. Enforcement**

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

F. In addition to the remedies provided by the provisions of this Section, Law Enforcement or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

### **Section Ten. Civil Violations**

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

### **Section Eleven. Public Education**

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

### **Section Twelve. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

### **Section Thirteen. Amendment**


This Act shall not be amended except by recommendation by the Health Committee of the Cheyenne River Sioux Tribe of South Dakota.

**Section Fourteen. Effective Date.**

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

**CERTIFICATION**

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 14, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 4th day of March 2015, Regular Session; and that the foregoing Cheyenne River Sioux Tribe Smoke-free Air Act of 2015 Ordinance was duly adopted at such meeting by a roll call vote of 13 yes, 0 no, 1 abstaining, and 1 vacant.

  
Ev Ann White Feather, Secretary  
Cheyenne River Sioux Tribe