



Picayune Rancheria
of the

III - C

CHUKCHANSI INDIANS

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THE PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS

RESOLUTION #2008-30

APPROVAL OF THE TRIBAL FOOD SAFETY ORDINANCE

WHEREAS, the Picayune Rancheria of the Chukchansi Indians (the "Tribe") is a sovereign federally recognized Indian tribe; and

WHEREAS, the Tribal Council of the Picayune Rancheria of the Chukchansi Indians (the "Tribal Council") is authorized by the Tribe's Constitution (the "Constitution") to act as the governing body of the Tribe pursuant to Article IV, Section 2; and

WHEREAS, the Tribal Council is authorized to promulgate and enforce bylaws and ordinances necessary to carry out its powers under the Constitution pursuant to Article V(a), to safeguard the peace, safety, morals, and general welfare of the Tribe pursuant to Article (c), to apportion available tribal funds for public purposes pursuant to Article (o), to manage all economic affairs and enterprises of the Tribe pursuant to Article V(m), and to delegate to subordinate boards, or cooperative associations, any of the powers of the Tribal Council pursuant to Article V(i); and

WHEREAS, the Tribe previously had adopted the FDA 1999 Food Code for a Class III Gaming Facility to regulate the handling and sale of food within the jurisdiction of the Tribe; and

WHEREAS, the Tribal-State Gaming Compact entered into between the Tribe and the State of California requires the Tribe at Section 10.2(a) to adopt and comply with standards no less stringent than state public health standards for food and beverage handling; and

WHEREAS, the Tribal Council finds that it is in the best interests of the Tribe to adopt the Tribal Food Safety Ordinance attached hereto,


NOW THEREFORE BE IT RESOLVED, the Tribal Council hereby adopts the Tribal Food Safety Ordinance attached hereto.

CERTIFICATION

The Tribal Council of the Picayune Rancheria of the Chukchansi Indians does hereby certify that a meeting duly called, noticed and convened on the 15th day of May 2008, where a quorum was present, do hereby certify that the foregoing resolution was adopted by the Picayune Rancheria of the Chukchansi Indians, by a vote of 3 for, 0 against, 0 abstain, 1 not voting, and 3 absent.


Morris Reid, Chairman

ATTEST:


Joe Alberta, Secretary

TRIBAL FOOD SAFETY ORDINANCE

Section 1. Title. This Ordinance shall be known as the "Tribal Food Safety Ordinance."

Section 2. Findings and Purposes. The PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS ("Tribe" or "Tribal") Tribal Council on behalf of the General Council finds that:

- 2.1 Pursuant to the requirements of Section 10.2(a) of the Tribal-State Gaming Compact adopted between the Picayune Rancheria of Chukchansi Indians and the State of California it is incumbent upon the Tribe to adopt and comply with standards no less stringent than state public health standards for food and beverage handling.
- 2.2 Purposes. The purpose of the Food Ordinance is to safeguard the public from potential health hazards related to food and Food Establishment sanitation.
- 2.3 The Tribal Council in adopting the Food Ordinance intends to:
 - a. Regulate the retail sale, commercial service, and vending of food at the Tribe's Gaming Facility and other commercial venues; and
 - b. Define and classifying terms related preparation and service in Food Establishments; and
 - c. Provide standards for employee food safety knowledge, health and practices; and
 - d. Provide sanitation regulations for food, food equipment, and utensils; and
 - e. Provide sanitation and handling regulations for the transportation, protection, storage, processing, display, serving and sale of foods; and
 - f. Establish criteria for the issuance of a permit to operate a Food Establishment; and
 - g. To require permits for the operation of Food Establishments; and
 - h. To require certification or permits for food managers and employees; and
 - i. To require inspection of Food Establishments; and
 - j. To provide criteria relating to the inspection and examination of a Food Establishment; and
 - k. To provide standards for enforcement; and
 - l. To authorize the Tribal Department of Safety to administer, interpret, and enforce this Ordinance.

Section 3. Definitions.

3.1 Except as provided below, the definitions of words and phrases in the 2005 United States Public Health Service/ Food and Drug Administration Food Code, ¶ 1-201.10(B) shall apply to the same words and phrases in the Tribal Food Code.

3.1.1 Inspector: means a representative of the Tribal Department of Safety, who is professionally certified to conduct inspections of Food Establishments.

3.1.2 Food Establishment.

1. Food Establishment means any eating establishment, including temporary eating establishments, within the jurisdiction of the Tribe that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including restaurants, satellite catered feeding locations, mobile transportation vehicles used to serve food, and any mobile or stationary food or coffee carts.
2. Food Establishment does not include:
 - a. Establishments that offer only Pre-Packaged Foods that are not potentially hazardous (Time/Temperature Control for Safety) Foods; or
 - b. Produce stands that only offers whole, uncut fresh fruits and vegetables; or
 - c. Any private kitchens in guest rooms, staff conference or break rooms, or other Gaming Facility property that is not used for the purposes of food preparation for consumption by the public.

3.1.3 Gaming Facility: means any building in which Class III gaming activities of gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation.

3.1.4 Law or Tribal Law: means the laws of the Picayune Rancheria of Chukchansi Indians.

3.1.5 Person: means any individual, firm, corporation or entity.

3.1.6 Regulatory Authority: means the Department of Safety of the Picayune Rancheria of the Chukchansi Indians.

3.1.7 Tribal Council: means the duly elected representatives of the governing body of the Picayune Rancheria of Chukchansi Indians.

3.1.8 Tribe: means the Picayune Rancheria of Chukchansi Indians.

3.1.9 Tribal Department of Safety: means the Tribal department established by the Tribal Building Ordinance, with the responsibilities delegated by the Tribal Building Ordinance, this Ordinance, and other ordinances of the Tribe.

3.2 The following terms identified in the California Retail Food Code shall have the following meanings under this Ordinance:

3.2.1 Health Officer or Local Health Officer: means a representative of the Tribal Department of Safety.

3.2.2 Enforcement Agency or Local Enforcement Agency: means the Tribal Department of Safety.

3.2.3 Enforcement Officer: means a representative of the Tribal Department of Safety.

Section 4. Administration, Publication.

4.1 Accessibility. The Tribal Council Secretary shall make available at the Tribal Administration Building for public review and inspection three copies of the 2005 FDA Food Code and the California Retail Food Code along with any supplements, during normal business hours.

4.2 Certification of Adoption and Publishing. The Tribal Council Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by Tribal Law.

4.3 Effective Date. This Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and approval.

Section 5. Adoption by Reference.

5.1 Adoption of FDA Food Code. The 2005 Food Code published by the United States Public Health Services/ Food and Drug Administration (FDA Food Code) is hereby adopted as Tribal Law and made part of this Ordinance by reference for the purposes of regulating the handling of food and the design, construction, management, and operations of Food Establishments in a manner to provide basic protections for human health. The FDA Food Code and the provisions of this Ordinance shall be applied to all Food Establishments located within the jurisdiction of the Tribe.

5.2 Adopting of Amendments. Any revisions or amendments to the 2005 FDA Food Code consistent with this Ordinance shall automatically be incorporated as Tribal Law and shall be deemed to automatically amend this Ordinance in conformity therewith and it shall not be necessary for the Tribal Council to take any action with regard to such revision, amendment of, or repeal of the 2005 FDA Food Code.

5.3 Exclusions: Sections 8-601.10; 8-601.20; 8-805.10; 8-805.20; 8-805.30; 8-805.40; 8-805.50; 8-805.60; 8-805.70; 8-805.80; 8-805.90; 8-805.100; 8-806.10; 8-806.20; 8-806.30; 8-806.40; 8-807.10; 8-807.20; 8-807.30; 8-807.40; 8-807.50; 8-807.60; 8-808.10; 8-808.20; 8-809.10; 8-809.10; 8-809.20; 8-809.30; 8-809.40; 8-809.50; 8-810.10; 8-811.10; 8-812.10; 8-813.10 of the FDA Food Code are hereby excluded from adoption and incorporation into this Ordinance

5.4 Adoption of Certain Provisions of California Retail Food Code. The following specific provisions of the California Retail Food Code are hereby adopted as Tribal Law and made part of this Ordinance by reference: §113947.1, §113947.2, §113947.3(a), §113949.5, §113967, §13973, §113980, §113982, §113984, §113984.1, §113996(b)(4) & (6), §113998, §114035, §14039.5, §114055, §14065, §114067, §114069, §114089.1, §114093, §114099, §114107, §114109, §114111, §114157(a) (b) & (c), §114163, §114172, §114175, §114177, §114180(c), §114182, §114185.1, §114259, §114259.2, §114259.3, §114259.4, §114259.5

Section 6. Enforcement.

6.1 The Tribal Department of Safety is authorized to contract with consultants, or on a case by case basis to authorize representatives of other governmental entities to assist the Tribal Department of Safety in carrying out its enforcement obligations under this Ordinance.

6.2 The Inspector shall be authorized to:

1. Enter onto the premises of Food Establishments;
2. Inspect the Food Establishments; and
3. Interview the owner, operator, and other employees of the Food Establishment.

6.3 The Tribal Department of Safety shall be authorized to:

1. Grant Permits;
2. Suspend Permits;
3. Issue corrective action orders;
4. Issue notices of violation;
5. Issue closure orders;
6. Issue compromises and settlements; and
7. Hear and decide appeals related to enforcement of this Ordinance.

6.4 It shall be the policy of the Tribal Department of Safety to use corrective action orders as the primary means of enforcing this Ordinance. The Department may settle a case after a petition has been filed and before a notice of hearing is served by providing the respondent with an opportunity to request settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

Section 7. Permit Requirement

7.1 Each of the Food Establishments shall be required to possess a separate Permit from the Tribal Department of Safety. To qualify for a Permit, the Food Establishment must meet the requirements of the FDA Food Code and this Ordinance. Permits shall be issued by the Tribal Department of Safety in conformity with Section 8-3 of the FDA Food Code.

7.2 Post of Permit. A valid and current Permit shall be posted in every Food Establishment within the jurisdiction of the Tribe.

Section 8. Closure

8.1 Under the rules and regulations adopted in this Ordinance, the Tribal Department of Safety and the Inspector are authorized to order corrective action in accordance with the FDA Food Code. Where the Department or the Inspector finds egregious or repeated violations in which there is imminent harm to human health, the Department or the Inspector may order closure of any Food Establishment in which violations exist. A closure order shall be effective immediately and shall act as a suspension of the Permit.

8.2 Any Person who shall fail to comply with a corrective action order or continues to operate a Food Establishment in violation of a closure order shall be deemed to have violated this Ordinance. Each day which said person shall continue to operate in violation such order shall be deemed a separate violation of this Ordinance, subjecting such person to civil fines in accordance with Section 10.

Section 9. Civil Fines

9.1 The Commission may seek to enforce the provisions of this Ordinance and its orders by levying civil fines against the Permit Holder or other Persons who violate its provisions.

9.2 A Person who violates a provision of this Ordinance may be subject to a civil fine of not more than five hundred dollars (\$500.00); or there is intent to defraud or mislead, a civil fine not exceeding fifteen hundred dollars (\$1500.00).

9.3 Each day on which a violation occurs may be deemed a separate violation under this section.

Section 10. Hearings and Appeals

10.1 Right to Appeal. A recipient of an order, decision, suspension, notice, or fine from the Tribal Department of Safety may appeal it to the Board of Appeals.

10.2 Appointment of Board of Appeals. The Tribal Council may establish on a case-by-case basis a Board of Appeals for purposes of hearing appeals related to this Ordinance, or such appeals may be heard by the Tribal Council. The Board of Appeals shall be comprised of three members to serve on an as-needed basis, and upon the conclusion of any appeal shall no longer exist as a Board. The Tribal Council may appoint members of the Board qualified by experience and training.

10.3 General authority. The Board of Appeals shall have the authority to review, sustain, reverse, change or modify any decision of the Tribal Department of Safety or the Inspector.

10.4 Manner of filing appeals. Any individual(s) who wishes to appeal to and be heard before the Board of Appeals shall file a request for an appeal hearing to the Tribal Council on a form provided by the Tribal Department of Safety. The appeal shall be filed within fifteen (15) business days of the date the recipient received the order, decision, suspension, or fine, and shall include all grounds for objections.

10.5 Fee for appeals. Every request for a hearing filed under the provisions of this Ordinance shall be accompanied by a fee of \$50.00, payable to the Tribe.

10.6 Scheduling of hearing; notice of hearing. Upon receipt of a request for hearing before the Board of Appeals, the Board of Appeals shall set a date for the hearing. The applicant and other persons interested in the case shall be notified as to the time and date of the hearing in writing.

10.7 Conduct of hearing. The Board of Appeals shall hear all arguments and review all evidence submitted by the applicant, the Tribal Department of Safety, and any other person(s) interested in the case, and shall render its opinion. The Board of Appeals shall keep a verbatim record of its proceedings, maintain all documents reviewed or introduced as evidence at meetings, and issue its decisions or other orders in writing.

10.8 Burden of Proof. The individual(s) filing the objection has the burden of establishing that the decision of the Tribal Department of Safety or the Inspector should be reversed, changed, or modified.

10.9 Decisions by Board of Appeals. The Board of Appeals may affirm, modify or reverse the decision upon which a request for hearing was filed, and may remand specific issues to the Tribal Department of Safety for reconsideration. The decision of the Board of Appeals shall be final, and is not subject to appeal.

Section 11. Tribal Gaming Commission. Consistent with the provisions of the Tribal Gaming Ordinance, the Picayune Rancheria of the Chukchansi Indians Tribal Gaming Commission shall be entitled to rely on the enforcement of this Ordinance by the Tribal Department of Safety, and the official determinations of the Tribal Department of Safety, the Inspector, and the Board of Appeals.

Section 12. Inconsistent Codes Repealed. All other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

Section 13. Sovereign Immunity. Nothing in this Ordinance is intended nor shall it be construed to waive the sovereign immunity of the Picayune Rancheria of the Chukchansi Indians, its officers, agents, members, employees, tribal entities or tribal enterprises, nor to confer any jurisdiction on any federal, state or local governmental officer, entity or agency.