



Picayune Rancheria
of the
CHUKCHANSI INDIANS

8080 N. Palm Ave., Suite 207 * Fresno, CA 93711 * (559) 412-5590

TRIBAL COUNCIL

RESOLUTION NO. 2015-27

Approval of Tribal Tobacco Regulatory 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 ratified by the membership on October 22, 1988 (the "Constitution") to act and exercise Tribal Authority on behalf of the Tribe; and

WHEREAS, pursuant to Article V of the Constitution of the Tribe, the Tribal Council has the power and responsibility to promulgate and enforce bylaws and ordinances to carry out its powers under the Constitution, to promulgate and enforce ordinances governing the conduct of the members of the Tribe and non-members within the Tribe's jurisdiction, to safeguard the peace, safety, morals, and general welfare of the Tribe, to provide for the protection and preservation of Tribal property, and to exercise such further powers, consistent with the Constitution, as needed to carry out the powers listed in the Constitution; and

WHEREAS, the Tribal Council finds that it is in the best interests of the Tribe to adopt the attached Tribal Tobacco Regulatory Ordinance.

NOW, THEREFORE, BE IT RESOLVED, the Tribal Council hereby adopts the Tribal Tobacco Regulatory Ordinance attached hereto, and provides that the ordinance shall be effective as of this date; and

BE IT FURTHER RESOLVED, that any and all previous Tribal Tobacco Regulatory Ordinances are hereby repealed.

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CERTIFICATION

The Tribal Council of the Picayune Rancheria of Chukchansi Indians does hereby certify that the foregoing resolution was adopted by the Tribal Council at a duly called meeting on the 17 day of Dec, 2015, at which a quorum of 7 was present, and was adopted by a vote of 7 FOR, 0 AGAINST, and 0 ABSTAINING.

Claudia Gonzales
Claudia Gonzales, Chairwoman

12-17-15
Date

N. Nokomis Hernandez
Nokomis Hernandez, Vice Chair

12.17.15
Date

Dixie Jackson
Dixie Jackson, Treasurer

12-17-15
Date

Thomas Walker
Thomas Walker, Secretary

12-17-15
Date

Morris Reid
Morris Reid, Member at Large

12/17/2015
Date

Dora Jones
Dora Jones, Member at Large

12/17/2015
Date

Harold M. Hammond, Sr.
Harold M. Hammond, Sr., Member at Large

12-17-2015
Date



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TRIBAL TOBACCO REGULATORY ORDINANCE

SECTION 1. FINDINGS, INTENT AND POLICY

1.1. Findings. The Tribal Council of the Picayune Rancheria of the Chukchansi Indians, the primary governing body of the Tribe, finds that:

- (a) The Tribe desires to engage in the purchase and sale of tribal tobacco to aid the development of the economy of the Tribe in order to improve the Tribe's economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors, and to provide its members with opportunities to improve their own economic circumstances.
- (b) Tribal operation and licensing of one or more Tribal Tobacco businesses is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goal of self-sufficiency and self-determination.
- (c) The Tribe has the legal authority to license and regulate the purchase and sales of Tribal Tobacco within its jurisdiction.
- (d) Properly licensed and regulated Tribal Tobacco business is consistent with announced federal policy promoting tribal self-government and economic self-sufficiency.
- (e) Tribal regulation and control of Tribal Tobacco business conducted within the jurisdiction of the Tribe is essential for the protection of the public welfare.
- (f) It is essential that the Tribal Council regulate Tribal Tobacco business in a manner commensurate with Tribal law and policy and applicable federal law.
- (g) Adoption of a Tribal Tobacco Regulatory Ordinance by the Tribal Council is a necessary condition for the legal operation of Tribal Tobacco business on the Rancheria and is in the best interest of the Tribe.

- (h) Establishment of a Tribal Tobacco Regulatory Authority to implement the purpose and intent of the Tribal Tobacco Regulatory Ordinance on the Rancheria is in the best interest of the Tribe.

1.2. Intent. The Tribal Council, on behalf of the Tribe, declares that the intent of this Ordinance is to:

- (a) Diversify and expedite the development of the economy of the Picayune Rancheria of the Chukchansi Indians for the purposes described in section 1.1 (a) above.
- (b) Define general regulatory powers to be exercised by a Tribal Tobacco Regulatory Authority in relation to the regulation, control, and oversight of Tribal Tobacco businesses and their vendors.
- (c) Ensure that all Tribal Tobacco revenues are used for the benefit of the Tribe and the Rancheria's community.
- (d) Ensure that Tribal Tobacco business is conducted appropriately by Licensees and that it remains free from corrupt, incompetent, unconscionable and dishonest practices.
- (e) Protect the interests of the public in the offering of Tribal Tobacco products.
- (f) Ensure the maintenance of public confidence in Tribal Tobacco business practices.
- (g) Ensure that Tribal Tobacco laws are strictly and fairly enforced upon Persons involved in Tribal Tobacco business.

1.3. Policy.

- (a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Revenues from Tribal Tobacco business shall be utilized and expended only for the following purposes:
 - (1) To fund the Tribe's government operations or programs.
 - (2) To provide for the public health and general welfare of the Tribe and its members and visitors to the Tribal community.
 - (3) To promote Tribal economic development and self-sufficiency.

- (4) To donate to charitable organizations.
- (b) Tribal Tobacco Policy. The establishment, promotion and operation of Tribal Tobacco business is necessary, provided that such business is regulated and controlled by the Tribe pursuant to this Ordinance and the revenues of such Tribal Tobacco business are used exclusively for the benefit of the Tribe.
- (c) Responsibility for Regulation. The Tribe shall have sole proprietary interest in and responsibility for the conduct of Tribal Tobacco business authorized by this Ordinance.
- (d) Tribal Tobacco Business Authorized. Tribal Tobacco business is authorized and permitted only as described in this Ordinance and its implementing regulations.

SECTION 2. DEFINITIONS In this Ordinance, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

- 2.1. “Applicant” means any Person who has applied for a License under the provisions of this Ordinance.
- 2.2. “Application” means a request for the issuance of a License under the provisions of this Ordinance.
- 2.3. “License” means the official, legal and revocable Retail or Wholesaler License granting permission from the Tribal Tobacco Regulatory Authority to an Applicant to transact Tribal Tobacco business, or be employed by a Tribal Tobacco Retailer or Wholesaler. A License is a revocable privilege.
- 2.4. “Licensee” means a Person that is licensed as a Licensee by the Authority.
- 2.5. “Ordinance” means this Tribal Tobacco Regulatory Authority Ordinance.
- 2.6. “Person” means any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe or any of the above listed forms of business entities that are wholly owned or operated by the Tribe, or any other entity whatsoever, who engages or seeks to engage in the business of Tribal Tobacco pursuant to this Ordinance; provided, that the term does not include the Federal Government or any agency thereof.
- 2.7. “Rancheria” means the Picayune Rancheria.
- 2.8. “Tribal Council” means the Picayune Rancheria of the Chukchansi Indians

Tribal Council, the governing body of the Tribe as defined and described in Article IV, Section 2 and Article V of the Tribe's Constitution.

- 2.9. "Tribal Land" means the Picayune Rancheria and any land over which the Tribe exercises jurisdiction.
- 2.10. "Tribal Tobacco Regulatory Authority" or "Authority" means the regulatory authority established and described in Section 4 of this Ordinance.
- 2.11. "Tribal Tobacco Retailer" means and includes any authorized Licensee in the ordinary course of business who sells any Tribal Tobacco product on Tribal Land to a consumer.
- 2.12. "Tribal Tobacco" means all tobacco products sold to a Licensee that do or do not have one or more government jurisdiction's tax stamp already affixed to the tobacco package.
- 2.13. "Tribal Tobacco Wholesaler" means a Licensee who in the ordinary course of business sells Tribal Tobacco products to Tribal Retailers or Persons intended for resale on Tribal Land.
- 2.14. "Tribe" means the Picayune Rancheria of the Chukchansi Indians.
- 2.15. "Vendor" means a Person that provides or receives, or is likely to provide or receive at least Twenty-Five Thousand Dollars in any twelve (12) month period from a Licensee in exchange for services or aid in the Tribal Tobacco business.

SECTION 3. GENERAL PROVISIONS

- 3.1. **Authority.** This Ordinance is enacted pursuant to the inherent sovereign powers of the Picayune Rancheria of the Chukchansi Indians and in accordance with Article V (a) of the Tribe's Constitution.
- 3.2. **Construction.** In construing the provisions of this Ordinance, the following shall apply:
 - (a) The provisions of this Ordinance, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.
 - (b) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Ordinance, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all

matters of construction and application of the Ordinance required for any determination or action by the Authority.

- (c) No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.
- (d) Words of the masculine gender or neuter include masculine and feminine genders and are the neuter.
- (e) Words in the present tense include the future and past tenses.
- (f) Words in the singular number include the plural, and words in the plural number include the singular.

- 3.3. Severability.** If any section of this Ordinance is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.
- 3.4. Effective Date.** This Ordinance shall take effect and be in full force and effect from and after the date of its final passage and approval by the Tribal Council.

SECTION 4. TRIBAL TOBACCO REGULATORY AUTHORITY

- 4.1. Establishment and Purpose.** The Tribal Council hereby charters, creates and establishes the Tribal Tobacco Regulatory Authority as a governmental subdivision of the Tribe. The Authority has charge of the implementation of the ordinances and regulations of the Tribe relating to Tribal Tobacco activities and associated licensing requirements.
- 4.2. Location and Place of Business.** The Authority may maintain its headquarters, principal place of business and office within the offices utilized by the Tribal Council. The Authority may, however, with a majority vote from the Tribal Council, establish other places of business in such other locations as the Authority may from time to time determine to be in the best interest of the Tribe.
- 4.3. Duration.** The Authority shall have perpetual existence and succession in its own name, unless dissolved by Tribal Council amendment of this Ordinance pursuant to Tribal law.

4.4. Attributes. As a governmental subdivision of the Tribe, the Authority is under the direction and control of the Tribal Council, and it is the purpose and intent of the Tribal Council that the operations of the Authority be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members and residents of and visitors to the Tribe's Rancheria.

- (a) Arm of Tribe. In carrying out its purposes under this Ordinance, the Authority shall function as an arm of the Tribe.
- (b) Tribal Actions. Notwithstanding any authority delegated to the Authority under this Ordinance, the Tribe reserves to itself the right to bring suit against any Person or entity in its own right, on behalf of the Tribe or on behalf of the Authority whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Authority.

4.5. Sovereign Immunity of the Authority.

- (a) Immunity from Suit. The Authority is cloaked by Tribal and federal law with all the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in any tribal, federal or state court.
- (b) No Waiver. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Authority from suit, except limited waivers pursuant to subsection 4.5(d).
- (c) No Consent to Jurisdiction. Nothing in this Ordinance shall be deemed or construed to be a consent of the Authority to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Authority.
- (d) Waiver of Sovereign Immunity of the Authority. Sovereign immunity of the Authority may be waived upon the recommendation of the Authority and only by express resolution of the Tribal Council.
 - (1) Resolution Effecting Waiver. All waivers of sovereign immunity must be preserved with resolutions of continuing force and effect issued by the Tribal Council.
 - (2) Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Authority or the Tribe.
 - (3) Limited Nature to Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the

Authority subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

- (4) Limited Effect of Waiver. Neither the power to sue and be sued provided in subsection 4.16 herein, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Authority other than property specifically pledged or assigned, a consent to suit with respect to any land within the exterior boundaries of the Tribe's Rancheria, or a consent to the alienation, attachment or encumbrance of any such land.

4.6. Sovereign Immunity of the Tribe. With respect to the existence and activities of the Authority, all inherent sovereign rights of the Tribe as a Federally recognized Indian Tribe are hereby expressly reserved, including sovereign immunity from suit in any state, Federal or Tribal court. Nothing in this Ordinance nor any action of the Authority shall be deemed or construed to be a waiver of sovereign immunity from suit or counterclaim of the Tribe, a consent of the Tribe to the jurisdiction of the United States, any state or other tribe with regard to the business or affairs of the Authority or the Tribe, a consent of the Tribe to any cause of action, counterclaim, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe, a consent to suit or counterclaim in respect to any land within the exterior boundaries of the Tribe's Rancheria, or to be a consent to the alienation, attachment or encumbrance of any such land.

4.7. Assets of the Authority. The Authority shall have only those assets specifically assigned to it by the Tribal Council, acquired in its name by the Tribe, or acquired by the Authority on its own behalf. No activity of the Authority or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Authority.

4.8. Composition of Authority; Jurisdiction.

(a) Composition of the Authority. The membership of the Authority shall mirror the membership of the Tribal Council.

(b) Jurisdiction. The Authority shall have jurisdiction over all Tobacco sales and transactions taking place on Tribal lands. By conducting Tobacco transactions on Tribal land, all Licensees and other individuals shall be deemed to have consented to the Authority's jurisdiction.

4.9. Regulatory Agent; Compensation, Duties.

(a) Regulatory Agent. The Authority shall appoint an Agent. The

Authority may increase the number of Agents as it deems necessary to conduct the governmental operations of the Authority.

(b) Compensation. The compensation of the Agent shall be established from time to time by the Authority.

(c) Duties. The Agent shall have the following responsibilities:

- (1) Carry out the regulatory duties of the Authority under the direct supervision of the Authority; and
- (2) Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of any Authority employees; and
- (3) Serve as the agent for service of process; and
- (4) Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Ordinance or further directive of the Tribal Council.

(d) Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

- (1) The Agent shall be an enrolled member of the Tribe.
- (2) The Agent shall have expertise, experience, education or a combination thereof in the following areas: business, management, governmental regulation, law, and/or Tribal policy.
- (3) The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.
- (4) No person shall serve as Regulatory Agent if:
 - A. His/her prior activities, criminal record, if any, or reputation, habits or associations:
 1. Pose a threat to the public interest; or
 2. Threaten the effective regulation and control of Tribal Tobacco; or
 3. Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Tribal Tobacco.

- B. He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or
- C. He/she, or any member of his or her Immediate Family has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Licensee or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, “Immediate Family” means an individual’s father, mother, son, daughter, husband, wife, brother, sister, grandfather, grandmother, grandson, granddaughter, including “half,” “step,” and “in law,” and also including individuals cohabitating as partners. Ownership of a Lender by virtue of membership in the Tribe is not a per se monetary or financial interest in the conduct of any Licensee.

4.10. Meetings. The Authority shall hold or participate in such meetings as it deems necessary.

4.11. Prohibited Acts. The Agent and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

(a) Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. Notwithstanding the foregoing, an employee of the Authority other than a Commissioner may become so indebted; provided that, while the debt is outstanding, the borrower shall not participate in any examination of any Licensee conducted by the Authority and the indebtedness is:

- (1) Incurred on terms no more favorable than those available to the general public, and
- (2) Fully disclosed to and approved by the Chairperson before funding, including the following information:
 - A. The date of the indebtedness;
 - B. The amount;

- C. The interest rate; and
- D. Security.

- (b) Be an officer, director, or employee of any Licensee.
- (c) Own or deal in, directly or indirectly, the shares or obligations of any Licensee.
- (d) Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Lender and is distributed among all eligible Tribal members by virtue of membership in the Tribe.

4.12. Removal of Regulatory Agent; Vacancy.

- (a) Removal. The Authority may remove an Agent for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of Tribal Tobacco or the Authority or violates the letter or intent of this Ordinance. The Authority's decision concerning removal of a Regulatory Agent shall be final.
- (b) Vacancy. If the Regulatory Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Authority shall declare his or her position vacant and shall appoint another qualified individual to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace the Agent shall be for the balance of the unexpired term for the position.

4.13. Powers of the Authority. The Authority has the authority and responsibility for the discharge of all duties imposed by law and this Ordinance on the Authority. In furtherance, but not in limitation of the Authority's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Ordinance:

- (a) To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Ordinance; provided that such regulations shall take effect only upon approval of the Tribal Council.

- (b) To regulate all Tobacco transactions on Tribal lands and ensure that all such transactions comply with this Ordinance and the Tribal Tax Ordinance.
- (c) To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Authority considers it necessary.
- (d) To make or cause to be made reasonable investigations of any Licensee or Person as it deems necessary to ensure compliance with this Ordinance or any order of the Authority, to determine whether any Licensee or Person has engaged, is engaging or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Ordinance or any order of the Authority; or to aid in adopting rules or regulations pursuant to this Ordinance.
- (e) To establish procedures designed to permit detection of any irregularities, fraud, or the like.
- (f) Upon prior explicit resolution and approval of the Tribal Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and Tribal Tobacco professionals.
- (g) To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of all Applicants.
- (h) To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee or Person, or agent, officer or employee of any Licensee or Person, or any other witness with respect to any matters related to this Ordinance and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Authority may apply to a court of competent jurisdiction to compel appearance or production.
- (i) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee or Person engaging or participating in, or suspected to be engaging or participating in, Tribal Tobacco.
- (j) To discipline any Licensee or Person engaging or participating in Tribal Tobacco in violation of this Ordinance by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by

Section 4.18 of this Ordinance.

- (k) To sue or be sued in courts of competent jurisdiction within the United States, arbitrate, compromise, negotiate or settle any dispute, subject to Section 4.5 herein; provided, that no suit shall be brought by the Authority without the prior explicit written approval of the Tribal Council.
- (l) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings , files, and records and to impose the forgoing fees as applicable.
- (m) To establish and maintain such bank accounts as may be necessary or convenient.
- (n) To make such findings as may be necessary to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

4.14. Investigations, Right of Entrance.

- (a) Investigations. The Authority, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or Person engaging or suspected to be engaging in Tribal Tobacco within its jurisdiction.
 - (1) In undertaking such investigations, the Authority may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.
 - (2) In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.18 of this Ordinance.
 - (3) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Licensee.
- (b) Right of Entrance. The Authority and duly authorized employees or agents of the Authority, during regular business hours, may reasonably enter upon any premises of any Licensee or Person engaging in or suspected to be engaging in Tribal Tobacco on Tribal Lands for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee or Person.

(c) Aid to Entry. The staff of the Licensee or Person engaging in or suspected to be engaging in Tribal Tobacco on Tribal Lands shall facilitate such inspection or examinations by giving every reasonable aid to the Authority and to any properly authorized officer or employee.

4.15. Annual Budget. The Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

4.16. Authority Regulations.

(a) Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

- (1) The making of findings or other information required by or necessary to implement this Ordinance; and
- (2) Interpretation and application of this Ordinance, as may be necessary to enforce the Authority's duties and exercise its powers;
- (3) A regulatory system for overseeing Tribal Tobacco, including accounting, contracting, management and supervision;
- (4) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Ordinance.
- (5) Specification of the amount and the schedule of applicable Licensing and examination fees that shall be imposed by the Authority.

(b) No regulation of the Authority shall be of any force or effect unless it is adopted by the Authority by written resolution and subsequently approved by a resolution of the Tribal Council.

4.17. Quarterly Report to the Tribal Council. The Authority shall file a quarterly report with the Tribal Council summarizing reports received from each Licensee and make such comments as it deems necessary to keep the Tribal Council fully informed as to the status of the Authority's activities. The Authority shall define by regulation, subject to the approval of the Tribal Council, the schedule for the submission of such reports.

4.18. Due Process; Notice; Hearings; Examiner. The Authority shall provide notice and the opportunity for a hearing comporting with notions of due

process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder.

- (a) No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.
- (b) Notice of Hearing. The Authority shall, within five (5) days after learning of the event giving rise to the concern, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.
- (c) Hearing. The hearing shall be scheduled to take place no less than five (5) days and no more than thirty (30) days business days after the notice of hearing is delivered. At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.
- (d) Examiner. The Authority's Agent shall act as examiner for the purpose of holding any hearing, or the Agent may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Ordinance with respect to any such hearing.
- (e) Decision. The Authority shall issue a written decision to all affected parties within thirty days after the hearing.
- (f) Appeals. Affected parties may appeal an Authority determination by filing a written appeal to the Tribal Council within twenty (20) days of receiving the Authority's final written decision. The Tribal Council shall place the matter on the agenda of its next regularly scheduled meeting. Any decision of the Tribal Council on appeal shall be final and not subject to further appeal.

SECTION 5. LICENSES

5.1. Applicability. Any Person seeking to engage in Tribal Tobacco or, when applicable, to provide services to a Licensee or be employed by a Licensee shall apply for and receive all required licenses prior to engaging in Tribal Tobacco business, providing services to a Licensee or being employed by a Licensee.

- (a) Every Person that aids, participates or is related to Tribal Tobacco is

required to have a current and valid License as issued by the Authority.

- (b) Every Vendor that provides or receives, or is likely to provide or receive at least Twenty-Five Thousand Dollars in any twelve (12) month period from a Licensee in exchange for services or aid in the Tribal Tobacco business is required to have a current and valid License as issued by the Authority.
- (c) Every Person extending financing, directly or indirectly, to any Licensee is required to have a current and valid License issued by the Authority.
- (d) Every Person employed by a Licensee in a position that routinely has substantive interaction with the Tribal Tobacco public, is required to have a current and valid License issued by the Authority.
- (e) If the Applicant is a person other than a natural person, the qualifications required by this Section 5 are also required of any executive officer, director or partner of the firm, partnership, association or other form of entity.
- (f) A License is a revocable privilege to do business within the jurisdiction of the Picayune Rancheria of the Chukchansi Indians.

5.2. Application Procedure.

- (a) Submission to Authority. An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require.
- (b) Application Contents. At a minimum, the Application shall contain the following information:
 - (1) For Applicants that are other than natural persons, each of the Applicant's owners, officers and/or directors; and principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; and
 - (2) Each of its owners or partners, if an unincorporated business; and
 - (3) Each of its shareholders who own more than 10 percent of the shares of the corporation; and
 - (4) For each person listed in sub-Sections (A) to (C) above, and for all Applicants that are natural persons, an Application for a License shall include each person's criminal and civil record, if any, and an explanation of any crimes for which he has been convicted or civil suits in which a judgment has

been entered against him or to which he has entered a plea of no contest in any jurisdiction and a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant. The Applicant shall provide written permission giving the Authority or its designees the right to the Applicant's background, including his criminal record;

- (5) An Applicant for a License shall provide all necessary information and written permission for the Authority or its designee to obtain the Applicant's credit history and/or credit score at the request of the Authority.
 - (6) The disclosure of whether there is a previous contractual relationship with an Indian tribe; and
 - (7) A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Tribe; the Applicant will abide by all applicable Tribal and Federal laws, regulations and policies; and the information contained in the Application is true and correct to the best of Applicant's knowledge.
- (c) Each Application shall be accompanied by an application fee, the amount of which shall be set by the Authority.

5.3 Review, Issuance and Denial, Term.

- (a) Tribal Tobacco License. A License shall automatically issue if the following criteria are met:
- (1) The Applicant complied with the provisions of Section 5.2; and
 - (2) No owner, partner, officer and/or director; or principal management employee of the Applicant or a shareholder who owns more than ten percent (10%) of the shares of Applicant has been, in any jurisdiction, charged with a felony or any other crime involving breach of trust or dishonesty; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation; and
 - (3) The Tribal Tobacco business is authorized pursuant to this

Ordinance; and

- (4) The Tribal Tobacco business is authorized by a Tribal Council Resolution; and
 - (5) The Tribe has the sole proprietary interest in the Tribal Tobacco business.
- (b) License for Vendors or Employees. Upon compliance with Section 5.2, the Authority shall review the qualifications of the Applicant sufficient to make a determination of eligibility as required under this Ordinance.
- (c) Issuance. Upon completion of any necessary background investigation, the Authority may issue a License on a conditional or unconditional basis. The Authority shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License.
- (d) Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing, provide the basis for the denial of the License, and otherwise comply with the procedural requirements of Section 4.18 of this Ordinance.
- (e) Term. Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance, unless sooner revoked by the Authority or relinquished by Licensee.
- (f) License Substance. The License shall bear on its face the name of the Licensee, the Tribal Logo, the issue date, and the license number.
- (g) Record Retention. The Authority shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of employment.

5.4. License Denial, Suspension or Revocation of License.

- (a) Denial; Temporary Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority shall deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.18 herein, if the Authority finds that an Applicant or Licensee:
- (1) Failed to pay initial Application or renewal fees;
 - (2) Made a material misstatement or omission on the Application or on any document required to be filed with the Authority;
 - (3) Withheld or provided incomplete or insufficient pertinent information;

- (4) Is not a Person of honesty, truthfulness or good character;
- (5) Failed to collect or remit tax on a Tribal Tax imposed by the Tribal Tax Ordinance;
- (6) Violated or aided, abetted, or conspired with another Licensee or Person or knowingly or knowingly caused any Licensee or Person to or otherwise participated in violate this Ordinance, the Tribal Tax Ordinance, or the rules and regulations of the Authority;
- (7) Participated in Tribal Tobacco on Tribal Lands that was not authorized by this Ordinance;
- (8) Knowingly falsified books or records that relate to a transaction connected with the operation of Tribal Tobacco;
- (9) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Ordinance or to substantiate, by the Authority, compliance with this Ordinance;
- (10) Failed to take reasonable measures to ensure that an agreement with a borrower is not breached;
- (11) Is insolvent;
- (12) Is charged in any jurisdiction with a felony or any other crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
- (13) Has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;
- (14) Has had an order entered against it by an administrative agency of any jurisdiction and the order is based on conduct that involved fraud, deceit or misrepresentation by the Applicant or Licensee and it entered after notice and an opportunity to be heard;
- (15) Has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
- (16) Employed any Person in a Tribal Tobacco business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;
- (17) Refused to comply with any lawful order, inquiry or directive of the Authority or the Tribal Council;

- (18) Attempted to bribe or offer something of value to any Person, Tribal Council member, or a Commissioner in an attempt to avoid or circumvent Tribal law;
- (19) Stole or attempted to steal funds or other items of value from the Authority or the Tribe;
- (20) Poses a threat to the public interest or the effective regulation of Tribal Tobacco;
- (21) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Tribal Tobacco;
- (22) Was a former licensee pursuant to this Ordinance whose License was suspended or revoked and not subsequently reinstated; or
- (23) Has demonstrated an inability to manage the Applicant's personal or business finances or demonstrates a sufficient indebtedness in relation to income so as to cause concern for the Applicant's ability to fulfill their responsibilities under this Ordinance.

(b) Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a license if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, "controlling person" means a person who owns more than twenty- five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant.

(c) Procedure for Suspension or Revocation

- (1) Upon reasonable basis for belief that a violation of the Ordinance has occurred, the Authority or its designee may either undertake an investigation of the Licensee, or serve upon such Licensee an order to show cause why the Licensee's License should not be suspended or revoked, or why the Licensee should not be enjoined from conducting Tribal Tobacco business.
- (2) Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Authority pursuant to Section 4.18 herein.

- (3) The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a suspension, revocation order or injunction should not be issued.
- (4) The hearing shall be governed in all respects in accordance with Tribal law and Authority regulations. Any suspension or revocation decision of the Authority after hearing may be appealed in accordance with the provisions of Section 4.18.

5.5. Renewal.

- (a) Renewals. A Licensee shall petition to have the License renewed by applying to the Authority for a renewal before the License expires. Applicants may be required to provide updated material as requested.
- (b) Non-renewal. The Authority may deny renewal of a License or suspend or revoke a license if the Authority finds the existence of any circumstance listed in section 5.4(a)(1) above, or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Authority to refuse to issue the License.

5.6. Voluntary Surrender of License. Any Licensee registered pursuant to this Ordinance may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority.

5.7. Assignment or Transfer. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Authority. The Authority shall not give consent if the Authority finds that the acquiring Person does not meet the qualifications described in this Ordinance. For the purposes of this Subsection, “control means the power to vote more than twenty-five percent (25%) of the outstanding voting shares of a licensed corporation, partnership, association or trust.”

5.8. Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties, civil penalties, administrative fines and other fees or penalties provided for in this Ordinance shall in all cases be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Tribal Council.

SECTION 6. LICENSEES

6.1. Compliance. Licensees shall at all times comply with the provisions of this Ordinance, rules and regulations promulgated pursuant to this Ordinance, and all other applicable Tribal and federal laws.

6.2. Prohibited Acts by Licensees.

- (a) A Licensee shall not engage in the business of Tribal Tobacco without first obtaining a License pursuant to this Ordinance unless a Licensee first obtains special approval and accompanying resolution by Tribal Council. A separate License is required for each location that the Licensee operates. The Licensee shall post its License issued pursuant to this Ordinance at the location for which it is issued or, if the location is a website, said License shall be posted electronically on such website.
- (b) A Licensee shall not:
 - (1) Engage in any Tribal Tobacco business on Tribal Lands other than that allowed under this Ordinance.
 - (2) Fail to timely remit applicable taxes pursuant to the Tribal Tax Ordinance.
 - (3) Engage in unfair, deceptive or fraudulent practices.

6.3. Books, Accounts and Records, Examinations, Costs.

- (a) A Licensee, if applicable, shall maintain at each location at which it conducts business all books, accounts and records that the Authority reasonably requires. The Licensee shall:
 - (1) Ensure that the books, accounts and records are sufficiently detailed to comply with the Ordinance and all applicable Tribal and federal laws.
 - (2) Maintain the books, accounts and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least three years.
- (b) The Authority shall examine or cause to be examined each Licensee annually and more frequently if the Authority considers it necessary. In conducting such examination, the Authority or its agent may examine the books, accounts and records to determine if the Licensee has complied with this Ordinance and any implementing regulations adopted pursuant to this Ordinance. The Licensee shall pay the cost of the examination as may be required by the Authority in accordance with its regulations.

6.5. Reports.

- (a) Annual Reports. Every Licensee engaged in providing goods or services for the Tribal Tobacco business shall file an annual report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient

for the Authority to determine compliance with this Ordinance including, at a minimum, the following:

- (1) The name, address and telephone number of the Licensee;
- (2) The names, addresses and titles of all of the current managers of the Licensee;
- (3) A sworn statement that the Licensee has complied and will continue to comply with all Tribal and federal laws applicable to Tribal Tobacco business; and
- (4) The name, address and signature of the agent who will accept service of process on behalf of the Licensee.

(b) Monthly Reports. Every Licensee engaged in the sale of Tribal Tobacco shall file a monthly report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Ordinance. The report shall include, at a minimum, the following information:

- (1) The name, address and telephone number of the Licensee;
- (2) The names, addresses and titles of all of the current managers of the Licensee;
- (3) A description of the Tribal Tobacco business conducted, its Gross Revenue from the Tribal Tobacco operation, the number of borrowers served, a detailed description of any borrower complaints and other problems experienced by the Licensee, and a description of any substantive changes in management personnel or practices related to the Tribal Tobacco business;
- (4) The number of full-time equivalent people, on an annualized basis, employed by the operation during the past twelve (12) months, together with a projection of the number of full-time equivalent people who are expected to be employed during the next license period;
- (5) A sworn statement that the Licensee has complied and will continue to comply with all Tribal and federal laws applicable to Tribal Tobacco; and
- (6) The name, address and signature of the agent who will accept service of process on behalf of the Licensee.
- (7) The name, address, and signature of the Person engaged by the Licensee to perform the Licensee's compliance

function, if applicable.

- 6.6. Audit requirements.** A Licensee shall provide to the Authority annually a copy of an independent audit, including such information and in a format required by the Authority, if directed by the Authority.
- 6.7. Public Notice.** Each Licensee shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any person at each authorized Tribal Tobacco site.

SECTION 7. TRIBAL TOBACCO BUSINESS

- 7.1 Adoption of Laws and Regulations.** The Authority and the Tribal Council shall adopt applicable laws and regulations, including the implementation and enforcement of the Tribal Tax Ordinance to ensure legal business practices and proper remittance of taxes to the Tribe.

SECTION 8. ENFORCEMENT

- 8.1. Jurisdiction.** Except as provided otherwise in this Ordinance, the Authority shall have jurisdiction over all violations of this Ordinance.
- 8.2. Guidelines.** In imposing any administrative remedy or civil penalty provided for in this Ordinance, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Person or Licensee charged, the gravity of the violation, the history or previous violations, and such other matters as justice may require.
- 8.3. Civil Violations.** Any Licensee or Person who violates or fails to comply with any provision of this Ordinance or who fails or neglects to comply with any final order of the Authority shall be charged with a violation and given due process pursuant to Section 4.18 herein. If the Licensee or Person is found to have committed a violation, he/it may be required to pay a civil fine not to exceed Five Thousand Dollars (\$5,000) for each violation and may be subject to suspension or revocation of their License. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a court of competent jurisdiction.
 - (a) An officer or agent of a business entity who participates in a violation of this Ordinance is subject to the penalties prescribed in this Section.
 - (b) A Licensee found responsible for a violation pursuant to this Section is subject to revocation of the License.
- 8.4. Cumulative Fines.** All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages nor

bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.

- 8.5. Purpose of Civil Penalties.** The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Rancheria, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and. Authority regulations and not to punish such people for violation of such laws and regulations.
- 8.6. Civil Action for Penalties.** In enforcing the civil infraction provisions of this Ordinance, the Authority may proceed, in the name of the Tribe against a Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Ordinance.
- 8.7. Seizure and Forfeiture of Property.** Property utilized in violation of this Ordinance shall be subject to seizure and forfeiture by order of the Authority pursuant to such implementing regulations as the Authority shall promulgate.

[END]