



# Tools for Advancing Tribal Public Health Policies

NIHB Tribal Public Health Summit

JUNE 8, 2017

ANCHORAGE ALASKA



PUBLIC HEALTH  
LAW CENTER  
at Mitchell Hamline School of Law



6/8/2017

- Introduction to the Public Health Law Center
- Applying tribal sovereignty to promote public health
- Overview of commercial tobacco and healthy food systems policy approaches
- Policy drafting considerations
- Q&A





# Who we work with

Tribes



Federal








State

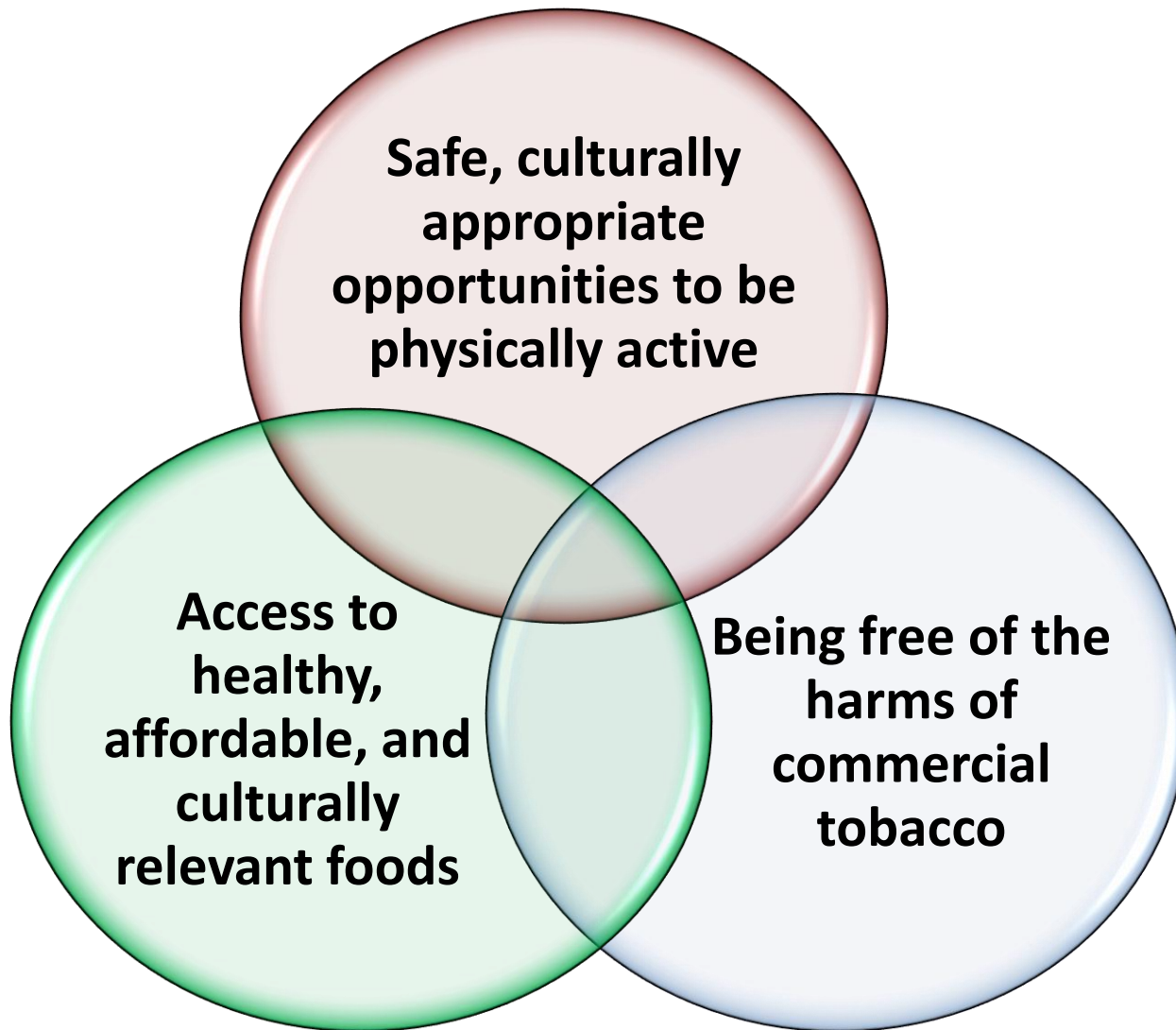


Local



# LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development
-  Publications
-  Trainings
-  Direct Representation
-  Lobby





# HELP KIDS LIKE DRUE AND MIO HAVE HEALTHIER LIVES.



# **PUBLIC HEALTH LAW AND SOVEREIGNTY**



# STARTING POINTS

- 567 federally recognized Tribes; 567 legal/policy systems
- How to promote health is a challenge for everyone—there is no single “right” answer

# LAW AND PUBLIC HEALTH

- Law is a tool
- Establishes public health infrastructures, systems (e.g., health departments)
- Address or redress public health problems



Navajo Nation Tribal Council chambers in Window Rock, AZ., in 2006. Matt York/AP

# TRIBAL PUBLIC HEALTH

- Many Tribes have a health department
- May not have a public health department, but public health concepts are embedded in governance
- Acting to protect public health is an act of sovereignty



# Policy

Any **written** plan or course of action designed to **influence** and determine decisions



# TRIBAL LAW

- Executive orders
- Resolutions
- Ordinances
- Codes or code sections
- Regulations
- Constitutions
- Case law
- Treaties
- Customary law

# WHAT ARE YOU WORKING ON?





## **NEXT: OVERVIEW OF POLICY AREAS**

- Commercial tobacco control
- Healthy eating and Tribal food systems

# Perspective on Commercial tobacco



A Law Synopsis by the Tobacco Control Legal Consortium  
June 2015

**Toking, Smoking & Public Health: Lessons from Tobacco Control for Marijuana Regulation**

Kerry Cork

 Tobacco Control Legal Consortium

Law. Health. Justice.





# Harms of Commercial Tobacco

- 29.2 percent of AI/AN currently smoke.
  - 50 percent of Northern Plains tribal members were smokers compared to 14 percent of Southwest tribal members
  - Tribe-specific data is needed to fully understand the disease burden among Indian tribes
- The tobacco industry strategically targets AI/ANs

Source: <https://www.tobaccofreekids.org/research/factsheets/pdf/0251.pdf>





# Policy Options

- Cessation referral policy for health center
- Smoke-free housing
- Smoke-free casinos
- Smoke-free campus policies / e-cigarettes
- Point-of-sale policies
- Commercial tobacco tax
- Missing any?





**EXECUTIVE ORDER NO. 13-2014**

**PROTECTING NAVAJO NATION EMPLOYEES EXPOSURE TO  
COMMERCIAL TOBACCO PRODUCTS AND SECONDHAND SMOKE IN THE  
WORK PLACE**

**THE NAVAJO NATION  
EXECUTIVE ORDER NO. 13-2014**

August 14, 2014

**WHEREAS:**

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and program matters. 2 N.N.C. § 1005 (A);
2. The President shall have the enumerated power of issuing an executive order for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such status. 2 N.N.C. § 1005 (C) (14);
3. An executive order shall have the force of law upon the recipient. Id.
4. Executive Order No. 02-2011 was implemented April 26, 2011 for the similar purpose. Executive Order No. 13-2014 provides clarification and will supersede Executive Order No. 02-2011.
5. The cultural, spiritual, and ceremonial use of Hozooji Dzil Natcho/ Natural Mountain Smoke is the fundamental values and principles of Dine Life Way;
6. Navajo cultural teachings about the Hozooji Dzil Natcho/ Natural Mountain Smoke and its use are of importance to the health, wellness, and welfare of the Navajo people;

7. The Navajo fundamental traditional and ceremonial use of Hozooji Dzil Natcho/ Natural Mountain Smoke shall not be restricted;
8. Secondhand smoke has been classified by the U.S. Environmental Protection Agency (EPA) as a group A carcinogen;
9. There are no safe levels of secondhand smoke and no available adequate ventilation technology based upon scientific studies that can ensure that protection and prevention of involuntary exposure to secondhand commercial tobacco smoke and its health-related illness; and
10. Everyone has the right to breathe clean air and be free from the pollution of spit tobacco smokeless tobacco, e-cigarettes, or any other commercial tobacco products.


**THEREFORE:**

I, Ben Shelly, President of the Navajo Nation, by the authority vested, I hereby issue the following order:

1. Policy. It is the policy of the Navajo Nation Executive Branch to establish a commercial tobacco free environment for government employees and member of the public visiting or occupying Navajo Nation facilities. The use of commercial tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Navajo Nation and in any outdoor areas under the executive branch, and within a reasonable distance of 25 feet of entrances, operable windows, and ventilation systems of enclosed areas where commercial tobacco products are hereby deemed prohibited.
2. Other locations. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under the auspices of the executive branch in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.
3. Responsibility for implementation. The heads of divisions agencies departments and programs are responsible for implementing and ensuring compliance with the provisions of this order. Independent agencies are mandated to comply with the provisions of this order.
4. Consistency with the other laws. The provisions of this order shall be implemented consistent with the laws and highest welfare of the people.

5. Construction. Nothing in this order shall limit a division, agency, department or program head from establishing more protective policies on smoking in the workplace for employees and members of the public who are served, invited and welcome.

Executed at the Office of the President and Vice President of the Navajo Nation  
On this 14<sup>th</sup> day of August, 2014.

  
Ben Shelly, President  
THE NAVAJO NATION

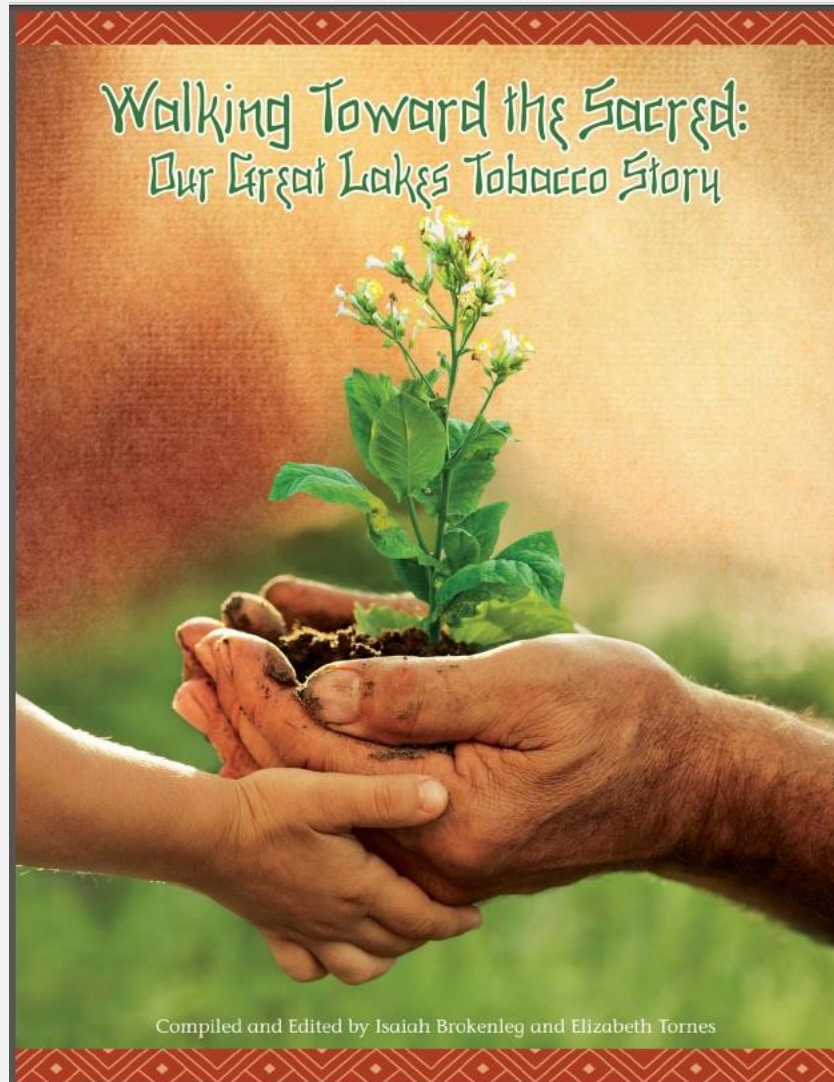
**ATTEST:**

  
Harrison Tsosie, Attorney General  
THE NAVAJO NATION

# Types of Commercial Tobacco



# Respecting Traditional Tobacco



Source:

[http://www.glitc.org/  
forms/Tabacco/  
tabacco-booklet-web-.pdf](http://www.glitc.org/forms/Tabacco/tabacco-booklet-web-.pdf)



# The Family Smoking Prevention and Tobacco Control Act



# The Family Smoking Prevention and Tobacco Control Act

“The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product . . .”

*21 U.S.C. § 321(rr)(1)*

## “Traditional (Ceremonial) Tobacco Use

The FDA does not regulate the use of traditional (ceremonial) tobacco. The FDA understands and respects the use of traditional tobacco by Native tribes.”

*<http://www.fda.gov/>*





# The Family Smoking Prevention and Tobacco Control Act



21 U.S.C. § 387a(b):

“This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.”



# The Family Smoking Prevention and Tobacco Control Act

FDA has comprehensive authority:

- Premarket review of new products
- Set product standards
- Require warning labels
- Establish advertising and marketing restrictions
- Require registration of manufacturers
- Require disclosure of product lists
- Require testing and disclosure of ingredients
- Require disclosure of health information



# The Family Smoking Prevention and Tobacco Control Act

## FDA Cannot:

- Prohibit the use of tobacco products
- Prohibit the sale of an entire class of tobacco product
- Prohibit the sale of tobacco products in a specific category of retail outlets
- Require a prescription for tobacco products
- Levy taxes on tobacco products
- Raise the minimum purchase age of tobacco products

# Tribal Sovereignty

“...nothing in this subchapter ... shall be construed to limit the authority of ... the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this subchapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this subchapter shall limit or otherwise affect any State, tribal, or local taxation of tobacco products.

*21 U.S.C. § 387p(a)(1)*

## Tribal Sovereignty

“ ... the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

"(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.”



U.S. Department of Health and Human Services



**U.S. Food and Drug Administration**  
Protecting and Promoting *Your* Health

[A to Z Index](#) | [Follow FDA](#) | [En Español](#)

Search FDA



- [Home](#)
- [Food](#)
- [Drugs](#)
- [Medical Devices](#)
- [Radiation-Emitting Products](#)
- [Vaccines, Blood & Biologics](#)
- [Animal & Veterinary](#)
- [Cosmetics](#)
- [Tobacco Products](#)

## Tobacco Products

[en Español](#)

Home > [Tobacco Products](#) > Compliance, Enforcement & Training > State, Local, Tribal and Territorial Governments

### State, Local, Tribal and Territorial Governments

- ▶ [Engagement with American Indian and Alaska Native Tribal Governments](#)

[FDA Tobacco Retail Inspections](#)

# Engagement with American Indian and Alaska Native Tribal Governments

- [f SHARE](#)
- [t TWEET](#)
- [in LINKEDIN](#)
- [p PIN IT](#)
- [e EMAIL](#)
- [p PRINT](#)

FDA's Center for Tobacco Products (CTP) understands the importance of collaboration and consultation, as appropriate, with federally-recognized tribal governments, per [HHS Tribal Consultation Policy](#) and [Executive Order 13715](#), on the implementation and enforcement of the [Tobacco Control Act](#) and related regulations. CTP respects tribal sovereignty and honors the government-to-government relationship we have with federally-recognized American Indian and Alaska Native tribes.

The American Indian and Alaska Native population has the highest prevalence of cigarette smoking (about 22%) compared to any other population group in the United States.<sup>1</sup> We understand and appreciate that many tribal governments have been working actively to reduce tobacco use within their tribes and to prevent smoking and other tobacco use among tribal youth. Through a collaborative partnership, we can protect the health of Native communities, including youth, by ensuring compliance with the Tobacco Control Act.

### Federally-Recognized Tribes

- [Working with CTP](#)
- [Guidance, Rules, and Regulations on Regulated Tobacco Products](#)
  - [Traditional \(Ceremonial\) Tobacco Use](#)
- [Contact CTP](#)

### The Center for Tobacco Products and Native Communities



Despite decades of progress, tobacco use is still the greatest cause of preventable disease and death in the United States—something that FDA's Center for Tobacco Products is working to change. Tobacco use has had a serious impact on Native communities. The American Indian and Alaska Native (AIAN) population has the highest prevalence of cigarette smoking (21.4 percent) compared to any other population group in the United States, according to the Centers for Disease Control and Prevention (CDC).<sup>1</sup> Because of the prevalence of smoking and other tobacco use, AIANs have an especially high risk of suffering from tobacco-related death and disease. AIAN youth are particularly affected: CDC's Youth Risk Behavior Surveillance System (YRBBS) for 2013 found that more than 23 percent of AIAN high school students smoked a cigarette before age 13, compared to approximately 9 percent of the total U.S. high school population.<sup>2</sup> Among AIAN high school students, 24.6 percent smoked cigarettes, compared to 13.7 percent the total U.S. high school population.<sup>2</sup>

#### Building a Healthier Future

Our vision at CTP is to make tobacco-related death and disease part of America's past, not America's future, and by doing so, to ensure a healthier life for every family. We understand and appreciate that many tribal governments have been working actively to reduce tobacco use within their tribes and to prevent smoking and other tobacco use among tribal youth.

In 2010, the Family Smoking Prevention and Tobacco Control Act gave FDA the authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco product use by children and adolescents. Currently, regulated tobacco products include cigarettes and cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. FDA has published a proposed rule to bring under FDA's regulatory authority other products that meet the definition of tobacco products, such as e-cigarettes, cigars, and pipe tobacco.





## FDA Actions (Non-Tribal)

Retail Inspections as of 5/31/13:

- Enforcement Contracts with most States & Territories
- 175,152 Retail Inspections
- 9,105 Warning Letters
- 689 Civil Monetary Penalties
  - \$156,225 as of 2/28/2013

# FDA Actions (Tribal)

## “Inspections on Tribal Lands

FDA inspects establishments engaged in the manufacture, compounding, or processing of regulated tobacco products. FDA also inspects tobacco retailers to determine a retailer’s compliance with FDA regulations.

FDA is authorized to award tobacco retail inspection contracts to States, Tribes, Territories, and third parties to conduct retail inspections. ... The Tobacco Control Act specifically prohibits FDA from contracting with any state to exercise enforcement authority under the Tobacco Control Act in Indian Country without the express written consent from the tribe involved.”

*[www.fda.gov](http://www.fda.gov)*

## Tribal Awards:

- Mescalero Apache Tribe
- Rincon Band of Luiseno Indians
- Seminole Tribe of Florida
- Shoshone-Bannock Tribes (Idaho).

# The Family Smoking Prevention and Tobacco Control Act

## Sales and Distribution:

- Establish a minimum age of 18 and require verification of all persons not over the age of 26
- Prohibit non-face-to-face sales including vending machines
- Prohibit sampling



# The Family Smoking Prevention and Tobacco Control Act

Sales and Distribution, cont'd:

“No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackage cigarettes that is smaller than [20].”


*21 C.F.R. § 1140.14(d)*





# FDA Actions (Tribal)

Buyers: [Login](#) | [Register](#) | [Vend](#)

 **Tobacco Retail Compliance - Indian Tribes**  
Solicitation Number: FDA-16-SOL-1160806  
Agency: Department of Health and Human Services  
Office: Food and Drug Administration  
Location: Office of Acquisitions and Grants Services - Rockville

Notice Details Packages Interested Vendors List

[Return To Opportunities List](#) [Watch This Opportunity](#)  
[Add Me To Interested Vendors](#)

**Complete View**

- [Original Synopsis](#)  
Presolicitation  
Dec 24, 2015  
11:31 am
- [Changed](#)  
Feb 26, 2016  
8:42 am  
Solicitation
- [Changed](#)  
Mar 09, 2016  
12:03 pm

**Solicitation Number:** FDA-16-SOL-1160806  
**Notice Type:** Solicitation

**Synopsis:**  
Added: Dec 24, 2015 11:31 am

The Food and Drug Administration intends to award sole source contracts to Indian Tribes for tobacco retail compliance check inspections. This action is in accordance with the Tobacco Control Act, Public Law 111-31, Section 103 (g) (2).

“Protect Our Future:  
Prevent Tobacco Sales to  
Minors”

<https://youtu.be/Z0xxC3hDqw>



# The Family Smoking Prevention and Tobacco Control Act



## Advertising and Marketing:

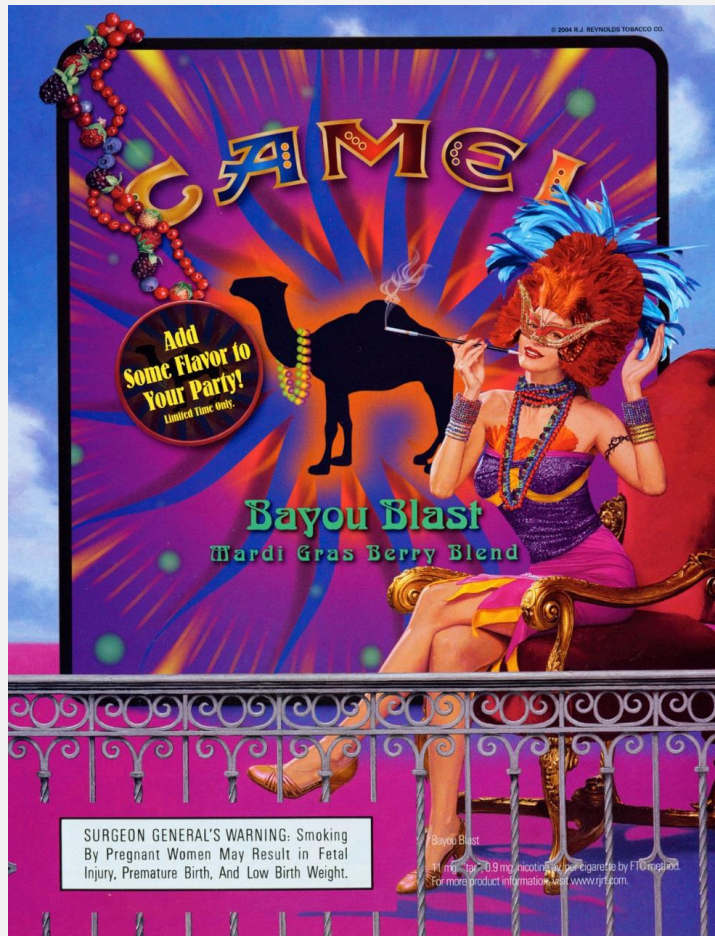
- Prohibit tobacco product brand and trade names of non-tobacco products
- Prohibit brand and trade name sponsorship of sporting and cultural events
- Require notice of all advertising in any non-traditional medium



# The Family Smoking Prevention and Tobacco Control Act

Product Standards:

No cigarette can contain a “characterizing flavor,” except tobacco or menthol flavors



# Deeming Regulation

www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/ucm394909.htm



U.S. Department of Health and Human Services



**U.S. FOOD & DRUG  
ADMINISTRATION**

[A to Z Index](#) | [Follow FDA](#) | [En Español](#)

Search FDA



[Home](#)

[Food](#)

[Drugs](#)

[Medical Devices](#)

[Radiation-Emitting Products](#)

[Vaccines, Blood & Biologics](#)

[Animal & Veterinary](#)

[Cosmetics](#)

[Tobacco Products](#)

## Tobacco Products

[en Español](#)

[Home](#) > [Tobacco Products](#) > [Products, Guidance & Regulations](#) > [Rules, Regulations & Guidance](#)

### Rules, Regulations & Guidance

[Rules & Regulations](#)

[Guidance](#)

[Tobacco Control Act](#)

[Letters to Industry](#)

## FDA's New Regulations for E-Cigarettes, Cigars, and All Other Tobacco Products

[f](#) SHARE

[t](#) TWEET

[in](#) LINKEDIN

[p](#) PIN IT

[e](#) EMAIL

[p](#) PRINT

Tobacco use is the single largest preventable cause of disease and death in the United States. Since 2009, FDA has regulated cigarettes, smokeless, and roll-your-own tobacco. FDA [finalized a rule](#), effective August 8, 2016, to regulate all tobacco products. For background information on this milestone in consumer protection, see [The Facts on the FDA's New Tobacco Rule](#).

[Read the FDA Voice blog post](#) by Center Director Mitch Zeller on Protecting the Public and Especially Kids from Tobacco Products, Including E-Cigarettes, Cigars and Hookah Tobacco.

## How Do the New Regulations Affect You?





	<b>E-Cigs &amp; other newly-covered products</b>
Regulation of adulterated products	Effective date of Final Rule
Required disclosure of measure/contents; premarket approval	24 mos after Final Rule issued
Prohibition on false or misleading advertising	Effective date of Final Rule
Required disclosure of ingredients, substances, compounds and additives	6 mos after effective date of Final Rule
Required disclosure of harmful and potentially harmful constituents	36 mos after effective date of Final Rule
Required disclosure of health-related documents	6 mos after effective date of Final Rule
Required registration of manufacturers	By end of calendar yr in which Final Rule issued (if issued in 2nd half of year, FDA will designate a date)
Required disclosure of product lists	Upon submission of new product applications
Prohibition of the use of “light,” “mild,” “low,” or similar descriptors	12 mos after effective date of Final Rule



	<b>Cigarettes</b>	<b>Smokeless Tobacco</b>	<b>Cigars</b>	<b>E-Cigarettes and Other Newly-covered Products</b>
<b>Minimum purchase age of 18</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>No vending machine sales</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	Allowed in adults-only facilities
<b>No self-service displays</b>	Allowed in adults-only facilities	Allowed in adults-only facilities	<input type="checkbox"/>	<input type="checkbox"/>
<b>Minimum package size requirements</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>No loosies</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>No free samples</b>	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>No characterizing flavors</b>	Menthol and tobacco allowed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Warnings on packages and ads</b>	9 Rotating warnings	4 Rotating warnings	4 Rotating warnings	1 Static warning re: containing nicotine, which is addictive
<b>No brand-names sponsorship of sporting and cultural events, no brand names on non-tobacco items</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Required notice of ads in any non-traditional medium</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

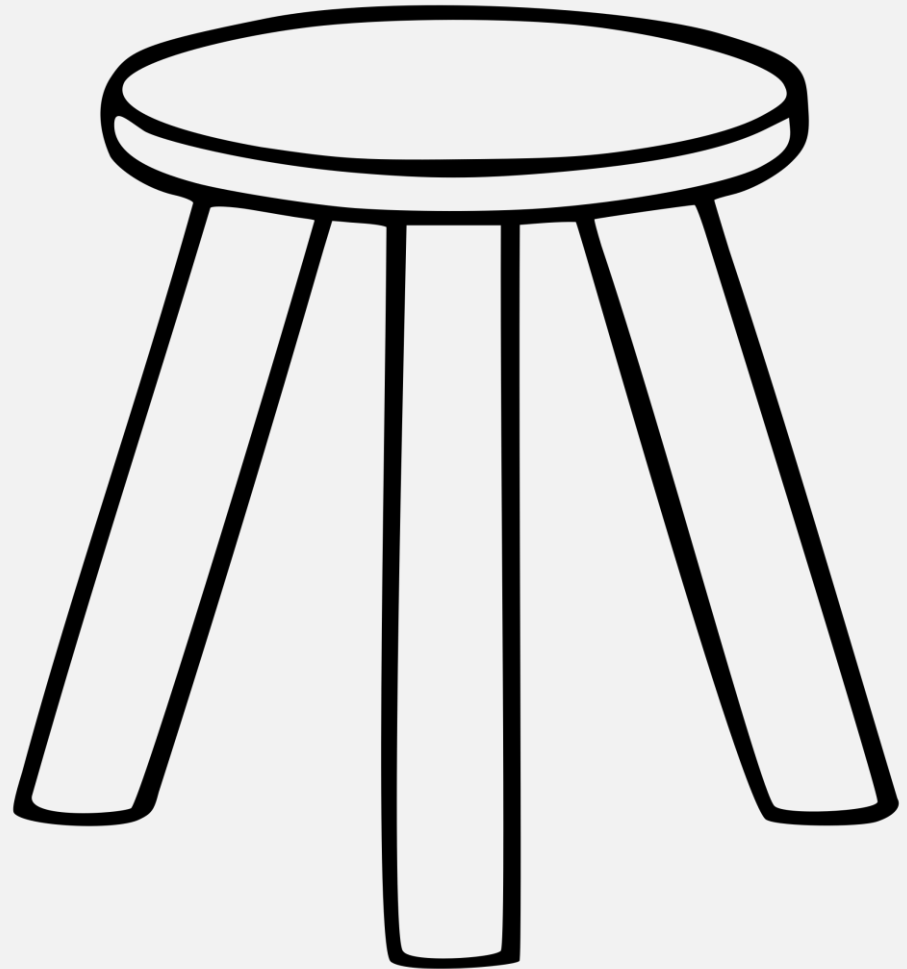
# Missed Opportunities

- Flavored Tobacco Products
- Television Advertising
- Internet Sales
- Brand Name Sponsorship
- Self-Service Displays
- Minimum Package Size
- Child-Resistant Packaging



## “Trifecta” of Commercial Tobacco Control

- Smoke-Free
  - Bars & Restaurants
  - Housing
  - Casinos
  - E-Cigarettes
- Youth Access
- Tax / Program Funding
  - Cessation





## Other Policy Options

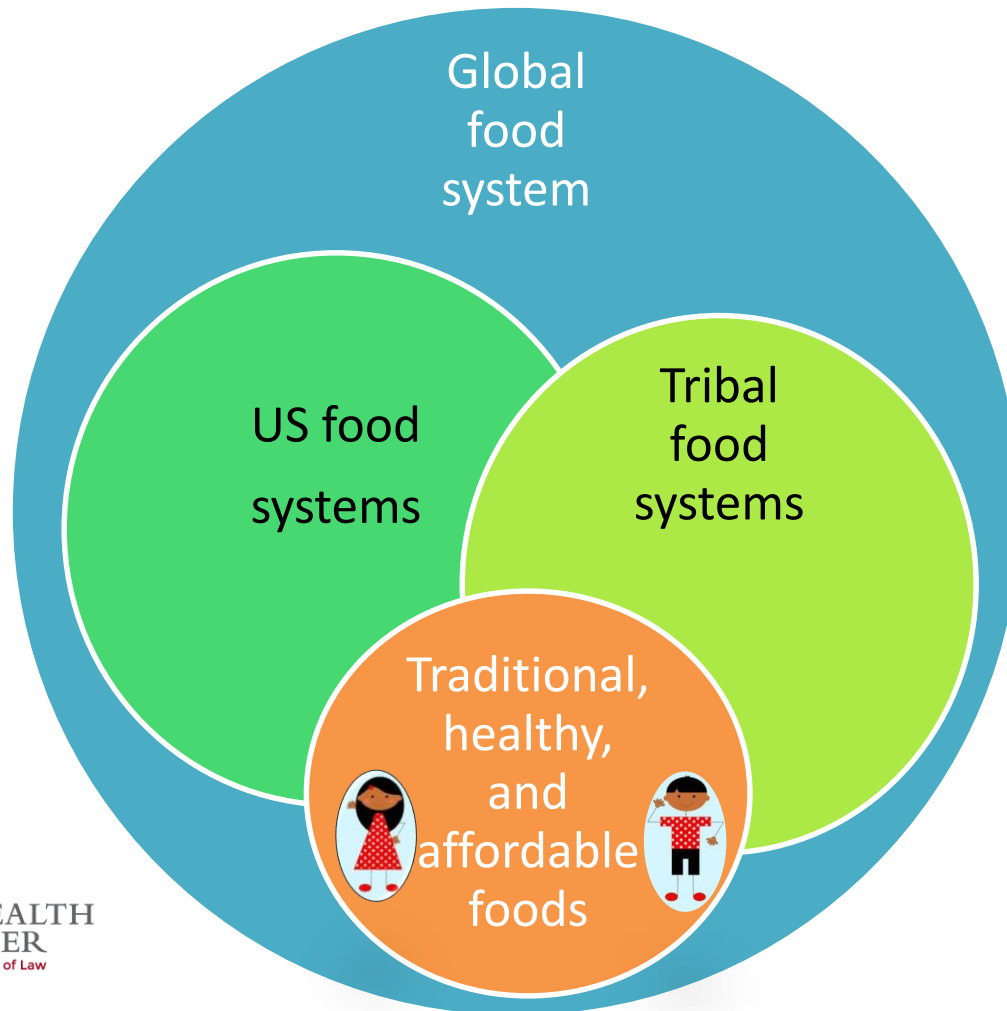
- Restrict Sale of Flavored Products, incl. Menthol
- Tobacco 21
- Marketing Restrictions
- Minimum Price / Coupon Restrictions

# QUESTIONS SO FAR?



# HEALTHY EATING AND TRIBAL FOOD SYSTEMS

“Tribal food systems embody the connections by uniting social, cultural, political, legal and economic institutions within a Tribal community.” – Vena A-dae Romero-Briones (Cochiti/Kiowa)





# **Little River Band of Ottawa Indians Ordinance 04-500-02, Section 1.02 (i)**

Chi-gbeyhiíng [for a great long time—thousands and thousands of years], the native plant and animal species have lived and flourished in the Aníshinaábek homeland. The animals and their habitat, and the plants, and fish, and the waters in which they spawn and grow, are part of the Aníshinaábek sense of place. Gzhémnidoó guided us here in fulfillment of an ancient prophecy, and the Aníshinaábek are obliged to remain and to protect them in this place. As the Aníshinaábek primary food source for thousands of years, plants, fish, and wildlife continue to be an essential aspect of Aníshinaábek nutritional and spiritual health;

# TRIBAL POLICY, SYSTEMS, ENVIRONMENTAL APPROACHES TO PROMOTE HEALTHY FOOD SYSTEMS

- Codify hunting, fishing, gathering treaty rights
- Establish a food policy council or taskforce
- Link economic development to healthy food systems
- Require 75% of snacks and drinks in vending machines on Tribal government property to meet a nutrition standard
- Include Native food preference, nutrition standards in Tribal government food procurement process
- Tax junk food, make fresh produce tax-free
- Give a discount to powwow vendors who sell only healthy foods

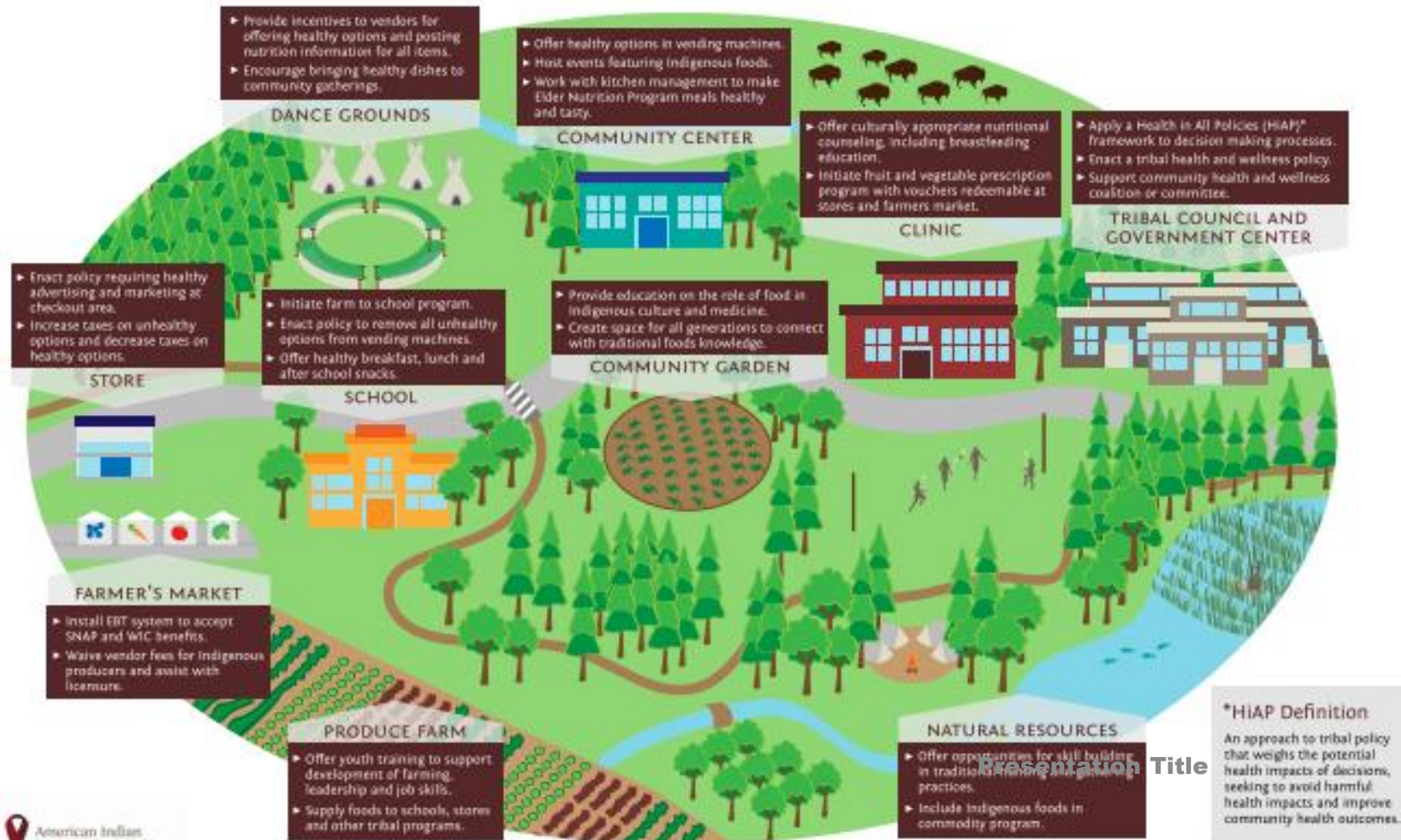
# HEALTHY EATING FOR STRONG NATIVE COMMUNITIES

## PROMOTING INDIGENOUS HEALTH

▶ Indigenous Foods: foods native to local area.

▶ Healthy Options: water, fruits, vegetables, whole grains, lean proteins, unprocessed foods.

▶ Unhealthy Options: sugary drinks and processed foods high in sugar, sodium and saturated fat.



# Roles and Opportunities for Tribal Governments

- Establish robust protection of Native foods
- Use tribal lands for producing healthier foods and revitalizing traditional foods
- Recapturing health through revitalizing food systems
- Creating business opportunities in food for tribal citizens
- Establishing clear policy and a shared vision
- Tap into the talent and power of Native peoples in food
- Rising global population means greater attention to food and greater need to protect Native resources
- Protection of culture is one part of the picture



School of Law

***Indigenous Food and Agriculture Initiative***

<http://indigenousfoodandag.com/model-food-code-project/>



# Model Food and Agriculture Code: Examples of Sections

- Foreign Ownership of Ag Land on Reservations
- Traditional foods
- Seeds and Seed Protection
- Animal Rights and Animal Welfare
- Commercial Relationships
- Cooperatives and other Business Entities
- Ag Taxation in General
- Taxation of Unhealthy Foods
- Restrictions on Corporate Farming
- Energy Issues related to Agriculture
- Environmental Issues related to Agriculture
- Estate Planning related to Agriculture
- Farm Labor & Child Labor
- Beginning farmer and rancher



School of Law

*Indigenous Food and Agriculture Initiative*

# Model Food and Agriculture Code

## Sections: More Examples

- Food Law (covering food safety on the farm and in retail establishments as well as the entire supply chain)
- Hunger and Food Security/Food Access
- Hunting, Recreation and Wildlife
- Trade
- Land Use Planning, Regulation, Farmland Preservation, Land Sales and Leases
- Finance and Credit issues
- Forestry
- Water and Soil Conservation
- Leases and Contracts
- Marketing
- Types of Farming and Ranching on Tribal lands
- Torts, Insurance and Related issues
- Transportation
- Perishable Products
- Prompt Payment
- Nutrition Programs



School of Law

***Indigenous Food and Agriculture Initiative***

# Model Food and Agriculture Code Sections: More Examples....

- Food Labeling
  - Protections of the food name and compliance with food laws
- Landowner Liability
- Food Waste and Food Recovery
- Pesticides and Chemicals
- Zoning related to Agriculture Production and Food
- Uniform Commercial Code Articles related to Food and Agriculture
- Veterinary Law
- Relationships in Local/Regional Market Development
- Organic Certification
- Right to Farm and Limitations on Farmer/Rancher Liability



School of Law

***Indigenous Food and Agriculture Initiative***

# Honoring Little Crow with Healthy and Indigenous Foods Initiative

## Resolution No. 16-116

Adopted  
September 20, 2016



### Lower Sioux Indian Community

P.O. Box 308 • 39527 Reservation Highway 1

Morton, MN 56270

*Cansayapi Otunwe*

#### LOWER SIOUX INDIAN COMMUNITY RESOLUTION NO. 16-116

#### APPROVING AND SUPPORTING THE LOWER SIOUX INDIAN COMMUNITY'S HONORING LITTLE CROW WITH HEALTHY AND INDIGENOUS FOODS INITIATIVE

- WHEREAS, The Lower Sioux Indian Community is a duly organized and federally recognized Indian Tribe under 25 U.S.C. § 476, and is governed by the terms of a Constitution and Bylaws originally adopted by the Community Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,
- WHEREAS, pursuant to said Constitution and Bylaws, the Community Council is the governing body of the Lower Sioux Indian Community; and
- WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS (a) to negotiate with the Federal, State, and local Governments on behalf o the Community...; (c) to approve or veto any sale, disposition, lease, or encumbrance of Community lands, interests in lands, or other Community assets...; (e) to make assignments of community land to members of the Community...; (f) to manage all economic affairs and enterprises of the Community...; (g) to appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community...; (i) to safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation...; (j) to establish ordinances...providing for the maintenance of law and order upon the Reservation...; (m) to encourage and foster the arts, crafts, traditions, and culture of the Community...; (o) to protect and preserve the property...of the Community...; and
- WHEREAS, disproportionately higher health disparities have been identified in American Indian/Alaska Native populations compared to all non-Indian populations,

# HONORING LITTLE CROW WITH HEALTHY AND INDIGENOUS FOODS INITIATIVE

- **Calls for policy to support availability of healthy and indigenous foods in vending machines at rec center and Government Center**
  - 75% healthy/indigenous
  - Use pricing and placement to promote healthy items
  - Calorie information to be provided
- **Calls for policy to encourage Wacipi (powwow) vendors to provide healthy and indigenous foods (50% discount on fee)**
- **Calls on committee to develop strategic plan and recommendations for other food outlets**



# STRATEGIC PLAN COMPONENTS

- A) Guidelines for food and beverages provided at LSIC meetings, forums, and other events or occurring on LSIC property
- B) Guidelines for the Associate Dining Room (employee) program
- C) Increase availability and purchase of health promoting foods and beverages in stores and other community food outlets



# THE POLICY JOURNEY

- The Lower Sioux Indian Community, with help from the American Indian Cancer Foundation (AICAF), created a community Health and Human Services Advisory Committee to serve the areas of Health and Social Services.
- 8 member Advisory Committee was nominated by Lower Sioux Indian Community members at a community dinner in January, 2015 and approved by Tribal Council.

# LSIC HEALTH & HUMAN SERVICES ADVISORY COMMITTEE GOAL

“To increase community engagement to establish a sustainable Lower Sioux Indian Community food system that improves access to healthy food, connects the community to indigenous foods, and creates healthier families.”



# ONE OF THE CHAMPIONS . . . .



Stacy Hammer, RDN, LD

Registered Dietitian

Diabetes Coordinator/Title VI Director

Lower Sioux Health Care Center

Mdewakanton Dakota

# COMMON THEMES

- Identify stakeholders (decision makers and implementers)
- Gather information--learn about the process, collect examples of standards, policies
- Build and strengthen relationships
- Promote collaborative dynamic
- Goal: recommendations that are ambitious but feasible



# OTHER EXAMPLES: COMPREHENSIVE PLANS (ONEIDA NATION)

## GOAL 3: Diversify the Oneida agricultural operations.

Status: *On-going*

### Objectives

- 3.1: Raise alternative crops for diversification.  
Status: *On-going*
- 3.2: Raise alternative animals for diversification.  
Status: *On-going*

## GOAL 4: Preserve and enhance Oneida Nation agricultural land base.

Status: *No activity*

### Objective

- 4.1: Protect the most important farmlands.  
Status: *No activity*

## GOAL 5: Maintain and enhance the Oneida agricultural production operation as a local long-term and sustainable industry.

Status: *No activity*

### Objective

- 5.1: Promote, expand and stabilize the Oneida agricultural economy.  
Status: *No activity*

## GOAL 6: Establish a "Food Security Program" that reduces hunger, food insecurity and enables the tribe to provide foods for all persons in the Oneida Community at all times.

Status: *On-going*

### Objectives

- 6.1: Enhance the Oneida Community Integrated food system (OCIFS) that provides access to culturally and nutritionally adequate food to persons in the community through local non-emergency sources at all times.  
Status: *On-going*
- 6.2: Increase economic and job security.  
Status: *On-going*
- 6.3: Strengthen the existing tribal and regional nutrition assistance safety net.  
Status: *On-going*

- 6.4: Support/reinforce supplemental food products from volunteers and nonprofit groups.  
Status: *On-going*

- 6.5: Increase and improve marketing, sales and distribution of food products produced by the Oneida Community Integrated Food System (OCIFS) and entrepreneur raised products to increase revenues locally.  
Status: *Ongoing*

- 6.6: Ensure adequate staffing with knowledge, skills and abilities to maintain the food security system functions.  
Status: *On-going*

- 6.7: Undertake community "Capacity Building" to strengthen the community's ability to be self-sufficient and provide local food security.  
Status: *On-going*

- 6.8: Charge affordable food prices.  
Status: *No activity*

- 6.9: Expand canning department.  
Status: *No activity*

- 6.10: Evaluate Oneida agriculture.  
Status: *Ongoing*

- 6.11: Develop the Oneida Reservation as an "oasis of life."  
Status: *Pending*

## GOAL 7: Develop earth and animal friendly agricultural production, processing practices and policies for healthy people and for economic benefits.

Status: *On-going*

### Objectives

- 7.1: Balanced land use.  
Status: *No activity*
- 7.2: Maximize use of infrastructure.  
Status: *On-going*
- 7.3: Use best livestock production practices.  
Status: *On-going*
- 7.4: Use best farm conservation practices.  
Status: *On-going*



# EXECUTIVE ORDERS (CHEROKEE)



## EXECUTIVE ORDER

WHEREAS, Cherokee Nation is a tribal government with more than 300,000 citizens, and whose public health and health care service delivery span across the nation's jurisdiction, covering fourteen counties in northeast Oklahoma; and

WHEREAS, obesity has emerged as a significant health threat in the Cherokee Nation and is directly associated with increased costs, increased morbidity and mortality, diabetes, heart disease, cancer, and other diseases for our citizens, this **EXECUTIVE ORDER** shall establish a manner in which to address these concerns and raise awareness in our Nation, and

WHEREAS, Cherokee Nation believes good public health practice is one that includes a systems approach where multiple stakeholders, including tribal, public, private and community organizations work in partnership to assure conditions in which people can be healthy, and such conditions often include social, economic, educational and environmental factors that either help, or make it difficult, for communities to be healthy; and

WHEREAS, Cherokee Nation is dedicated to promoting and improving health which will provide healthy communities for this and future generations, and

WHEREAS, preventable and chronic health conditions are detrimental to every Cherokee's quality of life, cause disproportionate social and economic burdens, and result in Cherokee Nation spending a large percentage of the tribe's total healthcare dollars on medical versus primary prevention efforts; and

WHEREAS, the Cherokee Nation is uniquely positioned to bring together the talent, resources, experience, and innovations of the tribe's public health workforce, diverse communities, employers, schools and universities, and others, to develop a plan to reduce the burden of disease and improve the health of all communities within the Cherokee Nation; and

WHEREAS, reducing the obesity rate in both children and adults and improving the health of Cherokee Nation citizens and others living within our tribal jurisdiction is a priority for Cherokee Nation;


**IT IS ORDERED** that Cherokee Nation Health Services, through its Public Health Committee, establish an Obesity Prevention Long Range Plan to promote a practice of evidence-based strategies of obesity prevention among children and adults.

**IT IS FURTHER ORDERED** that Cherokee Nation Health Services hereby be given the task to identify and provide Cherokee Nation Administration strategies to:

1. *Improve access to healthy, affordable, and locally produced food, for all citizens; and*
2. *Support education regarding the physical and mental health risks of obesity and the benefits of sustainable agriculture, using locally produced food, consuming fresh fruits and vegetables, infant breastfeeding, providing healthy meals in our schools, promoting physical activity and exercise, and maintaining a healthy weight; and*
3. *Encourage programs that increase physical activity and exercise in schools, at work, and in communities, including those that provide safe playgrounds and parks, pedestrian-friendly walkways, bicycle paths, and other recreational opportunities.*

**IT IS FURTHER ORDERED** that Cherokee Nation develop a clear plan with measurable progress goals that lead toward reducing obesity, identify and recommend concrete actions that could be taken to reduce obesity, and shall develop a public health surveillance system to report progress toward reducing obesity within the Cherokee Nation.

It is so ordered on 4-16- 2014

  
Bill John Baker  
Principal Chief  
Cherokee Nation

# **ESTABLISH A FOOD POLICY COUNCIL (MUSKOGEE (CREEK))**

**TR 10-79**

**CLASSIFICATION: #15. CULTURAL AFFAIRS/HISTORY/MUSEUM  
A TRIBAL RESOLUTION OF THE MUSKOGEE (CREEK) NATION ESTABLISHING  
A TRIBAL FOOD AND FITNESS POLICY COUNCIL**

Be is Resolved by the National Council of the Muscogee (Creek) Nation:

**LET IT FURTHER BE RESOLVED THAT**, The Muscogee (Creek) Nation hereby supports the establishment of the Muscogee (Creek) Nation Food and Fitness Policy Council comprised of representatives from the Indian Health Service, Muscogee (Creek) Nation Division of Health, Legislative, Executive and Judicial branches of government, Myskoke Food Sovereignty Initiative and farmers/ranchers and other stakeholders, as decided by the Food and Fitness Policy Council that will provide input and legislative recommendations to the government of the Muscogee (Creek) Nation.

# PROVIDE HEALTHY FOOD AT COMMUNITY GATHERINGS

## Jena Band of Choctaw Indians Community Garden Initiative

Submit Your Story

Eastern Band Cherokee

Ka-ke-to-fa Booster Breaks -  
Worksite Wellness Project to  
Increase Physical Activity

The Zuni Youth Enrichment  
Project

Dig it! Plant it! Grow it!  
Community Garden

Jena Band of Choctaw Indians  
Community Garden Initiative

Hoonah City School Garden  
Initiative

Da-gwa-le-la A-wi-sv-nv  
(Garden Wagon): Putting

Posted by ARRA Funds - OASH on 07/15/2015

### The Jena Band of Choctaw Indians (Jena, LA) Project Leads: Holly VanHoozen and Cheryl Smith

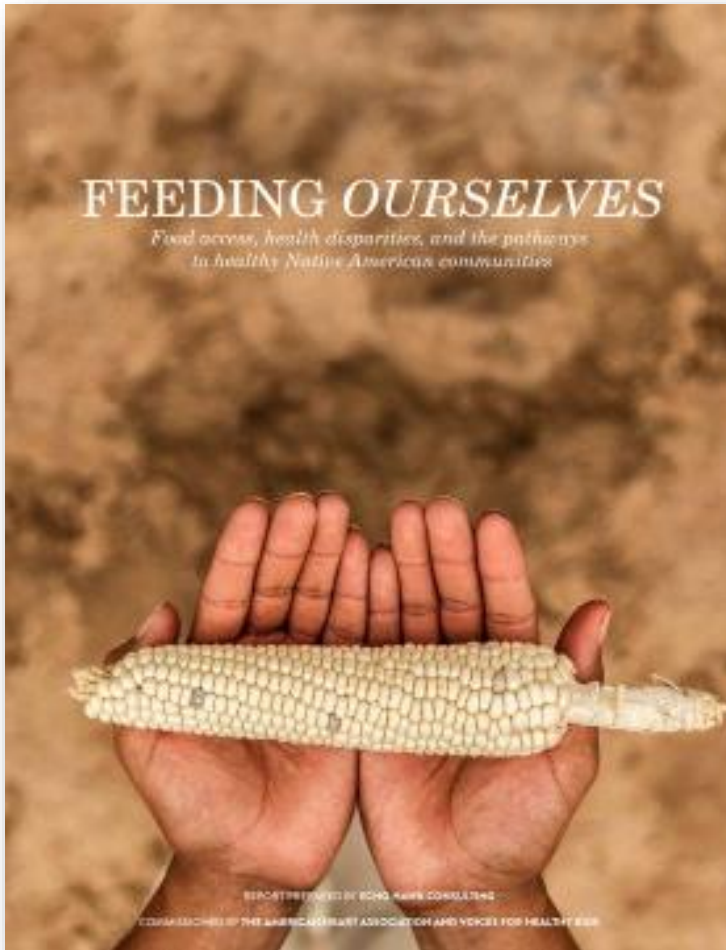
The Jena Band of Choctaw implemented a policy to provide healthy food at community gatherings. The community already had a community garden, however the grant allowed them to purchase necessary supplies to add to what they were growing.

Patient/community education on healthy eating and demonstrations on healthy cooking of fruits and vegetables harvested in our community garden were conducted quarterly.

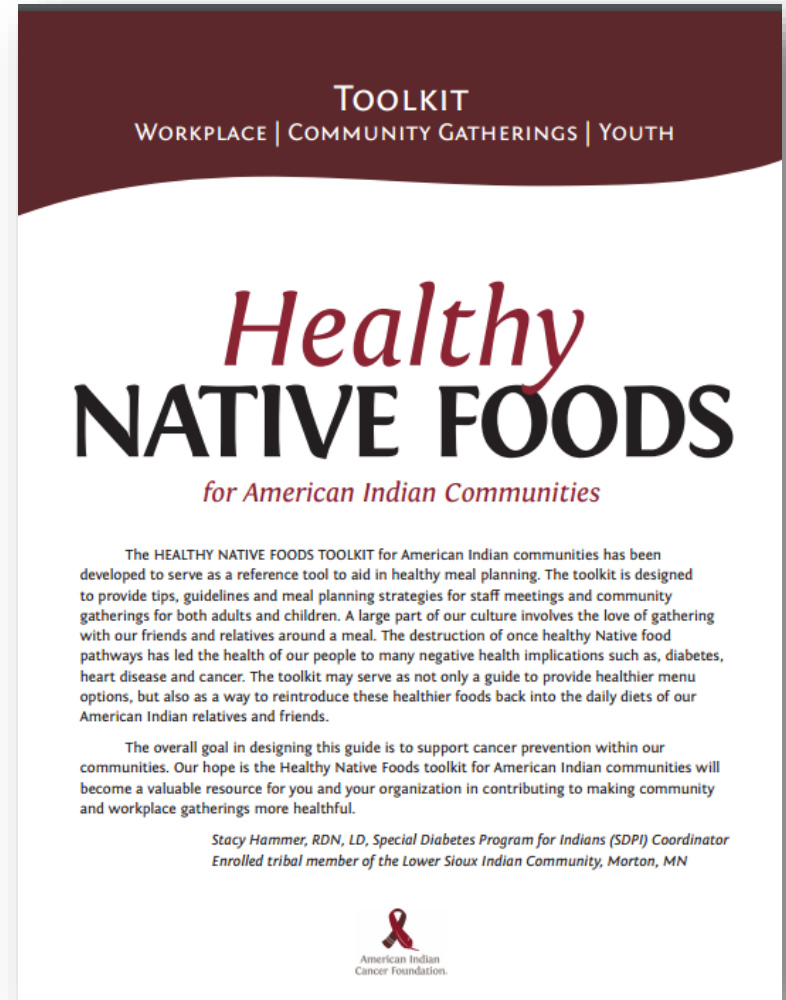
Tribal members took home the produce harvested that they learned how to prepare. The Tribal Maintenance Department prepared the beds for planting, added nutrient rich soil and helped to maintain the gardens. The Tribal Cultural Department conducted the educational component and food demonstrations and incorporated our traditions into classes.



# Resources



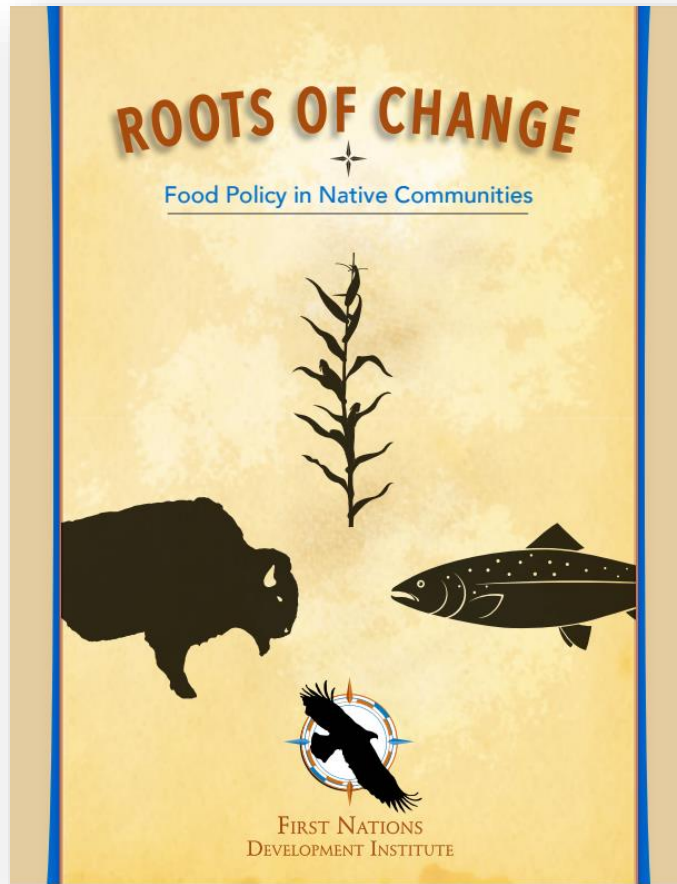
[http://www.heart.org/HEARTORG/Advocate/VoicesforHealthyKids/Feeding-Ourselves\\_UCM\\_475570\\_Article.jsp](http://www.heart.org/HEARTORG/Advocate/VoicesforHealthyKids/Feeding-Ourselves_UCM_475570_Article.jsp)



[http://www.americanindiancancer.org/wp-content/uploads/2014/01/Toolkit\\_NEW\\_03\\_2014-2.pdf](http://www.americanindiancancer.org/wp-content/uploads/2014/01/Toolkit_NEW_03_2014-2.pdf)



# ADDITIONAL RESOURCES



- 2016 First Nations Development Institute Report
- Helpful framework for thinking through policy considerations
- <http://www.firstnations.org/knowledge-center/foods-health>

# HEALTHY COMMUNITY FOOD SYSTEMS

The screenshot shows the website's header with the title "HEALTHY COMMUNITY FOOD SYSTEMS" and social media icons. A navigation bar includes links for "ABOUT US", "GETTING SERIOUS NOW", "HEALTHY FOODSHEDS", "FARM TO SCHOOL", "PUBLICATIONS", "NEWS & EVENTS", and "BLOG". The main content area features a breadcrumb trail "You are here: Home / Four Corners Foodsheds" and a section titled "Four Corners Foodsheds". Below the title, a paragraph states: "HCFS's work in the Four Corners region (Colorado, Utah, Arizona, and New Mexico) includes projects and information specific to the region, including Native American communities." A bulleted list follows: "Native American Topics", "Four Corners Farm to School", "Native American Gardens", "Native American Food Safety Resources", "Navajo Churro Lamb & Wool Marketing", and "Map, Monitor, & Adapt Your Local Foodshed - especially suited to the Four Corners Region." A paragraph below reads: "For more information on the history of regional projects, view our partner group: the Southwest Marketing Network." To the right is a photograph of a green field with a cliff in the background. At the bottom left are social media icons for Facebook, Twitter, Google+, and a plus sign.

<http://healthycommunityfoodsystems.org/four-corners/>

The screenshot shows the website's header with the title "HEALTHY COMMUNITY FOOD SYSTEMS" and social media icons. A navigation bar includes links for "ABOUT US", "GETTING SERIOUS NOW", "HEALTHY FOODSHEDS", "FARM TO SCHOOL", "PUBLICATIONS", "NEWS & EVENTS", and "BLOG". The main content area features a breadcrumb trail "You are here: Home / Four Corners Foodsheds / Native American Gardens" and a section titled "Native American Gardens". Below the title, a paragraph states: "Examples of gardens in Native communities are featured here since they are important to our work on Native Community Farm to School with the National Farm to School Network and since they tend to have many of the best features of our Wild School Gardens concept." A section titled "GARDEN EXAMPLES:" lists several items: "TOCA - Tohono O'odham Traditional Foods and Gardens", "Family Gardens Contributing to Ramah Navajo School", "Sustainable Molokai", "Tuba City Feast for the Future", "White Mountain Apache Feast for the Future", "Colusa Indian Community", "Northwest Indian College Garden Sites", "Meskwaki Nation", "South Dakota Area Native Gardens", and "FNDI Profiles of Native Gardens and Farms". To the right is a photograph of a garden with rows of young plants in a field.

<http://healthycommunityfoodsystems.org/four-corners/native-gardens/>



## Breastfeeding and Child Care Programs

*Meeting Best Practices, Providing Great Service*

By supporting breastfeeding, child care providers help babies get the best start they can in life, leading to stronger, healthier kids and adults.

There is growing awareness and appreciation of the health and wellness benefits of breastfeeding. Across the nation, breastfeeding rates have been increasing.<sup>1</sup> In Minnesota, breastfeeding rates are higher than national averages, with over 90.1% of women breastfeeding their newborn infants and 65.9% still breastfeeding six months after birth.<sup>2</sup> The number of Minnesota hospitals choosing to become *Baby Friendly Hospitals* is increasing, and recent changes to federal and Minnesota law have strengthened *nursing protections for nursing mothers*.<sup>3</sup> For child care providers, the increasing preference for breastfeeding means that providers with programs that support breastfeeding are meeting a key market need, which makes them more competitive and promotes healthy child development.

### Why Is Breast Milk the Most Beneficial and Nutritious Choice?

With its optimal combination of proteins, fats, vitamins, and carbohydrates, breast milk (sometimes

referred to as human milk) is the best source of nutrition for infants.<sup>4</sup> Alternatives, such as cow's milk, can be more difficult for young babies to digest.<sup>5</sup> Health and child development experts recommend that infants be breastfed exclusively for the first six months of life.<sup>6</sup>

After the first six months, the American Academy of Pediatrics (AAP) recommends that breastfeeding continue for the first year of the child's life and beyond as desired.<sup>7</sup> The World Health Organization (WHO) recommends breastfeeding through two years of age and beyond.<sup>8</sup>



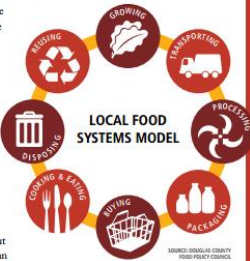
## The Food System

Our food choices impact every aspect of our society and economy

How we currently get food from the farm to our plates is a mystery to many of us. Food distribution and procurement is a global system. It encompasses farmers, eaters, and all of the industries that link them together. Decisions are made every day by our local governments, businesses, and organizations that influence where our food is grown, how it is prepared, distributed, and served.

Local food systems are composed of all of the interdependent steps and actors that go into producing food that is grown and raised in a region. This includes planting, harvesting, storing, transporting, processing, packaging, and retailing of food.

Consumers seeking out locally grown food is an emerging trend in our region. From the phenomenal growth in farmers' markets in our country, to the growing interest in school gardens, to the restaurants and grocers selling local foods — members of our community care about what they eat and how it impacts the place they call home.



### WELLNESS

The healthy (or not-so-healthy) foods we choose impact our individual health and can create burdensome healthcare costs for all.

### EQUITY

Not all members of our community have equal access to healthy, quality foods — leaving them vulnerable to food insecurity and malnutrition.

### ECONOMY

Where we buy food shapes our local economy. Buying locally-grown foods supports local farmers, and helps small and mid-sized agribusinesses create new jobs.

### ENVIRONMENT

Food production and shipping can impact our landscapes and quality of life.

The Public Health Law Center provides information and technical assistance on issues related to public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney.

September, 2014

Content for this publication was provided by the Douglas County Food Policy Council and reformatted by the Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, with funding from the Kansas Health Foundation.



## Proposed Changes to SNAP Eligibility for Stores

The Supplemental Nutrition Assistance Program (SNAP) is a federal program that provides low-income households with funds to purchase food from participating stores using debit or EBT cards.<sup>1</sup> This program used to be known as the "food stamp" program.

The program was established by federal law and is administered by the Food and Nutrition Service (FNS), which is part of the U.S. Department of Agriculture. To participate in SNAP, retailers must carry "staple foods," specifically, foods that are classified as "meat, poultry, or fish, bread or cereals, vegetables or fruits, and dairy products."<sup>2</sup> Staple foods do not include hot food that is eaten right away, like restaurant food.<sup>3</sup>

### Current program standards

Under current regulations, retailers that "sell food for home preparation and consumption" can meet staple food stocking requirements if:

- More than half of their "total gross retail sales" are from sales of staple foods,<sup>4</sup> or
- They provide a minimum healthy food stock, which means:
  - Carrying 3 or more "varieties" of food in each staple food category,<sup>5</sup> and
  - Carrying perishable (frozen/fresh) food items that fit into 2 or more staple food categories.<sup>6</sup>

### Proposed changes

The 2014 federal Farm Bill made some changes to retailer SNAP eligibility. FNS recently

proposed a rule to implement these changes, and included some additional changes.<sup>7</sup> If finalized as proposed, the new rule would:

- Increase the number of required varieties within each staple food category from 3 to 7 (required in the 2014 Farm Bill),
- Require retailers to carry at least 6 "stocking units" of each variety,
- Increase the number of staple food categories with perishable food items from 2 to 3 (required in the 2014 Farm Bill),
- Narrow the definition of "staple food" to exclude many multiple-ingredient products (such as pizza) and more "necessary foods" (such as desserts and snack foods),
- Exclude retailers for whom sales of food that is heated or cooked on site make up 15% or more of their food sales, and
- Make information about SNAP-violating facilities public.

"Varieties" refer to different types of food, not variations on the same type of food (e.g., apples and oranges are two varieties, but Red Delicious and Gala apples are one variety). (7 C.F.R. § 278.1 (b)(1)(iii)(C)) Also, food items containing multiple ingredients, like soups, are counted in one category only, which is determined by their primary ingredient. (7 CFR § 271.2.)



## Farmers' Market Vendor and Market Rules

Farmers' markets often have handbooks or specific rules for vendors that guide market operation. These requirements, however, vary greatly between different markets, depending on the unique characteristics of a specific market, as well as the needs of the individual vendors and local communities involved.



### What is this?

This assessment of vendor and market rules provides a variety of policies across locations in Kansas, including urban and rural communities, as well as both private and public markets. This resource provides a checklist and guide for those interested in working with local Kansas communities to establish a new market or support the development of an existing farmers' market.

### How should this information be used?

This information provides a general guide to the different operational rules a farmers' market might want to consider for the market, recognizing that each community will need to evaluate how best to support its markets based on its own unique local and legal context. This information can be used to facilitate a conversation about the current state of a community farmers' market and develop potential goals and objectives. Feel free to write answers to

This fact sheet is part of a series funded by the Kansas Health Foundation to increase the availability of healthy foods in Kansas.



# HEALTHY FOOD

- Healthy food in public places
- Farmers markets
- Early care and education
- Supporting breast feeding
- Food policy councils/food systems work





## A Review of Federal and Minnesota Laws on Pedestrian, Bicycle, and Non-motorized Transportation

October 2013



MINNESOTA ACTIVE TRANSPORTATION

## Liability for Volunteers in the Walking School Bus Program *Minnesota Law Provides Protection from Liability Claims*

A walking school bus program aims to get children to be more physically active and socially walking to and from school in groups accompanied by adults. The program is designed for schools that have a school

essential to the Walking School Bus program and for children walking to and from school. Adult volunteers act responsibly — just as parents do with their children. As long as adults act with good intention and do not neglect their duty to protect them from liability claims that occur while volunteering.

Walking School Bus programs are ideal for neighborhoods that have a school within walking distance.



legal responsibility. Typically, someone must prove that the volunteer was negligent or acted in a way that was not in the best interest of the child. If someone is harmed that could be expected to occur.

1 875 Summit Avenue St. Paul, Minnesota 55105 www.publichealthlawcenter.org 651.290.7506

## Responsibility for Minnesota Roads

Roads make up a substantial and important part of Minnesota's transportation system. Most Minnesotans use highways, streets, and other roads to get from one place to another on a daily basis. While often associated with motor vehicles, Minnesota roads are, in fact, designed and built to support *all* forms of traffic — which includes pedestrians, bicycles, and almost anything else that can be used for travel, unless a certain type of traffic is specifically prohibited on a specific road.<sup>1</sup> Understanding who is responsible for establishing and maintaining these roads is important to ensure that Minnesota's transportation system is safe and efficient, and meets the legal requirements and needs of pedestrians, bicyclists, and other non-motorized transportation users.

**Q:** How does Minnesota's transportation system support the use of roads by pedestrians and bicyclists?

**A:** Minnesota's transportation system seeks to support pedestrian and bicycle use of Minnesota roads by:<sup>2</sup>

- Minimizing fatalities and injuries for transportation users throughout the state;
- Providing multimodal and intermodal transportation facilities and services to increase access for all persons and businesses and to ensure economic well-being and quality of life without undue burden placed on any community;
- Providing a reasonable travel time for commuters;

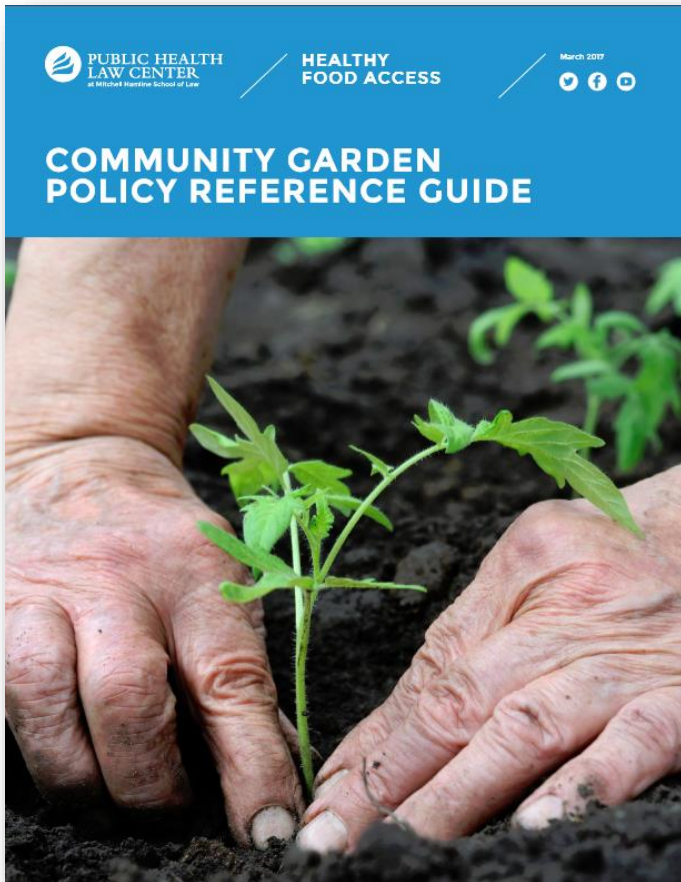


# PHYSICAL ACTIVITY

- Active transportation
  - Complete Streets
  - Walkability or bikeability assessments
  - Transportation planning
  - Safe routes to healthy food
- Child care
- Schools
- Public places

7/17/2017

# COMING SOON



- Making the case
- Community engagement
- Funding and planning for sustainability
- Finding land and choosing a site
- Garden design and building
- Garden rules
- Liability considerations
- Harvesting, selling, and seed saving



# CHILD CARE AND OUT-OF-SCHOOL TIME

## Healthy Eating, Active Play, Screen Time Best Practices

Discover how child care licensing laws have incorporated best practices for healthy eating, active play, and screen time.



### Project Overview

To see the child care licensing regulations used for this research, see The Public Health Law Center's state-specific child care regulations and resources and highlighting protocol, state-specific child care regulations and resources and highlighting protocol.



### Using the Maps

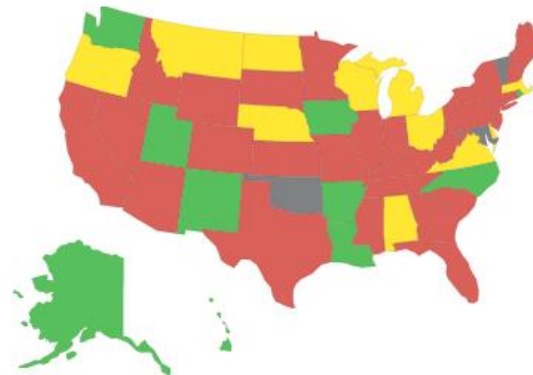
Instructions pending...



### Research Information

This information is a part of a larger project funded by Healthy Eating Research, a program of the Robert Wood Johnson Foundation, titled Child Care Licensing Laws for Nutrition, Active Play, and Screen Time, grant number 72062.

- Healthy Eating Policies >
- Active Play Policies >
- Screen Time Policies >



# CHILD CARE FOOD POLICY ENVIRONMENT MAPPING PROJECT:

publichealthlawcenter.org/ece

The screenshot displays the website interface for the Child Care Food Policy Environment Mapping Project. At the top, there is a navigation bar with four main categories: Licensing and Administrative Regulations (orange), Funded Programs (green), Quality Measures (blue), and Emerging Opportunities (purple). Below this, a map illustrates the policy environment with various entities and their interactions. The entities include Tribes, US Congress, US President, Executive Agencies, MN Legislature, MN Governor, Executive Agencies, Local Governmental Entity, County Social Services Agency, Provider, and Children and Families. Green arrows indicate the flow of influence or funding between these entities. A callout box for the Department of Human Services (DHS) is highlighted with a yellow star. On the right side of the map, there are three filter options: 'Select Setting:' with options 'Family, Friend and Neighbor', 'Family Child Care Homes' (circled in red), and 'Child Care Centers'; 'Select Component:' with options 'Child Care Assistance Program (CCAP)' (circled in red) and 'Child and Adult Care Food Program'; and 'Data Pages:' with a dropdown menu 'Select a data page to view it'. At the bottom of the page, there is a footer with the Public Health Law Center logo and name, the text 'Presentation Title', the date '7/17/2017', and the page number '71'.

# QUESTIONS?



## What is an effective law or policy?

- Easy to understand and follow
- Easy to enforce
- Accomplishes goals





# Laying the Groundwork

- Research the issue in your community
- Engage the community and stakeholders
  - Outreach and Education
- Address community concerns
- Understand the policy adoption process
- Understand other relevant laws
- Meet with relevant government officials





# Elements of a Policy

- Findings

“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.”





# Elements of a Policy--Findings

LOWER SIOUX INDIAN COMMUNITY  
RESOLUTION NO. 16-116

WHEREAS, American Indian/Native Alaska people in Minnesota experience similar higher health disparities, with 40% having been diabetic for less than ten years with an additional 30% having been diabetic for over ten years, according to data from the Bemidji Indian Health Service reported in 2015. This is compared to an 8.1% rate of diabetes for adults in Minnesota generally, according to 2014 data from the Minnesota Department of Health. Additionally, according to Bemidji IHS data, Minnesota American Indians/Native Alaskans have the lowest percentage (36%) of patients with an A1C results of 7.0 or less based on audited charts of diabetic patients; and

WHEREAS, 72.8% of American Indians/Native Alaskans in Minnesota are overweight (having a BMI between 25 to 29.9) or obese (having a BMI over 30.0); and

WHEREAS, the Lower Sioux Indian Community Health and Human Services Department conducted a community assessment and identified families choosing unhealthy food options because of the convenience they offer as being a primary challenge for improving health for Community Members. Specifically, the assessment found that there is a lack of visible healthy food options throughout community venues and events; lack of Communities policies that require inclusion of healthy food and beverage options at all community events; and a lack of convenient availability for healthy food and beverage options; and

# Elements of a Policy

- Findings
- Purpose

“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.”





# Elements of a Policy

- Findings
- Purpose
- Definitions





# Elements: Definitions

- O. “Sugar-sweetened beverage” means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.
  - 1. “Sugar-sweetened beverage” includes, but is not limited to all drinks and beverages commonly referred to as “soda,” “pop,” “cola,” “soft drinks,” “sports drinks,” “energy drinks,” “sweetened ice teas,” or any other common names that are derivations thereof.
  - 2. “Sugar-sweetened beverage” shall not include any of the following:
    - a. Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;
    - b. Any beverage for medical use;
    - c. Any liquid sold for use for weight reduction as a meal replacement;
    - d. Any product commonly referred to as “infant formula” or “baby formula”; or
    - e. Any alcoholic beverage.
- P. “Sugar-sweetened beverage product” means a Sugar-sweetened beverage or Added caloric sweetener.



# Exercise on Definitions

“Enclosed area means all interior space within a building or other facility between a floor and a ceiling that is enclosed on all sides by walls, windows, or doors extending from the floor to the ceiling.”

*Anchorage Secondhand Smoke Control Ordinance,*  
*Section 16.65.005*



# Exercise on Definitions



*“Enclosed area means all interior space within a building or other facility between a floor and a ceiling that is enclosed on all sides by walls, windows, or doors extending from the floor to the ceiling.”*



# Exercise on Definitions



*“Enclosed area means all interior space within a building or other facility between a floor and a ceiling that is enclosed on all sides by walls, windows, or doors extending from the floor to the ceiling.”*





# Exercise on Definitions



*“Enclosed area means all interior space within a building or other facility between a floor and a ceiling that is enclosed on all sides by walls, windows, or doors extending from the floor to the ceiling.”*



Google

smoking shelter



Web Shopping **Images** News Maps More Search tools







# Exercise on Definitions

“‘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.”

*Cheyenne River Sioux Tribe*

*Smoke-Free Ordinance, Sec. 3(C)*



# Elements of a Policy

- Findings
- Purpose
- Definitions
- Restrictions / Requirements

“Commercial tobacco / smokeless tobacco and electronic cigarettes usage is prohibited on all campus properties including all buildings, college vehicles, parking lots, walking trail and garages.”

*Leech Lake Tribal College Commercial Tobacco Free Policy*





# Elements of a Policy

- Findings
- Purpose
- Definitions
- Restrictions / Requirements
- Exemptions (Use With Caution)





# Elements of a Policy

THEREFORE BE IT ORFAINED, that the Oglala Sioux Tribal Council at the recommendation of the Judiciary Committee does hereby adopt the following:

- I. No person may smoke tobacco or carry any lighted tobacco product in the following places;
  - A. Any hospital or medical or dental clinic,
  - B. Any office of any Oglala Sioux Tribal Program,
  - C. Any nursing facility
  - D. Any public library, museum or indoor theater,
  - E. Any elementary or secondary school building,
  - F. Any public conveyance,
  - G. Any jury room,
  - H. Any elevator,
  - I. Any registered or unregistered day care program, day care center, day care cooperative; or family day care home governed by Chapter 26-6 during the time in which children who a not family members or the day care provider are receiving care.
- II. This section does not prohibit the smoking of tobacco products in buildings such as bingo halls or casinos.
- III. This section does not prohibit the use of tobacco for ceremonial purposes.
- IV. Sign required to be posted in all Tribal buildings to advise the persons of "No Smoking".



# Elements of a Policy

- Findings
- Purpose
- Definitions
- Restrictions / Requirements
- Exemptions (Use With Caution)
- Enforcement / Implementation







# Elements of a Policy

“Enforcement of this policy will depend on the cooperation of all faculty, staff and students as well as campus visitors helping us care for the land and people by promoting a clean, safe, healthy environment in which to work, study, and live. The college will give short trainings at orientations and other training opportunities designed to assist and prepare students and staff to help one another comply with the policy.

The enforcement strategy is through peer encouragement, with the goal of changing the well-being of our community over time.

In the event of a violation, the person will be informed of the LLTC Tobacco Free Campus policy. Should the individual continue to violate the policy, a report will be made by security through the use of a tobacco use grievance form to the appropriate office.”

*Leech Lake Tribal College Commercial Tobacco Free Policy*



# Elements of a Policy

“1. The monitoring and enforcement of the Health System smoking policy is the responsibility of all employees and volunteers. It will be the responsibility of all employees and volunteers to politely bring this smoking policy to the attention of persons observed violating the policy.

2. Employees and volunteers who violate or refuse to abide by this policy should be reported to their immediate supervisor for appropriate action, which include:

1. Verbal Warning, with counseling by facility smoking cessation facilitator.
2. Written Reprimand, with mandatory one hour presentation on “Tobacco 101”
3. Suspension without pay for a period up to ninety (90) calendar days.
4. Termination

Every effort will be made to assist employees with resource information and their understanding of this policy.

3. All employees are authorized and encouraged to communicate this policy with courtesy and diplomacy, especially with regard to patients and visitors. Patients who refuse to comply with the Hospital’s smoke free policy will be counseled by the nurse or physician responsible for the patient’s care.

4. Supervisors are responsible to ensure that the Smoking Policy is implemented and enforced.”



# Elements of a Policy

- Findings
- Purpose
- Definitions
- Restrictions / Requirements
- Exemptions (Use With Caution)
- Enforcement / Implementation
- Severability





# Drafting Tips

- Be clear and specific



“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.

“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.

*Cheyenne River Sioux Tribe [CRST] ordinance, Sec. 3(A)-(B)*



D. Ceremonial Tobacco Use – a use that is not prohibited by this Code includes ceremonial and/or traditional uses including but not limited to: smudging, carrying or passing tobacco ties, wearing tobacco pouches, possessing a single cigarette to be immediately used in a traditional ceremony, or using a traditional pipe in connection with recognized traditional spiritual or cultural protocols. Questions as to whether a particular practice is in accord with “traditional spiritual or cultural protocols” will be referred to a pipe carrier within the lodge the proponent claims to identify with.

F. Commercial Tobacco Product – is commercially produced cigarettes, bidis, cheroots, stogies, cigars, pipe or other smoking tobacco, snuff, snuff flour, cavandish, plug and twist tobacco, smokeless, spit, chew, fine cut and other chewing tobacco, shorts, and any other kind and forms of tobacco prepared in such a manner as to be suitable for smoking in a pipe or otherwise are all subject to this Code.

Commercial tobacco means a manufactured product for commercial sale and when used results in tobacco addiction, illnesses, cancer and deaths.

*Blackfeet Tobacco Free Act, Section 5(2)*

Ceremonial purposes means when an individual or individuals offer tobacco to carry the message of prayer.

*Oglala Sioux Tribal Council Ordinance No. 98-04*



# Drafting Tips

- Be clear and specific
- Be concise





# Drafting Tips

- Be clear and specific
- Be concise
- Be consistent





# Drafting Tips

- Be clear and specific
- Be concise
- Be consistent
- Be practical







# Drafting Tips

- Be clear and specific
- Be concise
- Be consistent
- Be practical
- Be collaborative





# Drafting Tips

- Be clear and specific
- Be concise
- Be consistent
- Be practical
- Be collaborative
- Tailor language





# Drafting Tips

- Be clear and specific
- Be concise
- Be consistent
- Be practical
- Be collaborative
- Tailor language
- Anticipate Challenges



## Exercise – Badly Drafted Definition

“Vape pen” means a device that simulates smoking and delivers nicotine to a person using the device. Vape pen includes any component, part, accessory, or related product of such a device, whether or not sold separately. “E-cigarette” does not include products used for cessation purposes.

# Simulates Smoking?





## Well-Drafted Definition?

“Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah.

# Developing your own policy idea

- Where could you look for examples of similar policies?
- What stakeholders would you like to consult about what the policy should be?
- What information do you need to write a good policy that you don't yet have?
- What are some things you could do to help tailor the policy for your Tribe?



## Wrap-up

- What concepts did you find most compelling today?
- What's still unclear for you that you would like to learn more about?
- Based on your experience, and what you've heard today, what are some of your next steps?

# ADDITIONAL RESOURCES

- First Nations Development Institute, [www.firstnations.org](http://www.firstnations.org)
- Native Food Systems Resource Center, <http://www.nativefoodsystems.org/about>
- Indigenous Food and Agriculture Initiative at the University of Arkansas School of Law, <http://law.uark.edu/ifai/>
- Tribal Code Drafting Clinics (e.g., Mitchell Hamline School of Law)
- NCAI Tribal Public Health Laws database
- Cherokee Nation's Healthy Tribal Nations Toolkit: <http://www.healthytribalnations.com>

# CONTACT US



651.290.7506



[publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu)



[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)



[@phealthlawctr](https://twitter.com/phealthlawctr)



[facebook.com/publichealthlawcenter](https://facebook.com/publichealthlawcenter)

Julie.RalstonAoki@mitchellhamline.edu  
651-290-7532

Michael.Freiberg@mitchellhamline.edu  
651-290-7517

