

RESOLUTION NO. \_\_\_\_\_

ONEIDA TOBACCO ORDINANCE

WHEREAS, by the Treaty with the Oneidas, 1838 the Oneida Indian Reservation was set aside for the use of the Oneida Indian Nation of Wisconsin, and;

WHEREAS, the Oneida Indian Nation has the inherent sovereign power to form their own government, administrate their own laws and regulate the use of land within the Oneida Indian Reservation, and;

WHEREAS, the Oneida Tribal Business Committee is the duly constituted governing body of the Oneida Tribe of Indians of Wisconsin of the Oneida Indian Reservation, and;

WHEREAS, under the Constitution and By-Laws of the Tribe, Article IV, Section 1 (F) the Oneida Tribal Business Committee is charged with the duty of protecting the health, security and general welfare of the Oneida Tribe of Indians of Wisconsin, and;

WHEREAS, by virtue of their status as an Indian Nation, the Oneida Tribe of Indians of Wisconsin are authorized by Treaty Rights to possess unstamped cigarettes and other tobacco products on the Oneida Indian Reservation and to regulate their sale and distribution, and;

WHEREAS, the Oneida Tribal Business Committee deems it essential to the health, security and general welfare of the Oneida Tribe of Indians of Wisconsin to enact a comprehensive tobacco ordinance regulating the sale and distribution of cigarettes and other tobacco products and levying an excise tax upon their distribution on the Oneida Indian Reservation, and;

WHEREAS, the Oneida Tribal Business Committee wishes to clarify all of the ramifications and benefits of the following Oneida Tobacco Ordinance,

NOW, THEREFORE, the Oneida Tribal Business Committee does hereby promulgate and enact the following tobacco ordinance.

AN ORDINANCE

Governing sale, distribution, and  
taxation of tobacco products  
within the Oneida Indian  
Reservation

## SECTION 1. TITLE

This ordinance shall be known as the Oneida Tobacco Ordinance.

## SECTION 2. DEFINITIONS

As used in this ordinance, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated:

- (a) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin of the Oneida Indian Reservation.
- (b) "Reservation" shall mean all lands within the Oneida Indian Reservation of Wisconsin.
- (c) "Committee" shall mean the Oneida Tribal Business Committee.
- (d) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (e) "Tobacco Products" shall mean cigarettes, cigars, smoking tobacco, snuff, chewing tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.
- (f) "Taxable Event" shall mean the sale, use, consumption, handling, possession or distribution of each tobacco product.
- (g) "Retail Selling Price" shall mean the ordinary, customary, or usual price paid by the consumer for each tobacco product, less the tax levied by this ordinance.
- (h) "Wholesale Distribution Price" shall mean the price paid for each tobacco product by the Tribe together with all freight charges and other expenses incurred by the Tribe in their receipt and distribution.
- (i) "Operator" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin employed by the Tribe to manage a Tobacco outlet.
- (j) "Tribal Member" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin.
- (k) "Tobacco Outlet" shall mean a Tribal retail sales business selling tobacco products within the Oneida Indian Reservation.
- (l) "On-Going Commercial Establishment" shall mean any retail sales business owned and operated by an enrolled Tribal member within the Oneida Indian Reservation.

### SECTION 3. ESTABLISHMENT OF TOBACCO OUTLETS

The Oneida Business Committee shall establish one or more tobacco outlets within the Oneida Reservation as the Oneida Business Committee in its discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.

### SECTION 4. NATURE OF OUTLET

Each tobacco outlet established hereunder, shall be a Tribal tobacco outlet and shall be managed or operated for the Tribe by a Tribal employee.

### SECTION 5. ON-GOING COMMERCIAL ESTABLISHMENT

An enrolled Tribal member who is the owner and operator of a retail establishment of which more than eighty (80) percent gross receipts are derived from non-cigarette sales may be issued a license by the Tribe to sell cigarettes in conformity with this ordinance on the Oneida Indian Reservation.

### SECTION 6. APPLICATION FOR TOBACCO LICENSE

Any enrolled member of the Oneida Tribe of Indians of Wisconsin may apply upon an application form provided by the Oneida Tribal Business Committee for a tobacco license as provided in Section 5 hereof.

### SECTION 7. TOBACCO LICENSE

Upon approval of an application, the Oneida Tribal Business Committee shall issue the applicant a tobacco license for a one (1) year period which shall entitle the operator to sell cigarettes on the Oneida Indian Reservation. The license shall be renewable in such a manner as the Oneida Tribal Business Committee shall prescribe and shall be nontransferable.

### SECTION 8. RESTRICTIONS UPON LICENSEE

The Tribe reserves the right upon issuing a license to restrict the sales volume, pricing and profit margins of the licensee.

### SECTION 9. EXCISE TAX IMPOSED

There is being levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes in the amount of three (3) cents per package or thirty (30) cents per carton. The Oneida Tribal Business Committee may levy an additional tax upon the distribution of cigarettes and other tobacco products as it deems desirable.

The excise tax levied hereunder, shall be a tax upon distribution of cigarettes and other tobacco products by the Tribe only, and shall not constitute a tax or license fee upon either the Operator (Tribal Licensee) or the buyer-consumer. The excise tax levied hereunder shall be first a tax upon distribution of cigarettes and other tobacco products by the Tribe: provided, however, that failure to pay the tax at the time of such distribution shall not prevent tax liability from

arising by reason of another taxable event. The excise tax levied hereunder shall be added to the retail price of tobacco products sold to the ultimate consumer. No state tax of any kind shall be collected from the buyer-consumer; nor shall the Tribal employee pay any such taxes to the state.

#### SECTION 10. PURCHASE BY TRIBE

All tobacco products purchased by the Tribe pursuant hereto shall be purchased with federally restricted Tribal funds from legitimate tobacco dealers.

#### SECTION 11. DISTRIBUTION OF TOBACCO PRODUCTS

The Tribe shall buy tobacco products from such suppliers as it may choose and shall take title and possession on delivery to a tobacco outlet on the reservation (the title shall be subject to any purchase money security interest). Possession of the tobacco products (but not title) shall be transferred to the manager of the tobacco outlet, i.e., the operator or Tribal employee, to hold for sale to the retail buyers. The Tribe shall retain title to tobacco products until sold to a retail buyer-consumer.

#### SECTION 12. DISTRIBUTION TO INDIAN RESERVATIONS

The Tribe shall buy tobacco products from such suppliers as it may choose and shall take title and possession on delivery to the reservation for distribution and sales to other Indian Reservations, such sale to include a Tribal excise tax as provided in Section 9.

#### SECTION 13. TOBACCO PRODUCTS FEDERALLY RESTRICTED PROPERTY OF TRIBE

The entire stock of tobacco products distributed hereunder, shall remain federally-restricted Tribal property owned and possessed by the Tribe until sale to the ultimate consumer.

#### SECTION 14. RISK AND INSURANCE

The manager of the tobacco outlet i.e., the operator or Tribal employee, shall be responsible for all risks to the tobacco products, and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his interest may appear.

#### SECTION 15. RESTRICTIONS ON SALES TO NON-INDIANS

The Tribe reserves the right and may limit the sale of no more than two (2) cartons of cigarettes per sale to a Non-Indian, and no tobacco products shall be sold to a Non-Indian under the age of sixteen (16) years. The Tribe may restrict sales of other tobacco products to Non-Indians as it deems necessary.

#### SECTION 16. RESTRICTED SALES TO MINORS

No tobacco products shall be sold to any person under the age of sixteen (16).

SECTION 17. OPERATING WITHOUT A TRIBAL PERMIT (Exclusive Purchase)

No person other than an authorized Tribal employee or Tribal member as provided in Section 5 shall sell tobacco products on the Oneida Reservation. All tobacco products sold on the Oneida Reservation shall be acquired through the Tribe.

SECTION 18. TRIBAL IMMUNITY, LIABILITY, CREDIT

A Tribal employee or licensee shall not attempt or be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such a Tribal employee or licensee attempt or be authorized to create any liability on behalf of the Tribe or to utilize Tribal credit.

SECTION 19. TERMINATION OF EMPLOYMENT

It shall be grounds for termination of the Tribal employee that an employee has violated the terms of this ordinance including any future amendments, or of any contract between the employee and the Tribe. No employee shall be terminated until the employee has been given notice and an opportunity for a hearing before the Oneida Business Committee. Upon termination, all tobacco products in the employee's possession shall be subject to repossession by or forfeiture to the Tribe.

SECTION 20. VIOLATION - REMEDIES

The Oneida Tribal Business Committee shall seize all tobacco products from wherever purchased and by whomsoever owned from any tobacco outlet being operated in violation of this ordinance. Within three (3) days of such seizure, after adequate notice to the Tribal member licensee or employee of such outlet, a hearing shall be held with the Oneida Tribal Business Committee at which time the Tribal member licensee or employee of such outlet shall be given an opportunity to present evidence in defense of his activities.

If the Oneida Tribal Business Committee shall determine by a preponderance of the evidence that such a tobacco outlet was being operated in violation of this ordinance, the Oneida Tribal Business Committee shall impose a penalty suspending or terminating the Tribal employee. In addition, the Tribe shall have a cause of action in Federal court or a court of proper jurisdiction by the Oneida Tribal Business Committee against any Tribal member licensee or Non-Tribal member operating a tobacco outlet on the Oneida Reservation in violation of this ordinance and to recover any taxes owed and not paid to the Tribe in accordance with this ordinance.

SECTION 21. SEPARABILITY

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances is not affected.

SECTION 22. APPLICABILITY

This ordinance shall apply to any Non-Tribal outlet or vending machine which was engaged in selling cigarettes on the Oneida Reservation on the effective date of this ordinance.

SECTION 23. ACCOUNTING

A report shall be submitted monthly to the Oneida Business Committee consisting of a financial statement, inventory report and a billing for services. The Oneida Business Committee shall request an audit annually and such audit shall be performed by a certified public accountant.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 7 members, constituting a quorum were present at a meeting duly called, noticed and held on the 4 day of September, 1929; that the foregoing resolution was duly adopted at such meeting by a vote of 4 members for, 2 members against, 0 members not voting; and that said resolution has not been rescinded or amended in any way.

Margaret Doytater