

Resolution No. _____

Date Enacted _____

Subject Matter _____

RESOLUTION NO. 11-16: 21A

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 constiuted 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 charge 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 Right to possess unstamped cigarettes 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 unstamped cigarettes 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 Distribution, sale and
taxation of unstamped cigarettes
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, as established by the Treaty with the Oneida, 1838.
- (c) "Business Committee" shall mean the Oneida Tribal Business Committee of the Oneida Tribe of Indians of Wisconsin.
- (d) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size, 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) "Unstamped Cigarette" shall mean any cigarette not taxed by the State of Wisconsin.

- (f) "Excise Tax" shall mean a tribal tax imposed on the sale of unstamped cigarettes to the retail buyer-consumer on the Reservation.
- (g) "Retail Selling Price" shall mean the ordinary, customary, or usual price paid by the consumer for unstamped cigarettes less the excise tax levied by this ordinance.
- (h) "Tribal Employee" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin employed to work in or manage a Tobacco outlet.
- (i) "Manager" 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 unstamped cigarettes within the Oneida Indian Reservation.
- (l) "Non-Tribal Member" shall mean any person not an enrolled member of the Oneida Tribe of Indians of Wisconsin.

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 unstamped cigarettes.

SECTION 4. NATURE OF OUTLETS

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. PURCHASE BY TRIBE

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

SECTION 6. TITLE TO AND POSSESSION OF TOBACCO PRODUCTS

The Tribe shall purchase unstamped cigarettes 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 unstamped cigarette (but not title) shall be transferred to the manager of the tobacco outlet to be held for sale to the retail buyers. The Tribe shall retain title to unstamped cigarettes until sold to a retail buyer-consumer.

SECTION 7. DISTRIBUTION TO INDIAN RESERVATIONS

The Tribe shall purchase unstamped cigarettes 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 10.

SECTION 8. TOBACCO PRODUCTS FEDERALLY RESTRICTED PROPERTY OF TRIBE

The entire stock of unstamped cigarettes purchased hereunder, shall remain federally-restricted Tribal property owned and possessed by the Tribe until sale to the ultimate retail buyer-consumer.

SECTION 9. RISK AND INSURANCE

The Tribe shall be responsible for all risks to the unstamped cigarettes 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 10. 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 unstamped cigarettes in the amount of three (3) cents per package or thrity (30) cents per carton. The Oneida Tribal Business Committee may levy an additional tax upon the sale or distribution of unstamped cigarettes as it deems desirable. The excise tax levied hereunder shall be added to the retail price of unstamped cigarettes sold to the ultimate retail buyer-consumer. No state tax of any kind shall be collected from the retail buyer-consumer, nor shall th Tribal employee pay any such taxes to the state.

SECTION 11. RESTRICTIONS

The Tribe reserves the right to restrict sales, volume, pricing and profit margin of unstamped cigarettes on the Oneida Reservation.

SECTION 12. RESTRICTIONS ON SALES TO NON-INDIANS

The Tribe shall limit the sale to no more than two (2) cartons of unstamped cigarettes per sale to a non-Indian.

SECTION 13. RESTRICTED SALES TO MINORS

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

SECTION 14. RESTRICTION ON NON-TRIBAL MEMBER

No non-tribal member, except a supplier, shall directly or indirectly participate in the sale, possession or distribution of unstamped cigarettes on the Oneida Indian Reservation.

SECTION 15. RESTRICTION ON LICENSE

No license shall be issued by the Tribe authorizing any Tribal member to sell unstamped cigarettes on the Oneida Indian Reservation.

in Federal Court or a court of competent jurisdiction against any Tribal member or non-Tribal member operating a tobacco outlet on the Oneida Reservation in violation of this ordinance.

SECTION 20. 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 21. APPLICABILITY

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

SECTION 22. ACCOUNTS

There shall be established at a bank designated by the Business Committee, two federally restricted tribal trust accounts. One account shall be designated operating account for the operational expense of the tobacco outlet with the other account being designated tax account for the deposit of the excise tax imposed by Tribe on the sale of unstamped cigarettes.

SECTION 23. ACCOUNTING

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

SECTION 16. OPERATING WITHOUT A TRIBAL PERMIT (EXCLUSIVE PURCHASE)

No person other than an authorized Tribal employee shall sell unstamped cigarettes on the Oneida Reservation. All unstamped cigarette sold on the Oneida Rservation shall be sold by the Tribe.

SECTION 17. TRIBAL IMMUNITY, LIABILITY, CREDIT

A Tribal employee shall not attempt or be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such a Tribal employee, unless authorized in writing by the Business Committee, attempt to create any liability on behalf of the Tribe or to utilize Tribal cred

SECTION 18. 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. The employee shall be afforded due process.

SECTION 19. VIOLATION - REMEDIES

The Oneida Tribal Business Committee shall seize all unstamped cigarettes from wherever purchased and by whomever owned from any tobacco outlet being operated in violation of this ordinance. A hearing shall be held with the Oneida Tribal Business Committee at which time the Tribal member or non-Tribal member 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. In addition, the Tribe shall have a cause of action

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 6 members, constituting a quorum were present at a meeting duly called, noticed and held on the 18th day of November, 1981; that the foregoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, 0 members not voting; and that said resolution has not been rescinded or amended in any way.

Wanda Webster
WANDA WEBSTER - TRIBAL SECRETARY