

TRIBAL CODE

CHAPTER 42

CIGARETTE SALES AND DISTRIBUTION ORDINANCE

CONTENTS:

- 42.101 Purpose.
- 42.102 Definitions.
- 42.103 Applicability.
- 42.104 Tribal Distribution.
- 42.105 Authorized Sales Agent.
- 42.106 Rebate to Tribal Members.
- 42.107 Penalties.
- 42.108 Repeal.
- 42.109 Effective Date; Grandfather Clause.

HISTORY NOTE:

Current Ordinance:

Adopted May 28, 1985, Resolution No. 183(85), effective immediately.

Amendment:

Resolution No. 220(88), June 27, 1988, amends Secs. 42.104(2), 42.106(1), and 42.106(6).

Resolution No. 145(90), May 29, 1990, amends Sec. 42.104(2) increasing tribal distribution cost from 50¢ to 75¢.

Resolution No. 338(90), December 10, 1990, amends Sec. 42.104(2) increasing tribal distribution cost from 75¢ to 85¢, and resolved any further cigarette cost increases, such as federal taxes, state taxes, etc., shall be absorbed by the retailer.

Resolution No. 350(90), December 17, 1990, amends Sec. 42.106(1) delete "Sales Agents" insert "store", and Sec. 42.106(2) delete "Sales Agents" insert "Tribal Store."

Resolution No. 83(92), March 23, 1992, amends Sec. 42.105(4) from “midnight on December 31” to “midnight on June 30” and “prior to January 1” to “prior to July 1”.

Resolution No. 126(92), April 27, 1992, amends 42.104(2) delete “90¢” insert “\$1.14”, amends 42.106(1) delete “90¢” insert “\$1.14”, amends 42.106(6) delete “\$23.40” insert “\$29.64”.

Resolution No. 456(94), amended December 12, 1994, approves: only Tribal Enterprises may be authorized sales agents, Sec.42.104(1); Tribal Enterprises shall not be assessed a tribal distribution cost, 42.104(2); language added regarding the deduction of rebates to tribal members Sec. 42.104(3); and change from Accounting Office to Cigarette Committee Secretary Sec. 42.106(8).

Prior Ordinances:

The first ordinance, An Ordinance to Regulate to Sale of Cigarettes, was adopted January 25, 1982, Resolution No. 14(82).

This ordinance was replaced by an Ordinance for the Distribution and Sale of Cigarettes adopted September 12, 1983, Resolution No. 248(83), amended October 10, 1983, Resolution No. 284(83), and October 24, 1993, Resolution No. 296(83).

This ordinance was replaced by Cigarette Sales and Distribution Ordinance - 1984, adopted July 9, 1984, Resolution No. 228(84).

The prior ordinances were repealed by sec. 42.108 of the current ordinance.

Other:

Resolution No. 215(84), adopted June 18, 1984, authorized entering into a cigarette tax agreement with Wisconsin Department of Revenue, pursuant to 1983 Wis. Act 27, Wis. Stat. ss. 139.323 and 139.325. The first such agreement was executed June 25 and July 3, 1984. The current agreement was executed on July 29 and August 1, 1988.

Resolution No. 269(94), July 25, 1994, by Resolution No. 259(93) and by Referendum approval dated August 17, 1993, approved “appropriating the cigarette revenues from the Smoke Shop operations for the Youth”; and hereby defines revenues as “all net income from Smoke Shop, including but not limited to: sales of cigarettes; distribution fee, Northland rebate, display income, and 30% tax rebate.”

Resolution No. 488(96), December 16, 1996, net revenues as defined herein, from the Asema Cigarette operation, to the youth.

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CHAPTER 42

CIGARETTE SALES AND DISTRIBUTION ORDINANCE

42.101 Purpose.

The purpose of this ordinance is to provide for the distribution and sale of cigarettes by member businesses on the reservation consistent with an agreement entered into between the Tribe and the Wisconsin Department of Revenue in accordance with 1983 Wisconsin Act 27.

42.102 Definitions.

(1) "Carton" means any container prepared by the manufacturer of cigarettes in which at least 200 cigarettes are held, packaged or contained. Carton shall not include any such container holding more than 250 cigarettes.

(2) "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.

(3) "Distribution" means the taking of orders from tribal sales agents, the acquisition of cigarettes in containers bearing the State of Wisconsin cigarette tax stamp, and the delivery of state-stamped cigarettes to tribal sales agents for retail sale.

(4) "Member" means a person enrolled in the tribe.

(5) "Member business" means any member-owned commercial or business activity, whether a sole proprietorship, joint venture or corporation, established or organized for the purpose of profit; provided, that such member ownership and control shall constitute not less than 51 percent of the enterprise.

(6) "Nonmember" means a person, regardless of Indian ancestry, who is not enrolled in the tribe.

(7) "Reservation" means the land and waters within the exterior boundaries of the Lac du Flambeau Indian Reservation.

(8) "Sales agent" means any member business or tribal enterprise appointed by the Tribal Council to sell cigarettes pursuant to this ordinance.

(9) "Sell" or "Sale" includes the transfer, gift, barter, trade or exchange or any shift, device, scheme or transaction whereby cigarettes may be obtained.

(10) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(11) "Tribal Court" means the Lac du Flambeau Tribal Court.

(12) "Tribal enterprise" means any economic enterprise owned, controlled and operated by the Tribe.

42.103 Applicability.

This ordinance governs the distribution and sale of cigarettes by the Tribe, tribal enterprises, and member businesses. It is not intended to govern the distribution or sale of cigarettes by nonmembers.

42.104 Tribal Distribution.

(1) The tribe shall have the exclusive distribution of cigarettes on the reservation. No member shall sell cigarettes on the reservation unless such member's business has been appointed an authorized sales agent pursuant to section 42.105 hereof and the cigarettes shall have been purchased from the tribe. At the present time only tribal enterprises may be authorized as sale agents.

(2) The tribe shall charge its sales agents the following sum for cigarettes, to be collected by the tribe or the person making delivery prior to or at the time the order is delivered: the full price per carton minus the state tax, plus \$1.14 per carton non-refunded portion of the state tax. Tribal enterprises shall not be assessed a tribal distribution cost.

(3) The tribe shall apply for all refunds of state cigarette tax available under the provisions of 1983 Wisconsin Act 27 and the agreement entered into with the Wisconsin Department of Revenue. All such refunds after deduction of rebates to tribal members under this ordinance, together with amounts received for the tribal distribution cost, shall be deposited in the general fund for appropriation by the tribe for purposes which promote the health, safety, education, general welfare, and economic well-being of members.

42.105 Authorized Sales Agent.

(1) No member business or tribal enterprise shall sell cigarettes on the reservation unless such business or enterprise shall have been appointed a tribal sales agent by the Tribal Council pursuant to this ordinance.

(2) Any member business or tribal enterprise which wishes to become an authorized sales agent shall apply in writing to the Secretary of the Liquor/Cigarette Control Committee requesting such appointment. The applicant shall provide a description of the location where sales will take place and, if the applicant is a member business, evidence of tribal membership and of business ownership and control by the member owner. Such evidence shall include:

(a) evidence of the extent of Indian ownership, control and interest, including the organic documents of the business;

(b) evidence of structure, management and financing affecting the Indian character of the business, including subcontracts, leases purchase agreements, material or equipment supply arrangements, salary or profit-sharing arrangements, and evidence showing the effect of these upon the extent of Indian ownership and interest; and

(c) evidence as to who will actually be selling the cigarettes, and that such persons are on the payroll of the member business as employees, and not as employees of some other entity.

The Tribe may request additional information from the applicant on any of the above items and may in addition request a certified audit report on the member business which plainly shows the distribution of capital, income, and other payments between member and non-member owners and employees. An applicant failing to provide satisfactory evidence shall not be entitled to appointment as a sales agent.

(3) Applications shall be received by the Liquor/Cigarette Control Committee, which shall make recommendations to the Tribal Council. If the application is approved the Tribal Council shall make the appointment by resolution. Non-member businesses shall not be appointed as sales agents. Sales agents shall sell cigarettes only at the locations designated in the appointment resolution. Sales agents shall not sell or deliver cigarettes off the reservation in violation of state law.

(4) Appointments shall be for a calendar year or fractional portion thereof and shall expire at midnight on June 30. Preference in appointment shall be given to members holding appointments under the ordinance repealed hereby, provided that the businesses of such members meet the requirements of this ordinance. Sales agents must reapply for appointment annually prior to July 1. No fee shall be charged for an appointment.

(5) Each authorized sales agent shall keep and maintain accurate records and books of account pertaining to cigarette sales in a form and manner approved by the Comptroller. The Tribe shall have the right to inspect and audit such books

and records upon demand. Authorized personnel of the Tribe may at any time enter the premises where cigarettes are sold or stored to determine whether this ordinance is being complied with.

(6) Appointments made pursuant to this section are not assignable, either in whole or in part. However, nothing in this ordinance shall prohibit an authorized sales agent from hiring employees to assist in the sales authorized hereby.

(7) The Tribe hereby reserves the right and power to regulate by resolution the sale price of cigarettes.

(8) In addition to any other remedies provided herein, the Tribe may revoke any appointment made pursuant to this section for violation of any of the provisions of this ordinance.

42.106 Rebate to Tribal Members.

(1) Members shall be eligible to receive a rebate on the purchase price for cartons of cigarettes purchased from tribal store on the reservation of \$1.14 per carton under the terms and conditions set forth in this section.

(2) Tribal Store shall upon request provide to members purchasing cartons of cigarettes for their own consumption a receipt for such purchase on a form provided by the Tribe which shall contain the name of the seller, the name of the purchaser, and the date of the purchase. A receipt shall be given for each carton purchased.

(3) Receipts shall be obtained for cigarettes purchased for personal consumption only and are not transferable.

(4) Rebates shall be given for purchase by the carton only.

(5) No rebate shall be given for sale to a member under the age of 18.

(6) The maximum rebate available to a member shall be \$29.64 (26 cartons) per quarter.

(7) The Tribe shall apply for its rebate from the Wisconsin Department of Revenue within 15 days after the end of each calendar quarter (Jan. 1 - March 31, April 1 - June 30, July 1 - Sept. 30, Oct. 1 - Dec. 31). Upon receipt of the rebate from the state, the Tribe shall notify members of the availability of the quarterly rebate to members by posting notice thereof in the tribal office.

(8) A member seeking a rebate shall apply therefor within 30 days of posting of notice of availability by the Tribe on a form provided for that purpose by the Cigarette Committee Secretary. Application shall be made to the Cigarette Committee Secretary and shall include all receipts showing purchases by the applicant in the quarter for which the rebate is sought. No rebate shall be made for purchases in a given quarter if application is not made within the 30 day posting period.

42.107 Penalties.

(1) Any violation of this ordinance may be punished by criminal penalty of up to 6 months imprisonment and/or a fine of up to \$500.00, as provided in the Tribal Court Code, Tribal Code Ch. 80. In addition, the Tribe may seek a civil remedial forfeiture of not more than \$5,000, as provided in the Tribal Court Code, Tribal Code Ch. 80.

(2) Cigarette owned, possessed, kept, stored, made, sold, distributed, or transported in violation of this ordinance, and all personal property used in connection therewith is unlawful property and subject to seizure and forfeiture, as provided in the Tribal Court Code, Tribal Code Ch. 80.

(3) Nothing contained herein shall prevent the Tribe from bringing suit in any court of competent jurisdiction for an accounting, money damages, or equitable relief for violation of this ordinance.

42.108 Repeal.

An Ordinance Regulating the Sale of Cigarettes and Resolution No. 14(82) adopting said ordinance; An Ordinance for the Distribution and Sale of Cigarettes on the Lac du Flambeau Reservation, Resolution No. 248(83) adopting said ordinance, Cigarette Sales and Distribution Ordinance - 1984 and Resolution No. 228(84), and all amendments thereto, are hereby repealed.

42.109 Effective Date; Grandfather Clause.

This ordinance shall take effect on the date of adoption hereof by resolution by the Tribal Council; provided, that all sales agents appointed under the prior ordinance shall be allowed to operate in compliance with this ordinance under such appointment for a period not to exceed the remaining portion of the calendar year in which this ordinance is adopted. At that time, said sales agents must apply for appointment under this ordinance.