



Akwesasne Oién:kwa Kaianerénhsera (Akwesasne Tobacco Law)

Kaiahnehronshera iehiontakwa Number: 2016-02

Mohawk Council Resolution: 2016/2017-#075
Date Enacted: June 17, 2016


Coming into Force: April 1, 2017

AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference: _____

MCR #: 2016/2017-#075



THE	MOHAWK COUNCIL OF AKWESASNE	THIS MEETING TOOK PLACE IN THE TERRITORY OF AKWESASNE WITH THE FOLLOWING MEMBERS OF THE AKWESASNE MOHAWK COUNCIL PRESIDING	
AGENCY	SOUTHERN ONTARIO DISTRICT		
PROVINCE	ONTARIO/QUEBEC	RECORDED VOTE	
PLACE	Admin. I Building	For: _____	<input type="checkbox"/> Carried
DATE	27 June 2016 <small>Day Month Year</small>	Against: _____	<input type="checkbox"/> Denied
		Abstention: _____	

DO HEREBY RESOLVE:

Moved: Steve

Seconded: Conne

WHEREAS, the Mohawks of Akwesasne have the existing and inherent right of self-determination, which includes the inherent jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawks of Akwesasne have the aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawk Council of Akwesasne is the community government within the territory of Akwesasne and has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of Akwesasne;

AND WHEREAS, the Mohawk Council of Akwesasne intends to preserve the cultural, political and economic integrity of the Mohawk territory and community of Akwesasne;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2010/2011-#143 establishing a Working Task Group to develop an Akwesasne Tobacco Law;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2012/2013-#112 adding to the mandate of the Working Task Group to also develop a tobacco strategy;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2014/2015-#201 accepting in principle the Akwesasne Tobacco Manufacturing and Products Law Draft for Phase II dated October 3, 2014;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2015/2016-#261A accepting the Akwesasne Legislative Enactment Regulation dated December 2, 2015;

AND WHEREAS, community consultation was completed and the Mohawk Council of Akwesasne ratified Resolution 2016/2017-#027 accepting in principle a revised Akwesasne Oién:kwa Kaianerénhséra (Akwesasne Tobacco Law) for Phase IV – Enactment of an Akwesasne Law;

AND WHEREAS, the Mohawk Council of Akwesasne determined by Resolution 2016/2017-#028 that the enactment method would be by way of a referendum vote to be held on June 11, 2016 in accordance with the Akwesasne Oién:kwa Kaianerénhséra (Akwesasne Tobacco Law) Special Referendum Regulation;

AND WHEREAS, the Chief Referendum Officer, in accordance with the Akwesasne Oién:kwa Kaianerénhséra (Akwesasne Tobacco Law) Special Referendum Regulation subsection 15.1, submitted to Council the statement of results of the referendum;


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AGENCY	SOUTHERN ONTARIO DISTRICT		
PROVINCE	ONTARIO/QUEBEC	RECORDED VOTE For: <u>10</u> Against: <u>1</u> Abstention: _____	<input checked="" type="checkbox"/> Carried <input type="checkbox"/> Denied
PLACE	Admin. I Building		
DATE	<u>27</u> <u>June</u> <u>2016</u> <small>Day Month Year</small>		

DO HEREBY RESOLVE:

Moved: Steve Thomas

Seconded: Cannie Lazare

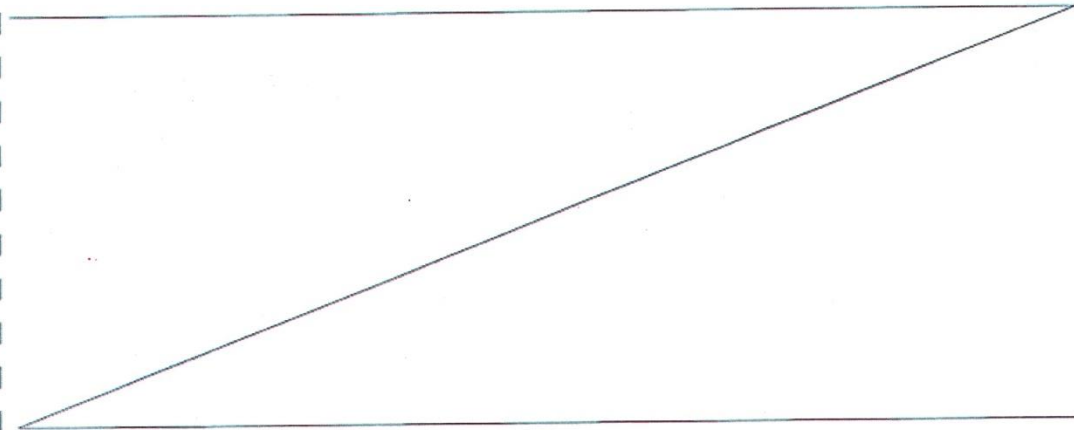
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AND WHEREAS, the appeal period outlined in the Akwesasne Oién:kwa Kaianerénhsara (Akwesasne Tobacco Law) Special Referendum Regulation subsection 17.1 has expired and no appeal to the result of the referendum were filed;

THEREFORE BE IT RESOLVED, THAT the Mohawk Council of Akwesasne acknowledges the Chief Referendum Officers' statement of results of the Special Referendum to enact the Akwesasne Oién:kwa Kaianerénhsara (Akwesasne Tobacco Law) as the final results:

FURTHER BE IT RESOLVED, THAT the attached Akwesasne Oién:kwa Kaianerénhsara (Akwesasne Tobacco Law) is hereby enacted and shall come into effect by April 1, 2017;

FINALLY BE IT RESOLVED, THAT the Akwesasne Oién:kwa Kaianerénhsara (Akwesasne Tobacco Law) shall be forwarded to the Kaiahnehrónshera iehiontakwa to be registered as an Akwesasne Community Law.



A. Berdoo
Grand Chief Yes No

Louise Thompson
Chief Yes No Ab

Imildemohs
Chief Yes No Ab

Steve Thomas
Chief Yes No Ab

D. L. Z.
Chief Yes No Ab

Louise Thompson
Chief Yes No Ab

Karen Ina
Chief Yes No Ab

[Signature]
Chief Yes No Ab

[Signature]
Chief Yes No Ab

Cannie Lazare
Chief Yes No Ab

[Signature]
Chief Yes No Ab

Joe Leger
Chief Yes No Ab

[Signature]
Chief Yes No Ab



Akwesasne Oién:kwa Kaianerénhsera

(Akwesasne Tobacco Law)

As approved by: MCR 2016/2017-#075

Dated: June 17, 2016

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PREAMBLE

WHEREAS, the Kanien'kehá:ka (Mohawk) language, culture and heritage define our People;

AND WHEREAS, Akwasasne's distinct character within the Kanien'kehá:ka Nation is displayed in the community charter, Ohkwaho Kaionwi Ne Akwasasne (Akwasasne Wolf Belt);

AND WHEREAS, the Ohkwaho Kaionwi Ne Akwasasne (Akwasasne Wolf Belt) is a record kept by the Mohawk Nation Council of the people's commitment to protect, preserve and perpetuate their lands and resources; community, societies and culture; laws, traditions, and values; economy, health and spirituality, in a manner most appropriate to their life ways and inclusive of community collective and individual rights;

AND WHEREAS, the Mohawks of Akwasasne as Indigenous Peoples have the existing and inherent right of self-determination, which includes jurisdiction over their lands, peoples and resources;

AND WHEREAS, the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* recognizes the rights of Indigenous Peoples, including the right to self-determination and freely pursue economic, social and cultural development;

AND WHEREAS, the Mohawks of Akwasasne have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in section 35 of the *Constitution Act 1982* of Canada which include the inherent right of self-government and jurisdiction over their lands, peoples and resources;

AND WHEREAS, the Mohawk Council of Akwasasne is the community government of the Mohawks of Akwasasne within the territory of Akwasasne and as such has jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of Akwasasne;

AND WHEREAS, the Mohawk Council of Akwasasne has the jurisdiction to make by-laws in section 81 of the Indian Act (Canada), including providing for the health and safety of Members and observance of law and order;

AND WHEREAS, tobacco is culturally important to the Mohawks of Akwasasne and was one of the traditional staples of economic trade with other indigenous peoples of North America;

AND WHEREAS, the exercise of the Mohawk Council of Akwasasne's jurisdiction over the tobacco-based economy on Akwasasne Lands is a component of developing sustainable economic growth for the Akwasasne community, enhancing the lives of all residents, increasing employment opportunities and building capacity for future generations;

THEREFORE BE IT RESOLVED THAT, the Mohawks of Akwasasne enact the Akwasasne Oién:kwa Kaianerénhsra (Akwasasne Tobacco Law) to:

- 1) protect the overall well-being of its young members concerning tobacco use;
- 2) minimize the damaging effect regarding health that tobacco use has on the community;
- 3) regulate the growing, manufacturing, distribution and retail sale of tobacco products on Akwasasne Lands;
- 4) facilitate trade between First Nations, Indian Tribes and other recognized indigenous peoples; and
- 5) enhance economic development for the community of Akwasasne.

PURPOSE

Tobacco and the use of tobacco products have presented numerous on-going issues on Akwasasne Lands. The Council of Akwasasne recognizes the negative impact that tobacco and tobacco use has on the overall health and welfare of its Membership and recognizes the highest universally accepted tobacco control standards. The Council of Akwasasne also recognizes the positive impact that a well-regulated tobacco economy may have on the welfare and development of the community. Additionally, the Council of Akwasasne acknowledges the traditional role of Sacred Tobacco in Mohawk culture and do not intend for this Law to infringe on the handling or use of Sacred Tobacco.

The Akwasasne Oién:kwa Kaianerénhsara (Akwasasne Tobacco Law) provides tobacco rules to regulate the possession, sale, purchase, distribution, manufacture, importation, exportation, and transportation of Tobacco Products on Akwasasne Lands. This law provides guidance regarding tobacco promotion and minimizing the exposure to young persons, ensuring the future well-being of the community. The intent of this law is to protect the health, safety, and welfare of the Mohawk community and Akwasasne Lands.

The Akwasasne Oién:kwa Kaianerénhsara (Akwasasne Tobacco Law) is meant to provide a mechanism for Members and Member-owned Businesses to obtain Licenses to lawfully possess, sell, purchase, distribute, manufacture, import, export, and transport Tobacco Products on Akwasasne Lands. This Law prescribes regulations and sets out offences and restrictions in order to control all aspects of commercial tobacco in Akwasasne.

The Law is not intended to be exhaustive with respect to all measures that can arise in law; but to assist in governing tobacco trade and commerce, as well as tobacco use and promotion on Akwasasne Lands.

Section 1.0 Title

1.1 This Law shall be referred to as the “Akwasasne Oién:kwa Kaianerénhsara (Akwasasne Tobacco Law)”.

Section 2.0 Definitions

2.1 In this Law:

“**Akwasasne Lands**” means the lands, resources and waters over which the Council of Akwasasne has jurisdiction over, and for greater certainty includes:

- a) Kawehno:ke (Cornwall Island) and any island within Ontario;
- b) Kana:takon (St. Regis Village);
- c) Tsi Snaihne (Chenail/Snye);
- d) Enskatsikahwenote (St. Regis Island) and any island within Quebec;
- e) traditional territory and any future additions to Akwasasne Lands; and
- f) any submerged lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to Akwasasne Lands that are part of Akwasasne by operation of law;

“**Akwasasne Law**” means a law or code enacted by the Mohawks of Akwasasne;

“**Akwasasne Legislative Enactment Regulation**” means the Regulation establishing the procedure for enactment and coming into force of Akwasasne Laws;

“Akwasasne Licensing Commission” means the Mohawk Licensing Commission which, as set out in its charter, administering the Tobacco Product licensing systems established under Akwasasne Laws and Regulations;

“Akwasasne Review Commission” means the body established by the *Akwasasne Review Commission Charter* for the purposes set out in that charter which include the hearing of a complaint regarding the conduct of any Justice or any member of a decision-making body;

“Akwasasne Sale of Tax Exempt Tobacco Products Law” means Akwasasne By-Law 1987/88 # 519, a *By-Law Respecting the Sale of Tax Exempt Cigarettes and Other Tobacco Products within the Mohawk Territory of Akwasasne*;

“Authorized Expense(s)” means the expenses reasonably incurred by the Akwasasne Licensing Commission and Council in each Fiscal Year to administer this Law, including:

- a) payment of salary and benefits, administrative, accounting, legal, professional, and management costs to operate the tobacco regime as outlined in this Law; and
- b) honoraria for the Akwasasne Licensing Commission;

“Bonded Warehouse” means a secured building where Tobacco Product may be stored or stamped in accordance with this Law indicating the Stamping Agent’s fee has been paid;

“Boxes” means a unit of fifty (50) Cartons destined for Licensed Wholesalers;

“Carton” means a unit of ten (10) Individual Packages destined for wholesale or retail sale;

“Court” means the Akwasasne Tekaia’torehthà:ke (Akwasasne Court) exercising authority under the *Akwasasne Tekaia’torehthà:ke Kaianerénhsera (Akwasasne Court Law)*;

“Electronic Nicotine Delivery System” means electronic cigarettes and any other product made for an intended use to deliver nicotine as defined by Regulation;

“Environmental Contamination” means substances that, when accidentally or deliberately introduced into the environment, may have the potential to harm land, water, air, people, wildlife and plants and can take the form of chemical substances or energy, such as noise, heat or light and can be either foreign substances/energies or naturally occurring contaminants;

“Export Permit” means a permit issued to a Manufacturer to allow for the sale of Tobacco Product outside of Akwasasne with transportation arranged through a Licensed Wholesaler;

“Government Workplace” means any building, structure, land lot, or location under the jurisdiction or under the control of the Council whether or not Akwasasne Lands are deemed as a place of business, place of employment or communal space;

“Individual Package” means individually enclosed units in compliance with packaging requirements as outlined by Regulation destined for retail consumption;

“License” means a document issued by the Akwasasne Licensing Commission in accordance with the authority established in this Law, including a:

- a) Manufacturer’s License;
- b) Wholesaler’s License;
- c) Tobacco Transporter License; and
- d) Vendor’s License;

“License Holder” means a person that has applied for and receives one or more Licenses;

“Manufacturer’s License” means a License issued in accordance with this Law for the manufacture of Tobacco Products on Akwasasne Lands;

“Manufacture” means producing, packaging, and labeling Tobacco Products for sale or trade;

“Member” means a person who is enrolled on the Akwasasne Membership Roll under the Akwasasne Membership Code, but does not include probationary members;

“Member-Owned Business” means a partnership or other business structure where the fifty-one (51) percent majority ownership or control is held by a Member or Members of Akwasasne, and the business shall employ at least fifty-one (51) percent Member labor force;

“Council” means the Mohawk Council of Akwasasne duly elected pursuant to the Akwasasne Election Law;

“Public Place” means any place to which the public have access as of right or by invitation, express or implied, or in any place open to public view, as identified by Regulation;

“Regulation” means the rules and guidelines established by Resolution for the purpose of setting out standards, procedures and penalties as provided for under this Akwasasne Law;

“Resolution” means a Mohawk Council Resolution formally adopted by the Mohawk Council of Akwasasne pursuant to its governing authority;

“Sacred Tobacco” means oien’kwaòn:we, commonly known as tobacco of the species *Nicotiana rustica* and any other species of tobacco used for prayer and ceremonial purpose;

“Stamping Agent” means the government official authorized by Council to monitor the affixation of stamps indicating the Stamping Agent’s fee has been paid on Tobacco Products, collect the associated fees and other duties to assist in administering this Law;

“Tax Exempt Tobacco Products” means Tobacco Products acquired, possessed, and sold pursuant to and in compliance with Akwasasne Sale of Tax Exempt Tobacco Products Law;

“Tobacco Compliance Officer” means the official authorized by Council to make reports, carry out investigations and conduct other duties to assist in administering this Law;

“Tobacco Products” means cigarettes, cigars, cigarillos, cheroots, loose tobacco, smokeless tobacco, pipe tobacco, any other product made in whole or in part from raw leaf tobacco, Electronic Nicotine Delivery System and other products as defined by Regulation;

“Tobacco Transporter License” means a License issued by the Akwasasne Licensing Commission authorizing the holder to transport Tobacco Products;

“Vendor’s License” means a License issued in accordance with this Law to permit vendors to sell Tobacco Products to the public on Akwasasne Lands for personal consumption; and

“Wholesaler’s License” means a License issued in accordance with this Law for the distribution and sale of Tobacco Products to wholesalers and vendors on Akwasasne Lands or other First Nation lands for resale to the public.

Section 3.0 General Provisions

3.1 Jurisdiction – This Law shall apply on Akwasasne Lands, and to all persons or activities on Akwasasne Lands.

- 3.2** This Law is enacted in exercise of the inherent right of self-government of the Mohawks of Akwasasne as recognized and affirmed by section 35 of the *Constitution Act 1982* and by the United Nations Declaration on the Rights of Indigenous Peoples.
- 3.3** This Law is enacted in exercise of Council's right to make by-laws providing for the health and safety of Members and observance of law and order as recognized by section 81 of the *Indian Act (Canada)*.
- 3.4** No person shall engage in the possession, sale, purchase, distribution, manufacture, importation, exportation, and transportation of Tobacco Products on Akwasasne Lands, except in accordance with the provisions of this Law.
- 3.5** **Sacred Tobacco** – Nothing in this Law will regulate, govern or administer the growing, cultivation, possession or individual use of Sacred Tobacco.
- 3.6** **Agreements with Other Governments** – Council may enter into agreements with any other government or agency respecting the administration and/or enforcement of this Law.
- 3.7** **Compliance with Other Laws** – Where any federal act or regulation, provincial act or regulation or any other Akwasasne Law applies to the License Holder, or to any matter covered by this Law, compliance with this Law will not relieve a person from also complying with the provisions of the other applicable act, regulation or Law.
- 3.8** **Notices** – Where notices are required to be given to a License Holder under this Law, the notice shall be deemed properly given if delivered or mailed to the address of the License Holder shown on the License or Export Permit.
- 3.9** **Interpretation** – In this Law:
- a) headings and sub-headings are for convenience only and do not form part of this Law, and in no way define, limit, alter, or enlarge the scope or meaning of any provision;
 - b) words in singular include the plural, and words in the plural include the singular;
 - c) unless otherwise clear from the context, whenever the masculine is used, it will include the feminine and the use of the feminine includes the masculine;
 - d) the word “shall” is to be understood as compulsory and the word “may” is to be understood as permissive;
 - e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
 - f) reference to an Akwasasne Law, charter or Regulation includes any successor, amendment or replacement of that Law, charter or Regulation;
 - g) “person” means, in addition to a natural person, includes a corporation, partnership, agency, government or any agent, employee, successor or legal representative of such person to whom the context can apply according to this Law;
 - h) reference to an Akwasasne commission in this Law includes any successor body established, carrying out all or some of the functions of the commission; and
 - i) words in this Law referring to an officer, by name of office or otherwise, also apply to any person assigned or designated by the Akwasasne Licensing Commission or under this Law to act in the officer's place.

- 3.10 Calculation of Time** – Unless otherwise stated, the following are guidelines for calculating the number of days for the purposes of establishing a deadline stated in days:
- a) unless otherwise provided, Saturdays, Sundays, federal holidays, provincial holidays, Council declared holidays or the day to complete an act are not included in the calculation of number of days for completing an act or meeting a deadline; and
 - b) if Council administration offices are closed on a day when a time limit expires, the act may be done on the next day that the office is open.
- 3.11 Immunity** – No action or proceeding for damages shall be instituted against a Tobacco Compliance Officer, peace officer or any person working as an employee or contractor with the Council or the Akwasasne Licensing Commission for any act done in good faith in the discharge of that person's duties under this Law.
- 3.12 Indemnification** – Any Holder of a License or Export Permit issued under this Law to manufacture, distribute, transport, or sell Tobacco Products on the Akwasasne Lands shall indemnify and hold harmless present or past Council, employees, or agents of Council, including the Akwasasne Licensing Commission, Tobacco Compliance Officers, and any other person charged with implementing, administering, or enforcing this Law and applicable Regulations, against any loss, cost, damage, suit or other claim arising as a result of any Tobacco Products manufactured, transported, sold or acquired pursuant to the License or Export Permit granted in accordance with this Law.

Section 4.0 Stamping Agents

- 4.1** The stamping of Tobacco Products manufactured on Akwasasne Lands by Licensed Manufacturers, or distributed on Akwasasne Lands by Licensed Wholesalers, shall be handled by Stamping Agents.
- 4.2** Stamping Agents shall fulfill all requirements imposed by this Law and by Regulation.
- 4.3 Stamping Agent's Fees** – Stamping Agents shall collect fees at the times identified in this Law and as provided by Regulation and shall remit the collected fees to Council under subsections 4.6 and 5.1.
- 4.4** A Stamping Agent fee schedule shall be set by the Akwasasne Licensing Commission and approved by Resolution, outlining the following categories of fees:
- a) Tobacco Products manufactured on Akwasasne Lands;
 - b) Tobacco Products manufactured in the southern portion of Akwasasne and imported onto Akwasasne Lands;
 - c) Tobacco Products manufactured by another First Nation and imported onto Akwasasne Lands;
 - d) Tobacco Products which are tax-exempt under the Ontario First Nations Cigarette Allocation System and imported onto Akwasasne Lands; and
 - e) Tobacco Products manufactured internationally and imported onto Akwasasne Lands.
- 4.5** A different stamp will be developed for each category of Tobacco Product listed in subsection 4.4.
- 4.6 Tobacco Legal Fund** – Council shall establish by Resolution a tobacco legal fund by setting aside a percentage of the Stamping Agent's fee, not to exceed ten (10) percent.

- 4.7** The tobacco legal fund shall be expended as Council deems necessary or appropriate in assisting a License Holder as set out in accordance with a Regulation.
- 4.8** For greater certainty, if a License Holder who is in compliance with this Law has their Tobacco Products seized off the territory, then Council in its discretion may use the tobacco legal fund to assist with legal costs, as provided for by Regulation.
- 4.9** **Stamping** – All Tobacco Products to be sold on Akwasasne Lands shall be evidenced by a stamp as determined by the Akwasasne Licensing Commission.
- 4.10** Stamping Agents shall be authorized to monitor the affixation of stamps on Tobacco Products, provided the Tobacco Products meet all requirements established by Regulation.
- 4.11** No person shall duplicate, manipulate, copy, or otherwise reproduce or replicate a stamp authorized by the Akwasasne Licensing Commission.
- 4.12** **Bonded Warehouse** – The Stamping Agent shall carry out their responsibilities in relation to imported Tobacco Products at a Bonded Warehouse.
- 4.13** The Bonded Warehouse under subsection 4.12 shall be managed by Council or their designate in accordance with a prescribed Regulation.
- 4.14** **Reporting Requirements** – Stamping Agents are required to keep a record of the:
- a) bill of lading of the raw leaf tobacco being transported onto Akwasasne Lands for the purpose of manufacturing; and
 - b) copy of the bill of lading issued by a Licensed Manufacturer under subsection 8.28.
- 4.15** Stamping Agents are required to:
- a) collect payments of the Stamping Agents fees;
 - b) provide a receipt upon receiving payment for stamps; and
 - c) provide a monthly report to the Tobacco Compliance Officer for the purpose of verifying the reports submitted by License Holders.
- 4.16** Monthly reports from Stamping Agents will be submitted as prescribed by Regulation and are due ten (10) calendar days after the end of the preceding month.

Section 5.0 Community Responsibility

- 5.1** Revenue generated from the Stamping Agent's fees that is not deposited in the tobacco legal fund pursuant to subsection 4.6 and interest from the security deposit pursuant to subsection 8.10 shall be used in one of the following areas:
- a) first, to pay Authorized Expense(s); and
 - b) second, with any surplus revenue after Authorized Expense(s) have been paid, for the priorities set out in subsection 5.2.
- 5.2** Council shall decide in accordance with a Regulation where any surplus revenue will be distributed among the following priorities, by providing funding to:
- a) promote and support health, safety and well-being of Members;
 - b) promote and preserve the study and learning of the language and cultural heritage of the Mohawks of Akwasasne;
 - c) create an educational trust fund to provide scholarships to Members;

- d) assist in emergency disaster relief;
- e) assist in meeting the social needs of Members;
- f) assist in establishing and promoting recreational programs for Members;
- g) assist with the costs of negotiations or litigation to protect or advance Treaty, Inherent or Aboriginal rights of the Mohawks of Akwasasne;
- h) assist programs or initiatives promoting justice, security and protection for Members;
- i) assist programs protecting, maintaining or enhancing the natural environment;
- j) assist in the creation and promotion of economic development;
- k) assist with the construction or improvement of facilities, including infrastructure, owned or operated by Council; and
- l) assist in the acquisition of land, the ownership of which will provide a tangible benefit to the Mohawks of Akwasasne.

5.3 Controls Relating to Use of Tobacco Products – No person shall use or hold lighted Tobacco Products within a distance of an entrance to a Public Place or Government Workplace or in any enclosed Public Place or enclosed Government Workplace as prescribed by Regulation, except if the use is in accordance with subsection 3.5.

5.4 The restrictions related to subsection 5.3 shall be further defined by Regulation including:

- a) designated smoking areas;
- b) prohibitions in Council-owned vehicles; and
- c) public policies relating to smoking restrictions, prohibitions and employee rights to non-smoking environment.

5.5 The Mohawk Council of Akwasasne Department of Health shall develop a tobacco reduction strategy and tobacco cessation programs as prescribed by Regulation.

5.6 Restriction on the Sale of Tobacco Products – Licensed Manufacturers shall only sell Tobacco Products to Licensed Wholesalers, Licensed Vendors through the Bonded Warehouse or through an Export Permit.

5.7 Licensed Wholesalers shall only sell Tobacco Products:

- a) to a Licensed Vendor and other Licensed Wholesalers; or
- b) for sales outside Akwasasne Lands, through an Export Permit where the Tobacco Products are destined for delivery to a person/organization licensed to receive Tobacco Products in accordance with the jurisdictional laws in which they are located.

5.8 Licensed Vendors shall only sell Tobacco Products to individual customers for personal consumption selling no more than five (5) Cartons in a single transaction.

5.9 Licensed Vendors shall never sell Tobacco Products online, by electronic mail, by telephone or by mail order.

5.10 Protection of Young Persons – No person shall furnish, by selling, trading, giving or by any other means, a Tobacco Product to a person under eighteen (18) years of age.

5.11 A person shall not be found to have contravened subsection 5.10 if it is established that the person attempted to verify that the person was at least eighteen (18) years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

- 5.12** Licensed Vendor's shall post at retail, in accordance with the prescribed Regulation, a notice informing the public that the sale or giving of a Tobacco Product to a person under eighteen (18) years of age is prohibited by this Law.
- 5.13** Licensed Vendor's shall not allow a person less than eighteen (18) years of age to sell, stock, or otherwise handle or access Tobacco Products.
- 5.14** No person shall manufacture, sell, distribute, advertise, solicit, promote or otherwise entice Tobacco Products, or Tobacco Product sales or use, including promotional items, within the prescribed distance as identified by Regulation of any school, daycare facility, youth center, recreation center, library, sports arena/field or complex or any location or event where youth gather or congregate for activities.
- 5.15** No person shall sell or offer for sale on Akwasasne Lands a flavored Tobacco Product that has been prohibited by Regulation for retail sale on Akwasasne Lands.
- 5.16 Environmental Contamination, Health and Safety** – The Akwasasne Licensing Commission shall immediately suspend a License issued under this Law if the License Holder or their employee:
- a) cause or pose an imminent risk of Environmental Contamination;
 - b) manufacture Tobacco Products with contaminated ingredients; or
 - c) otherwise harm or threaten imminent harm to the health, safety, or welfare of the Mohawk community or Akwasasne Lands.
- 5.17** A Tobacco Compliance Officer has authority to take immediate steps to contain the contamination and/or prevent the safety breach or harm, including ordering a manufacturer to cease operating, for a period of forty-eight (48) hours.
- 5.18** If the Akwasasne Licensing Commission cannot meet within forty-eight (48) hours of notice from a Tobacco Compliance Officer, the Tobacco Compliance Officer may apply to the Court with notice to the License Holder, or if the License Holder cannot be located, on an *ex parte* basis, for an Order that the License Holder's activities causing the contamination, safety concern or other urgent situation immediately cease.
- 5.19** Subject to subsection 5.16, the Akwasasne Licensing Commission or Court may direct:
- a) the immediate suspension of a License issued under this Law; and
 - b) measures necessary to bring the License Holder back into compliance.
- 5.20** After measures have been taken to bring the License Holder back into compliance, a Tobacco Compliance Officer or health and safety officer shall inspect the manufacturing or other operation to ensure that the operation is in compliance with applicable environmental and health and safety standards.
- 5.21** The security deposit posted by a Licensed Manufacturer may be used to cover the costs incurred to bring a manufacturing operation back into compliance, provided that the use of the security deposit is done in accordance with this Law.

- 5.22** The Akwasasne Licensing Commission or Court may lift the suspension of the License Holder in the event that the License Holder:
- a) is able to demonstrate they have brought their operation back into compliance;
 - b) provides a report indicating that the inspectors recommend that the Manufacturer or other License Holder resume operations; and
 - c) all related costs to the Environmental Contamination, safety concern or other urgent situation that has been incurred have been paid;
 - d) if the security deposit has been used to cover any of the costs related to the Environmental Contamination, safety concern or other urgent situation, that the Manufacturer have replenished the security deposit to the original amount; and
 - e) is able to demonstrate that they have reimbursed any costs incurred by Council related to the Environmental Contamination, safety concern or other urgent situation.

Section 6.0 Akwasasne Licensing Commission

- 6.1 Akwasasne Licensing Commission Authority** – Except as specifically provided otherwise in this Law, the authority to grant or deny Licenses, administer this Law and develop Regulations required to administer this Law is hereby delegated to the Akwasasne Licensing Commission.
- 6.2** The Akwasasne Licensing Commission has the authority to review documentation provided with an application for a License and may request additional information related to the application in order to determine eligibility.
- 6.3** Based on the information provided with the application for a License and any additional information requested pursuant to subsection 6.2, the Akwasasne Licensing Commission has the discretion to determine relevancy of information as it relates to eligibility for a License.
- 6.4 Regulations** – Regulations established by the Akwasasne Licensing Commission shall take effect on the date specified in the Resolution approving the Regulation.
- 6.5** The Akwasasne Licensing Commission is responsible to annually review and recommend revisions to any Regulations developed in accordance with subsections 6.1 and 6.4, with the revisions taking effect on the date approved by Resolution.
- 6.6 Forms and Administrative Documentation** – The Akwasasne Licensing Commission may establish, correct, revise or update the applications, forms or other documentation which complement and support this Law provided that the Regulation states the forms may be changed from time to time without a Resolution.
- 6.7 Registry** – The Akwasasne Licensing Commission shall:
- a) maintain a current registry of all License Holders under this Law; and
 - b) retain a copy of all Licenses issued by the Akwasasne Licensing Commission.
- 6.8** The list of currently registered License Holders shall be publicly accessible.
- 6.9 Tobacco Product Directory** – The Akwasasne Licensing Commission shall maintain a list of approved Tobacco Product brands in a Tobacco Product directory made available to the public as prescribed by Regulation. License Holders shall not possess, sell, purchase, distribute, manufacture, import, export, or transport Tobacco Products not on the list of approved brands.

- 6.10 Non-Interference of Council** – Except with respect to responsibilities of Council described in this Law, Council shall not interfere with or become involved in the operations or decision-making of the Akwasasne Licensing Commission.
- 6.11 Complaints Against Akwasasne Licensing Commission** – Complaints based on the conduct of a member of the Akwasasne Licensing Commission shall be filed to the Akwasasne Review Commission.

Section 7.0 Licenses

- 7.1 License Eligibility Criteria** – In order to be eligible for a License issued under this law, the License Holder shall meet the following general eligibility criteria:
- a) be a Member or a Member-Owned Business;
 - b) parties are at least eighteen (18) years of age;
 - c) be considered as “in good standing” with the *Akwasasne Good Standing Policy*; and
 - d) meet any other License-specific criteria as identified in this Law or by Regulation.
- 7.2** No License shall be granted under this Law to a person who has been convicted within the last five (5) years of an indictable offence or of an offence under this Law.
- 7.3 Applications** – Applications for Licenses and License renewals under this Law shall:
- a) be made to the Akwasasne Licensing Commission;
 - b) submit the prescribed non-refundable application fee; and
 - c) satisfy all the eligibility requirements of this Law and applicable Regulations.
- 7.4 Akwasasne Licensing Commission Decision** – The Akwasasne Licensing Commission shall review all completed applications submitted and make a decision to:
- a) approve the License with conditions; or
 - b) deny the License with reasons outlining ineligibility of applicant.
- 7.5 Appeal of Akwasasne Licensing Commission Decision** – Applicants may apply for review of a final License decision of the Akwasasne Licensing Commission to the Court, who may:
- a) uphold the decision of the Akwasasne Licensing Commission;
 - b) overturn the decision of the Akwasasne Licensing Commission; or
 - c) amend the License conditions set out by the Akwasasne Licensing Commission in accordance with this Law.
- 7.6 Duration of a License** – A License granted under this Law is valid for a period of two (2) years from the date of issuance and may be subject to suspension and revocation.
- 7.7 Automatic Suspension and Revocation of a License** – A License shall be automatically suspended by the Akwasasne Licensing Commission where the License Holder is convicted of an indictable offence in Canada and until their conviction is successfully overturned in an appeal.
- 7.8** A License Holder shall have their License automatically revoked if the License Holder is convicted of an indictable offence in Canada:
- a) and does not appeal their conviction; or
 - b) the conviction is upheld on appeal.

- 7.9 Complaints Leading to Suspension or Revocation of a License** – A License may be suspended or revoked by the Akwasasne Licensing Commission on grounds that the License Holder has:
- a) obtained the License as the result of false, incomplete or misleading representations;
 - b) no longer fulfills one or more of the eligibility requirements;
 - c) breached any of the conditions to which the License is subject;
 - d) breached any provision of this Law or the Regulations; or
 - e) for any other reasonable and just cause.
- 7.10** Where a complaint is received regarding a License Holder alleging any of the grounds outlined in subsection 7.9, the investigation of the complaint shall be carried out in accordance with procedures established by the Akwasasne Licensing Commission.
- 7.11** Where the Akwasasne Licensing Commission contemplates the suspension or revocation of a License as a result of an investigation, the Akwasasne Licensing Commission shall conduct a hearing into the matter in accordance with the hearing procedures prescribed by Regulation.
- 7.12** Hearing procedures for the Akwasasne Licensing Commission into alleged violations of this Law by a License Holder shall at a minimum:
- a) give the License Holder and persons making the complaint against the License Holder reasonable notice of the time and place of the hearing;
 - b) permit the License Holder the right to be represented by legal counsel at their cost;
 - c) permit the License Holder to be heard;
 - d) permit the License Holder to review any non-privileged, non-confidential documents or hear any evidence upon which the alleged violation is based opposing or detrimental to his or her application;
 - e) permit the License Holder to question witnesses giving evidence at a hearing; and
 - f) require the Akwasasne Licensing Commission to provide the License Holder with its decision in writing.
- 7.13** At the conclusion of a hearing under subsection 7.12, the Akwasasne Licensing Commission may:
- a) dismiss the allegations;
 - b) suspend, vary or revoke the License, in which case the Akwasasne Licensing Commission shall provide public notice of the suspension, variance or revocation; or
 - c) take any other action that the Akwasasne Licensing Commission decides is appropriate under the circumstances.
- 7.14** Where the Akwasasne Licensing Commission makes a finding against the License Holder, the Akwasasne Licensing Commission may assess the costs of the hearing against the License Holder.
- 7.15** Where the Akwasasne Licensing Commission makes a finding that the complaint against a License Holder is frivolous or vexatious, the Akwasasne Licensing Commission may assess the costs of its investigation against the complainant.
- 7.16 Renewal of License** – Renewals are subject to the continued compliance of the License Holder with the provisions of this Law and the Regulations, demonstrated through timely reporting, passing inspections and having no offences under this Law.

- 7.17 Changes During the License Period** – Where any changes occur in the License Holder's business that differs from the information contained in the original application, the License Holder shall immediately notify the Akwasasne Licensing Commission and Tobacco Compliance Officer in writing.
- 7.18** Upon receiving the notice under subsection 7.17, the Akwasasne Licensing Commission may require the License Holder to make a new application for a License.
- 7.19 Transfer of License** – A License issued under this Law is not transferable.
- 7.20** A new application for a License shall be submitted in the event of a change in ownership.
- 7.21 Display of License** – A License issued under this Law shall be prominently displayed by the License Holder at the principal place of the Licensed business identified in the application for the License, or in the instance of a Tobacco Transporter License, carried within the motor vehicle used to transport Tobacco Products.
- 7.22 Reporting** – License Holders shall submit and maintain copies of the reports required by this Law and applicable Regulations, and of the business records used to prepare these reports, for period of at least five (5) years at the License Holder's place of business.
- 7.23** License Holders shall provide records, documents or other materials requested by the Tobacco Compliance Officer to verify reports or verify compliance with this Law.
- 7.24** Tobacco Compliance Officers or their agent may inspect the License Holder's premises and records at any time during normal business hours, with or without notice.
- 7.25** Monthly reports from all License Holders will be submitted as prescribed by Regulation and are due ten (10) calendar days after the end of the preceding month.
- 7.26** License Holders shall not provide information that is false, incomplete or misleading in any way in an application or report to the Akwasasne Licensing Commission, nor shall any License Holder destroy, alter or conceal books or records or other documents relating to an activity authorized by a License issued under this Law.
- 7.27 Audit** – The Akwasasne Licensing Commission may conduct audits of License Holders as outlined by Regulation.

Section 8.0 Manufacturers License

- 8.1** The manufacturing of Tobacco Products on Akwasasne Lands shall only be carried out in compliance with this Law and applicable Regulations.
- 8.2** Members or Member-Owned Businesses interested in manufacturing Tobacco Products on Akwasasne Lands shall:
- a) obtain a Manufacturer's License issued under this Law; and
 - b) operate only one (1) tobacco manufacturing facility in Akwasasne Lands.
- 8.3** A Manufacturer's License shall also be required for the Manufacture of tobacco-related products including red papers, tubes and the re-packaging or re-labeling of finished or partially finished Tobacco Products.

- 8.4 Manufacturer's License Eligibility Criteria** – In addition to the general application requirements in subsections 7.1 and 7.2, the applicant for a Manufacturer's License shall provide:
- a) a criminal records check, including a full field investigation with cross-border check;
 - b) a financial history for a period prescribed by Regulation for the purpose of verifying the source of the funds financing the manufacturing operation and security deposit;
 - c) supply the security deposit as identified in this Law; and
 - d) demonstrate fulfillment of the manufacturer facility requirements by including a package of documentation detailing compliance with those requirements.
- 8.5 Manufacturers Security Deposit** – On application to the Akwasasne Licensing Commission for a Manufacturer's License, the applicant shall submit a security deposit in a minimum amount as prescribed by Regulation.
- 8.6** The security deposit shall be in the form of a bank draft or certified cheque payable to the Akwasasne Licensing Commission.
- 8.7** The security deposit submitted with the Manufacturer's License application shall:
- a) be deposited by the Akwasasne Licensing Commission into an interest bearing account as prescribed by Regulation;
 - b) have a record kept matching the deposit to the applicant's name; and
 - c) not be co-mingled with other Council funds.
- 8.8** If the application for a Manufacturer's License is denied, the security deposit principal submitted shall be returned in full to the applicant.
- 8.9** If the application for a Manufacturer's License is approved, and a Manufacturer's License is issued, the security deposit shall be retained in an interest bearing account for the duration of the License.
- 8.10** At the end of the License period the security deposit shall be returned to the License Holder, minus:
- a) deductions based on the eligible uses of the security deposit identified in subsections 8.11 and 8.12; and
 - b) the interest accrued on the security deposit, which shall be considered revenue and be included under subsection 5.1.
- 8.11 Eligible Uses of the Security Deposit** – The security deposit may be used to:
- a) ensure payment of fees due by the Manufacturer's License Holder where Stamping Agents fees are outstanding longer than as prescribed for by Regulation;
 - b) compensate Council for cleanup associated with Environmental Contamination;
 - c) cover the cost of remediation of any damages to Akwasasne community property; or
 - d) assist with liability costs incurred by Council as a result of actions by the License Holder.
- 8.12** The Akwasasne Licensing Commission may deduct from the security deposit to cover expenses related to subsection 8.11.
- 8.13** The Akwasasne Licensing Commission shall give 10 days' notice in writing to the Licensed Manufacturer of the deduction as prescribed by Regulation.

- 8.14** A decision of the Akwasasne Licensing Commission to make a deduction to the security deposit in accordance with this Law may be appealed to the Court.
- 8.15 Manufacturing Facility Requirements** – The applicant seeking a Manufacturer's License shall have a facility consisting of one or more buildings on Akwasasne Lands where the manufacturing activity takes place.
- 8.16** The manufacturing facility under subsection 8.15 shall satisfy the following requirements:
- a) a building of a minimum of 3,000 sq. ft. dedicated solely to the manufacture operation, which is not adjacent to or connected to any building or structure used as a residence;
 - b) where the facility is in more than one building and each building is not identifiable by a separate address, each building shall be clearly identified on an attached plan of survey;
 - c) each building shall have adequate entrances, exits and fire extinguishers as approved by local fire prevention officials;
 - d) all tobacco manufacturing operations shall maintain an inventory list and its equipment by description and serial numbers;
 - e) each building shall comply with all building, health and safety, waste management and environmental laws and regulations established by the Council, and with all other applicable building, health and safety, waste management and environmental laws and standards, complying with the building code standards identified by the Mohawk Council of Akwasasne Department of Technical Services;
 - f) each building shall have security systems which includes a qualified security staff with standard operating procedures and video surveillance system;
 - g) maintain fire, theft and comprehensive liability insurance for each building comprising the facility and covering the public and staff working therein;
 - h) manufacturing facilities shall be operated in approved zones as defined by Regulation or Akwasasne Law; and
 - i) obtain an environmental assessment from the Mohawk Council of Akwasasne Environment Program.
- 8.17 Fees to be Paid by Manufacturer** – Licensed Manufacturers shall pay a Stamping Agent's fee in the amount prescribed by Regulation per gram of raw tobacco delivered to the manufacturer's facility, as evidenced by a proper bill of lading, which payment shall occur at or prior to the time of delivery.
- 8.18** Payment of the Stamping Agents fee shall be made through the manufacturer's purchase of stamps from the Licensed Stamping Agent.
- 8.19** A Stamping Agent shall monitor the affixation of the stamps purchased pursuant to subsection 8.17 onto the Tobacco Products manufactured from that raw tobacco on which the fee has been paid.
- 8.20 Manufacturing Procedures** – Regulations may be developed to provide quality control and maintain best practices, including regulating the contents of Tobacco Products.

- 8.21** Manufacturers shall produce fire-safe cigarettes in accordance with the highest universal established and accepted standard of fire-safety compliance, cigarette ignition propensity standards, toxic constituents, side stream smoke, main stream smoke, and follow appropriate testing and reporting on these in accordance with Regulation.
- 8.22** Licensed Manufacturers shall provide manufacturing procedures for each Tobacco Product to the Akwasasne Licensing Commission as prescribed by Regulation.
- 8.23** **Packaging** – Every Individual Package of Tobacco Products manufactured by a Licensed Manufacturer shall display medical/health warnings and any other labels, stamps and notices prescribed by the Akwasasne Licensing Commission pursuant to applicable Regulations.
- 8.24** Prior to mass production, all proposed packaging for each type of Tobacco Product shall undergo a one-time assessment ensuring the packaging has minimal impact on the environment by Council's environmental assessment process.
- 8.25** Failure to maintain the packaging requirements as identified under subsections 8.23 and 8.24 may be grounds for suspension or revocation of the Manufacturer's License.
- 8.26** All Individual Packages, Cartons and Boxes shall be sealed for shipment in the manner prescribed by the Akwasasne Licensing Commission pursuant to applicable Regulations.
- 8.27** **Transportation** – Each Tobacco Product shipment shall be accompanied by an original bill of lading issued by the Licensed Manufacturer as prescribed by the Regulation.
- 8.28** The Stamping Agent shall be provided a copy of a bill of lading for every shipment of raw tobacco or Tobacco Products shipped by/to a Licensed Manufacturer.
- 8.29** **Exporting Tobacco Products** – Trade between a Licensed Manufacturer and an entity in another jurisdiction or another First Nation requires that the transaction be approved by the Akwasasne Licensing Commission as prescribed by Regulation through an Export Permit and the Tobacco Products are destined for delivery to a person/organization licensed to receive Tobacco Products in accordance with the jurisdictional laws in which they are located.

Section 9.0 Tobacco Transporters License

- 9.1** Any person transporting Tobacco Products in bulk, which is considered to be one (1) Box or more; within, into, or out of Akwasasne Lands, shall apply to the Akwasasne Licensing Commission for a Tobacco Transporter License in such a form and manner as prescribed by Regulation.
- 9.2** **Tobacco Transporter's License Eligibility Criteria** – In addition to the general application requirements in subsections 7.1 and 7.2, the applicant for a Tobacco Transporter's License shall provide:
- a) a copy of a valid driver's license; and
 - b) a drivers abstract.
- 9.3** The Akwasasne Licensing Commission may impose such reasonable conditions and restrictions to a Tobacco Transporter's License as prescribed by Regulation.

- 9.4 Transporting Tobacco Products** – Tobacco Transporter License holders are required to transport Tobacco Product only to, from, and on behalf of License Holders.
- 9.5** When transporting Tobacco Products, the Tobacco Transporter License holder shall have in their possession in the motor vehicle used to transport the Tobacco Products:
- a) the original or a certified copy of the Tobacco Transporter License issued in accordance with the Regulation; and
 - b) the bill of lading for the Tobacco Products issued by the:
 - i. Manufacturer under subsection 8.27;
 - ii. manufacturer licensed by the jurisdiction(s) in which they operate; or
 - iii. Licensed Wholesaler.

Section 10.0 Vendors License and Retail Sales

- 10.1** The sale of Tobacco Products to the public on Akwasasne Lands for personal consumption shall only be carried out by a Licensed Vendor who meets the general eligibility requirements as outlined in subsection 7.1 and 7.2.
- 10.2** The Licensed Vendor shall conduct their retail business in compliance with the conditions set out in this Law and applicable Regulations.
- 10.3 Minimum Retail Pricing** – The Akwasasne Licensing Commission shall establish a minimum price for Tobacco Products on Akwasasne Lands as set out by Regulation.
- 10.4** No Tobacco Products shall be sold at retail on Akwasasne Lands below the prescribed minimum price in accordance with subsection 10.3.
- 10.5 Fees to be Paid by Vendor** – For Tobacco Products manufactured off Akwasasne Lands for which no Stamping Agent's fee has been paid by a Licensed Manufacturer, Licensed Vendors shall pay a Stamping Agent's fee to the Akwasasne Licensing Commission in an amount prescribed by Regulation.
- 10.6** Payment of the Stamping Agent's fee shall be made through the purchase of stamps from the Licensed Stamping Agent.
- 10.7** A Stamping Agent shall monitor the affixation of stamps purchased by the Licensed Vendor onto the Tobacco Products at the Bonded Warehouse prior to pick up by the Licensed Vendor.
- 10.8** The selling of Tobacco Products manufactured under this Law to a Licensed Vendor on Akwasasne Lands shall be carried out by the Licensed Manufacturer with the Tobacco Product being purchased through the Bonded Warehouse.
- 10.9 Retail Sales Operations** – Licensed Vendors shall operate under the following conditions:
- a) the purchase of Tax-Exempt Tobacco Products which are tax-exempt under the *Ontario First Nations Cigarette Allocation System* shall be purchased from Council or its designate;
 - b) the purchase of all other Tobacco Products shall be from a:
 - i. Licensed Wholesaler; or
 - ii. Licensed Manufacturer through the Bonded Warehouse;
 - c) sales of Tobacco Products to persons under the age of eighteen (18) are prohibited;

- d) retailers may only display/promote Tobacco Products as described by Regulation;
 - e) only Tobacco Products that have proper packaging and stamps may be sold; and
 - f) Licensed Vendors shall sell Tobacco Products only to individual consumers for personal consumption, selling no more than five (5) Cartons in a single transaction.
- 10.10 Tax- Exempt Tobacco Products** – Only Vendors with a Tax-Exempt Tobacco Products permit may possess, sell, purchase or distribute Tax-Exempt Tobacco Products.
- 10.11** An applicant seeking to sell Tobacco Products which are tax-exempt under the *Ontario First Nations Cigarette Allocation System* shall comply with provisions of the Akwasasne Sale of Tax Exempt Tobacco Products Law and Regulations passed pursuant to that Law.
- 10.12** Vendors who possess a Tax-Exempt Tobacco Products permit shall also obtain a Vendors License under this Law. Such Vendors, however, are exempt from paying the Vendors License application fee identified under this Law.
- 10.13** The annual fees and royalties paid by permit holders under the Akwasasne Sale of Tax Exempt Tobacco Products Law shall continue under this Law and be incorporated into the fee schedule assessed by the Stamping Agent under subsection 4.4.
- 10.14** No person shall export Tax-Exempt Tobacco Products from Akwasasne Lands.

Section 11.0 Wholesalers License

- 11.1** The purchase of Tobacco Products on Akwasasne Lands for wholesale purposes shall be carried out by a Licensed Wholesaler in accordance with the prescribed Regulation.
- 11.2** A Licensed Wholesaler who is found in possession of unstamped Tobacco Products without the proper authorization or bill of lading issued under this Law, is subject to:
- a) investigation by the Tobacco Compliance Officer, whose findings may be grounds for suspension or revocation of the Wholesaler's License; and
 - b) a ticket issued under this Law.
- 11.3 Wholesaler's License Eligibility Requirements** – Where a wholesaler intends to establish a warehouse on Akwasasne Lands to conduct their wholesaling operation, in addition to the general application requirements in subsections 7.1 and 7.2, the eligibility requirements for a Wholesaler's License shall include the:
- a) information regarding the business facility on Akwasasne Lands from which they will operate the business;
 - b) Licensed Manufacturers that they propose to purchase Tobacco Products from;
 - c) external suppliers from which they propose to purchase and import Tobacco Products; and
 - d) external consumers from which they proposed to sell and/or export Tobacco Products.
- 11.4** Notwithstanding subsection 7.1 and 7.2, where a wholesaler has established their wholesaling operating off Akwasasne Lands the following eligibility criteria shall apply:
- a) parties are at least eighteen (18) years of age;
 - b) be considered "in good standing" with the *Akwasasne Good Standing Policy*; and
 - c) meet additional criteria as identified by Regulation.

- 11.5 Importing Tobacco Products** – Importing of Tobacco Products that are listed on the tobacco products directory shall be through a Licensed Wholesaler with the Tobacco Products destined for delivery to a Licensed Vendor.

Section 12.0 Enforcement

- 12.1** This Law shall be enforced by a Tobacco Compliance Officer(s) having the authority to:

- a) conduct investigations and inspections;
- b) seize:
 - i. Tobacco Products; and
 - ii. equipment from unlicensed manufacturers on Akwasasne Lands; and
- c) carry out any other responsibilities specifically referenced in this Law.

- 12.2** Akwasasne Mohawk Police Service Officers have the authority within the provisions set out in this Law to seize:

- a) Tobacco Products; and
- b) equipment from unlicensed manufacturers on Akwasasne Lands.

- 12.3 Investigations** – Tobacco Compliance Officers have the authority, responsibility and duty to investigate all potential violations of this Law.

- 12.4** Without limiting the generality of 12.3, a Tobacco Compliance Officer shall have the right to:

- a) enter and examine the premises where Tobacco Products are manufactured, stored or sold;
- b) examine the books, documents, records and/or materials of the License Holder;
- c) request that the holder of a Tobacco Transporter License or other License issued under this Law produce the requested documentation for inspection;

for the purpose of determining whether the provisions of this Law, applicable Regulations or conditions of any Licenses granted have been violated and to verify the information submitted in reports by the License Holder to the Akwasasne Licensing Commission.

- 12.5** Tobacco Compliance Officers shall make regular activity reports to the Akwasasne Licensing Commission on findings with recommendations for action to be taken if required or appropriate.

- 12.6 Seizures** – No person shall possess, sell, purchase, distribute, manufacture, import, export or transport Tobacco Products for commercial purposes without the appropriate License or Export Permit; any such Tobacco Products are subject to immediate seizure.

- 12.7** Tobacco Products not stamped in accordance with this Law and applicable Regulations and Tobacco Products not on the list of approved Tobacco Products brands maintained under subsection 6.9 are subject to immediate seizure.

- 12.8** Any seizure of Tobacco Products or equipment under this Law by a Tobacco Compliance Officer, who believes on reasonable grounds that an offence has been committed under this Law, is carried out on behalf of the Mohawks of Akwasasne.

- 12.9** The person from whom property were seized or the owner of seized property may apply within thirty (30) days following seizure to the Court for an order to recover possession of the seized property where they claim to have the right to possession of that property.
- 12.10** Unless an order to recover possession of seizure is granted by the Court, property shall be forfeited to Council for disposal.
- 12.11** If no charges have been laid within thirty (30) days of the seizure, the seized property shall be returned to the person from whom it was seized.
- 12.12 Interference with Compliance Officer** – No person shall obstruct, interfere or hinder a Tobacco Compliance Officer in the carrying out of their duties or mislead them by concealment or false declarations or refuse to disclose information to a Tobacco Compliance Officer to which a Tobacco Compliance Officer is entitled under this Law.

Section 13.0 Offences

- 13.1** The Akwasasne Licensing Commission shall develop a Regulation designating offences under this Law where a Tobacco Compliance Officer may issue a ticket.
- 13.2** The Akwasasne Licensing Commission shall develop a fine schedule that identifies infractions where tickets can be issued with respect to violations of this Law.
- 13.3 Tickets** – A Tobacco Compliance Officer who believes on reasonable grounds that an offence has been committed under this Law, may issue to the accused an appearance ticket to summon them to appear before the Court, and may also set out a proposed fine.
- 13.4** A ticket issued under subsection 13.3 shall include the:
- a) name and date of birth of the accused;
 - b) charge against the accused and the amount of the proposed fine;
 - c) date by which the accused must request a hearing with the Court if the accused wishes to dispute the charge or fine amount, and the date for such hearing;
 - d) options available to the accused, which include:
 - i. pleading guilty by paying the fine;
 - ii. pleading not guilty to the charge and requesting a hearing;
 - iii. or pleading guilty with the Court with submissions as to the fine amount or a request to the Court for an extension of time to pay the fine;
 - e) period and manner in which payment may be made; and
 - f) address of the Akwasasne offices where payment may be made.
- 13.5** By failing to exercise any of the options listed in subsection 13.4(d) by the hearing date specified on the ticket or notifying the Court otherwise, the accused may be found guilty in absentia by the Court and liable for the fine, hearing costs and surcharges.
- 13.6 Penalties** – Every person who contravenes this Law or a Regulation made under this Law may be found guilty of an offence by the Court and on conviction is liable to:
- a) a fine in accordance with Regulations made under this Law;
 - b) suspension or termination of License in accordance with subsection 7.13(b), and declaration of ineligibility for future Licenses; or
 - c) confiscation, seizure and forfeiture of Tobacco Products destined for sale within Akwasasne Lands.

- 13.7 Environmental Contamination, Health and Safety Offences** – In addition to any order under subsection 13.6 or action taken under subsection 5.16-5.22, in the event a License Holder contravenes this Law or other applicable environmental protection laws prohibiting Environmental Contamination, the License Holder may be found guilty of an offence and on conviction is liable to:
- a) pay for costs or compensation for clean-up relating to the de-contamination;
 - b) an additional penalty may be applied not to exceed ten thousand dollars (\$10,000.00) per incident; and
 - c) remediate the affected area.
- 13.8** Where a violation of an Akwasasne Law in relation to environmental protection is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day it is committed or continued.
- 13.9 Unpaid Fines** – A fine imposed under subsection 13.6(a) or costs assessed under subsection 13.7 that remains unpaid after the allotted period for payment shall be registered against the convicted person as debt owed to Council.

Section 14.0 Adjudication

- 14.1** The Court shall have jurisdiction for consideration of offences under this Law and the interpretation of provisions within this Law.
- 14.2** The Akwasasne Licensing Commission shall have jurisdiction for consideration as set forth in this Law and as prescribed by Regulation.

Section 15.0 Appeal

- 15.1** Except where specified otherwise, review of a final decision of the Akwasasne Licensing Commission lies to the Court.
- 15.2** Appeals of decisions of the Court regarding tickets issued under this Law lies with the appellate division of the Court.

Section 16.0 Law Enactment

- 16.1** This Law shall be enacted in accordance with the Akwasasne law enactment process as outlined in the Akwasasne Legislative Enactment Regulation.
- 16.2** This Law shall come into effect on the date identified by Council in its Resolution giving final approval under the Akwasasne Legislative Enactment Regulation.

Section 17.0 Amendments

- 17.1** This Law may be amended in accordance with the Akwasasne Legislative Enactment Regulation.
- 17.2** A review of this Law shall occur every five (5) years from the date it has come into effect by Council technicians and/or Akwasasne Licensing Commission as appointed by Resolution.
- 17.3 Severability** – If any part of this Law is for any reason held invalid by a decision of the Court, the invalid section or subsection shall be severed from and not affect the remaining provisions of this Law.

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