

**ST. REGIS MOHAWK TRIBE  
GENERAL BUSINESS LICENSING ORDINANCE  
2013**

**I. AUTHORITY TO REGULATE BUSINESS**

The power to regulate business conducted within the Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the St. Regis Mohawk Tribe. The St. Regis Mohawk Tribal Council is authorized to regulate the conduct of trade, including the imposition of taxes and license fees, on the Reservation by both members and non-members alike. All laws or bylaws of the Tribe or any of its predecessor Councils concerning the regulation of the conduct of persons entering Akwesasne to sell or deal in goods are hereby repealed.

**II. PURPOSE**

The St. Regis Mohawk Tribal Council finds that the regulation of persons engaged in trade and business on the Reservation is necessary to safeguard and promote the peace, safety, morals and general welfare of the Tribe. Accordingly, the Council declares that the Tribe has the sole and exclusive authority to grant, deny or withdraw the privilege of doing business within the Reservation.

**III. PRE-EXISTING BUSINESSES, SPECIAL PURPOSE PROJECTS, BENEFITS**

- (a) Any business that is pre-existing as of the date of enactment of this Code is not affected by this Code unless such business elected to utilize the provisions of the Code, except as prescribed in subsection (c) below.
- (b) Any business that elects not to utilize the Tribal Code shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis, and except as prescribed in subsection (d) below.
- (c) The business licensing requirements contained in this Ordinance shall not apply to special purpose fund raising projects, such as educational field trips or recreational projects.
- (d) Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribes' jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safety, morals and general welfare of the Tribe and the Reservation as prescribed by law.

**IV. DEFINITIONS**

The following terms, whenever used or referred to in this Ordinance, shall have the following meanings, unless a different meaning clearly appears from the context:

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- (a) "Agent" - the individual or individuals designated by any licensee to receive and accept service of process.
- (b) "Applicant" - any person who submits an application to the Tribe for a business license and who has not yet received such license.
- (c) "Business" - any regular or temporary business activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services; provided, however, that an isolated sale of property or services shall not be considered to be business under this Ordinance. Business does not include special projects as defined in Section 6-4-3(c).
- (d) "Company" - any person or group of persons engaged in business; may also be known as a firm, corporation, partnership, business association, union, or a principle-agent relationship.
- (e) "Employer" – a person who employs any salesperson, and includes a person who provides a salesperson with a commission for selling goods on his behalf.
- (f) "Governmental Entity" - the United States, the Tribe, a state or any political subdivision, agency or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.
- (g) "Licensee" - any person who is granted a business license by the Tribe.
- (h) "Notice" - actual notice by hand delivery or by certified mail. For time computations as provided for in this Ordinance, which are to begin upon notice, such notice shall be at delivery except that where delivery is not possible after three (3) consecutive postal days due to the inaction of the agent, notice shall be at the time of the first (1<sup>st</sup>) attempted delivery. Upon return of the forms of notice to the Compliance Director, the forms shall be mailed by regular mail.
- (i) "Peddler" – a salesperson who enters the territory of Akwesasne to buy, sell, or otherwise deal in wares or merchandise, or who offers or exposes for sale to any person, merchandise to be sold at that time or to be delivered afterwards.
- (j) "Person" - any individual, receiver, assignee, trustee in bankruptcy, trust, estate, partnership, joint venture, public utility, club, business trust, nonprofit corporation, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and includes any instrumentality thereof. The term includes members and nonmembers of the Tribe, but excludes any governmental entity.
- (k) "Products" – the merchandise or wares the peddler has to offer for sale, barter or exchange.
- (l) "Property" - any existing and identified real or personal property.
- (m) "Sale" - the transfer, exchange or barter, conditional or otherwise, of the ownership of, Ordinance to, or possession of real or personal property for consideration. The term shall also

include leases, conditional sales contracts, leases with the option to purchase, and any other contract under which possession of the property is given to the purchaser but Ordinance is retained by the seller as security. It shall also include the furnishing of food, drink or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.

(n) "Service of Process" - includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents.

(o) "Services" - the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(p) "Tribal Council" – the duly elected St. Regis Mohawk Tribal Council.

(q) "Tribal Member" or "Members of the Tribe" - an enrolled member or members of the St. Regis Mohawk Tribe. A "company" shall be considered a Tribal member, for purposes of this Ordinance only, if 51% or more of the entity is owned by Tribal members.

(r) "Tribe" – the federally recognized St. Regis Mohawk Tribe.

## **V. ADMINISTRATION OF ORDINANCE**

The Compliance Director is hereby delegated the responsibility to administer the provisions of this Ordinance. The Compliance Director is hereby delegated all powers of which are specifically provided for in this Ordinance, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers. The Compliance Director shall promulgate regulations pursuant to this Ordinance, formulate recommendations to submit to the Council for revisions of or amendments to this Ordinance, and take other actions necessary for the administration of the provisions of this Ordinance.

## **VI. BUSINESS LICENSES**

### **(a) Applicability**

(1) This Ordinance shall be applicable to all persons engaged in business within the exterior boundaries of the jurisdiction of the Tribe. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 9(a).

### **(b) Application and Issuance**

(1) An application for a business license shall be submitted in writing to the Compliance Director, using forms which the Director shall provide. Any person engaged in business at the time this Ordinance is enacted shall have sixty (60) days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

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- (a) A description of the type of business;
- (b) The name and address of the owner or owners of the business;
- (c) Proof of \_\_\_\_\_% St. Regis Mohawk Indian Ownership;
- (d) Sworn statement of ownership by all investors, partners, or owners;
- (e) The trade name, if any, to be used by the company;
- (f) The locations on the Reservation at which the business will be conducted;
- (g) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (h) A statement that the applicant possesses or does not possess an Indian Traders' License;
- (i) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Compliance Director shall notify the applicant by regular mail within fourteen (14) days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

(2) An application for a peddlers business license shall be submitted in writing to the Compliance Director, using forms which the Director shall provide. All applications shall include:

- (a) The goods the salesperson wishes to sell;
- (b) The areas or locations where the selling may take place;
- (c) The hours during which selling may take place;
- (d) The term of the license not to exceed three (3) months;
- (e) The name, address and telephone number of the salesperson and his employer, if any.

The Compliance Director shall notify the applicant by regular mail within thirty (30) days after receipt of the application whether a license shall be issued, except as provided in subsection B(d). If a license is issued, the licensee shall at all times while engaged in selling in the territory of Akwesasne carry his license on his person and shall show it to any person in the territory when request to do so.

(c) Classes of Licenses

(1) Temporary Business License: All persons engaged in business on the Reservation for a period of seven (7) days or less shall have a temporary business license. The fee for a temporary business license is ten dollars (\$10.00).

(2) Seasonal Business License: All persons engaged in business on the Reservation for a period of three (3) months or less shall have a seasonal business license. The fee for a seasonal business license is twenty-five dollars (\$25.00).

(3) Permanent Business License: All persons engaged in business for a period exceeding three (3) months shall have a permanent business license. The fee for a permanent business license is fifty dollars (\$50.00). A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Compliance Director of any change in the licensee's business activities, which render inaccurate the information previously provided to the Compliance Director under Section 6-4-12 of this Ordinance.

(4) Peddlers Business License: All non-resident salespersons engaged in business on the Reservation for a period exceeding \_\_\_\_ days shall have a peddlers business license, excluding those who are delivering goods to Akwesasne as a result of a resident having ordered those goods and excluding those who are selling goods in Akwesasne in a place to which he has been invited by the owner or occupant. The fee for a peddlers business license is two-hundred dollars (\$200.00) for a period not exceeding three (3) months. The Tribal Council or its designated agent(s), upon receiving a completed application for a peddler's license will make a determination within thirty (30) days whether to issue a license to the applicant. The license may be renewable subject to Council approval and is nontransferable.

**VII. CONDITIONS OF LICENSE**

(a) Each licensee shall comply with all applicable tribal laws, including but not limited to: Indian employment and contracting preference laws, health and sanitation laws and consumer protection laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

(b) Each licensee shall respond in a timely manner to requests by the Compliance Director for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Ordinance.

**VIII. DENIAL OF LICENSE AND APPEAL**

(1) If it is determined that a business licensee:

(a) has materially misrepresented facts contained in the application;

- (b) is presently in non-compliance with tribal, state or federal law;
- (c) has conducted him or herself in a manner which would indicate a propensity to violate Tribal law (this may include prosecution for criminal acts unrelated to the particular business for which the applicant was licensed); or
- (d) the business will threaten the peace, safety, morals or general welfare of the Tribe

the Compliance Director shall issue an order of denial to the applicant by certified mail, return receipt requested, within fourteen (14) days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has three (3) days from receipt of the order of denial to file a notice of appeal with the Compliance Director for an expedited administrative hearing under Section 13(a) of this Ordinance, or thirty (30) days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 13(b) of this Ordinance.

(2) If it is determined that a peddlers business licensee:

- (a) proposes to sell a product that is in competition with a local native product or service
- (b) is not of good character, or has been convicted of an offense under any criminal statute in relation to the conduct of the applicant's business;
- (c) proposes to sell a product that is not beneficial to the community; or
- (d) has been found to have engaged in unethical or sharp business practices, either in Akwesasne or elsewhere

the Compliance Director is not obliged to issue any license and may refuse to issue a license to any applicant.

## **IX. EXEMPTIONS**

(a) The following shall not be required to obtain a license under this Ordinance:

- (1) governmental entities;
- (2) tribal members engaged in the creation of traditional Indian art or handicrafts in their home;
- (3) tribal members engaged in the traditional practice of medicine;
- (4) any church engaged in raising funds for religious or charitable purposes, however, all churches located within the territory of Akwesasne must be registered with the St. Regis Mohawk Tribe on a form to be prescribed by the Compliance Director;

- (5) any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual;
- (6) any Tribal member(s) engaged in temporary community fundraising activities or special purpose fundraising projects taking place on the territory, such as a benefit dance or dinner, educational field trip or recreational project; and
- (7) any accredited school, no part of the income of which accrues to the personal benefit of any individual.

**X. NONCOMPLIANCE AND SUSPENSION; HEARINGS**

(a) Whenever it is brought to the attention of the Compliance Director that any person is in noncompliance with any condition of his license or has failed to obtain a license within the time requirements of this Ordinance, the Compliance Director may serve upon such person or any agent of such person an order to show-cause why his or her license should not be revoked or why he should not be enjoined from doing business on the Reservation without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross-examine opposing witnesses and to present any other evidence which he or she shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding thirty (30) days and not less than fifteen (15) days from the date of the notice. The Court shall notify all complainants and the Compliance Director of the hearing date. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court. The Court may make its own rules of procedure and evidence, consistent with principles of natural justice and fairness, in hearings under this law. The rules shall ensure that the judge hearing the case shall be impartial.

(b) In the event it is determined that any person's noncompliance with this Ordinance is a direct and immediate threat to the peace, safety, morals or general welfare of the residents of the Reservation, the Administrator shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Court, within three (3) days for an expedited appeal under Section 13(a) of this Ordinance, or within thirty (30) days for a regular appeal to Tribal Court under Section 13(b) of this Ordinance.

(c) Where a citizen of Akwesasne brings forth a complaint to the Compliance Director and it is determined that a peddlers business licensee has:

- (1) engaged in sharp or unethical sales or business practices;
- (2) sold a defective product;
- (3) trespassed on private property;

(4) engaged in conduct not authorized by the terms of his license; or

(5) conducted his business in a manner that is detrimental to the interests of consumers in the territory

the Director shall notify the peddler of the suspension of peddler's license in person, by telephone using the number indicated on the peddler's license, by sending the notice in writing by registered mail to the address on the peddler's license, or by notifying the peddler's employer. The Director is not obliged to suspend a peddler's license solely as the result of a complaint being filed, and may choose instead to request an explanation of the salespersons conduct either from the salesperson or from his employer or from both. If the explanation is unsatisfactory he may choose at that time to suspend the license.

(d) The Compliance Director may decide that the suspension may apply not only to an individual salesperson but to any other licensed salespeople employed by the same employer.

(e) A suspension of license shall come into effect forthwith upon the salesperson receiving notice of the suspension, and shall be deemed to have come into effect three (3) days after a notice has been sent by registered mail.

(f) In conducting a hearing reviewing a Peddler's business license application, the Court shall first hear from the Compliance Director with respect to the reasons why the application has been denied, and shall receive any evidence in support of those reasons and shall then ask the applicant or his employer to state the reasons why the license should be granted, and to produce any evidence in support of those reasons. The Court shall then decide whether the license should be granted. A decision of the Court is final and cannot be repealed to or reviewed by any other body.

(g) In conducting a hearing reviewing the revocation of a Peddler's business license, the Court shall first hear from the Compliance Director and from any complainant and shall receive any evidence in support of those reasons, and shall then ask the salesperson and his employer, if any, the reasons why the license should not be revoked. The Court shall then decide whether the license shall be suspended for a specific further period, revoked permanently or reinstated. A decision of the Court is final and cannot be repealed to or reviewed by any other body.

## **XI. PENALTIES**

(a) Notwithstanding subsection (e) – (h), if it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Ordinance, the Compliance Director may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount of the penalty shall not exceed \$ \_\_\_\_\_ for each violation.

(b) The Compliance Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his or her failure to

comply with the conditions of his or her license or his failure to secure a license within the time requirements of this Ordinance.

(c) The Compliance Director may submit a recommendation to the Tribal Court regarding the amount of any civil penalty which the person should pay for failure to comply with the conditions of his or her license or failure to secure a license within the time requirements of this Ordinance.

(d) If the Compliance Director submits a suggested penalty amount, the Compliance Director shall expressly address in writing each and all of the following criteria:

(1) the good or bad faith of the violator;

(2) the injury to the public resulting from the violation;

(3) the benefits derived by the violator from the violation;

(4) the violator's ability to pay;

(5) the administrative costs of prosecution; and

(6) the need to deter similar behavior by the violator and others and to vindicate the Tribes' authority and the integrity of the Compliance Director's orders.

(e) A person who violates the terms of the peddlers business license is guilty of an offense and is liable on summary conviction to a fine of not more than one thousand dollars (\$1,000.00) for each such violation.

(f) A person who conducts business in Akwesasne after his peddlers business license has been revoked or suspended, and any employer who employs salespeople to conduct business in Akwesasne after that employer's rights have been revoked or suspended, is guilty of an offence and is liable on summary conviction to a fine of not more than one thousand dollars (\$1,000.00), or to imprisonment for a term of not more than thirty (30) days, or to both fine and imprisonment.

(g) A person who in Akwesasne engages in unethical, fraudulent or predatory business practices is guilty of an offence and on summary conviction is liable to a fine of not more than one thousand dollars (\$1,000.00) for each occurrence.

(h) The Court may, upon the conviction of a person under subsection (g), accept instead of a fine that the person restores to the victim of his unethical, fraudulent or predatory business practices any money that was paid in such transactions in exchange for the goods that were sold, or what is left of such goods.

(i) The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Ordinance, and secondarily, to deter continued violations

of this Ordinance by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council. Administrative fees collected by the Tribe will be utilized to establish and maintain an office to administer terms and conditions of this ordinance. In addition, fees may be utilized to provide services to the reservation community as determined by the Tribal Council.

**XII. OTHER REMEDIES**

The Compliance Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Ordinance, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include findings showing:

- (a) the basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (b) the order, judgment or decree was not obtained fraudulently; and
- (c) the defendant was afforded due process.

**XIII. APPEALS**

(a) Expedited Administrative Appeal

- (1) If an applicant for a business license seeks an administrative hearing, the Compliance Director, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three (3) nor more than five (5) working days thereafter.
- (2) At the hearing, the applicant shall be entitled to present testimony and cross-examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Compliance Director shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.
- (3) The Compliance Director shall rule upon the appeal within three (3) working days after the hearing, and shall set forth in writing the factual findings and the reasons for his or her decision. If the appeal is denied, the ruling shall state that the applicant has thirty (30) days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.

(4) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than five (5) nor more than ten (10) working days thereafter.

(5) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Compliance Director. No new or additional evidence may be introduced during the appeal.

(6) The Tribal Court shall uphold all factual findings of the Compliance Director unless the Court determines that such findings are not supported by substantial evidence in the record established before the Compliance Director. In reviewing reasons for denial of the license by the Compliance Director, the Court shall give proper weight to the Compliance Director's interpretation of this Ordinance and any regulations promulgated hereunder.

(b) Direct Appeal to the Tribal Court

(1) If any person entitled to an appeal pursuant to this Ordinance seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(c) Expedited Direct Appeal to the Tribal Court

(1) Any person seeking an expedited appeal pursuant to Section 13(b) of this Ordinance shall file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal, the Tribal Court shall notify the appellant in person or by telephone or other electronic means, of the time set for the expedited hearing which shall be held no later than ten (10) working days after receipt by the Tribal Court of the notice of appeal.

(2) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedures of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within five (5) working days after completion of the hearing.

**XIV. BUSINESS STANDARDS**

(a) In-Home Sales

(1) Every door-to-door salesperson is obligated to inform each prospective consumer of the following information at the beginning of any sales visit:

(i) The salesperson's name;

- (ii) The name of the company that the salesperson represents;
- (iii) The salesperson's business address and the address of the company that the salesperson represents;
- (iv) The salesperson's business license number;
- (v) An address or phone number where a consumer may inform the salesperson of a decision to reconsider a sale, address questions and concerns regarding sale products, and any other information that is of interest to the consumer and salesperson.

(b) Consumers of merchandise purchased at their residence from salespersons are entitled to reconsideration of any purchase within three (3) workdays from the date of purchase. Reconsideration of sales will be fully credited or reimbursed to the consumer by the salesperson within five (5) working days after the date such salesperson is informed of such reconsideration of the purchase.

(c) No door-to-door salesperson may misrepresent any product to a prospective consumer in any manner that an ordinary person of reasonable aptitude, capability and instruction will not be able to perform the product in a like manner.

(b) Food Sanitation

(1) Every person involved with the sale of products to be consumed shall take reasonable care to ensure that such food products are prepared and sold in a sanitary environment.

(2) The business licensee is responsible for the preparation and sale of any food product that is sold under the authority of his or her license, regardless of whether the licensee prepared such food products.

(c) Non-Consumer Property Damage Protections

(1) Any business, whether or not licensed by the Tribe, that causes damage to private property of any individual is responsible for replace or repair of such property at the actual cost of repair and replacement of such property.

(2) Any business, whether or not licensed by the Tribe, shall make prompt payment or repair of damaged property within thirty (30) days from the date the damage occurred unless another agreement is made between the business and the property owner.

(3) A property owner may file an appeal of in accordance with Section 6-4-24 of this Code for failure of the business to repair or replace damage property within thirty (30) days, as prescribed in this Section.

**XV. INFORMAL COMPLAINT PROCEDURES**

- (a) A person may file a written complaint with the Compliance Director regarding alleged violations of Business License and/or Standards.
- (b) Upon receipt of a complaint, the Compliance Director shall conduct an investigation of the alleged violation within five (5) days. The Compliance Director shall report any findings to the person filing the complaint no later than ten (10) days from the date the complaint was filed.
- (c) Based on information received as a result of the complaint, subsequent investigation, and from other sources, the Compliance Director shall take whatever action that he or she deems appropriate to address the situation.
- (d) The action or inaction by the Compliance Director with respect to any formal complaints may be subject to review by the Tribal Court.

**XVI. SEVERABILITY**

In the event that any provision of this Ordinance shall be found or declared to be invalid, the remaining provisions of this Ordinance shall be unaffected thereby, and shall remain in full force and effect.