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AGENCY
COURT

ORDINANCE NO. 201

AN ORDINANCE TO AMEND AND REVISE ORDINANCE NO. WN - 04-16-84, RELATING TO THE TOBACCO EXCISE TAX AND TRIBAL OUTLETS ORDINANCE ON THE WINNEMUCCA INDIAN COLONY, HOME OF THE WESTERN BAND OF THE WESTERN BANDS OF THE SHOSHONE NATION OF INDIANS.

AGENCY
REVENUE OFFICE

THE TRIBAL COUNCIL OF THE WINNEMUCCA INDIAN COLONY DO ORDAIN AS FOLLOWS:

SECTION I. PURPOSE

(A) The general purpose of ORDINANCE 201 is:

- 1. to promote economic growth on the Winnemucca Indian Colony;
- 2. to provide employment opportunities;
- 3. to increase the health and social services for the Colony;
- 4. to provide supplemental funds for Tribal Government;
- 5. to regulate the sale of tobacco products on the Winnemucca Indian Colony.

SECTION II. APPLICABILITY

(A) This Ordinance applies to all sales of tobacco products on the Winnemucca Indian Colony. Wherever any provision of this Ordinance impose more stringent regulations, requirements or limitations than are required by the provisions of any other law or ordinance, the provisions of this Ordinance shall apply.

SECTION III. DEFINITIONS

(a) cigarettes - all rolled tobacco or substitutes therefore which are wrapped in paper or any paper substitute other than tobacco.

(b) consumer - any person who purchases, uses, maintains, and disposes of products and services. Users of the final product.

Consumers are to be distinguished from manufacturers (who produce goods), and wholesalers or retailers (who sell goods).

(c) manager - a person employed by and responsible to the Tribal Council who shall abide by the Indian Preference Hiring Act.

- 1 (d) net profits - money remaining from the operation of a tobacco
2 outlet, after deduction of excise tax revenues and of all costs
3 of doing business, as determined by the Tribal Council upon con-
4 sultation with a manager, and including reasonable costs for
5 improvement and expansion.
- 6 (e) person - one or more individuals, or any firm, association,
7 partnership or corporation. The term shall not include the tribe.
- 8 (f) retail selling price - the ordinary, customary or usual price
9 paid by the consumer for each tobacco product, less the excise
10 tax levied by this Ordinance.
- 11 (g) sale or to sell - to constitute a "sale", or to sell, there must
12 be parties standing to each other in the relation of buyer and
13 seller, their minds must assent to the same proposition, and a
14 consideration must pass.
- 15 (h) tobacco outlet - a tribal retail sales business selling tobacco
16 products on trust land within the Winnemucca Indian Colony.
- 17 (i) tobacco products - cigarettes, cigars, smoking tobacco, snuff,
18 snoose, chewing tobacco, and all other kinds of forms or ways
19 tobacco may be prepared.

20 SECTION IV. ESTABLISHMENT OF TOBACCO OUTLETS

21 The Tribal Council may establish one or more tobacco outlets within
22 the Winnemucca Indian Colony as the Council in its sole discretion deems
23 necessary to provide adequate service to consumers of cigarettes and tobacco
24 products. Tobacco products may not be sold on the Winnemucca Indian Colony
25 other than by a tobacco outlet established by the Tribal Council.

26 SECTION V. NATURE OF OUTLET

27 Each tobacco outlet established pursuant to this Ordinance shall be
28 operated and managed for the Tribe by a manager retained by the Tribal Council.

1 SECTION VI. PURCHASE BY TRIBE

2 *June* A. All tobacco products sold on the Winnemucca Indian Colony shall be
3 purchased wholesale by the Tribe and held for re-sale at tribal tobacco out-
4 lets only.

5 SECTION VII. EXCISE TAX IMPOSED

6 (a) There is hereby levied and there shall be collected as hereinafter
7 provided, a tax upon the purchase or possession of cigarettes by a
8 *Handwritten* consumer within the Winnemucca Indian Colony. This tax shall be in
9 the amount of \$.35 on each package of cigarettes. Package means a
10 package prepared by the producer for interstate transportation, and
11 remaining in the same condition as when it left the shipper, that is,
12 unbroken and undivided.

13 (b) There is hereby levied and there shall be collected as hereinafter
14 provided, a tax upon the purchase or possession of all tobacco pro-
15 ducts, other than cigarettes, by a consumer within the Winnemucca
16 Indian Colony. This tax shall be in the amount of 10% of the retail
17 selling price.

18 (c) The Tribal Council may change the amount of the tax upon the purchase,
19 use, consumption, handling, possession, or distribution of cigarettes
20 *Sticker* and other tobacco products as it deems desirable

21 (d) The excise tax levied hereunder shall be added to the retail selling
22 *Sticker* price of tobacco products sold to the consumer.

23 SECTION VIII. RESPONSIBILITY FOR COLLECTION OF THE CIGARETTE EXCISE TAX

24 *Sticker* It shall be the responsibility of every manager of a tobacco outlet to
25 collect the tobacco excise tax from every purchaser of tobacco products.

26 SECTION IX. REMITTANCE OF TAXES TO THE TRIBAL COUNCIL

27 The taxes collected pursuant to this Ordinance shall be remitted to
28 the Tribal Council according to a schedule which shall be established.

1 SECTION X. REQUIRED RECORDS

2 Every manager shall keep written records of the following:

- 3 (a) the number of packages of cigarettes or other tobacco products he
4 receives from the Tribe;
- 5 (b) the number of packages of cigarettes or other tobacco products sold
6 to consumers; and
- 7 (c) the amount of excise taxes collected.

8 SECTION XI. AUDIT

9 All records required to be kept by this Ordinance shall be open to
10 inspection and audit by a representative of the Tribal Council, at reasonable
11 times and places, to insure compliance with this Ordinance.

12 SECTION XII. USE OF NET PROFITS AND EXCISE TAX REVENUES

- 13 (a) All net profits derived from the operation of a tobacco outlet shall
14 be the property of the Tribe. These profits, as well as the excise
15 tax revenues collected pursuant to Title VI, shall be used for the
16 benefit and betterment of the Winnemucca Indian Colony.
- 17 (b) All excise tax revenues shall be appropriated to provide tribal
18 governmental services, including, but not limited to:
- 19 (1) Police and fire inspection;
- 20 (2) Establishment of tribal courts;
- 21 (3) Road construction, repair and maintenance;
- 22 (4) Water, sewage, and garbage disposal;
- 23 (5) Education of
- 24 (6) public health;
- 25 (7) Other essential tribal enterprises and services.
- 26 (c) Net profits may be appropriated by the Tribal Council for govern-
27 mental services or for any other purpose provided that purpose is
28 consistent with SECTION I. of this Ordinance.

1 SECTION XIII. DUTIES AND RESPONSIBILITIES OF TOBACCO OUTLET

- 2 (a) A manager shall be directly responsible to the Tribal Council for
3 the efficient and profitable operation of a tobacco outlet.
- 4 (b) Subject to the final approval of the Tribal Council, a manager shall
5 have authority to employ such persons as he deems necessary to
6 efficiently operate a tobacco outlet. Indian preference shall apply
7 to all persons hired by manager.
- 8 (c) Without the express written consent of the Council, a manager shall
9 not be authorized to waive the sovereign immunity of the Tribe from
10 suit, nor shall such manager be authorized to create any liability
11 on behalf of the Tribe or to utilize tribal credit. Any such written
12 consent by the Tribal Council shall specify in detail the scope of a
13 manager's authority. Any such authority shall be limited in duration
14 and in scope to the maximum possible extent. Any action taken by a
15 manager pursuant to authority derived under this Section shall be in
16 writing, shall be an express term of the transaction. Whenever pos-
17 sible, the Tribal Council shall approve in final form the language of
18 any such provision.
- 19 (d) As remuneration for operating and managing a tobacco outlet, a manager
20 shall be entitled to a reasonable salary as fixed by the Tribal Council.
- 21 (e) A manager shall maintain liability insurance upon the premises of the
22 tribal outlet in the sum of at least \$10,000.

23 SECTION XIV. RESTRICTED SALES TO MINORS

24 A manager may not sell any tobacco products to any person under the
25 age of 18 years.

26 SECTION XV. CIVIL ACTIONS

27 The Tribe may bring a civil action against any manager or other person
28 to enforce compliance with this Ordinance. Such action shall be brought in

1 accordance with the procedures set forth in CFR 25, Civil Actions, Section
 2 11.22(c) Jurisdiction. The Tribal Court shall have exclusive jurisdiction
 3 over any action arising from the sale of tobacco products or payment of the
 4 excise tax imposed by Title VI.

5 SECTION XVI. POWER TO ADOPT REGULATIONS

6 The Tribal Council shall have the power to adopt any regulations which
 7 are necessary to the efficient administration of the tobacco excise tax laws
 8 and tobacco outlets, as long as such regulations are not in conflict with the
 9 provisions of this Ordinance.

10
 11 C E R T I F I C A T I O N

12 The foregoing amendments and revisions and renumbering of the former
 13 Ordinance No. WN - 04-16-84 to ORDINANCE NO. 201 was duly adopted on
 14 August 8, 1992, by a vote of 4 for and 0 against by the Tribal
 15 Council of the Winnemucca Indian Colony, pursuant to authority vested
 16 in it by Article VI, Section 1 (g) of the Constitution and By-Laws of
 17 the Winnemucca Indian Colony. Said Ordinance No. 201 is effective as
 18 of the date of its approval.

19
 20 APPROVAL
 21 RECOMMENDED:

Robert Horta
 Superintendent

Glenn Wasson 8-11-92
 Glenn Wasson, Chairman

22 Date: 9-14-92

Richard P. Tom 8-11-92
 Richard P. Tom, Vice Chairman

23
 24 Thomas Magiera 08-11-92
 Thomas Magiera, Member

25
 26 Sharon H. Wasson
 Sharon H. Wasson, Member 11 AUG 1992

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SEP 14 1992

Superintendent, Western Nevada Agency

Winnemucca Indian Colony - Ordinance No. 201

Phoenix Area Director
Attn: Tribal Government Services

The attached Ordinance No. 201 to revised Ordinance No. WN-04-16-84-Taxation was enacted by the Winnemucca Indian Colony on August 8, 1992 and received at the Western Nevada Agency on August 26, 1992. The authority for the revision is Article VI, Section 1(g) of the Constitution & Bylaws.

A complete review has been conducted for compliance and consistency with the Constitution & Bylaws of the Tribe. It appears that these were minor changes made which are reflected in Sections I, III, VII, XII and XIII. There were no inconsistencies found, therefore, Ordinance No. 201 is approved this day and is being forwarded to the Phoenix Area Office for further legal review. There were no comments made and if there are any from the Phoenix Area Office, the Tribe should be notified for future amendment(s).

Further questions on Ordinance No. 201 should be directed to the Branch of Tribal Operations at (702) 887-3590.

Attachments

cc:
Winnemucca Indian Colony

FCDrye:ss:09/14/92