

# SENECA NATION OF INDIANS



## BUSINESS CODE

September 26, 1988

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Seneca Nation of Indians licensing procedure under the Business Code of 1988 as it pertains to businesses other than those under the Business Ordinance of 2003

Seneca Nation Business Code

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## Seneca Nation Business Code

### PREAMBLE

The Seneca Nation of Indians, in order to promote the economic development of the Seneca Reservations for the benefit of Seneca people and in order to clearly establish and exercise the Tribe's authority to regulate the conduct and operations of business(es) within the Seneca Reservations, hereby declares that the Seneca Nation of Indians (hereinafter "Nation" by virtue of its inherent sovereignty, its treaties, and the Seneca Nation constitution of 1848, as amended 1966 and 1978, and acting through the Tribal Council, hereby declares its authority to, regulate the privilege of non-Senecas doing business within the Nation.

### **SECTION 1 - PRIVILEGE OF DOING BUSINESS - AUTHORITY TO REGULATE**

#### **(a) Authority**

The Seneca Nation has inherent sovereign authority to protect the lands, waters, and natural resources of the Allegany, Cattaraugus, and Oil Spring Reservations, which are secured to the Nation by the Treaty 1794, 7 Stat. 44 which declares the lands within these Reservations "to be the property of the Seneca Nation" and further provides that "...the United states will never claim the same nor disturb the Seneca Nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof..." 7 stat. 44, 45.

**(b)** The Nation has inherent sovereign authority to protect the health, welfare, safety, environment, political integrity, and economic security of the Nation; its members and persons subject to the jurisdiction of the Nation; and the Nation must exercise this authority in order to provide for present and future generations by maintaining an environment which will protect and enhance the Nation's natural resources including but not limited to ground water resources and by protecting the Nation lands from development in a manner which is inconsistent with sound business practices and harmful to the Seneca people.

#### **(c) Need**

The Nation has in the past granted permission to non-Seneca's to enter upon and use Nation lands through permits and leases. The Nation's economic self-determination policy to encourage larger businesses and industries to locate within the Nation boundaries as well as individual businesses creates a need for laws to regulate business conduct.

#### **(d) Declaration of Authority**

The Seneca Nation through Tribal Council hereby declares its inherent sovereign authority to grant, deny, modify, suspend or revoke the privilege of doing business within the Nation as it deems reasonable.

#### **(e) Extending Privilege to Existing Businesses, Conditions for Continuation**

The privilege of doing business is hereby granted to those businesses presently operating within the Nation pursuant to leases or permits for land use or contractual agreements with the Nation, its enterprises and agencies subject to the control and/or supervision of the Tribal Council; provided that said business shall within 30 days submit an application for a Nation Business License in accordance with the provisions contained herein. Continuation of said privilege is conditioned upon the business' compliance with the applicable laws of the Nation and the effect or validity of prior leases, permits or contracts authorizing entry onto lands subject to Nation jurisdiction.

**(f) Administration-Enforcement Agencies**

Enforcement agencies as established by the Nation Tribal Council shall share the responsibility for administering these rules, subject to Tribal Council approval.

**(g) Authority of Advisory Committees**

(1) The Seneca Nation Business Commission is authorized to negotiate and recommend to Tribal Council the grant of leases and permits and licenses for the use of Nation lands for all existing Nation businesses for all business purposes now or hereafter authorized by Seneca law upon such terms and conditions as in the discretion of the Business Commission are deemed in the best interests of the Seneca Nation of Indians, subject to Tribal Council approval.

(2) The Seneca Nation Planning commission is authorized to negotiate and recommend to Tribal Council the grant of leases and permits and licenses for the use of Nation lands for all future Nation businesses for all business purposes now or hereafter authorized by Seneca law upon such terms and conditions as in the discretion of the Planning Commission are deemed in the best interests of the Seneca Nation of Indians, subject to Tribal Council approval.

(3) The above designated agencies are further authorized to adopt such rules and regulations as it deems necessary to govern the leasing of, and permits and licenses for the use of Nation lands, subject to approval by Tribal Council.

**ARTICLE 1 - GENERAL PROVISIONS**

**PART I - SHORT TITLE, INTERPRETATION, APPLICATION AND SUBJECT MATTER**

**1-101 Short Title**

This chapter shall be known and may be cited as Seneca Nation Business Code - General Provisions. Each article of this code may be cited by its own short title.

**1-102 Scope**

These rules being adopted this 26th day of September 1988, shall govern the conduct of business operations within the exterior boundaries of the Seneca Nation Reservations. These rules are promulgated pursuant to authority granted by its treaties the Seneca Nation Constitution of 1848, as amended 1966 and 1978, and shall include traditional, custom and practice. Where doubt exists as to such custom, the advice of tribal elders familiar with tribal custom will be requested. Proof of the existence of tribal law or custom shall be by presentation of evidence showing the custom to exist by a preponderance of the evidence.

**1-103 Purposes: Rules of Construction: Variation by Agreement**

(a) This chapter shall be liberally interpreted and applied to promote the following purposes and policies:

(1) To simplify, clarify, and to make uniform the law governing Seneca Nation Business conduct on the Seneca Nation Reservations.

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(2) To permit the orderly initiation of new businesses and the control of business practices between Nation members and between Seneca and non-Seneca persons, through custom, usage and agreement.

(b) The effect of the provisions of this chapter may be varied by written agreement; but the obligations of good faith, diligence, reasonableness and care may not be disclaimed. The parties may by written agreement determine the standard by which to measure the performance of such obligation if such standards are not unreasonable.

(c) The words “unless otherwise agreed” or words of similar importance, do not imply that the effect of other provisions may not be changed by agreement.

(d) Words in the singular include the plural and the plural include the singular. Words in one gender include the other gender.

### **1-104 Amendment, Recession or Adoption of Rules**

These rules of conducting business operations are to be designated “rule”. Any rule in this chapter may be changed or terminated or additional rules may be adopted not inconsistent with the Seneca Nation Constitution of 1848, as amended 1966 and 1978. No rule so modified, terminated or adopted shall divest or enlarge the substantive of the other party.

### **1-105 Applicable Law**

Civil matters shall be govern by Seneca Nation laws and customs not in direct contravention of the laws of the United States.

### **1-106 Jurisdiction - Policy**

It is hereby declared as a matter of tribal policy and legislative determination by the Seneca Nation Tribal Council that the interest of the Seneca Nation require that the provide itself, its members and other persons living on the Seneca Reservations or who are within the jurisdiction of the tribe with an effective means of redress in civil cases concerning business transactions arising between Nation members or a Nation member and non-nation member who through residence, presence, business dealings, contracts, or other actions or failures to act, or other contacts on or within the Nation, commit offences against the Nation or incur civil obligations to persons or entities entitled to Nation protection. The provisions of the Business code contained herein shall, except as otherwise expressly provided, apply to all persons or entities, whether Nation members or not, within the territorial jurisdiction of the Nation.

### **1-107 Jurisdiction - Forums; Original**

(a) The Peacemakers Courts of the Seneca Nation shall have original jurisdiction over all civil disputes which involve commercial transactions between Nation members or Seneca and non-Seneca persons.

(b) Except as otherwise required by federal law the Peacemakers Court shall have original jurisdiction over all commercial matters in which the Nation, or its officers, agents, or employees are parties either in their official capacities or as a result of performing their duties for the Nation.

(c) Nothing in the preceding paragraph or elsewhere in this Business Code shall be construed as a waiver, of sovereign immunity by the Nation, its enterprises, its officers, agents, or employees, unless specifically expressed as such by Tribal Council.

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(d) In commercial transactions involving Nation custom, ordinances, or regulation where doubt exists as to such custom, the Court may request the advice of Tribal elders familiar with such custom and tradition. Proof of the existence of a Tribal law or custom shall be made by a presentation of evidence showing the Tribal law or custom to exist by a preponderance of the evidence.

**1-108 Territorial Jurisdiction**

(a) The jurisdiction of the Nation as exercised in this Business Code shall extend to all lands now within the Nation or which may hereafter be added to and to such other lands as may be owned by the United States and held in trust for the benefit of the Nation.

(b) unless, in direct contravention of federal law, the jurisdiction of the Nation and its courts shall extend beyond the territorial limitation set forth in Section 1-108(a) to carry out the jurisdiction provisions set forth below.

**1-109 Personal - Jurisdiction**

(a) As used in these jurisdictional provisions, the word "Person" shall include any individual, firm, partnership, association or corporation, or business entity.

(b) Unless otherwise excepted within this Code or in contravention of federal law, the peacemakers court shall have exclusive jurisdiction over the following persons, who shall also be subject to the rules, regulations, and procedures as established by this Code.

- (1) Any person residing, domiciled or located within the Nation for:
  - (i) Any civil cause of action, or
  - (ii) is charged with an offense prohibited by this Business Code when the offense occurred within the Nation boundaries, or
  - (iii) adversely affects the health, safety, welfare or political integrity of the Nation.
- (2) Any person who transacts, conducts or performs any business or activity within the Nation, either in person, by agent or representative.
- (3) Any person who owns, uses, or possesses any property within the Nation,
- (4) Any person who commits a legally harmful (physically tortious) act or engages in legally harmful (physically tortious) conduct within the Nation boundaries, either in person or by agent or representative.
- (5) Any person who commits a civil offense prohibited by this Business Code by his own conduct or the conduct of another for which he is legally accountable if:
  - (i) the conduct occurs either wholly or partly within the Nation boundaries; or
  - (ii) the conduct which occurs outside Nation boundaries constitutes an attempt solicitation, or conspiracy to commit an offense within the Nation, and an act in furtherance of the attempt or conspiracy occurs within Nation boundaries; or
  - (iii) the conduct which occurs within the Nation boundaries constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an

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offense prohibited by this Business Code or other ordinance of the Seneca Nation and is also prohibited by such other jurisdictions.

(c) None of the foregoing basis of jurisdiction are mutually exclusive, to the other and jurisdiction over a person may be established on any one or more such basis.

**1-110 General Subject Matter Jurisdiction and Limitation**

(a) Subject to any contrary provisions, exceptions, or limitations contained in this Business Code, the Peacemakers Courts shall have jurisdiction over all civil actions and all offences occurring within the territorial jurisdiction as defined in 1-108.

(b) The Peacemakers Courts shall not assume jurisdiction over any civil or criminal matter which does not involve either the Seneca Nation, its officers, agents or employees in their official capacity, its property or enterprises, or a Nation member or member of another federally recognized tribe or the Nation ordinances, resolutions, rules, or regulations, if some other judicial forum exists for the handling of the matter and the matter is not one in which the rights of the Nation or its members may be directly affected.

**1-111 Jurisdiction Over Property**

Unless otherwise excepted within this code or in direct contravention of federal law, or as expressly stated elsewhere in this Business Code, the rules, regulations, and procedures contained herein shall apply to, and the Peacemakers Courts shall have jurisdiction over, any real or personal property located within the territorial jurisdiction of the Nation, including airspace; to determine the ownership or rights thereof or to determine the application of such property to the satisfaction of a claim for which the owner of the property is or may be liable.

**1-112 Remedies Liberal Administered**

(a) The remedies provided by this Code shall be liberally administered so that the aggrieved party they be placed in as good a position as if the other party had fully performed.

(b) Any right or obligation declared by this Code is enforceable by court action unless the provision declaring it specifies a different effect.

**1-113 Self Help Remedies Eliminated**

(a) All self-help remedies for the recovery of real or personal property secured to insure payment of obligations are hereby declared unavailable, except as otherwise provided herein.

(b) This section shall not be interpreted to prevent the voluntary surrender of secured property to a creditor by a debtor, provided, that such voluntary surrender occurs at the time of such surrender. All contract provisions for such surrender executed in advance of the need shall be of no effect.

**1-114 One Action to Foreclose Security Interest**

(a) There can be but one action in the Tribal Court to recover any debt or enforce or collect on any right secured by a mortgage or other security interest on non trust real or personal property situated or located on the Seneca Reservations, which action must be in accordance with the procedures outlined herein. The term non-trust property as used herein means property, the title to which is not held in trust for the Nation or Nation members.



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(b) In spite of the above provisions if the debt for which the encumbrance is held is not totally due but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance may be collected on, at the election of the holder of the note for installment(s) due or other charges to be paid by the debtor. The Tribal Court may by judgment, direct the sale of the encumbered property or of the equity of the defendants or so much as may be necessary to satisfy the amount due, and such encumbrance shall otherwise remain in full force and effect and the holder of the note shall have the right to enforce on the balance or any part of the balance.

### **1-115 Action to Foreclose Interest on Personal Property**

(a) An action to collect on a security interest in non-trust personal property shall be commenced by filing a complaint in Tribal Court.

(b) The Court shall determine the issues presented and may direct the sale of the encumbered property or so much as is necessary to satisfy the amount due, and direct the application of the proceeds of the sale to the payment of the costs of Court, the expenses of the sale, and the amount due the plaintiff. If it appears from the Seneca Nation Marshall or Law Enforcement record of sale that the proceeds are insufficient and an amount still remains due, the Court may direct entry of a judgment for such balance against the defendant or defendants.

(c) If it is reasonably made to appear after a complaint is filed, that the collateral is in imminent danger of being concealed, removed from the Reservation or otherwise disposed of in a manner inconsistent with the security interest, the Court may order the person having possession or control over such property to appear and show cause why such property should not be taken into custody of the Court or other security provided to prevent the improper disposal of the collateral.

(d) Sale of property under the court's judgment shall be conducted in the manner provided for execution sales in the Seneca Nation Peacemakers Court Rules of Civil Procedure.

### **1-116 Great Seal of the Seneca Nation**

The affixing of the Great Seal of the Seneca Nation of Indians to a writing evidencing a contract for sale or an offer to buy or sell goods or a lease of real or personal property is evidence of the validity of such writing when it is accompanied by the date and signature of the Clerk of the Seneca Nation of Indians.

### **1-117 Signatories**

All Seneca Nation of Indians negotiable instruments including checks, bank drafts, notes, bonds and securities bearing the dated signatures of the President and the Treasurer of the Seneca Nation of Indians, as authorized by Tribal Council, shall be evidence of the validity of such instrument.

### **1-118 Burden of Establishing Signatures, Defense and Due Course**

(a) Unless specifically denied, each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(1) the burden of establishing it is on the party claiming under the signature, but

(2) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

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(b) When a signature(s) is admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(c) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

### **1-119 Appendix of Official Forms**

The designated commission(s) shall have the power to adopt, amend, and rescind an appendix of forms, subject to approval by Tribal Council. Forms adopted pursuant to this section shall illustrate the purposes and policies which the business rules intend.

### **1-120 Adoption and Amendment, Procedures**

These rules and regulations may be amended at a duly called regular or special session of the Seneca Nation Tribal Council where interested parties shall have an opportunity to comment on proposed rules and regulations or modifications in the existing rules and regulations of the Seneca Nation Business Code.

Proposed rules and regulations and modifications in the existing rules and regulations of the Nation Business and/or Planning Commission(s) shall be presented to the Tribal Council, who may recommend publication in the designated publications most likely to give notice to the Seneca Nation public two consecutive issues, which shall be available to the public.

### **1-121 Payments**

Checks or other payment of any financial obligation due to the Seneca Nation of Indians shall be addressed to the Seneca Nation of Indians Business Office, P.O. Box 231, Salamanca, New York 14779.

### **1-122 Computation of Time**

In computing any period of time prescribed in these rules and regulations, the day of the act or event which initiates the time period shall not be counted. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday of the Nation, in which case the deadline shall be the next working day. (Legal holidays of the Nation are the same as Federal holidays, with the substitution of American Indian Day for Columbus Day). The Nation has a holiday on Friday if the calendar date of the holiday is on a Saturday.

### **1-123 Severability**

If any provision of this chapter or application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this and the provisions of this Business Code are declared severable.

### **1-124 Effective Date**

Article 1 and 2 of this Business Code shall take effect on September 26, 1988, or within thirty (30) days after being passed into Law by Tribal Council Resolution.

## **ARTICLE 2 - BUSINESS LICENSE SYSTEM**

### **2-101 Short Title**

This chapter shall be known and may be cited as Seneca Nation Business Code - Business Licenses. Each Article may be cited by its own short title.

### **2-102 Purpose**

The Seneca Nation at Indians (hereinafter “Nation”) authorized by its treaties, its Constitution and acting through its Tribal Council, recognizes the need for individual businesses and organizations to aid in its economic development and makes this provision for the issuance of business licenses accordingly.

### **2-103 Authority**

The Seneca Nation, by virtue of its inherent sovereignty, its treaties and the Seneca Nation Constitution of 1848, as amended 1966 and 1978, and acting through its Tribal Council has authority to grant permission to do business within the Nation by the issuance of business licenses.

### **2-104 General Definitions**

In interpreting the provisions of this Article, save when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

- “Action” - means a judicial proceeding whereby one prosecutes another for a wrong done or for protection of a right or prevention of a wrong.
- “Aggrieved Party” - means a party who has been injured or who has suffered a loss.
- “Agreement” - means a manifestation of mutual assent, between two or more legally competent persons which ordinarily leads to a contract. It is the bargain of the parties in fact as found in their language, or by implication from other circumstances, including course of dealing or usage of trade or course of performance.
- “Authority” - means an agency created by the Nation, ie...SNEIDA
- “Business” - means all activities engaged in, whether the object of gain, benefit or advantage to the taxpayer or another person or class, directly or indirectly or not, including daily, seasonal.
- “Commission”- means the Seneca Nation of Indians Planning and Business Commissions.
- “Council”- means the Council of the Seneca Nation of Indians
- “Court”- means the Seneca Nation Peacemakers Court or the Surrogates Court.
- “Engaging in Business” - means commencing, conducting, or continuing in any business of whatever nature and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators hold themselves out to the public as conducting such business.
- “Fiscal” - means either the calendar year or the business fiscal year when permission is obtained from the Planning-Business Commission to use a fiscal year instead of the calendar year.
- “Impound” - means to place merchandise, funds, or records in the custody of a Nation officer of the law.

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“Indian”- means a member of any tribe, Pueblo, band, group, village or community that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services as being Indian, or any person who possesses Indian blood and who is recognized as an Indian by the community where such person lives.

“Individual”- means a natural person, a corporation, an entity, association.

“License”- means a grant of permission to do a particular thing, to exercise a certain privilege, or to carry on particular business or to pursue a certain occupation.

“Mitigate”- means to lessen or reduce, the general rule is that one who is wronged must exercise reasonable diligence and ordinary care to avoid aggravating the injury or increasing the damages.

“Party”- as distinct from third party means a person who has engaged in a transaction or made an agreement within this Code.

“Person”-means an individual, corporation, governmental subdivision or agency, partnership, association, cooperative or any other legal entity.

### **2-105 Business License: Required**

Every individual engaged in or intending to engage in a trade, business, profession or commercial activity of any sort within the Nation boundaries shall, prior to January 1, 1989, and prior to December 31, of each calendar year thereafter, file with the designated agency an application for a business license or renewal and upon their recommendation for licensure to Tribal Council and subsequent issuance, shall entitle such entity to engage in the kind(s) of business activity at the location(s) listed in the application.

### **2-106 Business License Eligibility**

Any person or business entity which meets the requirements of this section shall be eligible to apply for, receive, and hold a license to conduct business operations upon the Seneca Nation of Indians Reservations and such holder(s) of a valid and unrevoked license(s) granted pursuant to this Code shall have the right to conduct only such business(es) upon the Seneca Nation of Indians Reservations at such time(s) at such location(s) as is (are) listed on the application.

### **2-207 Business License Exemptions**

(a) No business license shall be required of

- (1) any person engaged in the ministry of healing by purely spiritual means or other recognized religious activity;
- (2) any entity owned by the Seneca Nation of Indians;
- (3) any person under the age of 18 who conducts any activities which gross less than Three Thousand Dollars in any one calendar year;
- (4) any person engaged in the production and sale of the intrinsic or traditional crafts of the Seneca in the traditional manner which grosses less than Ten Thousand Dollars in any one calendar year;
- (5) any person who engages in a business operated entirely from their place of residence which grosses less than Ten Thousand Dollars in any one calendar year;

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(6) any person whose gross receipts attributable to activities that occur within the Nation boundaries are less than Ten Thousand Dollars in any one calendar year.

(b) No officer or employee of any government and no individual in private or public employment who is compensated for services performed by him as an employee by his employer shall, for such employment be required to obtain a license; in the case of a partnership, association, or joint venture, no license shall be required of any partner, associate or joint venture who does not engage in or conduct a trade, business or Professional activity of the entity on the Reservation.

### **2-108 Procedures Generally**

(a) A Business License Application form may be obtained during regular business hours at the Nation Clerk's office. Application(s) required to be obtained under the provisions of this sub-section shall be in addition to all other licenses, fees and permits required by Seneca law. Completed applications and proof of fees paid shall be submitted to the Tribal Planning Office for transmission to the Business and/or Planning Commissions.

(b) No license shall be granted to any business entity until it has completed the application and presented proof to the designated agency that it has complied with all tribal requirements established as conditions of commencing business within the Nation including but not limited to, the following:

(1) Proof of ownership of the land and/or an agreement with the landowner.

(2) Pursuant to the Nation's contract and employment preferences and the Buy Indian Act 25 U.S.C. 47, the entity agrees that whenever possible enrolled members will have employment preference in businesses operating by Nation license within the Nation's jurisdiction.

(3) Has submitted an environmental impact statement.

(4) Has submitted proof of insurance coverage or a plan for personal and property damage, including flood insurance.

(5) If subject to the corporate section of this Code, has filed the proper documents authorizing it to conduct business as a corporation.

(6) If a construction company, proof of the agreement with the landowner and the construction plan.

### **(c) Approved Applications**

Within ten (10) working days after approval of a completed application the Planning Commission shall recommend at the next session of Council that Tribal Council issue said applicant a license to engage in the business activity stated on the application, subject to any conditions or limitations by Tribal Council.

### **2-209 Failure to Apply for License**

(a) It shall be a violation of this Code for any entity doing business within the Nation which fails to obtain a license as provided for in this Code. Such entity shall, in addition to being required to immediately apply for such a license and pay the required fee, may be fined as defined by Seneca Law for each day it conducts business operations without a license, unless good cause is shown to the designated agencies' Chairpersons as to why such a license has not been obtained in a timely manner.

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(b) If the Chairperson(s) of the designated agencies become aware that an entity is conducting business within the Nation without a license, they shall in the name of the Nation deliver by personal service, then if unable, by registered mail (return receipt) a notice to the entity informing it that it is operating in violation of this Code and that it shall, within five (5) working days, apply for a license and/or be liable for such fines as are indicated in the letter.

(c) Where the Chairperson(s) of the designated agencies have reason to believe that the political integrity, economic security, health, safety, welfare, or morals of Nation residents are endangered by the continuation of such activity, the Chairpersons may by motion at a meeting of the designated agency, petition the Tribal Court in the name of the Seneca Nation to order such business to terminate all business activity until it has applied for a license

(d) Any entity doing business in the Nation without applying for a license within the time period requested by the Chairpersons or any entity whose license to do business has been revoked by any court or agency of competent jurisdiction pursuant to any provision of this Code or any other Tribal Code, shall immediately cease business operations within the Nation provided that, upon a showing of good cause, the court may grant the entity a reasonable period during which to conclude his business so long as, during that time, the continuation of such business does not endanger the political integrity, economic security, health, safety, welfare, or morals of Nation residents.

### **2-110 Penalty for Fraudulent Application**

Any person who gives a false or fictitious name or address in an application for a business license or who makes application in the name of a person other than the true owner shall be fined, as defined by Seneca Law.

### **2-111 Information Required**

(a) Every person or business entity desiring a business license, shall obtain an application for such license from the Nation Clerk. Each application shall contain an identification number and shall set forth in writing the following information:

- (1) Name, address and phone number of business.
- (2) Location(s) of Business, including Road, and Reservation.
- (3) Name, address and phone number(s) of owner or Chief Executive Officer.
- (4) Date and signature of applicant.
- (5) Date request submitted and received by Business and/or Planning Commission.
- (6) Signature and Position of person receiving application

(b) Each application shall be accompanied by payment of a twenty (\$25) dollar fee, which shall be a non-refundable fee.

### **Form of Registration and Application**

Applications for a Business license shall be made upon Form 87SNBC-1A, which is hereby adopted.

**(c) Use of Identification Number**

All applications for Business licenses shall bear a number which shall be the identification number of the applicants business for purposes of renewal, amendments, reports and any other papers relating to the applicants business.

**(d) Membership List**

All business applicants must indicate to the designated agency(s) current officers and/or directors including persons having a direct or indirect financial interest in the business by attaching such list to the application form. Supplementary lists of additions and deletions must be filed quarterly with the designated agencies who will transmit a copy to the Clerk's office. Such information shall be kept in confidentiality.

**(e) Application Fees**

Each application for an origin/renewal license shall be submitted to the Planning office and, shall bear the identification number and be accompanied by proof of a Twenty-Five Dollar (\$25.00) payment which shall constitute a non-refundable application fee, except where waived by Tribal Council or other Seneca Nation law. The person authorized to accept such applications then issues a receipt for the application.

(f) Business Application Register: The Tribal Planning Office shall keep a register of all Business license applicants setting forth the business name and date of application.

**2-112 Formal Discussion**

(a) Where any of the designated agencies has reason to believe that an applicant or existing business shall, if permitted to commence or continue to do business within the Nation, presents a danger to the political integrity, economic security, health, safety, welfare or morals of residents of the Nation, the Chair of the designated agency shall upon motion of the designated agency at a meeting of said agency within five (5) working days notify said entity first by telephone then by registered mail return receipt, in writing of the reason(s) it believes the entity presents such a danger and giving a noticing date and place for a formal discussion on the matter to be held within five (5) working days after delivery of notice.

**(b) Discussion B.O.P: Closed Discussion; Recommendation**

(1) Where the applicant is an existing business, a quorum of the Business Commission will conduct the discussion, and where the applicant is a new business, a quorum of the Planning Commission will conduct the discussion. The Planning Office will send notice to the business/applicant telling when and where the meeting with the Commission will take place.

(2) The Commission hearing the evidence shall then conduct a closed discussion of the merits of the application/business which discussion shall remain confidential.

(3) During the discussion the entity shall bear the burden of proof that its business activity does not present a danger to the political integrity, economic security, health, safety, welfare, or morals of the residents of the Reservation(s). In any discussion the entity shall be entitled to be represented by counsel, at their own expense, present testimony and evidence in support of their case and to cross examine adverse witnesses.

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(4) If after discussion the Commission(s) find no danger exists they shall state their reasons in writing, and where applicable shall then so affix their statement with the words, "Approved." and the date of approval stamped on the front of the application. The approved application shall then be transmitted immediately to the Chairperson, who shall recommend licensure at the next session of Tribal Council.

(5) If after discussion the Commission(s) finds by a preponderance of the evidence that a danger does exist, they shall within two (2) working days, notify said entity, first by telephone and then in writing by registered mail return receipt, stating the reasons for their finding, which shall then be affixed to the application with the words "Rejected" and the date of rejection stamped on the front of the application. A copy of which shall be filed with the Nation Clerk.

(6) Any applicant or business entity may appeal a Commission's finding to the Tribal Court and shall be entitled to an expedited hearing on the matter.

(7) Where the business is an existing business, a recommendation for suspension or revocation shall be transmitted to the Chairperson of the Business Commission who shall petition the Tribal Court on behalf of the Seneca Nation for an order to immediately enjoin the business from conducting further business, pursuant to Article 14 of the Peacemakers Court Rules.

### **(c) Failure to Appear**

(1) The consequences of applicant/business entity's failure to appear for discussion at the time stated in the notice to appear, shall be so stated in the notice of discussion and absent good cause to the contrary, shall imply that the applicant's/entity's business does present a danger and consideration for a license will be denied with all preceding paperwork voided, and further legal proceedings may be initiated.

(2) Applicant's/entity's failure to appear with good reason, as evidenced by a telephone call to the Planning Office upon receipt of notice will result in delay of consideration for licensure. A new appointment for discussion will be at the convenience of the Commission(s).

### **2-113 Reinstatement of License**

When a license has been suspended, revoked or denied, and the suspension, revocation or denial is set aside and the license reinstated or granted, the original license shall not be reissued. A new application for licensure shall be required as provided in this Article.

### **2-114 Period of Determination Issuance**

(a) The period in which the Commission(s) shall deliberate on a license application/renewal between the time of filing and the findings shall not exceed one (1) month.

#### **(b) Issuance by Clerk**

A copy of the determination and recommendation of the Commission(s) shall be sent to the Clerk of the Nation who shall issue the license upon approval of Tribal Council.

### **2-115 License Form; Distribution of Copies; Fee**

(a) The Nation Clerk shall issue a license upon authorization by Tribal Council.



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- (b) (1) The Clerk shall prepare the license in quadruplicate, issue the original to the licensee, retain a copy, forward a copy to Seneca Nation Law Enforcement and forward a copy to the Commission(s) at least five (5) days after Council authorization.
- (2) No joint license for the purposes of doing business shall be issued.
- (c) Fees — For each license or renewal granted by the Nation the license holder shall pay to the Nation the sum of Five Dollars (\$5.00) for each location at which it has been licensed to conduct business.

### **2-116 Posting**

Every entity issued a business license shall post it in a conspicuous place at the business location listed on the license, or if it lists more than one location, it shall post a notice indicating the location at which the license is posted.

### **2-117 Duration**

All licenses issued under this Code shall be valid and in effect for a maximum initial period of one year beginning January 1, and ending at Midnight on December 31, unless revoked as provided in this Code or under the provisions of any other Tribal Code.

- (a) Any license granted after January 1 of any given year shall be effective as though they had been issued on January 1, and shall expire at Midnight on December 31.
- (b) Terms for less than and longer than one year shall be at the discretion of the Business and Planning Commissions to recommend such terms to Council.

### **2-118 Terms and Conditions**

#### (a) Use

Licenses or permits to do business authorize use for business purposes only and do not constitute recognition of ownership of the premises. Other use of the said property inconsistent with the peace and safety of other Nation residents shall be grounds for suspension, revocation of the license and/or eviction from the property involved.

#### (b) Assignment

Business licenses or permits to do business may not be assigned, transferred or otherwise disposed of without the prior written consent of the Nation. Licensees shall notify the designated agencies who shall/shall not recommend in writing such assignment, transfer or disposal to Council setting forth their reasons for such recommendation or denial. Written consent to assign shall not be unreasonably withheld.

#### (c) Conservation

The licensee will comply with all applicable Seneca Nation conservation and environmental protection, health and safety laws now or hereafter adopted by the Council.

#### (d) Agency

Licenses to do business within the Nation do not create a Principal-Agent relationship whereby the licensee acts on behalf of Nation. Under no circumstances shall such authorization by license be interpreted to mean the licensee is a representative of the Nation.

**2-119 General Record Keeping**

(a) The Seneca Nation through its designated agencies shall require all persons doing business within the Nation to supply information concerning their business activities within the Nation.

(b) The Office of Fiscal Affairs (OFA) shall be authorized to inspect the books and records of any person or business entity located within the Nation. Upon notice to the entity such books and records shall be examined during regular business hours at the location where same is kept. The purpose is to collect data relevant to the determination of matters such as taxability, control, relatedness to other persons, and accuracy of filed tax declaration.

**(c) Financial and Statistical Information**

The Business and Planning Commission(s) is authorized to request and obtain information from persons doing business within the Nation which directly pertains to ordinances establishing the Tax Code and those regulations being administered by the designated agencies.

**2-120 Applications and Returns Confidential**

(a) The applications and returns made to the designated agencies shall not be made public, nor shall they be subject to the inspection of any person except the President or members of the Tribal Council at Executive Session, and it shall be a violation of this code for recipients of such applications, or returns to make public or inform any other person as to the contents or information contained in or to permit inspection of any application or return except as authorized in this section.

**(b) Confidentiality; Generally:**

Information contained in any application submitted by or on behalf of any person to the designated agencies shall not be disclosed by the Commission(s) or any persons receiving or in possession of such information without the consent of the person, except that:

(1) Nothing in this exception shall prevent the disclosure of such information by the chairperson(s) of the designated agencies to an Executive Session of:

- (i) the Business Commission
- (ii) the Planning Commission
- (iii) the Tribal Council.

(2) Nothing in this section shall prevent the disclosure of such information by the designated agencies in judicial proceedings involving the person from whom such information was obtained.

**(c) Statistical Summaries**

Nothing in this section shall prevent the Business and/or Planning Commission(s) from publishing several statistical summaries, graphs, data analysis and other such information relating to the administration of programs of the Seneca Nation which is designed not to disclose information relating to a single person.

**2-121 Indian Traders License**

An Indian Traders License issued by the Bureau of Indian Affairs under 25 C.F.R Sec. 140 is not deemed to be a Seneca Nation Business License. A Tribal Business License is

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required even if a valid Indian Traders License has been issued by the Bureau of Indian Affairs. However, non-Indians possessing Indian Traders Licenses shall be held to the provisions of 25 C.F.R. Sec. 140 in addition to the laws of the Nation.

### **2-122 Consent to Jurisdiction**

Acceptance of a Nation license to do business is consent to the jurisdiction of the Nation's courts to hear and determine any suit, claim, or other action arising out of or relating to the provisions of the license, access to or use of the property or activities of the licensee within the Nation, which involve the Nation or its members, officers, employees, agents, or representatives.

### **2-123 Indian Labor, Deviation, Denial**

(a) Pursuant to Sec. 2-108(b) Business Licensing System where and whenever possible enrolled members shall have employment preference for business entities operating by license within the Nation

(b) A deviation from the Indian Labor requirement may be approved by submitting sufficient justification in writing to the designated agencies at the time of application for license, for their review.

(c) A denial of a license shall be in writing stating the reasons for such denial and any recommendations including an opportunity for informal discussion on the matter.

(1) Informal discussion shall provide the entity the opportunity to demonstrate that it cannot comply with the Indian Labor requirement.

(2) If the Chairpersons of the designated agencies find by a preponderance of the evidence sufficient justification for non-compliance by the entity does not exist, they shall within five (5) working days so notify said entity by telephone then in writing by registered mail return receipt stating the reason for their finding.

(3) Said entity may appeal the Chairpersons' finding to the Tribal Court and shall be entitled to an expedited hearing on the matter.

(4) If the Chairpersons find sufficient justification for waiving the Indian labor requirement, they shall recommend licensure at the next session of Council, subject to Tribal Council approval

### **(d) Failure to Appear**

An applicant's failure to appear for informal discussion absent good cause shall imply that the applicant cannot justify waiver of the Indian labor requirement. Failure to appear with good reason will result in delay of consideration for licensure, as a new appointment for discussion will be at the Chairpersons' convenience.

### **2-124 Remedies**

#### **(a) Order to Show Cause**

If an entity doing business on the Reservation that has been directed by the Chairperson to cease business activity pursuant to the revocation of its license to do business within the Nation or under any other Tribal Code, fails to comply, the Chairperson shall within 24 hours petition the Court for a Show Cause Order as to why said business shall not be permanently restrained from doing business or excluded from the Nation.

**(b)Physical Removal, Incapacitation, Exclusion**

Where the petition by the Chairperson(s) allege that the business represents a danger to the political integrity, economic security, health, safety, welfare or morals of Nation residents, the Court shall hold an expedited hearing. If the entity fails to appear and fails to show good cause, the Court may order the Seneca Nation Marshall and/or Chief Law Enforcement Officer to take appropriate action.

(1) Where the person(s) engaging in business are not members of the Nation, the Court may order the Nations Marshalls and/or Law Enforcement to physically remove where necessary all such persons from the property along with any personal property used in the conduct of said business that can be removed without causing permanent damage to it.

(2) For property which cannot be so removed, such as a building, the Court shall order the incapacitation of said property and the Marshall and/or Law Enforcement shall use a padlock or other means so that it can no longer be used to carry out business.

(3) Where the person(s) doing business in violation of this Code are tribal members, they shall be prosecuted for criminal contempt of court, and all personal and real property used in the conduct of such business shall be impounded, padlocked, or otherwise incapacitated so that it cannot be used to carry out further business. A corporation, partnership, or other entity shall be considered a tribal ‘member’ for purposes of this section only if 51% percent or more of the entity is owned by tribal members.

**2-125 Redemption**

(a) An entity may recover all such property incapacitated or impounded under this section by paying to the Nation, the costs of carrying out the legal proceedings incurred by the Nation as well as a fine as defined by Seneca Law for each day that has passed since it as ordered by the Chairperson(s) to apply for the Nation business license.

(b) An entity excluded or incapacitated under this provision may be granted a new license to engage in business activity in the Nation only if:

(1) no less than six (6) months has passed since the date of the exclusion order, and all outstanding fees and tines are paid;

(2) the entity has paid all costs incurred by the Nation in carrying out the exclusion or incapacitation order and has paid such fine(s) as the Peacemakers Court deems appropriate and/or as defined by Seneca law;

(3) notwithstanding the provisions of the subsections above, the Peacemakers Court may, for good cause, deny such an entity a new license, or may attach such conditions as are appropriate upon the granting of a license, or may waive or mitigate the provisions of the preceding subsections. The determination of the Court shall be a final judgment.

(4) Any entity may appeal the Court determination to the Tribal Appellate Court.

**2-126 Severability**

If any provision of this chapter or application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Business Code are declared severable.