

MOHAWKS OF THE BAY OF QUINTE

Tobacco Quota Allocation Policy

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**DATES OF COMPLETION
AND REVISIONS**

| | DATE | MOTION # | SECTION |
|----------|------------------|-----------------|----------------|
| COMPILED | July 2016 | | ALL |
| APPROVED | December 4, 2017 | 13 | ALL |

ACCEPTANCE

- a. Duly accepted by a quorum of the Tyendinaga Mohawk Council this 4th day of December, 2017.
- b. This policy upon approval by the Tyendinaga Mohawk Council supersedes and replaces the Policy for the Distribution of Tax Exempt Tobacco Products on the Tyendinaga Mohawk Territory approved on August 2, 2002 by Motion number 10, as amended by Motion number 16 on November 1, 2005 and further amended by Motion number 3 dated February 7, 2006 and letter of April 25, 2007.



R. Donald Maracle, Chief

PREAMBLE

The Ontario Ministry of Finance has imposed and implemented, through regulations under the Ontario Tobacco Tax Act, the First Nations Cigarette Allocation System. Under this system, the Ministry of Finance calculates the total allocation of cigarettes that ministry-authorized tobacco wholesalers are permitted to deliver to businesses registered with the MBQ Administration.

Since the inception of the tobacco quota system, the Tyendinaga Mohawk Council maintains the position that this system is an infringement on Aboriginal and Treaty Rights.

The well-being of our community's youth is paramount. Registered business owners and their employees have both the right and responsibility to request proper identification before making a tobacco sale.

Through the *MBQ Issuance of Business Registrations Policy*, the Tyendinaga Mohawk Council has the authority to grant a permit to purchase wholesale, including tobacco, to businesses that meet the eligibility criteria and who complete the business registration process with the MBQ Administration.

DEFINITIONS

“Business Registration Policy” means the *MBQ Policy for the Issuance of Business Registrations on the Tyendinaga Mohawk Territory*

“Convenience Store” refers to a small store or shop that sells items such as snack foods, lottery tickets, tobacco products, movie rentals, newspapers, arts and crafts and magazines.

“Gas Station” refers to a business that operates at which gasoline or another petroleum product that is used as fuel is sold to the public and is put into fuel tanks of motor vehicles, floating motorized watercraft or into portable containers and who combines their service with a convenience store.

“Restaurant” refers to an area where the public can access to eat food or drink beverages, for a fee or at no cost. It is an area where food or drinks are served, sold or offered by employees that is not a private home.

“Tobacco Quota” refers to the allotment of tax exempt tobacco products within the First Nations Cigarette Allocation system.

“Wholesale Operation” refers to the sale of goods or merchandise to retailers; to industrial, commercial, institutional, or other professional business users; or to other wholesalers and related subordinated services. In general, it is the sale of goods to anyone other than a standard consumer.

1.0

PURPOSE

- a. The purpose of this policy is to provide clear and concise rules for the implementation of the Ontario Ministry of Finance First Nations Cigarette Allocation System.
- b. This policy must be read and applied in conjunction with the *MBQ Policy for the Issuance of Business Registrations on the Tyendinaga Mohawk Territory* also referred to herein as the Business Registration Policy, which precedes this policy in order of application.
- c. This policy may be amended from time to time as deemed necessary by the Mohawks of the Bay of Quinte Administration upon the approval of Tyendinaga Mohawk Council.

2.0

ELIGIBILITY

- a. In order to apply for a tobacco quota the applicant must:
 - i. Be a registered member of the Mohawks of the Bay of Quinte;
 - ii. Be in compliance with the MBQ Business Registration Policy;
 - iii. Have a valid MBQ Business Registration/Permit to Purchase Wholesale; and,
 - iv. Complete and submit for approval an *Application for Tobacco Quota Form* (APPENDIX A);
- b. Only the following types of registered businesses are eligible to apply for a Tobacco Quota:
 - i. Convenience Stores
 - ii. Gas Stations
 - iii. Restaurants
- c. It is expected, that if a business owner is applying for a tobacco quota, then that owner is in the business of selling tax exempt cigarettes on a daily basis to the public from their premises as a normal part of their operation and will be required to attest to that fact as part of the application process.

3.

CRITERIA

All applicants meeting the criteria below will be notified in writing by the Mohawks of the Bay of Quinte Economic Development Office as to the acceptance or rejection of their application.

- a. Applicants must have paid in full, within the specified time period to the Mohawks of the Bay of Quinte, the established tobacco quota fee per carton for any previously issued quota or the application will be automatically denied.
- b. Applicants shall have an eligible business and sufficient inventory or a sufficient variety of inventory to satisfy the definition outlined in this policy.
- c. Businesses must have visibly posted business hours and proper signage clearly identifiable to the public as to their business. Any identified business by an Applicant must maintain regular business hours appropriate to that business in relation to its intended service to the public
- d. Any MBQ registered business, applying for a tobacco quota for the first time, will be subject to a three (3) month waiting period after opening and operational before being eligible for quota in the following fiscal year.
 - i. A business owner may apply upon officially opening but will be required to wait the 3 month period before receiving a decision on approval of a tobacco quota allocation beginning the next fiscal year;
- e. If the business location or property is associated with an MBQ mortgage, the Registrant requires special permission from TMC to use the location to operate their business. This is outlined in the MBQ Mortgage document, specifically under Terms and Conditions, Section 7.
- f. The Mohawks of the Bay of Quinte reserves the right to deny an application or to issue less than a full quota to a registered business that does not meet the standards of the business type being applied under.

4.0

APPLICATION

- a. All Applicants meeting eligibility and criteria established in this policy, are entitled to submit an Application for Permit to Purchase Wholesale Tobacco. This permit may allow the business owner to receive and distribute tax-exempt tobacco products within the Tyendinaga Mohawk Territory subject to the provisions of this and any other relevant policies of the Mohawks of the Bay of Quinte.

- b. New applications must be complete, and be accompanied by any supporting documentation if necessary as determined by the MBQ Economic Development Office.
- c. Upon approval, the MBQ Economic Development Office will issue a Permit to Purchase Wholesale Tobacco to the Business Owner signed by the Chief Administrative Officer (CAO) of the Mohawks of the Bay of Quinte. The business owner will still be required to submit to the Economic Development Officer any required documentation at the time they renew their MBQ Business Registration. Failure to do so will result in cancellation of said permit and loss of quota.
- d. The MBQ Economic Development Office will issue a letter of notification to each business owner indicating the amount of quota approved for the current fiscal year. The letter will be hand delivered on April 1 of each fiscal year or as close to that date as possible dependent on timely notification by the Ministry of Finance on an approved allocation of tax-exempt tobacco products.
- e. All eligible business owners are required to re-submit an application for quota on an annual basis.
- f. It is the responsibility of the Business Owner to ensure that all new applications or renewal applications are submitted to the MBQ Economic Development Office on or before February 1st of each year. Late applications *will not* be accepted.

5.0

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|-------------------------|
| QUOTA ALLOCATION |
|-------------------------|

- a. A maximum of one quota will be issued to an eligible MBQ registered business during any fiscal year. The amount of an individual quota will be determined through the application approval process by the MBQ Economic Development Office and is based on the total quota allocation determined by the Ministry of Finance, Tobacco Branch.
- b. Registered business owners who have more than one business may be eligible for a Permit to Purchase Wholesale Tobacco for up to a maximum of two (2) eligible businesses.
- c. Mohawks of the Bay of Quinte will consider the allocation of half ($\frac{1}{2}$) and quarter ($\frac{1}{4}$) quotas depending on the requirements of a particular business.
- d. There is a tobacco fee per carton that MBQ registered business owners are responsible to pay within sixty (60) days of the MBQ issued invoice date.

6.0

ALLOCATION PROCESS

- a. The MBQ Economic Development Office will notify all MBQ registered business owners of their allocation amount and the date by which they are required to have their payment delivered to the Mohawks of the Bay of Quinte.
- b. The quota allocation will be issued to MBQ registered business owners twice per year. The first allocation will be on April 1, or as close to that date thereafter dependent upon MBQ receiving timely notification from the Ministry of Finance, Tobacco Branch. The second allocation will be on October 1, or as close to that date as possible dependent on the calendar year.
- c. The MBQ Administration will not hold back any of the approved quota allocation from the Ministry, meaning that the full quota will be allocated on April 1 and October 1 or as close to that date as possible.
- d. Once MBQ registered business owners receive notification of their allocation amount, they will have until 4:30 pm of the date identified in the notification to make their full payment of the tobacco quota fee per carton of \$3.00 per carton to MBQ for their annual quota allocation. Payment must be received by way of cash, cheque, bank draft, money order, debit or credit.
 - a. If paying by cheque, a certified cheque will be required for amounts greater than \$2500.
- e. No payments will be accepted beyond the specified date for payment in the notification. Each business owner that does not meet the deadline will automatically forfeit their annual allocation. The forfeited allocation will then be available for redistribution to all other eligible Applicants who were approved for quota within the current fiscal year.
- f. The date of distribution of any available quota as a result of the implementation of the above clause will be at the discretion of the Mohawks of the Bay of Quinte. The previously mentioned payment criteria will apply.

7.0

TRANSFER OF PERMITS

- a. A tobacco quota or portion thereof is issued to a specific MBQ registered business and is not transferrable between MBQ registered businesses nor is it transferrable among MBQ registered members.

8.0

COMPLIANCE

- a. The Mohawks of the Bay of Quinte Administration will carry out unscheduled spot inspections to ensure businesses are in compliance with this policy. Reports will document inspections and infractions will be taken into consideration for the next allocation period.
- b. The Mohawks of the Bay of Quinte view the sale of tobacco products to minors as a serious matter. All owners in the business of selling tobacco products will ensure that they and their employees request proper identification from any individual whose age of majority may be questionable before a sale is made.
- c. The sale of quota allocation between business owners is not an accepted practice. Each MBQ registered business owner upon initial application will be required to attest to the fact that the tobacco quota allocation is available for sale over the counter at their registered businesses to the public and will not engage in such practice and agree to accept the specified penalty if found to be in violation of this provision.
- d. All business owners agree to abide by the provisions of this policy. Any infractions of this policy or the Business Registration Policy as it relates to the sale of tobacco products which may be discovered by the Mohawks of the Bay of Quinte are subject to a penalty of three (3) years of loss of privileges from applying for a tobacco quota allocation.
- e. Infractions could result in the cancellation of a MBQ registered business owner's Permit to Purchase Wholesale Tobacco products at which time the owner will be required to return the permit to the MBQ Economic Development Office.
- f. Depending on the severity of an infraction, in relation to this Policy and the Business Registration Policy, the Economic Development Office will notify the owner in writing of the violation. An attempt will be made to meet with the owner to see if a mutually agreeable solution can be achieved. If no satisfactory resolution is obtained, the owner shall then be notified in writing as to the infraction and effective date of the prescribed penalty.

9.0

APPEALS

Each business owner shall have the right to appeal a decision made by the Mohawks of the Bay of Quinte in relation to the respective policies as it applies to the sale and distribution of tax exempt tobacco products.

- a. As a first step, MBQ registered business owners are encouraged to request a meeting with the MBQ Economic Development Office to review the grounds set out for the decision.

- The Director of Community Services may be invited to the meeting to review the grounds for the decision.
- b. If, after meeting with the Economic Development Office and the Director of Community Services, the Applicant believes there were not reasonable grounds for the decision, the Applicant may choose to submit a Notice of Appeal to the Chief Administrative Officer (CAO).
 - c. If the appeal is not resolved following the response and/or meeting with the Chief Administrative Officer, the Applicant may choose to submit a Notice of Appeal to the Appeal Board.
 - d. The Tyendinaga Mohawk Council shall act as an appeal board for the purpose of this policy in relation to the distribution and sale of tax exempt tobacco products.
 - e. Appeals must be made in writing within thirty (30) days of the initial notification of the decision to revoke, to suspend, to refuse issuance or to renew a permit to purchase wholesale tobacco application. Copies of the appeal notice must be sent to the Mohawks of the Bay of Quinte Administration Office.
 - f. The Appeal Board shall review the individual's position as presented in the Notice of Appeal. The Appeal Board will also give consideration to the original decision and decision making process of the MBQ Economic Development Office.
 - g. If necessary, the Appeal Board will request a meeting with the individual and notify the individual of the date, time and place of hearing within twenty (20) days of receipt of the Notice of Appeal. All documents relevant to the appeal must be presented to the pertinent parties within ten (10) days.
 - h. At the appeal hearing, the onus will be upon the individual to show just cause why the application should be granted or that revocation was executed in error.
 - i. The Appeal Board will provide its decision in writing to the individual within two weeks of the review hearing.
 - j. All decisions of the Tyendinaga Mohawk Council are final.

Permit to Purchase Wholesale Tobacco Products

Business Owners Name and Band Number _____

Business Owners Civic Address _____

Business Name and Address _____

Business Owners Phone _____ Home _____ Business _____ Cell _____

Business Type _____ Seasonal _____ Year Round _____

If Seasonal Months/Days/Hours of Operation _____

If Year Round Days/Hours of Operation _____

Owners Tobacco Wholesaler _____

This is a New Application _____ Renewal Application _____

DECLARATION

I hereby certify that my business is owned by: _____
Name(s)

I hereby certify that my business premises is rented or owned by: _____
Name(s)

I hereby further declare that I am in compliance with all conditions of the Mohawks of the Bay of Quinte Business Registration Policy to be able to make this application for a tobacco quota.

I am hereby applying under category: Gas Station Convenience Restaurant

I further agree to abide by all the terms and conditions of the *Mohawks of the Bay of Quinte Tobacco Quota Allocation Policy* and the *Mohawks of the Bay of Quinte Business Registration Policy* currently in force. I do so declare that I will sell all quota, which may be issued to me, from my place of business to the general public on a daily basis and further agree that should I be found to be in contravention thereto of said policies that my Permit to Purchase Wholesale Tobacco is subject to cancellation and the penalty applied as per the policy.

Business Owner(s) Signature(s) Date

Recommended by Economic development Officer Date

Approved by Tyendinaga Mohawk Council Motion Number and Date _____

Signed: _____
Chief