

TITLE 17. MASHANTUCKET PEQUOT TRIBE LIQUOR CONTROL CODE

CHAPTER 1

17 M.P.T.L. ch. 1 § 1

§ 1. Definitions; For the Interpretation of this Code, unless the Context Indicates a Different Meaning

a. "Alcohol" means the product of distillation of any fermented liquid, rectified either once or more often, whatever may be the original thereof, and includes synthetic ethyl alcohol which is considered nonpotable.

b. "Alcoholic Liquor" or "Alcoholic Beverage" includes alcohol, beer, spirits and wines and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being for beverage purposes. Any liquor or solid containing more than one of the four varieties so defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the following order: Alcohol, spirits, wines and beer. The provisions of this Code shall not apply to any liquid or solid containing less than one-half of 1% of alcohol by volume.

c. "Backer" means, except in cases where the permittee is himself the proprietor, the proprietor of any business or institution established by the Mashantucket Pequot Tribe, incorporated or unincorporated, engaged in the sale of Alcoholic Liquor on the Reservation, in which business a permittee is associated, whether as employee, agent or part owner.

d. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinking water.

e. "Charitable Organization" means any nonprofit institution established for charitable or educational purposes by the Mashantucket Pequot Tribe.

f. "Commission" means the Land Use Commission and "Commissioner" means the Land Use Commissioner or the Office of the Land Use Commissioner.

g. "Gaming Facility" means that area of the Reservation in which gaming is conducted, as authorized by the Mashantucket Pequot Final Gaming Procedures, 56 Fed. Reg. 24966 (May 31, 1991) and the Mashantucket Pequot Gaming Law.

h. "Mashantucket Pequot Tribe" or "Tribe" means the federally recognized Tribe of the same name pursuant to 25 U.S.C. §§ 1751 et seq.

i. "Minor" means any person under 21 years of age.

j. "Nonprofit Public Museum" means any public museum established for nonprofit, charitable, literary and/or educational purposes by the Tribe.

k. "Person" means natural person including partners but shall not include corporations, limited liability companies, joint stock companies or other

associations of natural persons.

l. "Premises" means, if not otherwise defined herein, any public building or entity owned by the Tribe and located on its Reservation.

m. "Reservation" means the lands of Mashantucket Pequot Reservation held in trust by the United States.

n. "Spirits" means any beverage that contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whiskey and gin.

o. "Tribal Council" or "Council" means the governing body of the Mashantucket Pequot Tribe.

p. "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry and champagne.

17 M.P.T.L. ch. 1 § 2

§ 2. Land Use Commission Enforcement

a. The Commissioner shall enforce the provisions of this Code on the Reservation excluding the Gaming Facility in which areas the laws and regulations of the state of Connecticut applicable to the sale and distribution of alcoholic beverages are enforced by the State pursuant to Section 14(b) of the Mashantucket Pequot Final Gaming Procedures. It may generally do whatever is reasonably necessary for the carrying out of this Code; and it may call upon other departments of the tribal government such as the tribal police and legal counsel for such information and assistance as it deems necessary in the performance of its duties.

b. No member of the Commission and no employee of the Commissioner who carries out the duties and responsibilities pursuant to this Code may, directly or indirectly, individually or as a member of a partnership or as a shareholder of a corporation, have any interest whatsoever in dealing in or in the manufacture of Alcoholic Liquor, nor receive any Commission or profit whatsoever from, nor have any interest whatsoever in, the purchases or sales made by the persons authorized by this Code to purchase or sell Alcoholic Liquor. No provision of this Section shall prevent any such Commission member or employee from purchasing and keeping in his possession, for the personal use of himself or members of his family or guests, any Alcoholic Liquor which may be purchased or kept by any person by virtue of this Code.

c. The moneys received from the permit fees shall be deposited into the general funds of the Tribe.

d. The Commissioner shall submit to the Tribal Council an annual report of its acts. The Commissioner shall keep a record of proceedings and orders pertaining to all permits granted, refused, suspended or revoked and of all reports sent to its office. It shall furnish, without charge, for official use

only, certified copies of permits and documents relating thereto, to officials of the tribal government and of the state of Connecticut. All records pertaining to Applicants and to permits of the current year or of the previous three years, including applications, approvals and denials, permits and licenses, documents requested through proper legal documents in related legal proceedings, shall be open to public inspection at reasonable times during office hours. All other records may be regarded as confidential by the Commissioner, except to the Tribal Council and in response to judicial process.

17 M.P.T.L. ch. 1 § 3

§ 3. Inspections, Inquiries, Hearings

The Commissioner is authorized to conduct any inspection, inquiry, or investigation and the Commission may conduct a hearing under oath relative to the matter of inquiry or investigation. At any hearing conducted by the Commission, it may require the production of records, papers and documents pertinent to such inquiry.

17 M.P.T.L. ch. 1 § 4

§ 4. Nature and Duration of Permit. Renewals by Transferee or Purchaser of Permit Premises

A permit shall be a purely personal privilege, good for one year after issuance, and revocable in the discretion of the Commission subject to appeal as provided in Section 20, and shall not constitute property, nor shall it be subject to attachment and execution, nor shall it be alienable, nor shall it descend by the laws of testate or intestate devolution, but it shall cease upon the death of the permittee.

17 M.P.T.L. ch. 1 § 5

§ 5. Issuance of Permits

The Commissioner may issue permits in the classes described in this Code.

17 M.P.T.L. ch. 1 § 6

§ 6. Temporary Permit for Outings, Picnics or Social Gatherings

A temporary beer permit shall allow the sale of beer and a temporary liquor permit shall allow the sale of alcoholic liquor at any outing, picnic or social gathering conducted by a bona fide noncommercial organization established by the Mashantucket Pequot Tribe, which organization shall be the Backer of the permittee under such permit. The profits from the sale of such beer or Alcoholic Liquor shall be retained by the organization conducting such outing, picnic or social gathering and no portion thereof shall be paid, directly or indirectly, to any individual or other corporation. Such permit shall be issued subject to the approval of the Commissioner and shall be effective only for the time limited by the Commissioner. The combined total of temporary beer permits and temporary liquor permits issued to an organization shall not exceed four during any one calendar year. The fee for a temporary beer permit shall

be \$15 per day and for a temporary liquor permit shall be \$25 per day.

17 M.P.T.L. ch. 1 § 7

§ 7. Ninety-day Provisional Permit

A 90-day provisional permit shall allow the retail sale of Alcoholic Liquor by any applicant and his Backer, if any, who has made application for a liquor permit pursuant to Section 11 and may be issued at the discretion of the Commissioner. If said applicant or his Backer, if any, causes any delay in the review conducted by the Commissioner pursuant to said Section, the 90 day provisional permit shall cease immediately. Only one such permit shall be issued to any applicant and his Backer, if any, for each location of the place of business which is to be operated under such permit and such permit shall be nonrenewable but may be extended due to delays not caused by the applicant. The fee for such 90 day permit shall be \$500.

17 M.P.T.L. ch. 1 § 8

§ 8. Nonprofit Public Museum Permit

A nonprofit public museum permit shall allow the retail sale of Alcoholic Liquor by a nonprofit public museum located on the Reservation to be consumed on its premises by its patrons on any day on which such nonprofit public museum is open to visitors from the general public. Proceeds derived from such sales, except for reasonable operating costs, shall be used in furtherance of the charitable, literary and educational activities of such nonprofit public museum. Section 36, insofar as said Section refers to local regulation of sales, shall not apply to such permit. The annual fee for a nonprofit public museum permit shall be \$200.

17 M.P.T.L. ch. 1 § 9

§ 9. Charitable Organization Permit

A Charitable Organization permit shall allow the retail sale of Alcoholic Liquor by the drink to be consumed on the premises located within the Reservation. Such permit shall be issued on a daily basis subject to the hours of sale in Section 36 and only four such permits shall be issued to the same Charitable Organization in any calendar year. The fee for a Charitable Organization permit shall be \$25.

17 M.P.T.L. ch. 1 § 10

§ 10. Storage of Liquor. Approval of Facilities

Each permit shall also allow the storage, on the premises and at one other secure location registered with and approved by the Commissioner, of sufficient quantities of Alcoholic Liquor allowed to be sold under such permit as may be necessary for the business conducted by the respective permittees or their Backers.

17 M.P.T.L. ch. 1 § 11

§ 11. Applications for Permits, Renewals. Fees. Publication, Remonstrance, Hearing

a. For the purposes of this Section, the "filing date" of an application means the date upon which the Commissioner, after approving the application for processing, mails or otherwise delivers to the Applicant a placard containing such date.

b. Any person desiring a liquor permit or a renewal of such a permit shall make a sworn application therefore to the Commissioner upon forms to be furnished by the Commissioner, showing the name and address of the applicant and of the Backer, if any, and the location of the place of business which is to be operated under such permit. Such application shall include a detailed description of the type of live entertainment that is to be provided. The application shall also indicate any crimes of which the applicant or his Backer may have been convicted. Applicants shall submit documents sufficient to establish that any tribal regulations concerning hours and days of sale will be met. The tribal fire marshal or his certified designee shall be responsible for approving compliance with the applicable fire regulations. The Commissioner may, at its discretion, conduct a review to determine whether a permit shall be issued to an applicant.

(1) The applicant shall pay to the Commissioner a nonrefundable application fee, which fee shall be in addition to the fees prescribed in this Code for the permit sought. An application fee shall not be charged for an application to renew a permit. The application fee shall be in the amount of \$10 for the filing of each application for a permit by a Charitable Organization, or a temporary permit; and for all other permits in the amount of \$100 for the filing of an initial application. Any permit issued shall be valid only for the purposes and activities described in the application.

(2) The applicant, immediately after filing an application, shall give notice thereof, with the name and residence of the permittee, the type of permit applied for and the location of the place of business for which such permit is to be issued and the type of live entertainment to be provided, all in a form prescribed by the Commissioner, by publishing notice of the same in a publication having a circulation on the Reservation at least once. The applicant shall affix, and maintain in a legible condition upon the outer door of the building wherein such place of business is to be located and clearly visible to the public, the placard provided by the Commissioner, not later than the day following the receipt of the placard by the applicant. If such outer door of such premises is so far from the public view that such placard is not clearly visible as provided, the Commissioner shall direct a suitable method to notify the public of such application. When an application is filed for any type of permit for a building that has not been constructed, such applicant shall erect and maintain in a legible condition a sign not less than six feet by four feet upon the site where such place of business is to be located, instead of such placard upon the outer door of the building. The sign shall set forth the type of permit applied for and the name of the proposed permittee shall be clearly visible to the public and shall be so erected not later than the day following the receipt of the placard. Such applicant shall make a return to the Commissioner, under oath, of compliance with the foregoing requirements, in such form as the Commissioner may determine, but the

Commissioner may require any additional proof of such compliance. Upon receipt of evidence of such compliance, the Commission may hold a hearing as to the suitability of the proposed location. The provisions of this subsection shall not apply to temporary permits and Charitable Organization permits.

c. Any 10 residents of the reservation may file with the Commissioner, within three weeks from the filing date of the application for an initial permit, and in the case of renewal of an existing permit, at least 21 days before the renewal date of such permit, a remonstrance. Upon such remonstrance, the Commission, upon written application, shall hold a hearing and shall give such notice as it deems reasonable of the time and place at least five days before such hearing is had. The remonstrance shall designate one or more agents for service, who shall serve as the recipient or recipients of all notices issued by the Commissioner. The decision of the Commission on such application shall be final with respect to the remonstrance.

d. No new permit shall be issued until the foregoing provisions of subsections (a) and (b) of this Section have been complied with.

e. The Commissioner may renew a permit that has expired if the applicant pays a nonrefundable late fee of \$100, which fee shall be in addition to the fees prescribed in this Code for the permit applied for.

17 M.P.T.L. ch. 1 § 12

§ 12. Second Application

a. No person whose application for a permit has been denied on the ground that he is an unsuitable person may make another application for a permit within one year thereafter.

b. No person whose permit has been revoked may make an application for a permit under this Code within one year thereafter.

17 M.P.T.L. ch. 1 § 13

§ 13. Granting and Denial of Permits. Notice of Hearing

Permits may be granted without a hearing by the Commissioner in its discretion; but, in any case of the denial of or refusal to renew a permit, the Commissioner shall, in such manner as it directs, notify the applicant or permittee of its proposed action and set a day and place for a hearing thereon, giving the applicant or permittee reasonable notice in advance thereof. If, at or after such hearing, the Commission denies or refuses to renew the permit, as the case may be, notice of such decision shall forthwith be given to such applicant or permittee in such manner as the Commission directs.

17 M.P.T.L. ch. 1 § 14

§ 14. Mandatory Refusal of Permits to Certain Persons. Exceptions

The Commissioner shall refuse permits for the sale of Alcoholic Liquor to the following persons:

a. any member of the tribal law enforcement or judiciary, which includes any officer or employee of the tribal police department and any judge or staff member of the Mashantucket Pequot Tribal Court or Court of Appeals; or

b. a minor.

17 M.P.T.L. ch. 1 § 15

§ 15. Discretionary Refusal of Permit; Location or Character of Premises; Other Grounds

The Commissioner may refuse to grant permits for the sale of Alcoholic Liquor if he has reasonable cause to believe:

a. that the proximity of the permit premises will have a detrimental effect upon any social or governmental institution as established by the Tribal Council or any residential area;

b. that the place has been conducted as a lewd or disorderly establishment; or

c. that there is any other reason as provided by tribal law or regulation which warrants such refusal.

17 M.P.T.L. ch. 1 § 16

§ 16. Discretionary Refusal of Permits; Disqualification of Applicant

a. The Commissioner may, in his discretion, refuse a permit for the sale of Alcoholic Liquor if he has reasonable grounds to believe:

(1) that the applicant appears to be financially irresponsible or neglects to provide for his family, or neglects or is unable to pay his just debts;

(2) that the applicant has been provided with funds by any wholesaler or manufacturer or has any forbidden connection with any other class of permittee as provided herein or as provided in the Connecticut Liquor Control Act;

(3) that the applicant is in the habit of using alcoholic beverages to excess;

(4) that the applicant has willfully made any false statement to the Commissioner in a material matter;

(5) that the applicant has violated this Code, or has been convicted of violating the liquor laws of any state or of the United States or has been convicted of a felony or has such a criminal record that the Commissioner reasonably believes he is not a suitable person to hold a permit;

(6) if the permittee-applicant has not been delegated full authority and control of such premises and of the conduct of all business therein. Any Backer shall be subject to the same disqualifications as herein provided in the case of an applicant for a permit.

b. A permittee may file a designation of an authorized agent with the Commissioner to issue or receive all notices or documents provided for in this Section. The permittee shall be responsible for the issuance or receipt of such notices or documents by the agent.

17 M.P.T.L. ch. 1 § 17

§ 17. Permit to Specify Location and Revocability. Removal to Another Location

a. Every permit for the sale of Alcoholic Liquor shall specify the location including the particular building or place in which such liquor is to be sold, and shall not authorize any sale in any other place or building. Such permit shall also be made revocable in terms for any violation of any of the provisions of this Code.

b. Nothing in subsection (a) of this Section shall be construed as prohibiting the Commissioner from permitting the removal of such permit premises to any location, for any reason, provided:

(1) removal to the proposed location complies with all land use regulations;

(2) the proposed location is not found to be unsuitable or prohibited by any other provision of this Code.

The removal of the permit premises from the particular building or place specified in the permit without the approval of the Commissioner shall be grounds for the suspension or revocation of the permit.

17 M.P.T.L. ch. 1 § 18

§ 18. Permit to be Recorded

Each permit granted or renewed by the Commissioner shall be of no effect until a duplicate thereof has been filed by the permittee with the Tribal Council.

17 M.P.T.L. ch. 1 § 19

§ 19. Permit to be Hung in Plain View

Every permittee shall cause his permit or a duplicate thereof to be framed and hung in plain view in a conspicuous place in any room where the sales so permitted are to be carried on.

17 M.P.T.L. ch. 1 § 20

§ 20. Revocation or Suspension of Permits

a. The Commission may, of its own motion, revoke or suspend any permit upon cause found after hearing, provided 10 days written notice of such hearing has been given to the permittee setting forth the charges upon which such proposed revocation or suspension is predicated. Any appeal from such order of revocation or suspension shall be taken in accordance with the applicable

provisions of the Land Use Law.

b. The surrender of a permit for cancellation or the expiration of a permit shall not prevent the Commission from suspending or revoking any such permit pursuant to the provisions of this Section.

17 M.P.T.L. ch. 1 § 21

§ 21. Conviction of Permittee; Revocation or Suspension of Permit; Forfeiture

When any permittee has violated any of the provisions of this Code or has been convicted of a violation of any of the laws of the United States, the laws of the Mashantucket Pequot Tribe, or of any state, pertaining to the manufacture, sale, transportation or taxation of distilled spirits, beer and wine, or of any felony, or has forfeited his bond to appear in court to answer for any such violation, the Commission may, in its discretion, revoke or suspend his permit and order the forfeiture of all moneys that have been paid therefore, and such revocation or suspension and forfeiture shall be in addition to the penalties for such offense.

17 M.P.T.L. ch. 1 § 22

§ 22. Revocation of Permit Obtained by Fraud

Whenever any permit under this Code has been obtained by fraud or misrepresentation, the Commission, upon proof that such permit was so obtained, shall, upon hearing had, revoke the same, and all moneys paid therefore shall be forfeited.

17 M.P.T.L. ch. 1 § 23

§ 23. Offer in Compromise in Lieu of Suspension

The Commissioner, in its discretion, may accept from any permittee or Backer an offer in compromise in such an amount as may in the discretion of the Commissioner be proper under the circumstances in lieu of the suspension of any permit previously imposed by the Commissioner. Any sums of money so collected by the Commissioner shall be paid forthwith to the general funds of the Tribe.

17 M.P.T.L. ch. 1 § 24

§ 24. Certificate of Revocation, Suspension or Reinstatement

The Commissioner shall transmit a certificate of the revocation, suspension or reinstatement of any permit by it to the Tribal Council who shall attach such certificate to the duplicate copy of such permit on file.

17 M.P.T.L. ch. 1 § 25

§ 25. Appeal

Any applicant for a permit or for the renewal of a permit for the sale of Alcoholic Liquor whose application is refused or any permittee whose permit is revoked or suspended by the Commission or any 10 residents who have filed a remonstrance pursuant to the provisions of Section 11 and who are aggrieved by the granting of a permit by the Commission may appeal therefrom in accordance with the appellate provisions of the Land Use Law.

17 M.P.T.L. ch. 1 § 26

§ 26. Substitution of Permittees. Fee

In any case a new permittee may be substituted when so requested, provided the person so substituted shall be a suitable person as defined and set forth in this Code, and such person shall be permitted to serve in the place and stead of the original permittee for the remainder or any part thereof of the term of the permit upon which he has been substituted and such a substitution may be made upon the death of a permittee, when so requested. A substitute permittee under this Section shall not be subject to the provisions of Section 11. In the case of an application to permanently substitute the identity of the permittee, the applicant shall pay to the Commissioner a nonrefundable application fee of \$30.

17 M.P.T.L. ch. 1 § 27

§ 27. Consumer Bars

The Commissioner may permit more than one consumer bar in any premises for which a permit has been issued under this Code for the retail sale of alcoholic liquor to be consumed on the premises. A consumer bar is a counter, with or without seats, at which a patron may purchase and consume or purchase alcoholic liquor. The fee for each additional consumer bar shall be \$150 per annum.

17 M.P.T.L. ch. 1 § 28

§ 28. Unauthorized Sale Prohibited

a. The sale of Alcoholic Liquor, except as permitted by this Code, is prohibited, and any person or permittee who operates any establishment which is a place where Alcoholic Liquor is kept for sale or exchange contrary to law shall be liable to the penalties provided in Section 41.

b. The sale of Alcoholic Liquor without a permit issued under the provisions of this Code in any Premises located on the Reservation shall be unlawful. Any association or organization without such a permit, who sells or permits to be sold, to or by its members, guests or other persons, any alcoholic liquor shall be subject to the penalties provided in Section 41.

17 M.P.T.L. ch. 1 § 29

§ 29. Unsuitable Persons Prohibited from having Financial Interest in Permit Businesses; Employment of Minors

a. No person who is declared to be an unsuitable person to hold a permit to

sell Alcoholic Liquor shall be allowed to have a financial interest in any such permit business.

b. Any person over age 18 may be employed by an employer holding a permit issued under this Code. A minor performing paid or volunteer services of an emergency nature shall be deemed to be an employee subject to the provisions of this Section.

17 M.P.T.L. ch. 1 § 30

§ 30. Sales to Minors, Intoxicated Persons and Drunkards. Exceptions

Any permittee who, by himself, his servant or agent, sells or delivers Alcoholic Liquor to any minor, or to any intoxicated person, or to any habitual drunkard, knowing him to be such an habitual drunkard, shall be subject to the penalties of Section 41. Any person who delivers or gives any such liquors to such minor, except on the order of a practicing physician, shall be fined not more than \$1,500. The provisions of this Section shall not apply:

(1) to a sale or delivery made to a person over age 18 who is an employee pursuant to Section 29 and where such sale or delivery is made in the course of such person's employment or business

(2) to a sale or delivery made in good faith to a minor who practices any deceit in the procurement of an identity card, who uses or exhibits any such identity card belonging to any other person or who uses or exhibits any such identity card which has been altered or tampered with in any way, or

(3) to a delivery made to a minor by a parent, guardian or spouse of the minor, provided such parent, guardian or spouse has attained the age of 21 and provided such minor possesses such Alcoholic Liquor while accompanied by such parent, guardian or spouse.

17 M.P.T.L. ch. 1 § 31

§ 31. Statement from Purchaser as to Age

a. For the purposes of Section 30, any permittee shall require any person whose age is in question to fill out and sign a statement in the following form on one occasion when each such person makes a purchase:

(MM/DD) , (YYYY)

I, _____, hereby represent to _____, a liquor permittee of the Mashantucket Pequot Land Use Commission, that I am over the age of 21 years, having been born on (MM/DD) , (YYYY), at (CITY, STATE). This statement is made to induce said permittee to sell or otherwise furnish alcoholic beverages to the undersigned. I understand that the Mashantucket Pequot Tribe Liquor Control Code along with Title 30 of the Connecticut General Statutes both prohibit the sale of alcoholic liquor to any person who is not 21 years of age.

I understand that I am subject to a fine of \$100 for the first offense and not

more than \$250 for each subsequent offense for willfully misrepresenting my age for the purposes set forth in this statement.

_____ (Name)

_____ (Address)

Such statement once taken shall be applicable both to the particular sale in connection with which such statement was taken, as well as to all future sales at the same premises, and shall have full force and effect under subsection (b) as to every subsequent sale or purchase. Such statement shall be printed upon appropriate forms to be furnished by the permittee and approved by the Commissioner and shall be kept on file on the permit premises, alphabetically indexed, in a suitable file box, and shall be open to inspection by the Commissioner or any of its agents at any reasonable time. Any person who makes any false statement on a form signed by him as required by this Section shall be fined not more than \$100 for the first offense and not more than \$250 for each subsequent offense.

b. In any case where such a statement has been procured and the permittee is subsequently charged with serving or furnishing alcoholic beverages to a minor, if such permittee, in proceedings before the Commission, introduces such statement in evidence and shows that the evidence presented to him to establish the age of the purchaser was such as would convince a reasonable man, no penalty shall be imposed on such permittee.

17 M.P.T.L. ch. 1 § 32

§ 32. Inducing Minors to Procure Liquor. Exception

Any person who, for any purpose, induces any minor to procure Alcoholic Liquor from any person permitted to sell the same shall be subject to the penalties prescribed in Section 41. The provisions of this Section shall not apply to the procurement of liquor by a person over age 18 who is an employee or permit holder under Section 29 where such procurement is made in the course of such person's employment or business.

17 M.P.T.L. ch. 1 § 33

§ 33. Operator's License as Proof of Age. Misrepresentation of Age to Procure Liquor

Each person who attains the age of 21 years and has a motor vehicle or motorcycle operator's license, containing a full-face photograph of such person, may use and each permittee may accept such license as legal proof of the age of the licensee for the purposes of this Code. Any person who misrepresents his age or uses or exhibits, for the purpose of procuring Alcoholic Liquor, an operator's license belonging to any other person, shall be fined not less than \$200 nor more than \$500.

17 M.P.T.L. ch. 1 § 34

§ 34. Procuring Liquor by Person Forbidden to Purchase or by False Statement, Public Possession of Liquor by Minors Prohibited. Exceptions

a. Any person to whom the sale of alcoholic liquor is by law forbidden who purchases or attempts to purchase such liquor or who makes any false statement for the purpose of procuring such liquor shall be fined not less than \$200 nor more than \$500.

b. Any minor who possesses any alcoholic liquor in any public place or place open to the tribal community, including any club which is open to the public, shall be fined not less than \$200 nor more than \$500. The provisions of this subsection shall not apply to

(1) a person over age 18 who is an employee pursuant to Section 29 and who possesses alcoholic liquor in the course of his employment or business,

(2) a minor who possesses alcoholic liquor on the order of a practicing physician, or

(3) a minor who possesses alcoholic liquor while accompanied by a parent, guardian or spouse, who has attained the age of 21.

17 M.P.T.L. ch. 1 § 35

§ 35. Loitering on Permit Premises

Any permittee who, by himself, his servant or agent, permits any minor or any person to whom the sale or gift of Alcoholic Liquor has been forbidden according to law to loiter on his premises where such liquor is kept for sale, or allows any minor other than a person over age 18 who is an employee pursuant to Section 29 or a minor accompanied by his parent or guardian, to be in any room where Alcoholic Liquor is served at any bar, shall be subject to the penalties of Section 41.

17 M.P.T.L. ch. 1 § 36

§ 36. Hours and Days of Closing

a. The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of Alcoholic Liquor by an individual in places operating a permit issued by the Commission shall be unlawful on:

(1) Monday, Tuesday, Wednesday, Thursday and Friday between the hours of one o'clock a.m. and nine o'clock a.m.;

(2) Saturday between the hours of two o'clock a.m. and nine o'clock a.m.;

(3) Sunday between the hours of two o'clock a.m. and eleven o'clock a.m.;

(4) Christmas, except for alcoholic liquor that is served with hot meals during the hours otherwise permitted by this Section for the day on which Christmas falls; and

(5) January first between the hours of three o'clock a.m. and nine o'clock a.m., except that on any Sunday that is January first the prohibitions of this Section shall be between the hours of three o'clock a.m. and eleven o'clock a.m.

b. Tribal Council may, by vote of a tribal meeting or by Law, reduce the number of hours during which sales shall be permissible. Such action shall become effective on the first day of the month succeeding such action;

c. Nothing in this Section shall be construed to require any permittee to continue the sale or dispensing of Alcoholic Liquor until the closing hour established under this Section.

17 M.P.T.L. ch. 1 § 37

§ 37. Bottle Size. Prohibition against Sale of Certain Size

No Alcoholic Liquor, except wine, shall be sold or offered for sale on the Reservation 100 milliliter containers or bottles.

17 M.P.T.L. ch. 1 § 38

§ 38. Containers to be Sealed

Alcoholic Liquors, except beer, cider, wine and cordials shall be purchased by the holders thereof in sealed bottles or containers and poured for sale and consumption from the original bottles or containers. No such bottle or container shall be refilled in whole or in part.

17 M.P.T.L. ch. 1 § 39

§ 39. Gifts, Loans and Discounts Prohibited between Permittees. Tie-in Sales

No permittee or group of permittees licensed under the provisions of this Code in transaction with another permittee or group of permittees shall directly or indirectly offer, furnish or receive any free goods, gratuities, gifts, prizes, coupons, premiums, combination items, quantity prices, cash returns, loans, discounts, guarantees, inducements or special prices, or other inducements with the sale of alcoholic beverages or liquors. No permittee shall require any purchaser to accept additional Alcoholic Liquors in order to make a purchase of any other Alcoholic Liquor.

17 M.P.T.L. ch. 1 § 40

§ 40. Liquor Seller Liable for Damage by Intoxicated Person

a. If any person, by himself or his agent, sells any Alcoholic Liquor to an intoxicated person on the Reservation, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another whether within or without the Reservation, such seller shall pay damages to the person or persons injured, up to the aggregate amount of \$250,000, to be recovered in an action under this Section, provided the aggrieved person or persons shall

give written notice to such seller within 60 days of the occurrence of such injury to person or property of his or their intention to bring an action under this Section. In computing such 60-day period, the time between the death or incapacity of any aggrieved person and the appointment of an executor, administrator, conservator or guardian of his estate shall be excluded, except that the time so excluded shall not exceed 120 days. Such notice shall specify the time, the date and the person to whom such sale was made, the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred. No action under the provisions of this Section shall be brought but within one year from the date of the act or omission complained of. The damages recovered under this section up to the limit provided herein shall be calculated in the same manner as damages are calculated under 4 M.P.T.L. ch. 1 (Tort Claims) as the same may be amended from time to time. Such injured person shall have no cause of action against Seller for negligent sale of alcoholic beverages.

b. The Tribe hereby expressly waives its sovereign immunity from suits in the tribal court for actions brought pursuant to this Section founded upon an action of the Tribe, a tribal enterprise or institution, or their agents, servants, or employees acting within the scope of their authority, and nothing herein shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual and such sovereign immunity is waived only for purposes of an action against the Tribe as specifically authorized pursuant to this Section. Any action brought pursuant to this Section shall name the backer as the party defendant, and there shall be no separate cause of action existing against an agent, servant or employee of the Tribe, a tribal enterprise, or institution, when acting within the scope of their authority.

c. The tribal court is hereby authorized and shall have jurisdiction over all actions brought pursuant to this Section.

17 M.P.T.L. ch. 1 § 41

§ 41. Penalties

Any person found by the Commission to have violated any provision of this Code for which a specified penalty is not imposed, shall, for each offense, be fined not more than \$1,000 and may be referred to the State Department of Consumer Protection, Liquor Division.

17 M.P.T.L. ch. 1 § 42

§ 42. Recognition of State Permits and Licenses

The Commissioner may recognize a valid Connecticut state liquor permit as a tribal liquor permit upon review of the permit and the application submitted to the State Department of Consumer Protection, Liquor Division, provided that the type of permit sought is one provided for in this Code.

LEGISLATIVE HISTORY TO THE MASHANTUCKET PEQUOT LIQUOR CONTROL CODE

17 M.P.T.L. Leg. History

A. Regulation of the Sale or Dispensing of Alcohol at Mashantucket

1. Background

The state of Connecticut Department of Consumer Protection ("DCP") regulates the sale and distribution of alcoholic beverages within the gaming facilities located on the Reservation pursuant to the terms and conditions of the Final Mashantucket Pequot Gaming Procedures. 56 Fed. Reg. 24996 (May 31, 1991) (the "Gaming Procedures"). Prior to the opening of the Mashantucket Pequot Museum and Research Center ("MRC"), the Tribe informed the State of its intention to regulate the sale and distribution of alcohol on the Reservation in areas not covered by the Gaming Procedures. (A copy of the Tribe's letter discussing its intent to regulate is attached hereto as Attachment A.) The federal statutes and court decisions in this area indicate that the State maintains an interest in the regulation of liquor within Indian Country, concurrent with the interests of the Tribe. (see 18 U.S.C. § 1161, attached hereto as Attachment B and supporting case authority.) The DCP requested the Connecticut Attorney General to review the Tribe's request for recognition as the primary regulatory authority for the sale and distribution of alcoholic beverages in areas outside the gaming facilities. The Attorney General rendered an opinion concurring with the Tribe's position finding that the state of Connecticut is authorized by federal law to regulate the sale of alcohol in Indian country. (The Attorney General's opinion, which is attached as Attachment C, also covered the Mohegan Reservation.) The Tribe then applied for and received a provisional state liquor permit for the MRC.

The Tribal Council thereafter considered and adopted the Mashantucket Pequot Liquor Control Code (the "Code") 17 M.P.T.L. ch. 1, thus authorizing the Tribe to regulate the service of alcohol for all establishments on the Reservation excluding those governed by the Gaming Procedures. On January 20, 1999, the Tribe held a Referendum with the tribal membership on the issue of whether the Tribe should continue to permit the service of alcohol at the MRC. The tribal membership voted not to sell or distribute alcohol at the MRC and the application for a final liquor permit with the DCP subsequently was withdrawn.

2. Policy

The Tribe's primary purpose in enacting the Liquor Control Code is to further exercise the Tribe's inherent sovereign rights and to self-regulate wherever possible and prudent. Through this legislative action, the Tribal Council seeks to protect important tribal interests such as promoting self-government, encouraging self-sufficiency, accountability and economic development.

3. Content

The Code designates the Mashantucket Pequot Land Use Commission ("Commission") as the Tribe's regulating body for liquor control purposes. The Commission reports directly to the Tribal Council. It has the authority to grant or revoke a permit, hold hearings, impose fines, and conduct investigations in order to enforce the Code.

The Code differs from the State's liquor laws in that it allows for fairly limited types of liquor permits, such as a temporary permit for picnics and social gatherings, a nonprofit public museum permit, and for a charitable organization permit. The Code also defines requirements for the storage of alcohol, prohibits service to minors and intoxicated patrons, and delineates the days and hours when the sale of liquor is permitted. Violations of the Code are punishable by a fine, not to exceed \$1,000.

B. Jurisdiction of the Tribal Court

1. General

The Mashantucket Pequot Tribal Court has been established as a court of general jurisdiction over all causes of action except as may be limited by tribal or federal law. 1 M.P.T.L. ch. 1. The court's authority to hear specific types of claims and causes of action is defined by the jurisdictional grant in each enactment of tribal law. The court's authority to hear claims against the Tribe or an arm of the tribal government such as the Gaming Enterprise must be based on a clear and unequivocal waiver of the Tribe's immunity from suit, and such waiver must be strictly construed. Damages and other remedies that can be awarded against the Tribe also are defined by specific legislative enactments of the Tribal Council.

In adopting the Liquor Control Code, the Tribal Council granted the court jurisdiction to hear causes of action for persons who have sustained injuries to their person or property as a result of the service of alcohol to an intoxicated person on the Reservation.

2. Service of Alcohol to Intoxicated Persons

a. Cause of Action

Section 40 of the Code expressly provides a limited waiver of the Tribe's immunity from suit and creates a cause of action against the backer of an establishment who sells alcoholic liquor to an intoxicated person on the Reservation, if such purchaser, in consequence of such intoxication, thereafter injures the person or property of another. This legislation is meant to protect those innocent victims injured on or off the Reservation by an intoxicated person who was served alcohol by an establishment located on the Reservation. The maximum penalty under the Code is \$25,000.

b. Scope of Provision

Section 40 applies to any action that may be brought against the Tribe or the Gaming Enterprise as the backer of an establishment as defined in the Code, and to any action pending in the tribal court at the time of the Code's enactment against the Tribe, the Gaming Enterprise or agent or employee thereof, claiming liability based upon the service of alcohol. This Section of the Code, unlike the regulatory portions of the Code, applies to any service of alcoholic beverage on the Reservation, including service within the gaming facilities. In enacting the Code, the Tribal Council considered both pending cases and those filed in the past in which there were questionable tribal court remedies. The Council's concern for providing an appropriate and definite remedy within the tribal legal and judicial systems was an important factor in adopting this

particular provision. Therefore, the strict notice provisions in the law are not meant to apply to pending actions.