

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****The Pokagon Band of Potawatomi Indians of Michigan Liquor Control Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Liquor Control Ordinance of the Pokagon Band of Potawatomi Indians of Michigan (Tribe). The Ordinance regulates and controls the possession, sale and consumption of liquor within the Pokagon Band of Potawatomi Indians Reservation. This reservation is described as "all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and \* \* \* all lands \* \* \* part of the Tribe's reservation." This ordinance, however, applies only to the Tribe's reservation lands within the State of Michigan. This Ordinance allows for possession and sale of alcoholic beverages within the Pokagon Band of Potawatomi Indians Reservation, and increases the ability of the tribal government to control the Tribe's liquor distribution and possession. At the same time it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective on January 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** David Christensen, Regional Tribal Operations Officer, Bureau of Indian Affairs, Midwest Regional Office, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Telephone: (612) 725-4554, Fax 612-713-4401; or Ralph Gonzales, Office of Indian Services, 1849 C Street NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7629.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Pokagon Band of Potawatomi Indians Tribal Council adopted its Liquor Ordinance by Resolution No. 06-09-09-12 on September 9, 2006. The purpose of this Ordinance is to govern the sale, possession and distribution of

alcohol within Tribal lands. The Pokagon Band of Potawatomi Indians does not have an existing Liquor Control Ordinance.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Pokagon Band of Potawatomi Indians was duly adopted by the Pokagon Band of Potawatomi Indians Tribal Council on September 9, 2006.

Dated: January 12, 2007.

**Michael D. Olsen,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

The Pokagon Band of Potawatomi Indians of Michigan Liquor Control Ordinance reads as follows:

**Pokagon Band of Potawatomi Indians of Michigan and Indiana Liquor Control Code**

**Section 1 Legislative Findings.** The Pokagon Band Tribal Council hereby finds as follows:

(a) The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with an act duly adopted by the tribe having jurisdiction over such area of Indian country.

**Section 2 Declaration of Policy.**

(a) The Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation, and to promote temperance in the use and consumption of alcoholic liquor by establishing and enforcing Tribal regulation over such activities on the Reservation.

(b) The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation shall be lawful, provided that such activity is conducted by the Tribe or by an authorized Tribal enterprise, and is in conformity with this Code. Such conditions are

necessary to increase the Tribe's ability to control and regulate the distribution, sale, and possession of alcoholic liquor, while at the same time provide an important and necessary source of revenue for continued operation of the Tribal government and delivery of Tribal governmental services.

**Section 3 Authority.** The Council has authority to adopt this Liquor Control Code ("Code") pursuant to the authority and powers vested in it by Article IX, subsections 2 (a), 2 (e), 2 (i), and 2 (j), of the Tribal Constitution and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band. Further, the Supreme Court held in *United States v. Mazurie*, 419 U.S. 544 (1975), that Congress through 18 U.S.C. 1161 delegated to Indian tribes authority to control the introduction, distribution, and consumption of alcoholic liquor within Indian country.

**Section 4 Short Title.** This Code shall be known and cited as the "Pokagon Band Liquor Control Code."

**Section 5 Purpose.** The purpose of this Code is to prohibit the importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation except pursuant to a license issued by the Commission under the provisions of this Code and other Tribal laws.

**Section 6 Application of 18 U.S.C. 1161.** The importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation shall be "in conformity with" this Code and the laws of the State of Michigan as that phrase is used in 18 U.S.C. 1161.

**Section 7 Incorporation by Reference of Michigan Laws.**

(a) In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as Tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic liquor encompassing the following areas: Sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions, including such other laws prohibiting the sale of alcoholic liquor to certain categories of individuals. Said Tribal laws which are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State; provided, that nothing in this Code shall be construed as a consent by the Tribe to the jurisdiction of the State

of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Code nor shall anything in this Code constitute an express or implied waiver of the sovereign immunity of the Tribe.

(b) The Tribe, for resale by the Tribe, shall purchase spirits from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by similar licensees.

(c) In the event of any conflict or inconsistency between "adopted and applied" Michigan laws and this Code, the provisions of this Code shall govern.

(d) Whenever such Michigan laws are incorporated herein by reference, amendments thereto shall also be deemed to be incorporated upon their effective date in the State of Michigan without further action by the Council.

#### Section 8 General Provisions.

(a) *Sales Limited To Permitted Hours.* No alcoholic liquor shall be sold, served, or allowed to be consumed on any premises licensed under this Code other than during the hours permitted by Tribal law and the license.

(b) *Sale to Obviously Intoxicated Person.* It shall be a violation of this Code to sell or furnish for consumption on the licensed premises any alcoholic liquor to any person who is obviously intoxicated at the time. As used in this subsection, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

(c) *Distribution off premises.* No person licensed under this Code shall distribute or deliver any alcoholic liquor off the premises described in the license.

(d) *Sale or possession with intent to sell without a license.* Any person who shall sell or offer for sale or distribute or transport in any manner, any alcoholic liquor in violation of this Code, or who shall have alcoholic liquor in his possession with intent to sell or distribute on the Reservation without a license issued pursuant to this Code shall be guilty of a violation of this Code.

(e) *Purchases from other than licensed entities or premises.* Any person who, on the Reservation or within its boundaries, buys alcoholic liquor from any person other than a licensed entity

or premises shall be guilty of a violation of this Code.

(f) *Consumption or possession of alcoholic liquor by persons under 21 years of age.* No person under the age of 21 years shall consume or purchase any alcoholic liquor on the Reservation or within its boundaries. No person under the age of 21 years shall have for personal consumption any alcoholic liquor in his or her possession on the Reservation or within its boundaries. No person shall permit any other person under the age of 21 years to consume alcoholic liquor on his or her premises or any premises under his or her control except as expressly permitted under this Code. Upon any attempt to purchase alcoholic liquor on a premises licensed under this Code by a person who appears may be younger than twenty-one (21) years of age, the vendor shall demand, and the prospective purchaser upon such demand shall display, satisfactory evidence that he or she is of legal age. Any person violating this Section shall be guilty of a separate violation of this Code for each and every alcoholic liquor beverage consumed, acquired, or possessed.

(g) *Sales of Alcoholic Liquor to persons under 21 years of age.* It shall be a violation of this Code to sell or furnish any alcoholic liquor to a person unless that person has attained 21 years of age. Persons selling alcoholic liquor shall make a diligent inquiry as to whether the purchaser is at least 21 years of age. For purposes of this subsection, the term "diligent inquiry" means a diligent, good faith effort to determine the age of the purchaser, which includes at least an examination of such person's personal identification to establish the identity and age of the purchaser. Any person who shall sell or provide alcoholic liquor to any person under the age of 21 years shall be guilty of a violation of this Code for every sale or drink provided.

(h) *Transfer of identification to a minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be required for any finding of a violation of this Code.

(i) *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic liquor beverage through the use of a false or altered identification shall be guilty of violating this Code.

(j) *Acceptable Identification.* Where there may be a question of a person's right to purchase alcoholic liquor by

reason of his or her age, such person shall be required to present identification in one of the following forms that displays his or her correct age, signature and photograph:

(1) A driver's license or identification card issued by any state or U.S. territory;

(2) United States active duty military ID;

(3) A passport issued by the United States or any foreign country; or

(4) A Tribal identification card or other tribal identification card recognized by the Commission.

(k) *Sale of Adulterated or Mislabeled Liquor.* It shall be a violation of this Code for any person, by himself or by his agent or employee, to sell, offer for sale, or possess any alcoholic liquor that is adulterated or misbranded or any alcoholic liquor in bottles that have been refilled. For the purposes of this Section, alcoholic liquor shall be deemed adulterated if it contains any liquids or other ingredients not placed there by the original manufacturer or bottler. For the purposes of this Section, alcoholic liquor shall be deemed misbranded when not plainly labeled, marked or otherwise designated. For the purposes of this section, alcoholic liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

*Section 9 Administration of Code.* The Gaming Commission shall exercise all of the powers and accomplish all of the purposes as set forth in this Code, including the following actions:

(a) Adopt and enforce rules and regulations for the purpose of implementing and enforcing this Code, which includes the setting of fees, provided that the Gaming Commission shall provide a minimum public notice and opportunity to comment of sixty (60) days on any proposed rule or regulation before such rule or regulation becomes final and enforceable;

(b) Execute all necessary documents; and

(c) Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Code.

*Section 10 Applicability Within the Reservation.* This Code shall apply to all persons on or within the boundaries of the Reservation, consistent with applicable federal laws.

*Section 11 Definitions.* For the purposes of this Code, words in the present tense include the future; the masculine includes the feminine; the singular includes the plural; and the plural includes the singular. The word "shall" is mandatory and the word

“may” is permissive. In construing the provisions of this Code, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

(a) “Alcohol” means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(b) “Alcoholic liquor” or “liquor” means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing one half of one percent (½ of 1%) or more of alcohol by volume which is fit for use for beverage purposes. The following eight sub-classifications comprise the entire universe of alcoholic liquor: beer, wine, spirits, alcohol, sacramental wine, brandy, mixed wine drink, and mixed spirit drink. Alcoholic liquor does not include the exceptions set forth in Mich. Comp. Laws § 436.4.

(c) “Applicant” means any person who submits an application to the Tribe for a liquor license and who has not yet received such a license.

(d) “Beer” means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(e) “Brandy” means an alcoholic liquor as defined in the federal regulations, 27 CFR § 5.22(d) (1980).

(f) “Commission” and “Gaming Commission” as used throughout this Code means the Gaming Regulatory Committee first established by the Pokagon Gaming Regulatory Act, as amended, and any other Tribal commission, committee, board or other entity delegated authority by the Council to regulate Tribal gaming activities on the Reservation.

(g) “Constitution” and “Tribal Constitution,” as used throughout this Code, means the Constitution of the Pokagon Band of Potawatomi Indians of Michigan and Indiana, adopted on November 1, 2005 and approved by the Secretary of the Interior on December 16, 2005, including all subsequent amendments ratified and approved pursuant to Tribal and federal law.

(h) “Council” and “Tribal Council” means the elected Tribal Council of the Pokagon Band of Potawatomi Indians acting as the governing body of the Tribe pursuant to the Tribe’s Constitution.

(i) “License” means a liquor license issued by the Gaming Commission under the provisions of this Code

authorizing the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes on or within the Reservation consistent with federal law.

(j) “Licensee” means any holder of a liquor license issued by the Tribe and includes any employee or agent of the Licensee.

(k) “Manufacturer” means any person engaged in the manufacture of alcoholic liquor.

(l) “Mixed wine drink” means a drink or similar product marketed as a wine cooler and containing less than seven percent (7%) alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one (1) or more of the following: Nonalcoholic liquor; flavoring; coloring materials; fruit juices; fruit adjuncts; sugar; carbon dioxide; or preservatives.

(m) “Mixed spirit drink” means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an out-of-state seller of mixed spirit drink which contains ten percent (10%) or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic liquor or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.

(n) “Person” means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust estate, tribe, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and any other Indian tribe, band, or group, whether recognized by the United States or otherwise. The term shall also include any Tribal enterprise and licensee.

(o) “Purchase” means to acquire, by sale or otherwise, individual possession, ownership, or rights to goods or services.

(p) “Reservation” means: pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Tribe’s reservation. The term Reservation includes any rights-of-way running through the Reservation.

(q) “Secretary of the Interior” means the Secretary of the United States Department of the Interior.

(r) “Sacramental wine” means wine containing not more than twenty-four percent (24%) of alcohol by volume and is used for sacramental purposes.

(s) “Sale” means the exchange, barter, traffic, furnishing, or giving away for commercial purposes of possession, ownership, or rights to goods or services.

(t) “Spirits” means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than twenty-one percent (21%) by volume, except sacramental wine and mixed spirit drink.

(u) “Tribal Court” means the Tribal Court of the Pokagon Band of Potawatomi Indians.

(v) “Tribal enterprise” means the Tribe or any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe, where the organic documents establishing such enterprise expressly allow for the sale of alcoholic liquor.

(w) “Tribal law” means the Tribal Constitution and all laws, acts, codes, and resolutions now and hereafter duly enacted by the Tribal Council and any rules or regulations duly promulgated by the Gaming Commission pursuant to this Code.

(x) “Tribe” means, and “Tribal” refers to, the Pokagon Band of Potawatomi Indians of Michigan and Indiana.

(y) “Wine” means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than twenty-one percent (21%) of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

*Section 12 Interpretation and Findings.* The Gaming Commission in the first instance may interpret any ambiguities contained in this Code.

*Section 13 Liberal Construction.* The provisions of this Code shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

*Section 14 Computation of Time.* Unless otherwise provided in this Code, in computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For the purposes of this Code, the term “legal

holiday” shall mean all legal holidays under Tribal law.

*Section 15 Prohibition of Unlicensed Sale of Alcoholic Liquor.* This Code prohibits the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes other than where conducted by a Tribal enterprise in accordance with this Code. No license shall be issued to any person or entity other than a Tribal enterprise. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Code, and violators shall be subject to federal law. Consistent with *United States v. Wheeler*, 435 U.S. 313 (1978), nothing shall prevent both federal and Tribal jurisdiction to enforce this Code.

*Section 16 Sales of Alcoholic Liquor.*

(a) Sales for Cash. All alcoholic liquor sales on the Reservation or within its boundaries shall be on a cash or cash equivalent basis, including the use of ATM cards, debit cards, checks, major credit cards, or other instruments approved by the Gaming Commission.

(b) Sales for Personal Consumption. All alcoholic liquor sales shall be for the personal use and consumption by the purchaser. Resale of any alcoholic liquor purchased on the Reservation or within its boundaries is prohibited. Any person not licensed pursuant to this Code who purchases alcoholic liquor on the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Code.

*Section 17 Authorization to Sell Alcoholic Liquor.* Any Tribal enterprise applying for and obtaining a license under the provisions of this Code shall have the right to engage only in those alcoholic liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

*Section 18 Limitation of the Commission's Powers.* The Commission's powers under this Code shall be limited as follows:

(a) The Commission may only issue a license permitting the sale of alcoholic liquor on those areas of the Reservation where such activities have been authorized by the Tribal Council.

(b) In the exercise of its powers and duties under this Code, the Commission and its individual members shall not accept any gratuity, compensation, or other things of greater than nominal value from any alcoholic liquor producer, wholesaler, retailer, or distributor or from any liquor licensee provided that if other enactments of law by the Tribal Council provide more stringent ethics standards, such other standards shall apply.

*Section 19 Classes of Licenses.* The Commission shall have the authority to issue any one or more of the following classes of liquor licenses within the Reservation:

(a) “Retail on-sale general license” means a license authorizing the applicant to sell alcoholic liquor at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, without limitation, hotels where alcoholic liquor may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(b) “Retail on-sale beer and wine license” means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, without limitation, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(c) “Retail off-sale general license” means a license authorizing the applicant to sell alcoholic liquor at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(d) “Retail off-sale beer and wine license” means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(e) “Manufacturer's license” means a license authorizing the applicant to manufacture alcoholic liquor for the purpose of sale on the Reservation.

(f) “Temporary license” means a license authorizing the sale of alcoholic liquor on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. The Commission may, by appropriate Commission action, limit or restrict the number of licenses issued or in effect in its sole discretion.

*Section 20 Application Form and Content.* An application for a license shall be made to the Commission and shall contain the following information:

(a) The name and address of the licensee, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of alcoholic liquor;

(b) The specific area, location, and/or premise(s) sought to be licensed;

(c) The class of liquor license applied for (e.g., retail on-sale general license, etc.);

(d) Whether a state liquor license has been issued to the applicant;

(e) A sworn statement by the applicant to the effect that none of the

applicant's officers and directors, and employees with primary management responsibility related to the sale of alcoholic liquor were ever convicted of a felony under any law and have not violated and will not violate or cause or permit to be violated any of the provisions of this Code; and

(f) The application shall be verified under oath and notarized by a duly authorized representative.

*Section 21 Transfer of License.* Each license issued or renewed under this Code is separate and distinct and is transferable from one licensee to another and/or from one premises to another only with the approval of the Gaming Commission. The Commission shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. The transfer application shall contain all of the information required of an original applicant under Section 20 of this Code and shall be signed by both the licensee and transferee. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the alcoholic liquor is proposed to be sold.

*Section 22 Term and Renewal of License.* All licenses shall be issued on a calendar year basis and shall be renewed annually. The applicant shall renew a license by, prior to the license's expiration date, submitting a written renewal application to the Gaming Commission on the provided form, and paying the annual license fee for the next year.

*Section 23 Investigation.* Upon receipt of an application for the issuance, renewal, or transfer of a license, the Gaming Commission shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license. The Commission shall investigate all matters related to the eligibility of the applicant and the premises for a license under the requirements of this Code, including matters that may affect public health, safety, or welfare. The Commission shall specifically conclude whether the provisions of this Code have been complied with by the applicant and the premises.

*Section 24 Public Hearing.* Upon receipt of an application for issuance or transfer of a license, and the payment of all fees required under this Code, the Gaming Commission shall set the matter for a public hearing. A hearing shall not be required for a license renewal unless required by the Commission in its discretion based on information provided in the applicant's renewal application indicating that there has

been a material change in the applicant's ownership or control or based on other matters that may affect the applicant's continued eligibility for a license. Notice of the time and place of the hearing shall be given at least twenty (20) calendar days before the hearing to the applicant by United States mail, postage prepaid, at the address listed in the application or any other reasonable method adopted by the Commission. The Commission shall also provide notice to the public of the time, place, and purpose of the hearing by publication in a Tribal newspaper, a newspaper of general circulation sold on the Reservation, public posting or other reasonable method. The public notice shall include the name of the applicant, whether the action involves a new issuance, renewal, or transfer, the class of license applied for, and a general description of the area where the alcoholic liquor will be or has been sold. The hearing shall be conducted before the Gaming Commission under such rules of procedure as it may adopt. The Gaming Commission shall hear from any person who wishes to speak for or against the application, subject to such limitations as the Commission may issue in the course of the hearing regarding the length, relevance, or repetitiveness of each speaker's testimony.

**Section 25 Gaming Commission Action on the Application.** The Gaming Commission shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Commission shall have the authority to deny, approve, or approve the application with conditions. Upon approval of an application, the Commission shall issue a license to the applicant in a form to be approved from time to time by the Commission.

**Section 26 Denial of License, Renewal, or Transfer.** Solely for purposes of this Section and Section 25, "applicant" means licensee in the event of a renewal, and licensee and/or transferee in the event of a transfer. An application for a new license, license renewal, or license transfer may be denied for one or more of the following reasons:

- (a) The applicant has materially misrepresented facts contained in the application;
- (b) The applicant is presently not in compliance with Tribal or federal laws;
- (c) Granting of the license (or renewal or transfer thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;
- (d) The applicant has failed to complete the application properly or

has failed to tender the appropriate fee; or

(e) A plea, verdict, or judgment of guilty, or the plea of nolo contendere by an applicant's officer or director, or an employee with primary management responsibility related to the sale of alcoholic liquor, to any offense under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic liquor; or

(f) The applicant has a suspended or revoked state liquor license.

**Section 27 Temporary Denial.** If the application is denied solely on the basis of subsections 26(b) or 26(d), the Gaming Commission shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

**Section 28 Multiple Locations.** Each license shall be issued to a specific licensee. Separate licenses shall be issued for each of the premises of any business establishment having more than one address.

**Section 29 Posting of License.** Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

**Section 30 Suspension or Revocation of License.** Any one of the following actions or inactions by a licensee shall constitute grounds for the suspension or revocation of a license:

(a) Material misrepresentation of facts contained in any license application;

(b) Not in compliance with Tribal or federal laws;

(c) Failure to comply with any condition of the license, including failure to pay a required fee;

(d) A plea, verdict, or judgment of guilty, or a plea of nolo contendere entered against one of its officers or directors, or employees with primary management responsibility related to the sale of alcoholic liquor, to any offense under federal or state law prohibiting or regulating the sale, use, or possession, or giving away of alcoholic liquor;

(e) Failure to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Commission or its authorized representative; or

(f) Suspension or revocation of the licensee's state liquor license.

**Section 31 Initiation of Suspension or Revocation Proceedings.** Suspension or revocation proceedings are initiated by the Gaming Commission either:

(a) on the Commission's own initiative through adoption of a resolution that sets forth allegations that if substantiated, would provide grounds under this Code for the Commission to suspend or revoke the license(s); or

(b) based on a signed request by any person and filed with the Commission that alleges facts that would, if substantiated, provide grounds under this Code for the Commission to suspend or revoke the license(s).

The Gaming Commission shall cause the matter to be set for a hearing before the Commission on a date not later than thirty (30) days from the Commission's adoption of the resolution or its receipt of a request. Notice of the time, date, and place of the hearing shall be given the licensee and the public in the same manner as set forth in Section 24. The notice shall state that the licensee has the right to file a written response, verified under oath and signed by the licensee, five (5) days prior to the hearing date.

If the Gaming Commission determines that the grounds for suspension or revocation of a license are supported by reliable evidence and that such grounds pose a substantial risk of imminent harm to the health, welfare, or safety of the public, the Gaming Commission may immediately suspend such license provided that such emergency suspension may not exceed three (3) calendar days without a hearing.

**Section 32 Hearing.** The hearing shall be held before the Gaming Commission under such rules of procedure as it may adopt. Both the licensee and the person filing the request may present witnesses to testify and to present written documents in support of their positions to the Gaming Commission. The Gaming Commission may issue limitations in the course of the hearing regarding the length, relevance, or repetitiveness of each witness's testimony. The Gaming Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Gaming Commission shall be final.

**Section 33 Delivery of License.** A licensee, upon suspension or revocation of such license, shall promptly return the license to the Gaming Commission. In cases involving suspension, the Gaming Commission shall return the license to the licensee at the expiration or termination of the suspension period, with a memorandum of the suspension written or stamped upon the face thereof in red ink.

*Section 34 General Penalties.* Any person adjudged to be in violation of this Code, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil fine of not more than five hundred dollars (\$500.00) for each such violation. The Gaming Commission may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties that may be imposed under applicable law.

*Section 35 Initiation of Action.* Any violation of this Code shall constitute a public nuisance. The Gaming Commission, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court to abate and permanently enjoin any nuisance declared under this Code. Any action taken under this section shall be in addition to any other penalties provided for in this Code. The plaintiff shall not be required to give bond in this action.

*Section 36 Inspection.* Immediately upon the request of a law enforcement officer or a Commission investigator empowered to enforce this Code and the rules and regulations promulgated hereunder, a licensee shall make the licensed premises available for inspection and search during regular business hours or when the licensed premises are occupied by the licensee, including the licensee's employees and agents.

*Section 37 Contraband; Seizure; Forfeiture.*

(a) All alcoholic liquor within the Reservation held, owned, or possessed by any person or licensee operating in violation of this Code is hereby declared to be contraband and subject to forfeiture to the Tribe.

(b) Within three (3) weeks following the seizure of the contraband, a hearing shall be held by the Gaming Commission, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

(c) Notice of the hearing shall be given to the person from whom the property was seized, if known prior to hearing. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation.

The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

(d) If upon hearing, the evidence warrants, or if no person appears as a claimant, the Gaming Commission shall thereupon enter a determination of forfeiture and order such contraband sold or destroyed forthwith.

*Section 38 Disposition of Proceeds.* The gross proceeds collected by the Commission from licensing shall be distributed as follows:

(a) First, to the Commission for the payment of all necessary personnel, administrative costs, and legal fees for the administration of the provisions of this Code; and

(b) Second, to the Tribe any remainder.

*Section 39 Appeals.* Appeals under this Code may only be brought in the Pokagon Band Tribal Court by an applicant or a licensee to:

(a) challenge a final Gaming Commission decision to deny a license, to deny an application to renew or transfer a license, or to revoke a license; or

(b) to compel a Gaming Commission decision or action unreasonably delayed or unlawfully withheld more than sixty (60) days beyond any mandatory time limit established by law.

The Tribal Court shall hold unlawful and set aside any Gaming Commission decision it finds to be arbitrary, not in accordance with law, in excess of statutory authority, or unsupported by substantial evidence in the record. The Tribal Court shall give deference to the Gaming Commission's reasonable interpretations of this Code and any rules or regulations promulgated hereunder.

*Section 40 License Not a Property Right.* Notwithstanding any other provision of this Code, a liquor license is a mere permit for a fixed duration of time. A liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

*Section 41 Savings Clause.* In the event any provision of this Code shall be found or declared to be invalid by a court of competent jurisdiction, all of the remaining provisions of this Code shall be unaffected and shall remain in full force and effect.

*Section 42 Effective Date.* The effective date of this Code is the date that the Secretary of the Interior

publishes the same in the **Federal Register**.

*Section 43 Prior Inconsistent Acts.* Except as provided otherwise under applicable federal law, this Code shall be the exclusive Tribal law governing the introduction, distribution, sale and regulation of alcoholic liquor within the Reservation. This Code shall supersede any and all Tribal laws that are inconsistent with the provisions of this Code, and such laws are hereby rescinded and repealed.

*Section 44 Sovereign Immunity Preserved.*

(a) The Tribe, and all of its constituent parts, which includes but is not limited to Tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribe.

(b) Nothing in this Code, and no enforcement action taken pursuant to this Code or otherwise, including without limitation the filing of suit by the Gaming Commission to enforce any provision of this Code or other Tribal law, shall constitute a waiver of such sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

#### Legislative History

Liquor Control Code, enacted September 9, 2006 by Res. No. 06-09-09-12 and certified by the Secretary of the Interior and published on \_\_\_\_\_ ( Fed.Reg.) \_\_\_\_\_.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Advisory Board for Exceptional Children

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education is announcing that the Advisory Board for Exceptional Children will hold its next meeting in Washington, DC. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) on Indian children with disabilities.