

TRIBAL CODE

CHAPTER 41:

LIQUOR CONTROL ORDINANCE

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HISTORY NOTE:

Current Ordinance:

Resolution 4-15-85, adopted April 15, 1985. Approved by the Secretary of the Interior August 12, 1985. Published in the Federal Register August 27, 1985, 50 Fed. Reg. 34761. Effective date: August 27, 1985.

Reenacted in Tribal Code format as part of the Tribal Code July 5, 1995, Resolution No. 95-89, effective immediately.

Amendments:

Tribal Resolution 2000-71, adopted May 2, 2000 adds §41.405 prohibiting the giving away of liquor.

Tribal Resolution 11-25-85A, adopted November 25, 1985, made a host of technical amendments to correct errors in the text and set license fees under §41.401. The license fees took effect by virtue of §41.901. The file does not contain any indication that the Secretary of the Interior ever approved the other amendments.

TRIBAL CODE

CHAPTER 41:

LIQUOR CONTROL ORDINANCE

SUBCHAPTER I: GENERAL PROVISIONS

41.101 Title.

This ordinance shall be known as the Sault Ste. Marie Tribal Liquor Control Ordinance, Tribal Code Chapter 41.

41.102 Authority.

This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. §1161), which provides that federal Indian liquor laws shall be inapplicable to any act of transaction provided such act or transaction is in conformity both with the laws of the state in which such act or transaction occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior and published in the Federal Register.

41.103 Purpose.

The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Tribe's reservation. The enactment of this Tribal ordinance governing liquor possession and sales on the reservation will increase the ability of the Tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of Tribal government and the delivery of Tribal governmental services.

41.104 Effective Date.

This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the Federal Register.

41.105 Abrogation and Greater Restrictions.

Where the ordinance imposes greater restrictions than those contained in other Tribal ordinances controlling the possession and sale of liquor, the provisions of this ordinance shall govern.

41.106 Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation or repeal of any other Tribal power or authority.

41.107 Severability and Non-Liability.

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. There is no liability on the part of the Tribe, its agencies or employees, for damages that may occur as a result of reliance upon, and conformance with this ordinance.

41.108 Repealer.

(1) The Liquor Control Ordinance adopted by Tribal Resolution 4-15-85 and published in the Federal Register on August 27, 1985, 50 Fed. Reg. 34761, and all amendments to the ordinance, are hereby repealed.

(2) All other ordinances or parts of ordinances of the Tribe inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are hereby repealed.

41.109 Relation to Other Laws.

All acts and transactions under this ordinance shall be in conformity with this ordinance and in conformity with the laws of the State of Michigan as that term is used in 18 U.S.C. §1161.

41.110 Violation.

The introduction, purchase, sale or dealing in liquor, other than when done pursuant to license under this ordinance, is prohibited and is a violation of Tribal law. The federal Indian liquor laws are intended to remain applicable to any act or transaction which is not

authorized by this ordinance. Violations of this ordinance by any person shall be subject to federal prosecution as well as to legal action in accordance with Tribal law.

41.111 Tribal Authority.

This ordinance is adopted pursuant to the authority contained in Article VII, Section 1(g) of the Tribal Constitution.

41.112 Sovereign Immunity.

Nothing in this ordinance is intended nor shall be construed as a waiver of sovereign immunity of the Tribe. No employee or agent of the Tribe shall be authorized nor shall he or she attempt to waive the immunity of the Tribe.

41.113 Regulations.

The Board of Directors shall have the authority to adopt and enforce rules and regulations to implement this ordinance and further its purposes. This section grants the Board of Directors the authority to revise license fees when necessary.

41.114 Amendment.

This ordinance may be amended by a majority vote of the Board of Directors and approval by the Secretary of the Interior.

SUBCHAPTER II: DEFINITIONS

41.201 General Definitions.

For the purposes of this ordinance, the definitions set forth in §41.202 shall be used. 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.

41.202 Specific Words and Phrases.

(1) "Beer" means any beverage obtained by the alcoholic fermentation or an infusion or decoction of pure hops, or pure extract hops and pure barley malt or other wholesome grain or cereal in pure water, including ale, stout, and porter.

(2) "Board of Directors" means the governing body of the Tribe elected pursuant to the Tribal Constitution.

(3) "Class A Retailer License" means the granting of authority to sell beer or wine only to be consumed on the premises where sold.

(4) "Class B Retailer License" means the granting of authority to sell beer or wine only to be consumed away from the premises where sold.

(5) "Class A Retail Intoxicating Liquor License" means the granting of authority to sell, deal and traffic in intoxicating liquors only in original packages or containers and to be consumed off the premises so licensed.

(6) "Class B Retail Intoxicating Liquor License" means the granting of authority to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and not in the original package or container.

(7) "Intoxicating Liquor" means all ardent, spirituous, distilled, or vinous liquids, or compounds, whether medicated, proprietary, patented or not and by whatever name called, containing one-half percent or more alcohol by volume, which are fit for use for beverage purposes, but shall not include beer or wine.

(8) "Package" means the original container or receptacle used for holding intoxicating liquor, beer or wine.

(9) "Reservation" includes all land held in trust for the Tribe by the United States.

(10) "Sale" or "Sell" includes the exchange, barter, traffic, donation, with or without consideration in addition to the selling, supplying or distributing, by any means whatsoever, of intoxicating liquor, beer or wine by any person to any person or corporation; and also includes a sale or selling within an area of Tribal jurisdiction to a foreign consignee or his agent.

(11) "Temporary License" means a license for a term of no more than seven (7) days of any of the types defined in subs. (3) through (6).

(12) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

(13) "Wine" means any alcoholic beverage obtained by fermentation or fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, or to which any

saccharin substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

SUBCHAPTER III: LIQUOR LICENSES AND FEES

41.301 Liquor Licenses and Fees.

(1) The Board of Directors may issue to an applicant any one or combination of the following licenses: Class A Retailer License; Class B Retailer License; Class A Retail Intoxicating Liquor License; Class B Retail Intoxicating Liquor License; or a Temporary License of any of the above types.

(2) The fee for any license shall be Twenty-Five Dollars (\$25.00) per license, or such other amount as may be set by the Board of Directors pursuant to §41.113.

41.302 Issuance.

(1) The Board of Directors shall, in its discretion, determine how many liquor license it shall issue or have outstanding in any one year.

(2) Application for all licenses shall be submitted in the prescribed form to the Board of Directors or its authorized employees. The Board of Directors shall designate a committee to review and recommend to the Board of Directors whether a license shall be issued.

(3) At a minimum, the application for any liquor license authorized by this ordinance must be in writing, setting forth the following information:

- (a) applicant's name, address, age and Tribal affiliation (if any);
- (b) type(s) of license(s) desired;
- (c) a legal description of the land where the licensed activity will take place;
- (d) prior liquor license held;
- (e) prior felony convictions; and
- (f) owner of land and premises where the licensed activity will take place.

(4) An application for a liquor license must be accompanied by a nonreturnable application fee of \$25.00. There shall be no application fee for a temporary license.

(5) The Board of Directors has complete discretion in the granting or denial of all licenses.

(6) All new license requests will be acted upon by the Board of Directors within forty-five (45) days from the time when the application and fee were submitted to the Board of Directors.

(7) For purposes of considering an application for a license under this ordinance, the Board of Directors may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises.

(8) Every license shall be issued in the name of the applicant and no license shall be transferable, nor shall the holder thereof allow any other person to use the license or permit.

(9) Every licensee shall post and keep its license in a conspicuous place on the premises.

41.303 Inspection.

(1) All licensed premises used in the storage or sale of intoxicating liquor, beer or wine, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business shall at all times be open to inspection by any Tribal or federal inspector or Tribal or federal police officer.

(2) Every person, being on such premises and having charge thereof, who refuses or fails to admit a Tribal or federal inspector or Tribal or federal police officer demanding to enter therein in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such inspector or officer, shall thereby be deemed to have violated this ordinance.

41.304 Suspension and Cancellation.

(1) The Board of Directors may, for violation of this ordinance, issue a suspension or cancellation order as provided in this section of any license issued pursuant to this ordinance, and upon issuance of such order all rights of the licensee to keep or sell thereunder shall be suspended or terminated, as the case may be.

(2) At least ten (10) days prior to the effective date of the order to cancel or suspend, the Board of Directors shall provide written notice of such cancellation or suspension by certified mail, return receipt requested, to the licensee at the address shown on the

application. A licensee who receives a written notice of suspension or cancellation shall have the right prior to the suspension or cancellation date to request a hearing by the Board of Directors by sending written notice by certified mail with return receipt to the Tribal Chairperson at the Tribal office at 206 Greenough Street, Sault Ste. Marie, Michigan 49783, within the ten (10) day period before the effective date of the order. Upon receipt of the request for hearing, the Board of Directors shall not suspend or cancel the license pending the completion of the hearing. The Tribal Chairperson shall set a date for the hearing, which shall be held within thirty (30) days of the licensee's request for a hearing. The Board of Directors may affirm or revise in whole or in part its decision to cancel or suspend the license or permit after the hearing, and its decision shall be final.

(3) Upon suspension or cancellation of a license, the licensee shall forthwith deliver the license to the Board of Directors and cease all activities formerly conducted pursuant to the terms of the license. Where the license has been suspended, the Board of Directors shall return the license to the licensee at the expiration or termination of the period of suspension.

(4) Licenses may be suspended by the Board of Directors for a period of not to exceed sixty (60) days.

(5) The Board of Directors may reject any application for license renewal for any violation of this ordinance resulting in a suspension or revocation of any license.

41.305 Expiration of Licenses.

Unless sooner cancelled, every license issued by the Board of Directors shall expire on midnight on the 31st of each December.

41.306 Renewal.

(1) Applications for license renewals for the next calendar year must be submitted to the Board of Directors on or before November 15 of the preceding year. Applications for renewals shall contain the same information required for new licenses. The Board of Directors shall act on all renewal applications on or before December 15.

(2) The Board of Directors shall not be liable for any losses incurred by the licensee resulting from cancellation, suspension or non-renewal of a license.

SUBCHAPTER IV: ILLEGAL ACTIVITIES

41.401 Hours of Sale.

State laws relative to the hours during which sales are permitted shall apply to all establishments licensed under this ordinance.

41.402 Sale to Intoxicated Persons.

All sales shall be prohibited to any person known or believed to be intoxicated.

41.403 Age of Purchaser.

All sales shall be prohibited to any person under the age of twenty-one (21). All sales shall be prohibited to individuals known or believed to be purchasing on behalf of any person under the age of twenty-one (21). Any person may be required to present a Michigan identification card which shows the person's correct age and bears the holder's signature.

41.404 Sale Without License.

Where a liquor license is required by this ordinance, all sales of intoxicating liquor, beer or wine within the reservation without a license issued pursuant to this ordinance are illegal and prohibited.

41.405 Giving Away.

The giving away of intoxicating liquor, beer or wine in connection with a business operated within the reservation, except manufactures for consumption on the premises only, is prohibited.

SUBCHAPTER V: REMEDIES AND ENFORCEMENT

41.501 Contraband - Seizure and Forfeiture.

All intoxicating liquor, beer or wine within the reservation held, owned, or possessed by a person who is operating in violation of any provision of this ordinance is hereby declared to be contraband. The Board of Directors may issue a request to proper federal authorities for enforcement of federal liquor laws, including the seizure of contraband intoxicating liquor, beer or wine.

41.502 Civil Remedial Fine.

Any person found to have violated this ordinance or any lawful rule or regulations made under the authority of §41.113 shall be liable for a civil remedial fine not to exceed five hundred dollars (\$500.00).

41.503 Concurrent Jurisdiction.

Consistent with United States v. Wheeler, 435 U.S. 313 (1978), nothing shall prevent both federal and Tribal jurisdiction to enforce this ordinance.

41.504 Jurisdiction over Non-Indians.

Nothing in this ordinance shall be construed to exercise Tribal criminal jurisdiction over non-Indians to an extent inconsistent with the decision in Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).