

LIQUOR CONTROL ORDINANCE

Ordinance # 98-400-02

Section 1. General Provisions.

1.01. *Title.* This Ordinance shall be known as the “Little River Band of Ottawa Indians Liquor Control Ordinance.”

1.02. *Purpose.* The purpose of this Ordinance is to regulate and control the importation, manufacture, distribution, and sale of alcoholic beverages on the Little River Band of Ottawa Indians Reservation.

1.03. *Legislative Findings.* The Little River Band of Ottawa Indians Tribal Council hereby finds as follows:

a. The Tribal Council has the authority to adopt this Ordinance pursuant to the powers vested in it by Article IV, Section 7 of the Constitution, approved on July 10, 1998.

b. Federal law prohibits the introduction and sale of liquor into Indian country unless such 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.

c. The regulation and control of alcoholic beverages on the Tribe’s Reservation is necessary to protect the health, security and general welfare of the Tribe.

d. The enactment of this Ordinance is an exercise of the inherent sovereign powers of the Tribe.

1.04. *Declaration of Policy.* The importation, distribution, manufacture, and sale of alcoholic beverages on the Tribe’s Reservation shall be lawful, provided that such activity is licensed by the Tribe in accordance with this Ordinance and the laws of the State of Michigan relating to the sale and regulation of alcoholic beverages.

1.05. *Application of 18 U.S.C. § 1161.* The importation, distribution, manufacture, and sale of alcoholic beverages on the Tribe’s Reservation shall be “in conformity with” this Ordinance and the laws of the State of Michigan as that phrase is used in 18 U.S.C. § 1161.

1.06. *Incorporation of Michigan Laws by Reference.*

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 beverages 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 beverages to certain categories of individuals. The tribal laws that 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.

b. In the event any provision of this ordinance is in conflict with the substantive provisions of Michigan law adopted and applied pursuant to this Ordinance, the terms of this Ordinance shall govern.

c. Whenever such Michigan laws are incorporated herein by reference, amendments thereto shall also be deemed to be incorporated upon their effective adoption by the Tribe or the Tribal Council.

d. Nothing in this Ordinance 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 Ordinance nor shall anything in this Ordinance constitute an express or implied waiver of the sovereign immunity of the Tribe.

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

1.08. *Effective Date.* The effective date of this Ordinance is the date the Secretary of the Interior publishes the same in the Federal Register.

Section 2. Terms Defined.

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

- 2.01. "*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.
- 2.02. "*Alcoholic beverage*" or "*Liquor*" means and spirituous, vinous, malt, or fermented liquid and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume which is fit for use for beverage purposes. Alcoholic beverage or Liquor includes the following eight subclassifications: beer, wine, spirits, alcohol, sacramental wine, brandy, mixed wine drink, and mixed spirit drink. Alcoholic beverage or liquor does not include the exceptions set forth in Mich. Comp. Laws §436.4 (Mich.St. Ann. §18.974).
- 2.03. "*Applicant*" means any person who submits an application to the Tribe for a liquor license or who applies for or requests a license required by this Ordinance.
- 2.04. "*Beer*" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.
- 2.05. "*Constitution*" means the Constitution of the Little River Band of Ottawa Indians ratified by the members of the Tribe on May 27, 1998, and approved by the Deputy Commissioner of Indian Affairs on July 10, 1998.
- 2.06. "*Council*" or "*Tribal Council*" means the elected Tribal Council of the Little River Band of Ottawa Indians.
- 2.07. "*License*" means a liquor license issued by the Tribal Council pursuant to this Ordinance.
- 2.08. "*Licensee*" means any holder of a valid liquor license issued by the Tribal Council.
- 2.09. "*Manufacturer*" means any person engaged in the manufacture of alcoholic beverages.
- 2.10. "*Ogema*" or "*Tribal Ogema*" means the chief executive officer of the Tribe elected by majority vote of the members of the Tribe or the person authorized to perform the duties of the Ogema in his/her absence.
- 2.11. "*Person*" means an individual, receiver, assignee, trustee in bankruptcy, trust, estate, tribe, firm, partnership, joint venture, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise.
- 2.12. "*Reservation*" means
 - (i) all lands acquired by the Secretary of the Interior in trust for the benefit of the Tribe;
 - (ii) upon the proclamation of the reservation, all lands within the exterior boundaries of the Tribe's reservation; and
 - (iii) and any all lands made part of the reservation in the future.
- 2.13. "*Sacramental wine*" means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.
- 2.14. "*Sale*" means the exchange, barter, traffic, furnishing, or giving away for commercial purposes any alcoholic beverages.
- 2.15. "*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 21% by volume, except sacramental wine and mixed spirit drink.
- 2.16. "*Tribal Court*" means the Tribal Court of the Little River Band of Ottawa Indians.
- 2.17. "*Tribal Enterprise*" means any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe.
- 2.18. "*Tribal law*" means the Tribal Constitution and all laws, ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribal Council.
- 2.19. "*Tribe*" means, and "*tribal*" refers to, the Little River Band of Ottawa Indians.
- 2.20. "*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 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

Section 3.Licenses.

3.01. *Licensing Authority of Tribal Council.* The Council shall exercise all of the powers necessary to accomplish the purposes of this Ordinance, which may include the following actions:

- a. adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes setting of fees;
- b. execute all necessary documents;
- c. perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance;
- d. establish a commission and delegate to such commission the authority to regulate licensees and enforce this Ordinance; and
- e. to establish procedures to issue, suspend, revoke or transfer licenses under this Ordinance.

3.02. *Prohibition of Unlicensed Sale of Liquor.* This Ordinance prohibits the importation, manufacture, distribution, or sale of liquor for commercial purposes other than where conducted by a person licensed in accordance with this Ordinance. The federal laws relating to the importation, manufacture, distribution and sale of liquor are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to federal law.

3.03. *Purchases only from State licensed Distributors.* All persons shall purchase spirits, for resale by the person, from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, on the same basis that such beverages are purchased by similar licensees.

3.04. *Authorization to Sell Liquor.* Any person applying for and obtaining a license under the provisions of this Ordinance 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.

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

- a. “*Retail on-site general license*” means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where alcoholic beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.
- b. “*Retail on-site 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 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-site general license*” means a license authorizing the applicant to sell alcoholic beverages 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-site 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 beverages 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.

3.06. *Responsibility to Complete Application and Obtain License.* Except in the case of an application for a temporary license, the owner of the premises on which liquor is or will be imported, manufactured,

distributed, or sold for commercial purposes shall complete a License application and obtain a License for the premises as required by Section 3.05. If the Tribe or a tribal enterprise is the owner of the premises on which liquor is or will be imported, manufactured, distributed, or sold for commercial purposes, the manager or general manager of the premises shall file an application on behalf of the Tribe or tribal enterprise for a license under Section 3.07. In the case of a Temporary License, the person(s) organizing or sponsoring the event for which a Temporary license is required shall complete the License application.

3.07. *Application Form and Content.* An application for a license shall be made to the Council for consideration at a Regular Meeting of the Tribal Council 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) for which the license is applied for;
- c. The class of license under Section 3.05 applied for;
- d. Whether the applicant has a state liquor license;
- e. The application shall be verified under oath and notarized by a duly authorized representative.

3.08. *Investigation.* Upon receipt of an application for the issuance, renewal, or transfer of a license, the Tribal Council shall make an investigation to determine whether the applicant and the premises for which a license is applied for, qualify for a license, shall ensure that the applicant and premises are in compliance with this Ordinance, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

3.09. *Public Hearing.* Upon receipt of an application for issuance, renewal, or transfer of a license, and the payment of all fees if required by regulations promulgated under Section 3.01(a), the Tribal Council may issue a license or set the matter for a public hearing at a Special Meeting of the Tribal Council. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by United States mail, postage prepaid, at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance, renewal, or transfer, the class of license applied for under Section 3.05, and a general description of the area where the alcoholic beverage will be or has been sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and to limit or prohibit repetitive testimony.

3.10. *Tribal Council Action on the Application.* The Tribal Council shall act on the application within sixty (60) days of receipt of the application or within sixty (60) days of the conclusion of the public hearing if one is held pursuant to Section 3.09. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Provided, however, that the Tribal Council shall afford an applicant a hearing on the application before denying or approving with conditions any application. Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by Tribal Council resolution.

3.11. *Denial of License, Renewal, or Transfer.* An application for a license, license renewal, or license transfer may be denied for one or more of the following reasons:

- a. The applicant has knowingly and materially misrepresented facts contained in the application;
- b. The applicant (or premises) is not in compliance with tribal or applicable federal or state 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. If the applicant (or premise) is not in compliance with or does not meet the requirements of

Michigan law incorporated as tribal law pursuant to this Ordinance.

3.12. *Multiple Locations.* Separate licenses shall be issued for each of the premises at which liquor is imported, distributed, manufactured or sold.

3.13. *Posting of License.* Every license shall be posted and kept in a conspicuous place(s) on the licensed premises.

3.14. *Transfer of License.* Each license issued or renewed under this Ordinance is separate and distinct and is transferable from one licensee to another or from one premises to another only with the approval of the Tribal Council. The Tribal Council 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 3.07 of this Ordinance. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the liquor is proposed to be sold.

3.15. *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 Tribal Council on the provided form, and paying the annual license fee for the next year. License renewals may be issued without a hearing.

3.16. *Consent to Tribal Jurisdiction.* Anyone who imports, manufactures, distributes, or sells liquor for commercial purposes on the Tribe's Reservation, and anyone who submits an application for a license, shall be deemed to have consented to the jurisdiction of the Tribe and the Tribal Court.

Section 4. License Suspension and Revocation; Inspections; Seizure.

4.01. *Suspension or Revocation of License.* Whenever it is brought to the attention of the Tribal Ogema, Tribal Council, or any other person, that a licensee (or licensed premises), through action or inaction:

- a. has knowingly and materially misrepresented facts contained in any license application;
- b. is not in compliance with tribal or applicable state and federal laws;
- c. failed to comply with any condition of a license, including failure to pay a required fee;
- d. failed 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 issued by the Tribal Council or its authorized representative; or
- e. if applicable, suspension or revocation of the licensee's Michigan liquor license, proceedings to suspend or revoke a licensee's Tribal license may be initiated in accordance with this Section.

4.02. *Initiation of Suspension or Revocation Proceedings.*

(a) *Persons or Entities Authorized to Initiate Proceedings.* Suspension or revocation proceedings for any license held by a gaming operation may be initiated by the Tribal Gaming Commission by filing a complaint with the Tribal Council. All other suspension or revocation proceedings may be initiated by the Tribal Ogema or his/her designee, or by any person who files a complaint with the Tribal Council Recorder.

(b) *Interim Hearings Commission.* Until such time as the Tribal Council creates a regulatory commission vested with authority to adjudicate alleged violations of this Ordinance, suspension, revocation and other enforcement proceedings shall be heard by a Hearings Commission consisting of the Tribal Council Speaker, the Council Recorder, and one (1) other member of the Tribal Council.

(c) *Form of Complaint.* All complaints shall be in writing and signed by the complainant. The complaint shall state facts showing that there are specific grounds under this Ordinance which would authorize the suspension or revocation of the license(s). If the complaint does not state such grounds, the Hearings Commission shall dismiss the complaint and duly notify the complainant and the licensee.

(d) *Notice of Hearing.* If the complaint states such grounds, the Council Recorder shall cause the matter to be set for a hearing before the Hearings Commission on a date no later than thirty (30) days

from the Tribal Council's receipt of the complaint. 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 3.09. The notice shall state that the licensee has the right to file a written response to the complaint or resolution, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

4.03. *Hearing.* A hearing held on any complaint shall be held before the Hearings Commission under such rules of procedure as it may adopt. Both the licensee and the complainant shall have the right to present witnesses, testify, and present written documents in support of their positions to the Hearings Commission at such hearing. The Hearings Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Hearings Commission shall be final, unless appealed pursuant to Section 5.03.

4.04. *Delivery of License.* Upon suspension or revocation of a license, the owner of the premise shall return the license to the Recorder of the Tribal Council. In cases involving suspension, the Tribal Council shall return the license to the owner of the premise at the expiration or termination of the suspension period.

4.05. *General Penalties.* Any person adjudged to be in violation of this Ordinance, 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 Tribal Council 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 of the Tribe, its members and those on Reservation lands. The penalties provided for herein shall be in addition to any criminal penalties which may be imposed under applicable law. Each calendar day during which a violation occurs shall be deemed a separate violation.

4.06. *Initiation of Action.* The Tribal Ogema or Tribal Council, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any violation of this Ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

4.07. *Inspection.* All licensed premises or any parts used or in any way connected physically or otherwise with the licensed premise, and any premise whether licensed or not used in the importation, distribution, manufacture or sale of liquor shall at all times be opened to inspection by any tribal inspector appointed by the Tribal Ogema. Any licensed premises operated by a person holding a gaming license shall be open to inspection by the Tribal Gaming Commission or any inspector acting on behalf of the Gaming Commission.

4.08. *Contraband; Seizure; Forfeiture.*

a. All alcoholic beverages within the Reservation that are stored, held, owned, or possessed by any person, or licensee operating in violation of this Ordinance, are hereby declared to be contraband and subject to forfeiture to the Tribe.

b. Within thirty (30) calendar days following the seizure of the contraband, a hearing shall be held before the Tribal Court, at which time the licensee or owner of the premises or contraband shall be given an opportunity to present evidence.

c. Notice of the hearing shall be given to the persons identified in Section 4.08(b) or the person from whom the property was seized, if known, ten (10) calendar days 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 Tribal Court shall thereupon enter a determination of forfeiture and order such contraband forfeited to the Tribe and sold or destroyed forthwith.

Section 5. Sovereign Immunity; Appeals.

5.01. *Sovereign Immunity.*

a. The Tribe, and all of its instrumentalities, including, but not limited to tribal enterprises, subordinate organizations, boards, committees, officers, attorneys 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. Except as provided in Section 5.02, nothing in this Ordinance, and no enforcement action taken pursuant to this Ordinance or otherwise, including but not limited to, the holding of any hearing, the grant, denial, suspension, modification, conditioning or revocation of any license, the filing of suit by the Tribal Ogema or Tribal Council to enforce any provision of this Ordinance or other law, shall constitute a waiver of such immunity, either as to the original action, any counterclaim, regardless of whether an asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

5.02. *Limited Waiver of Sovereign Immunity of the Tribe.* The Tribe hereby expressly waives its sovereign immunity from suit in the Tribal Court for the limited purpose of an appeal of any decision of the Tribal Council to grant, deny, modify, or condition a license or of the Tribal Council Hearings Commission to suspend or revoke a license or to impose fines. Nothing contained in this section or this Ordinance or in any express waiver of sovereign immunity by resolution of the Tribal Council relating to the regulation of alcoholic beverages shall be deemed a consent to levy of any judgment, lien or attachment upon any property or revenues of the Tribe.

5.03. *Appeal to Tribal Court.* A person directly affected by any grant, denial, suspension, modification, conditioning or revocation of any license or imposition of fines under this Ordinance, shall have the right to appeal such decision to the Tribal Court. Any such appeal must be filed with the Tribal Court in writing on or before the thirtieth (30th) day following the decision of the Tribal Council or Tribal Ogema, as the case may be. In any case which has been appealed to the Tribal Court for final action, the Tribal Court shall review all findings of fact and of law of the Hearings Commission on the record and pursuant to an “arbitrary and capricious” standard and shall have power to affirm, modify or reverse the decision. Pursuant to Section 5.02, the Tribal Court may only grant injunctive relief and may not grant damages against the Tribe. The Tribal Court’s decision shall be final, and no further appeal may be had.