

TRIBAL CODE  
CHAPTER 40  
LIQUOR CONTROL ORDINANCE

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HISTORY NOTE:

Current Ordinance:

Adopted and placed for referendum August 12, 1985, Resolution No. 266(85). Enacted by referendum vote August 29, 1985. Approved by the Secretary of the Interior October 21, 1985. Published in the Federal Register September 25, 1986, 51 F.R. 34144 ff. Effective September 25, 1986.

Prior Ordinances:

Approval of liquor sales on the reservation under 18 U.S.C. s. 1154-1156 was voted down several times by the Tribal Council. See, e.g., minutes of March 12, 1956.

On October 7, 1969, the membership by referendum vote authorized the adoption of an ordinance authorizing the sale of liquor on the reservation.

Liquor sale was first authorized, under tribal licensing, on June 28, 1971, Resolution No. 48(71), published in the Federal Register January 31, 1974, 39 F.R. 3976, repealed by the successor ordinance in 1982.

A new ordinance more comprehensively regulating liquor sales was placed for referendum on June 14, 1982, Resolution No. 173 (82). It was approved by referendum vote on July 19, 1982, and adopted August 16, 1982, Resolution No. 266(82). This ordinance was repealed by the current ordinance.

Other:

Liquor regulation is carried out under the ordinance jointly with the Town of Lac du Flambeau under a Memorandum of Understanding executed August 15, 1985, and authorized August 12, 1985, Resolution No. 266(85). The Memorandum of Understanding was published in the Federal Register on September 25, 1986 along with the ordinance, 51 F. R. 34148.

TRIBAL CODE

CHAPTER 40

LIQUOR CONTROL ORDINANCE

CHAPTER I: INTRODUCTION

40.101 Title.

This ordinance shall be known as the “Lac du Flambeau Tribal Liquor Control Ordinance.”

40.102 Authority.

This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. s. 1161) and Article VI, Sections 1(a), (c), (i), (n), (t) and (u) of the Tribal Constitution.

40.103 Purpose.

The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Lac du Flambeau Indian Reservation. The enactment of a tribal ordinance governing liquor possession and sale 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 government services.

40.104 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.

40.105 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.

40.106 Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other tribal power or authority. In the event that this ordinance is silent on some aspect of liquor regulation, the laws of the State of Wisconsin may be looked to as a guide to the interpretation of this ordinance.

#### 40.107 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. The Tribe asserts that there is no liability on the part of the Lac du Flambeau Band of Lake Superior Chippewa Indians, its agencies or employees for damages that may occur as a result of reliance upon or conformance with this ordinance.

#### 40.108 Repealer.

Resolution and Ordinance No. 266(82) are hereby repealed. 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.

#### 40.109 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 Wisconsin as that term is used in 18 U.S.C. s. 1161.

#### 40.110 Sovereign Immunity.

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

### CHAPTER II: DEFINITIONS

#### 40.201 General Definitions.

For the purposes of this ordinance, the following definitions shall be used. Words used in present tense include the future; the singular includes the plural; and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive.

- (1) "Council" means the Lac du Flambeau Tribal Council.

(2) "Fermented Malt Beverage" means any beverage made by the alcoholic fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing one-half percent or more of alcohol by volume.

(3) "Intoxicating Liquor" means all ardent, spiritous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented or not and by whatever name called containing one-half of one percent or more alcohol by volume, which are fit beverages, but shall not include "fermented malt beverages" which contain less than 5 percentum of alcohol by weight.

(4) "License" means an authorization to sell fermented malt beverages or intoxicating liquors or both issued by the Council.

(5) "Package" means the original container or receptacle used for holding intoxicating liquors or fermented malt beverages.

(6) "Premises" means the area described in a license.

(7) "Reservation" means the area within the exterior boundaries of the Lac du Flambeau Indian Reservation.

(8) "Retailer" means any person who sells, or offers for sale, any fermented malt beverages or intoxicating liquors to any person other than a person holding a license under this ordinance.

(9) "Sale" or "Sell" include the exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of intoxicating liquors or fermented malt beverages by any person to any person or corporation and also includes a sale or selling within the reservation to a foreign consignee or his agent.

(10) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(11) "Tribal Court" means the Lac du Flambeau Tribal Court.

(12) "Wholesaler" means a person, other than a brewer, manufacturer, or rectifier who sells fermented malt beverages or intoxicating liquors to a licensed retailer or to another person who holds a license to sell beverages at wholesale.

(13) "Wine" means products obtained from the normal alcohol fermentation of juice or must of sound, ripe grapes, other fruits or agricultural products, imitation wine, wine coolers, compounds sold as wine, vermouth, cider, perry, mead, and sake, if such products contain 0.5% or more alcohol by volume.

## CHAPTER III: LICENSE CLASSES AND FEES

### 40.301 Retail License Classes.

The Council may issue licenses to retailers in the following classes, singly or in combination:

(1) "Class A Beer License", which shall authorize the retail sale of fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles.

(2) "Class B Beer License", which shall authorize the retail sale of fermented malt beverages either for consumption on the premises where sold and in the original packages, containers or bottles.

(3) "Class A Liquor License", which shall authorize the retail sale of intoxicating liquors only for consumption away from the premises where sold and in the original packages, containers, or bottles.

(4) "Class B Liquor License", which shall authorize the sale of intoxicating liquor to be consumed by the glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold, except that wine may be sold in any quantity for consumption off the premises.

(5) "Pharmacists License", which authorizes sale of intoxicating liquor by a registered pharmacist in quantities of less than 4 liters for consumption off the premises for medicinal, mechanical or scientific purposes only, under the terms, conditions and limitations set forth in Wis. Stat. s. 125.57 or successor statute.

(6) "Temporary License", which shall be a Class B Beer License issued to bona fide clubs, fair associations or agricultural societies, lodges, societies, fraternal organizations, or veterans organization for particular meetings, picnics, or similar gatherings for not more than seven days.

### 40.302 Wholesale License Classes.

The Council may issue licenses to wholesalers in the following classes, singly or in combination:

(1) "Beer Wholesalers License", which shall authorize the sale of fermented malt beverages from premises located on the reservation, only in the

original package or container to retailers or wholesalers, not to be consumed in or about the premises where sold.

(2) "Liquor Wholesalers License", which shall authorize the sale of intoxicating liquor from premises located on the reservation, only in the original package or container in quantities of not less than 4 liters at any one time to retailers or wholesalers, not to be consumed in or about the premises where sold.

#### 40.303 License Fees.

The Council shall by resolution set the fee for each class of license and combination thereof. The fee for licenses issued from January 1 to June 30 (except for temporary licenses) shall be one-half the applicable annual fee. The fee for licenses issued from July 1 to December 31 shall be the full annual fee.

#### 40.304 License Transfers.

(1) Any license may be transferred from the premises described in the license to another place or premises within the reservation upon approval of the Council in its discretion and payment of a fee of \$10.

(2) If the business of a licensee is sold or assigned, the license may be transferred to the successor owner if he or she complies with the requirements applicable to original applicants and the successor owner is acceptable to the Council.

(3) Licenses may be transferred to a person other than the licensee if the licensee dies, becomes bankrupt, or makes an assignment for the benefit of creditors during the license year or after filing the application.

### CHAPTER IV: LICENSING PROCEDURES

#### 40.401 Issuance.

(1) The Council shall, in its discretion, determine how many liquor licenses it will issue or have outstanding in each class in any one year.

(2) Application for all licenses shall be submitted to the Council or its authorized representative, which may include employees of the Town of Lac du Flambeau. Application shall be made in writing on the forms developed by the Wisconsin Department of Revenue for state alcoholic beverage license application pursuant to Wis. Stat. Ch. 125, including the auxiliary questionnaire, together with such supplemental information as the Council shall from time to time require. An auxiliary questionnaire shall be completed by each individual, each member of a partnership, and each officer, director, and agent of a corporation or organization applying for a license. Applicants for temporary



licenses shall make application on the Wisconsin Department of Revenue "Application for Special Class 'B' Retailers License to Sell Fermented Malt Beverages at Picnics or Gatherings," or successor form.

(3) No corporation may be issued a license unless it first appoints an agent in the manner prescribed by Wisconsin law in Wis. Stat. Ch. 125 and rests in the agent full authority and control of the premises licensed and the conduct of all business on the premises that the licensee could have and exercise if it were a natural person.

(4) The Council shall designate a five member Liquor Control Committee to review and recommend to the Council whether a license shall be issued and to make recommendations to the Council on other matters pertaining to this ordinance. Such committee may operate jointly with the Town of Lac du Flambeau.

(5) The Council has complete discretion in the granting of all licenses.

(6) All new license requests will be acted upon by the Council within 45 days from the time when the application is submitted to the Council.

(7) For the purposes of considering an application for a license under this ordinance, the Council 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 in such form as the Council shall direct. No license shall be transferable, except as provided in Section 40.304, nor shall the holder thereof allow any other person to use the license.

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

(10) No license shall be valid and delivered to the applicant until the license fee has been paid.

#### 40.402 Inspection.

(1) All licensed premises used in the storage or sale of intoxicating liquor or fermented malt beverages, 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, state or federal inspector or tribal, state or federal police officer.

(2) Every person, being on any such premises and having charge thereof who refuses or fails to admit a tribal, state or federal inspector or tribal, state 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.

#### 40.403 Suspension and Cancellation.

(1) The Council may, for violation of this ordinance, issue a suspension or cancellation order of any license issued pursuant to this ordinance and 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 Council 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 effective date thereof to request a hearing by the Council by sending written notice by certified mail with return receipt to the Tribal President at the Lac du Flambeau Community Center within the ten (10) day period between the issuance of the notice and the effective date of the cancellation or suspension order. Upon receipt of the request for hearing, the Council shall not suspend or cancel the license pending the completion of the hearing. The Council President shall set a date for the hearing which shall be held within thirty (30) days of receipt of the licensee's request for a hearing. The Council may affirm or revise in whole or in part its decision to cancel or suspend the license after the hearing. Its decision shall be final.

(3) In lieu of the procedures set forth in subsection (2), the Council may elect to proceed to act on a revocation or suspension in conjunction with the Town of Lac du Flambeau. If the Council so elects, the matter shall proceed in accordance with Wis. Stat. s. 125.12 or successor statute.

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

(5) Licenses may be suspended by the Council for a period not to exceed thirty (30) days.

#### 40.404 Expiration of Licenses.

(1) Licenses, except for temporary licenses, shall expire June 30 of each year.

(2) All licenses issued under Ordinance No. 266(82) which are in effect on the effective date hereof, except for temporary licenses, shall be automatically extended so as to expire on June 30, 1986.

#### 40.405 Renewal.

(1) Application for renewal shall be made in writing on the forms developed for that purpose by the Wisconsin Department of Revenue for state alcoholic beverage license application pursuant to Wis. Stat. Ch. 125, together with auxiliary questionnaire when the same is required by state law.

(2) Applications for license renewals for the next license year shall be submitted on or before April 15 of the preceding license year. Licensees who fail to meet this deadline shall be required to apply as new licensees. The Council shall act on all renewal applications on or before June 15.

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

(4) Upon timely application for renewal, the Council shall renew the license unless it shall be cancelled pursuant to the provisions of Section 40.403 hereof.

### CHAPTER V: ILLEGAL ACTIVITIES

#### 40.501 General Prohibition.

The introduction, purchase, sale or dealing in liquor on the reservation, other than when done pursuant to license and in conformity with this ordinance, is prohibited and is a violation of tribal law. The Federal Indian liquor laws and state liquor laws are intended to remain applicable to any act or transaction which is not authorized by ordinance. Violation of this ordinance by any person may be subject to federal and state prosecution as well to legal action in accordance with tribal law.

#### 40.502 Age.

All sales shall be prohibited to any person under the age established by the State of Wisconsin for the purchase or consumption of alcoholic beverages. All sales shall be prohibited to individuals known or believed to be purchasing on behalf of any person under such age. Any person may be required to present a tribal identification card or state identification card issued pursuant to Wis. Stat. s.

125.08 or successor statute which shows correct age and bears the holder's signature.

#### 40.503 Hours.

State laws relative to the hours during which sales of alcoholic beverages are permitted shall apply to all premises licensed under this ordinance.

#### 40.504 Sales to Intoxicated Persons.

Sale of fermented malt beverages or intoxicating liquors to any person known or believed to be intoxicated is prohibited.

### CHAPTER VI: PENALTIES AND ENFORCEMENT

#### 40.601 Seizure of Property.

All intoxicating liquor or fermented malt beverages owned, possessed, kept, stored, sold, distributed or transported in violation of this ordinance, and all personal property used in connection therewith, is unlawful property and may be seized. Any such property seized shall be disposed of in accordance with Chapter IV, Part Two of the Tribal Court Code, Tribal Code Ch. 80.

#### 40.602 Penalty.

Violations of the provisions of this ordinance shall be punishable by a civil remedial money penalty of not more than \$500 per violation, together with court costs.

#### 40.603 Procedure.

The Tribal Court shall have jurisdiction to hear matters pertaining to the violation of this ordinance. Proceedings for violation of this ordinance shall be governed by Chapters III and IV of the Tribal Court Code, Tribal Code Ch. 80.

#### 40.604 Enforcement.

The provisions of this ordinance shall be enforced by all tribal law enforcement officers. In addition, any federal, state, or local law enforcement officer may enforce this ordinance and institute proceedings for violation of this ordinance.

#### 40.605 State or Federal Enforcement.

Consistently with Wheeler v. United States, 435 U.S. 313 (1979), nothing herein shall prevent federal and state jurisdiction to enforce this ordinance or

other liquor laws in addition to tribal enforcement. The Council may agree to refer enforcement matters for enforcement under state law in lieu of tribal or federal enforcement.