

CHAPTER 5-1
LIQUOR CONTROL (12/14/1991)

LIQUOR CONTROL

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LIQUOR CONTROL

§ 1. General

1.1. Public Law 277, 83rd Congress, 1st Session, approved August 15, 1953 and codified as sec. 1161 of Title 18, United States Code, provides that Sections 1154, 1156, 3113, 3488, 3618* of Title 18 of the United States Code shall not apply within any area that is not Indian Country, nor to any act or transaction within any area of Indian Country, 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; and

1.2. It is the desire of the General Council of the Forest County Potawatomi Community of Wisconsin to adopt a Liquor Control Ordinance in the Indian Country that lies within the jurisdiction of the Community, and

1.3. The General Council of the Forest County Potawatomi Community of Wisconsin has the authority to adopt ordinances regulating liquor in the Indian Country that lies within the jurisdiction of the Community, by virtue of the provisions of Article IV, Section 1(d) of the Constitution of the Forest County Potawatomi Community of Wisconsin, adopted June 5, 1982;

1.4. The General Council of the Forest County Potawatomi Community of Wisconsin authorizes the issuance of licenses for on-premises sale of alcohol beverages within the Indian County that lays within the jurisdiction of the Community, provided:

§ 2. Licenses

2.1. Licenses for the sale of alcohol beverages may be issued only for sale of such beverages on the premises of businesses owned and regulated by the Forest County Potawatomi Community.

2.2. Licenses issued to businesses owned by the Forest County Potawatomi Community for the sale of alcohol shall be issued by the Executive Council of the Community, upon receipt by the Executive Council of a proper application containing the following information:

- (A) The name of the entity that regulates the Community business at which the sale of alcohol beverages would take place. Such entity shall be the license applicant. No individual or private entity may apply for or receive a license under this Ordinance.
- (B) A copy of the Community Ordinance or resolution under which the applicant entity is organized.
- (C) A description of the land or building owned by the Community and regulated by the applicant entity at which the applicant entity wishes to sell alcohol beverages.

* should be 3669.

- (D) A statement that the applicant entity will conform to all requirements of applicable Tribal, State and Federal law, as they relate to the purchase and sale of alcohol beverages.

2.3. Upon receipt of a proper application under this Ordinance, licenses for sale of alcohol beverages may be issued by the Executive Council of the Community to a Tribal entity of the Community if the Executive Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Executive Council may deem relevant, that such issuance is in the interest of the Community.

2.4. Licenses for the sale of alcohol beverages issued by the Executive Council shall contain the following requirements:

- (A) Each license shall require its holder to conform its operations to the laws of the Community, the State of Wisconsin and the United States of America.
- (B) No license shall be effective for a term of more than one (1) year from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.
- (C) Each license shall explicitly state that its continued validity is dependent upon the compliance of its holder with all the provisions of this Ordinance and other applicable law.

2.5. The Executive Council of the Community shall have the authority to suspend or revoke any license issued under this Ordinance, under the following procedures:

- (A) Upon receiving information suggesting that the holder of a license under this Ordinance may have violated the terms of the license or applicable law, the Executive Council shall give the license holder written notice that the Executive Council intends to suspend or revoke the holder's license. Such notice shall be sent by certified mail, return receipt requested, to the agent of the license holder and shall specify the grounds for the proposed suspension or revocation.
- (B) Any license holder who receives a notice of a proposed suspension or revocation may request a hearing by the Executive Council, by sending a written request therefore, certified mail, return receipt requested, to the Chairman of the Forest County Potawatomi Community, at the Community's Tribal Center, within seven (7) days of the license holder's receipt of the notice.
- (C) Upon receipt of a request for a hearing under this Ordinance, the Executive Council shall set a date for a hearing, which shall be not later than thirty (30) days from the date of the receipt of the hearing request.
- (D) At a hearing held under this Ordinance, the holder of a license under this Ordinance shall be permitted to present evidence with respect to the holder's compliance with the terms of its license and applicable law. In reaching its decision, the Executive Council may consider such evidence, together with all

other evidence it deems relevant. Following a hearing, if in the judgment of the Executive Council the license holder has not complied with the terms of its license and applicable law, the Executive Council shall suspend or revoke its license; and if in the judgment of the Executive Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. In either case, the decision of the Executive Council shall be final.

2.6. The Executive Council of the Forest County Potawatomi Community may reject any application for a license, or for a renewal of a license, under this Ordinance, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance.

§ 3. Agent

Any tribally owned entity licensed under this Ordinance shall appoint, subject to the approval and confirmation of the Tribal Executive Council, an agent who shall have full authority and control of the premises and of the conduct of all business on the premises relative to alcohol beverages. This person shall also be the person designated by Wis. Stats. sec. 125.04(6) requiring the appointment of agents.

§ 4. Authority of the Tribal Executive Council

4.1. The Tribal Executive Council, or any individual member thereof or any person acting with prior written authorization of the Tribal Executive Council may enter any premises licensed under this Ordinance at any time to observe the activities taking place.

4.2. Written authorization may be enacted at a closed session of the Tribal Executive council and remain confidential until any report made by such person is before the Tribal Executive council for action or until such person seeks to gain access to the premises of any Tribally licensed facility during normal closed hours in which case it shall be presented to the Manager on duty at the time, and said Manager shall immediately admit the person to the premises.

4.3. Tribal Executive Council members do not need such written authorization and may enter any Tribally licensed facility at any time upon identifying themselves if such admission is sought during normal closed hours.

§ 5. Separate Licenses For Each Facility

Each tribally owned entity licensed under this Ordinance shall be required to file a separate application and hold a separate license for each facility it operates.

§ 6. Transfer of Licenses Prohibited

No license issued under this Ordinance may be transferred to any other entity or person.

§ 7. State Law Applicable

The Forest County Potawatomi Community recognizes the applicability of general State law governing the sales of alcohol beverages.

§ 8. State Law Adopted

The Forest County Potawatomi Community hereby adopts for purpose of Tribal enforcement against any entity licensed by the Tribe under this Ordinance that following provisions of Chapter 125 of the Wisconsin Statutes, as modified below:

- 125.02 Definitions. Except as otherwise provided, in this Ordinance:
- 125.02(1) “Alcohol beverages” means fermented malt beverages and intoxicating liquor. Wine defined below is included in this definition.
- 125.02(6) “Fermented malt beverage” means any beverage made by the alcohol 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 0.5% or more alcohol by volume.
- 125.02(8) “Intoxicating liquor” means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever named called, containing 0.5% or more of alcohol by volume, which are beverages, but not include “fermented malt beverages”.
- 125.02(8m) “Legal drinking age” means 21 year of age.
- 125.02(14) “Person” means a natural person, sole proprietorship, partnership, corporation or association.
- 125.02(14m) “Premises” means the area described in a license permit.
- 125.02(17) “Regulation” means any rule adopted by the Tribal Executive Council or Ordinance adopted by the Tribal General Council.
- 125.02(20) “Sell”, “sold”, “sale” or “selling” means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, devise, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

- 125.02(20) “Underage person” means a person who has not attained the legal drinking age.
- 125.02(22) “Wine” means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 0.5% or more of alcohol by volume.
- 125.04(1) General licensing requirements. No person may sell, manufacture, rectify, brew or engage in any other activity for which this Ordinance provides a license without holding an appropriate license issued under this Ordinance.
- 125.04(2) Licenses issued in violation of this Ordinance. No license may be issued to any person except as provided in this Ordinance. Any license issued in violation of this ordinance is void.
- 125.04(10) License framed and posted. (a) Frame. Licenses for the sale of alcohol beverages, shall be enclosed in a frame having a transparent front which allows the license to be clearly read. (b) Display. All licenses shall be conspicuously displayed for public inspection at all times in the room or place where the activity subject to licensure is carried on.
- 125.07 Underage and intoxicated persons; presence on licensed premises; possession; penalties.
- 125.07(1) Restrictions. 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
2. No licensee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.
3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult’s control.
4. No adult may intentionally encourage or contribute to a violation of this Section.
- 125.07(2) Sales of alcohol to intoxicated persons. Restrictions. 1. No person may procure for, sell, dispense or give away alcohol

beverages to a person who is intoxicated. 2. No licensee or may sell, vend, deal or traffic in alcohol beverages to who is intoxicated.

125.07(3) Presence in places of sale; penalty. An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter or be on any premises for which a license for the retail sale of alcohol beverages has been issued.

125.085 Proof of age. (1) Definition. In this Section, “official identification card” means a valid operator’s license issued under Chapter 343 of the Wisconsin Statutes that contains the photograph of the holder, an identification card issued under Section 343.50 or an identification card issued under Section 125.08, of the statutes.

(2) Use. No card other than the identification card authorized under this Section may be recognized as an official identification card in premises licensed under this Ordinance.

§ 9. Closing Hours

Every entity licensed by the Forest County Potawatomi Community shall observe the closing hours established by Wisconsin Statutes governing the type of State license which is similar to the Tribal license which the entity holds. Failure to do so shall be the basis for the revocation of licenses issued by the Tribal Executive Council.

Legislative History:

11/19/1991 Recommended by the Tribal Ordinance Committee
12/14/1991 Enacted by General Council Resolution No. GC 004-91
01/05/2005 Publication of certification by Secretary of the Interior, 70 Fed. Reg. 1458-1460

References in text:

18 U.S. C. § 1154, referenced at Section 1.1, generally prohibits the sale of alcoholic beverages in Indian country.

18 U.S.C. § 1161, referenced at Section 1.1, provides an exception to the prohibition of Section 1154 for sales of alcohol “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.”