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*HISTORY*

<u>Revision</u>	<u>Authorizing Actions</u>	<u>Description</u>
20-Jun-14	LU-14-079	Codified as 1 L.U.R. pursuant to TCR052914-04 of 10
08-Dec-14	TCR121114-03 of 10	Amends 14 M.P.T.L & this title by adding Food Safety & Sanitation to LUC.
17-Apr-18	Administrative	Updated code reference at Ch. 1, §3a(1)

## ***TITLE 1. COMMISSION PROCEDURES***

### **CHAPTER 1. COMMISSION**

#### **§ 1. Scope and Purpose**

a. This Title outlines the procedures which the Land Use Commission shall adhere to when carrying out the duties and responsibilities authorized within 14 M.P.T.L., the Land Use Law.

b. The purpose of this Title is to standardize, and make available to the regulated community, the procedures of the Land Use Commission and to define the general obligations of all Commissioners charged with the responsibility of ensuring compliance with the Land Use Law.

#### **§ 2. Administration**

a. Administration of the Commission, unless otherwise specifically designated by Tribal Council, will be the responsibility of the MPTN Regulatory Affairs Officer who shall serve as the Commission Administrator.

- (1) In the event of the Administrator's temporary absence, the Administrator shall appoint a Commissioner to serve as the temporary Administrator until his return.
- (2) In the event that the Administrator had not appointed a temporary Administrator, one shall be selected by a majority vote at each Commission meeting prior to the commencement of any other official business.
- (3) In the continued absence of the Administrator, the temporary Administrator shall serve in that capacity until the next Commission meeting or the return of the Administrator, whichever occurs sooner.

b. Commission Administration shall include an Administrative Assistant, appointed by the Administrator, who shall serve as an agent of the Administrator responsible for maintaining the record of Commission business.

#### **§ 3. Voting Commissioners**

a. Unless specifically appointed by Tribal Council, each department or program discipline shall be represented as described:

- (1) **Fire Safety** - shall be represented by the MPTN Fire Chief or Fire Marshal. In the event that the Fire Marshal position is vacant and the Chief is unable to serve, the Chief will appoint, on an interim basis, a member of the MPTN Fire Department who is familiar with and understands the application of the MPTN Fire Prevention Code (2 L.U.R.).
- (2) **Historic Preservation** – shall be represented by the Tribal Historic Preservation Officer (THPO) or, in the event that the THPO position is vacant, a tribal member appointed by the Historical and Cultural Preservation Committee who is both familiar with the National Historic Preservation Act and the cultural and historic preservation values of the tribe.
- (3) **Natural Resources Protection** – shall be represented by the director of the tribal department responsible for Natural Resources Protection. In the event that the Director's experience is not within the field of environmental protection and/or the Director is not familiar with tribal and federal environmental protection regulations, then he shall appoint such a qualified employee from the Natural Resources Protection program discipline.

- (4) **Building Code Enforcement** – shall be represented by the MPTN Building Official or, in the event that the Building Official position is vacant, the director of the tribal department responsible for Building Code Enforcement. In the event that the Director’s experience is not within the field of inspection and code enforcement and/or the Director is not familiar with the Building Code, then he shall appoint a qualified employee from the Building Code Enforcement program discipline.
- (5) **Utilities** – shall be represented by the Director of MPTN Utilities. In the event that the Director is unable to serve he shall appoint an employee who has knowledge of MPTN’s utility infrastructure and standards.
- (6) **Planning and Zoning** – shall be represented by the MPTN Zoning Officer or, in the event that a Zoning Officer has not specifically been named, by the director of the tribal department responsible for the Planning function. In the event that the Director’s experience is not within the field of planning and/or the Director is not familiar with the MPTN Zoning Regulation, then he shall appoint a qualified employee from the Planning program discipline.
- (7) **Tribal Member Community** – shall be represented by a Mashantucket Pequot Tribal Member appointed to the Commission by Tribal Council. In the event that Council has not specifically appointed a Community representative, it shall be assumed that Council believes that the Commission has adequate Tribal Member representation. However, if at any time Tribal Member representation is less than two Commissioners, the Administrator shall be responsible for providing notice of such to Tribal Council.
- (8) **Mashantucket Pequot Gaming Enterprise** – shall be represented by the vice president with responsibilities over resort engineering and project management services. In the event that the vice president is unable to serve he shall appoint a high level manager with knowledge of resort infrastructure and engineering and project management services.
- (9) **Food Safety and Sanitation** – shall be represented by the manager of the tribal program responsible for enforcing the Tribal Food Law (26 M.P.T.L) and conducting environmental health inspections of commercial facilities. In the event that the manager cannot serve the director of the department responsible for the Food Safety program will appoint a qualified environmental health inspector.

b. The members of the Commission shall collectively, as a result of training and experience, be well qualified to analyze and interpret environmental trends, regulations, planning and construction designs, building and safety codes, and to appraise the scientific, economic, social, aesthetic, and cultural needs and interests of the Tribe in light of the policies set forth herein. Members of the Commission shall serve without compensation.

c. Commissioners may appoint an alternate to represent them from time to time.

- (1) Alternates shall, as a result of training and experience, be qualified to review construction design documents and interpret regulations applicable to the program discipline they represent.
- (2) When naming an Alternate, Commissioners shall:
  - (a) provide notice of such appointment to the Administrator,
  - (b) accept responsibility for the alternate’s actions and ensure that the alternate is provided all review materials and Commission correspondence related to the matters before the Commission at that time.

## CHAPTER 2. LAND USE REGULATION

### § 1. Types of Land Use Regulation

Land Use Regulation shall mean this entire body of Regulations, Codes or Standards, promulgated or otherwise adopted as specified within 14 M.P.T.L. Ch 4.

a. **Regulations** – The Commission shall promulgate Regulations when necessary for establishing jurisdictional authority over particular Land Use Activities. Regulations may include discretely applicable requirements in addition to those specified within 14 M.P.T.L., such as permits, procedures, enforcement provisions, and fees.

b. **Codes** – The Commission shall promulgate, amend, or adopt codes or reference standards that specify the minimum standards, for Land Use Activities, necessary to ensure the health, safety and welfare of all residents, employees and guests within Mashantucket.

c. **Standards** – The Commission shall promulgate, amend, or adopt program specific standards that specify the minimum requirements Commissioners will require when considering applications.

### § 2. Drafting Regulation

a. It shall be the responsibility of each Commissioner to propose for Commission consideration elements of a Land Use Regulation specific to the subject discipline they represent on the Commission.

b. In the event of conflicting jurisdictional authority between two Commissioners, the Administrator will assist in the Land Use Regulation development by assuring a coordinated effort and mediating potential conflict between Commissioners.

c. Draft Land Use Regulations shall be presented to the Land Use Commission for consideration by general vote. If approved, the Land Use Regulation shall be vetted by General Counsel and ratified as specified within 14 M.T.P.L. ch. 4.

### § 3. Applying Land Use Regulation - General Rules

a. The body Land Use Regulation, of which this is Title I, is comprised of Regulations, Codes, and Standards. The Commission's responsibility to enforce compliance with such differs slightly due to the process through which each was adopted.

- (1) Regulations are established through a process which, at minimum, involved vetting by Tribal Committees and Tribal Council. Therefore, Commissioners shall not question the necessity or validity of any provision within a Regulation. By nature of their jurisdictional claim, regulations may have their own specific procedures for consideration of variances, equivalencies or appeals which must be followed.
- (2) Codes are established minimum standards which were drafted by a team of experts to ensure public health and safety. Commissioners are cautioned not to confuse their authority to issue formal variances to a Code requirement with that of accepting equivalent compliance allowed within such Code. Commissioners may question interpretation of a Code but not the necessity of the Code requirement unless they are prepared to remove the specific provision in question from the Land Use Regulations.
- (3) Standards are Commission established minimum requirements typically demanded when considering applications. Therefore, Commissioners may determine that a particular provision of a Standard is not necessary on a case-by-case basis even if doing so conflicts with a Standard.

b. The MPTN Land Use Commission was established to streamline MPTN's regulatory review process. Commissioners who oversee regulatory programs which either require compliance prior to or following issuance of a Land Use Permit should work with Commission Administration to ensure that Applicants are well informed of such requirements.

- (1) The Administrator shall ensure that Commissioners' typical requirements are included within a Land Use Permitting Fact Sheet available to the public via the internet for download by perspective Applicants.
- (2) The Administrator shall ensure that the Permit Application Form includes the general information which Commissioners may require for their assessment of activity requirements.
- (3) The Administrator, when providing notice of an Application to Commissioners shall highlight for Commissioners those specific elements identified on the Application form needed for the Commissioners to assess the relevancy of their program requirements.

### **CHAPTER 3. PERMIT APPLICATION**

#### **§ 1. Minimum Requirements**

- a. An application for a Land Use Permit shall be made through the use of forms designated by the Administrator.
- b. Application forms shall contain, at a minimum, the following information:
  - (1) the name and general role of the Applicant (e.g. owner, owners rep., project manager);
  - (2) the location of the proposed Land Use Activity;
  - (3) a concise and factual description of the proposed Land Use Activity including -
    - (a) any proposed physical construction,
    - (b) any proposed new use, material change or expansion of existing uses,
    - (c) any proposed change to, or use of, utility infrastructure such as new utility services, changes to interior circuits or plumbing, whether water, gas or drain.
    - (d) any proposed change resulting in an increase of utility demand, a change in the character of sanitary discharge or installation of equipment intended to treat or condition utility provided supplies,
    - (e) any proposed activity or change of use with the potential to impact public safety, impact existing life safety systems, change the occupancy of a room or that necessitate a change to any emergency plan or procedure,
    - (f) any activity with the potential to impact natural resources including deposition or discharge to air, water or land, cutting of native vegetation, or an activity with the potential to cause a release of a polluting substance to the native environment,
    - (g) any potential impact to cultural or historic resources of the Tribe;
  - (4) the period of time for which the Permit is requested (i.e. start date & duration of activity);
  - (5) a certifying statement that the information contained is, to the best knowledge of the Applicant, correct.
  - (6) A certifying statement that the Total Cost of the Activity was calculated as defined within 14 M.P.T.L., Ch. 5, § 4; and
  - (7) A certifying statement that, if required, the Applicant will provide record as-built drawings per MPTN standards.
- c. An Application shall not be deemed complete unless the Application Fee is paid.

**§ 2. Typical Requirements**

- a. Five hard copy sets, and an electronic version, of all plans and specifications, including:
  - (1) Plan sheets and specifications necessary to depict:
    - (a) all information necessary for the fields of trade involved with the activity;
    - (b) compliance with all applicable codes (e.g. building, fire, and safety codes); and
    - (c) conformance with any other applicable Land Use Regulation (e.g. wetland buffers, zoning setbacks, and/or utility standards).
  - (2) Any other studies, reports, or other information prepared to demonstrate compliance with applicable Land Use Regulation.
- b. In the case of a phased Land Use Activity, the applicant shall submit:
  - (1) overview plans sufficient to provide the Commission with an understanding of the scope and extent of the entire project; and
  - (2) complete detailed plans and specifications for each phase of the activity.

**§ 3. Stamped Plans Required**

- a. The Commission may require that drawings and specifications be Stamped by the Design Professional in Responsible Charge. When required, drawings must be prepared, signed and dated by an architect or engineer duly authorized and licensed to practice in the state of Connecticut. The following activities will require Stamped drawings prior to issuance of a Land Use Permit.
  - (1) All new commercial buildings regardless of occupancy type or size.
  - (2) Any renovation to, or new construction being performed to, an existing commercial structure which involves:
    - (a) major mechanical, plumbing or electrical changes or additions.
    - (b) any structural change or addition.
    - (c) a change of occupancy which requires modification to life safety systems or which necessitates a change to the means of egress impacting the overall master egress plan of the facility.
  - (3) Residential construction activities consisting of:
    - (a) Non-conventional light-frame construction,
    - (b) truss systems,
    - (c) retaining walls over forty-eight inches high,
    - (d) foundations with pilings or caissons,
    - (e) roofs on posts such as carports and patio covers which are freestanding or which extend more than 6' beyond the building to which they are attached,
    - (f) wall bracing systems, or
    - (g) buildings with more than two stories.
- b. Any required drawings may be limited to reflect only the information needed in the required fields of trade. For instance, plumbing drawings would not be required if no changes were being made to the plumbing.
- c. The Commission, at its discretion, may accept documents Stamped by Design Professionals in Responsible Charge licensed by states other than Connecticut.

**§ 4. Land Use Fee**

- a. Any person who requires a Permit from the Commission must pay the Land Use Fee defined within 14 M.P.T.L. ch. 5, §4.
- b. An Application shall not be deemed complete until the fee is paid.
  - (1) The Commission may commence review but shall not take final action on an incomplete Application.
  - (2) Under unique circumstances the Commission may consider a reduction in the amount of the fee due with an Application.
  - (3) The Commission has determined that the minimum Land Use Fee for all Commercial Activities shall be fifty dollars (\$50).
- c. The Commission shall consider requests to reduce the amount of the Fee due with an Application at an official Commission meeting.
  - (1) The Commission shall only consider such requests when the Total Cost of the Activity exceeds two million dollars (\$2,000,000).
  - (2) The Commission shall not set the amount due with the Application to less than twenty percent (20%) of the Land Use Fee.
  - (3) When determining whether to reduce the amount due with the Application the Commission shall consider added financial burden to the Applicant due to:
    - (a) the length of the anticipated review period;
    - (b) the length of time before the anticipated start of the proposed activity; and,
    - (c) the expected length of the activity schedule.
  - (4) When establishing a reduced Application Fee the Commission shall ensure that, at minimum, the fee will:
    - (a) cover all direct and in-direct costs associated with the Commissioners' review, and
    - (b) be sufficient to pay for any third party review, inspection and testing, services which the Commission may require.
  - (5) If the Commission reduces the amount due with the Application they shall establish a payment schedule for the balance of the Land Use Fee. When establishing the payment schedule the Commission shall require an installment to be due prior to the commencement of construction activities and set installment amount by considering:
    - (a) the degree to which the activity will permanently alter the native environment and/or impact cultural resources (e.g. clearing & grading); and,
    - (b) the degree to which project activities would impact existing operations if the activity were commenced but not completed.
  - (6) Installments shall be scheduled such that it will ensure cash flow sufficient to satisfy all Commission expenses and obligations related to the activity.
    - (a) If any installment payment is not received by the established due date:
      - (i) the full balance of the Land Use Fee will be due and payable within thirty (30) calendar days.
      - (ii) Failure to pay the full Land Use Fee will null and void the permit issued.
    - (b) Any balance on the Land Use Fee may be paid prior to the maturity date without penalty.

- (c) Upon a change in ownership of the activity, the full balance of the Land Use Fee is due and payable within 30-days, otherwise the issued permit shall become null & void and require a new permit consistent with all provisions specified within this chapter.
- d. Payment of Balance
  - (1) The Applicant is required to notify the Administrator within ten (10) business days of being made aware of any significant change in the estimated Total Cost of the Activity used to calculate the Land Use Fee.
    - (a) If such change increases the Land Use Fee, the balance shall be payable the earlier of:
      - (i) Commission issuance of a final Certificate of Completion, or
      - (ii) thirty (30) calendar days following notification from the Commission that Commission costs related to the activity have exceeded the amount previously paid.
    - (b) If such a change decreases the Land Use Fee, the balance, less any expenses and costs incurred by the Commission, will be returned to Applicant following issuance of the final Certificate of Completion; provided that, the Applicant requests such a refund at least thirty (30) calendar days prior to the date the Commission issues the Certificate of Completion.
  - (2) Failure to provide timely notice to the Commission of a significant change in Total Cost of the Activity may result in:
    - (a) enforcement action including suspension or revocation of the permit issued;
    - (b) significant delay, or ultimate denial, of a Certification of Completion; and,
    - (c) forfeiture of any potential reimbursement.
  - (3) In the event that the Commission suspects that a significant increase in Total Cost of the Activity has occurred, for which it has not received notice, the Commission shall request a response from the Applicant and notify MPTN Finance.
    - (a) The Commission shall not issue a Certificate of Completion until either payment of the full Land Use Fee is received or until MPTN Finance has determined that the Commission need not pursue the matter.
    - (b) If the Applicant has responded and fifteen (15) business days has passed without a response from MPTN Finance, the Commission shall reach the presumptive conclusion that MPTN Finance takes no exception to the Applicant's response.
    - (c) The Commission may take any enforcement action, allowed by the Land Use Law, necessary to assist MPTN Finance with their assessment and/or to compel payment by the Applicant.
- e. The Application Fee, less any expenses and costs incurred by the Commission, will be returned to Applicant, upon timely request, when the Application is withdrawn or denied, or if a Permit is granted and the project is cancelled prior to the start of construction or commencement of the Land Use Activity.
  - (1) The Applicant must make such request within thirty (30) calendar days of:
    - (a) being notified that the Application has been denied,
    - (b) providing notice that the activity has been cancelled prior to construction commencing,
    - (c) providing notice that the Application is withdrawn, or
    - (d) the date an issued permit becomes null and void pursuant to 14 M.P.T.L Ch. 6, § 4.
  - (2) No portion of the Application Fee shall be refundable if the project is cancelled after construction has commenced.



## CHAPTER 4. CONSULTATION

For the purpose of this section the term Applicant shall also mean a prospective Applicant, the Applicant's project manager or any member of the Applicant's design team.

### § 1. Formal Consultation

- a. Commissioners shall encourage perspective Applicants to engage the Commission early in the project design.
  - (1) Early Commission participation will help the Applicant:
    - (a) vet requirements, issues and concerns,
    - (b) identify long lead requirements (e.g. environmental or archeological assessments), and
    - (c) avoid potentially costly design changes.
  - (2) Engaging the Commission with routine design progress updates will aid review and shorten the overall permitting process.
- b. Formal consultation, whether prior to or after submission of an Application, shall occur at Commission meetings which shall be recorded and minutes of the meeting prepared.
  - (1) Instruction, guidance or direction provided by the Commission during a formal consultation meeting shall become part of the official record.
  - (2) Any subsequent change in direction, guidance or direction provided to the Applicant by the Commission outside of a formal consultation meeting shall be:
    - (a) provided, with the justification for such change, in writing to the prospective applicant in as timely a manner as possible, and
    - (b) read into the record at the next official Commission meeting.

### § 2. Informal Consultation

- a. Commissioners are encouraged to engage an Applicant in informal consultation, outside of Commission Meetings, as often as necessary to facilitate their timely review.
- b. At all times during informal consultation, Commissioners shall be explicit with the Applicant that they represent only one of many program disciplines which make up the Commission. Commissioners are to request the Applicant make all post Application submittals to Commission Administration. Submittals received by a Commissioner shall immediately be forwarded to Commission Administration.
- c. Commissioners shall refrain from, "acting as the middle man," by attempting to resolve questions best answered by another Commissioner. If an Applicant raises questions or concerns related to another program discipline represented on the Commission, the Commissioner shall:
  - (1) refrain from providing guidance or opinion concerning such issues and refer the Applicant to the appropriate Commissioner, or
  - (2) if multiple disciplines are involved, refer the Applicant to the Administrator who will schedule a formal consultation before the entire Commission.
- d. Direction provided by a Commissioner, or commitments made by the Applicant, during informal consultation, which either party will rely on must be made part of the Application's record by:
  - (1) the Commissioner providing written notice of the consultation, and direction provided, to the prospective Applicant and the Administrator, or

- (2) the Applicant providing written notice of the consultation, and the specific direction provided, to the Administrator. In such cases the notice will only become part of the official record after the Administrator obtains confirmation of its validity from the appropriate Commissioner.
  - (a) If the source of the notice is minutes of a meeting, the Administrator shall verify the accuracy of such with the pertinent party (Applicant or Commissioner) who did not draft such minutes. The Administrator shall highlight the applicable summary of the direction provided, or commitment made, and only that portion of the document shall be considered part of the official record.
  - (b) Commissioners are responsible for providing the Applicant and the Administrator with timely written notice of any subsequent change in previously provided direction. Such notice must include the justification for the change.
  - (c) Failure of the Applicant to follow through with a commitment, or comply with a Commissioner's direction, which had not been made part of the official record shall not be used by any Commissioner as a basis for denying an Application unless the direction provided is relevant to a specific provision within Tribal Law, Land Use Regulation or other applicable federal requirement.

## **CHAPTER 5. REVIEW**

### **§ 1. Administrative Review**

- a. The Administrator will recommend Administrative Review for any Application which, he believes, is pertinent mainly to one program discipline represented on the Commission, or multiple disciplines which are likely to share similar project related concerns (e.g. Building Code Enforcement and Fire Marshal).
- b. The Administrator will select the Commissioner best qualified to examine the Application for compliance with applicable Land Use Regulations. The selected Commissioner, while reviewing and considering the Application, shall:
  - (1) inform the Commission of any findings or proposed activity changes which warrant consideration by other Commissioners,
  - (2) vet any and all concerns expressed by other Commissioners,
  - (3) maintain a record of all subsequent submittals and correspondence utilized when rendering their decision which must be provided to the Administrator upon the Commissioner's final action.
  - (4) provide the Commission with notice of any formal action taken.
- c. Prior to final action any Commissioner may request that the Application be brought before the entire Commission for consideration.
- d. The reviewing Commissioner shall, within a period of no more than twelve (12) business days, either approve the application or return it to the Administrator for consideration by full Commission.
- e. If at any time during the Administrative review, the reviewing Commissioner cannot resolve his concerns, or those expressed by other Commissioners, he is to return the application to the Administrator for consideration by full Commission.
- f. Conditional approval of an administratively reviewed permit is permissible.
  - (1) Conditions of approval shall become part of the application and constitute enforceable permit provisions.
  - (2) The Applicant shall have the right to refuse administratively reviewed conditions of approval and request that the application be considered by the full Commission.

**§ 2. Commission Review**

## a. Commission Review Period

- (1) When the application with supporting materials and fee are received, and deemed to be substantially complete, the Administrator shall provide notice to all Commissioners and the Commission review period will commence.
- (2) The initial review period shall last no more than twelve (12) business days during which time Commissioners are to review the materials submitted and provide comments to the Administrator.
- (3) Prior to the end of the initial review period Commissioners may:
  - (a) request that the Applicant provide additional information, studies or reports to assist in the review;
    - (i) Additional information requests must be relevant to the purposes and policies of the Land Use Law.
    - (ii) If additional information is requested, the Administrator shall notify the Applicant of the requested information and may set a reasonable time period for the submission of the information.
    - (iii) The initial review period shall restart commencing the day the Applicant provides the requested information.
  - (b) provide the Administrator with notice that additional review time is required;
    - (i) When requesting additional review time the Commissioner shall provide the Administrator with justification of the need and a reasonable date when the Commissioner will complete their review.
    - (ii) The Administrator shall notify the Applicant of any requested review period extension.
  - (c) provide the Administrator with notice that third-party review is necessary; and/or.
    - (i) The Administrator, with the assistance of the requesting Commissioner, shall determine the scope of services required and submit a request MPTN Procurement to bid such services.
    - (ii) The Administrator shall, with assistance from MPTN Finance, determine whether the cost of such services shall be invoiced to the to the Applicant as part of the Land Use Fee as allowed by 14 M.P.T.L. ch. 5, §4, d(3).
    - (iii) The Administrator shall notify the Applicant of the anticipated delay in the review and any additional cost.
  - (d) request a review hearing.
    - (i) The Administrator shall schedule the hearing as soon as practicable at the convenience of the Applicant and Commission.
    - (ii) The Applicant shall present the project and be prepared to answer Commission questions at the review hearing.
    - (iii) If at the conclusion of the Applicant's presentation there are no outstanding Commission issues, the Commission can move consideration of the project for vote, otherwise;
    - (iv) the commission review period shall reset from the day of the hearing.
- (4) In the event that the Administrator receives no response from a Commissioner by the conclusion of a review period, the Administrator will consider such as meaning that Commissioner takes no issue with the Application as it exists at that time.

- (5) The Administrator shall provide all Commissioners' comments/requests to the Applicant in a timely manner, but no later than one business day following the end of the applicable Commission review period.
- b. Upon completion of the review period it shall be the responsibility of the Administrator to determine the extent of outstanding Commission issues and gauge the relative concern of the Commission members related to the Application.
- (1) If, at the conclusion of the review period, there are still significant outstanding issues, the Administrator shall:
    - (a) provide the Applicant with the written findings of the Commission, and;
    - (b) if warranted, coordinate with the Applicant and Commission a mutually conducive time to convene a Commission meeting to discuss outstanding issues, and
    - (c) extend the review period by no more than twelve (12) business days from date the Applicant addresses the outstanding issues.
  - (2) If, at the conclusion of the review period, the Administrator believes that all outstanding issues have been addressed and that the Commission is content with the application he may move consideration for electronic vote.
  - (3) Otherwise the Administrator shall schedule a Commission meeting to consider the Application.
    - (a) Notice of such meeting shall be provided to the Applicant, and
    - (b) If the Applicant desires to attend the meeting, or if the Commission requests the Applicant be present, the Administrator shall coordinate mutually conducive meeting time.

## **CHAPTER 6. MEETINGS AND VOTES**

### **§ 1. Scheduling of Meetings**

- a. The Administrator shall schedule Commission meetings as necessary to:
  - (1) afford Applicants the opportunity for formal consultation before the Commission;
  - (2) review, approve, modify or deny Permits, not otherwise considered administratively or electronically; or
  - (3) conduct any other official business such as considering variances or enforcement actions.
- b. Meetings shall be recorded and minutes prepared summarizing the actions items for future consideration by the Commission.
- c. Meetings are to be closed to all but Commissioners, the Administrative Assistant, the representative from the Office of Legal Counsel, Subject Matter Experts invited by the Administrator and guests having business before the Commission at that time.
- d. If any tribal member or employee of the tribe has issues or concerns with any matter before the Commission they shall address such to the Commissioner(s) whose program discipline is pertinent to the issue. Commissioners shall be obligated to bring forth to the Commission such issues from the public and report back to those persons who had referred the matter to them.
- e. When scheduling meetings the Administrator shall:
  - (1) provide notice to any Applicant whose Application is included on the proposed agenda; and
  - (2) confirm the availability of all those Commissioners who the Administrator would reasonably expect could have a concern with any item included on the proposed agenda.

**§ 2. General Conduct of Meetings**

- a. The Administrator shall chair Commission meetings.
  - (1) In the event of the Administrators' absence, Commissioners shall appoint by majority vote a temporary Administrator to chair the meeting.
  - (2) The temporary Administrator shall carry out the duties of the Administrator until the earlier of the Administrators' return to work, or the next Commission meeting.
- b. In their absence Commissioners may be represented by:
  - (1) their alternates if duly appointed pursuant to Ch. 1, § 2 c. of this Title, or
  - (2) participating via live communication media.
- c. No official business may be conducted absent a quorum, defined as four (4) Commissioners present (14 M.P.T.L. Ch. 2., b(30)), except that Commissioners present may:
  - (1) review and approve minor changes to a permitted activity; and,
  - (2) act in an emergency to address issues which require immediate attention.
    - (a) Any action taken in an emergency must be subsequently approved through normal Commission voting procedures.
    - (b) In the event that an emergency action is not subsequently approved, the Administrator shall compel cessation of any activity commenced upon an emergency action.
- d. Prior to conduct of any other business the Administrator will commence with a roll call, identify any subject matter experts present and open the floor for motions to approve or modify the proposed agenda.
- e. Meetings shall progress by:
  - (1) the Administrator reading each agenda item into the record; then
  - (2) inviting the Applicant, if present, to present their Application and discuss the nature of their proposed activity.
- f. Each guest in attendance shall sign the attendance sheet and state their name for the record prior to speaking.
- g. Open discussion shall commence once the agenda item has been read and the Applicant's presentation, if any, is completed.
- h. At any time during open discussion, Commissioners may:
  - (1) request that guests step out of the meeting;
  - (2) motion to table the matter at hand for subsequent:
    - (a) consideration at the next meeting; or;
    - (b) electronic vote prior to the next meeting.
  - (3) motion the matter at hand for approval; conditional approval; or denial;
  - (4) motion to move to executive session;
  - (5) motion to reconsider any action taken by the Commission during that meeting; or
  - (6) motion to adjourn.
- i. All motions require a second motion prior to final vote by the Commission.

**§ 3. Commission Vote**

- a. Once a motion has been seconded the Administrator shall ask if there are any questions concerning the motion prior to calling for the vote.

- b. The Administrator shall not vote unless also serving as a Commissioner or representing a Commissioner pursuant to Ch. 1, § 2a. of this Title.
- c. Voting Commissioners may cast an aye or nay vote, abstain, or exercise a veto.
- (1) Collectively, Commissioners shall reach a majority decision by considering the complete Application, the testimony of the Applicant, Commissioners and subject matter experts, and deliberating the merits of the matter at hand in consideration of:
    - (a) the purpose and policies stated within the Land Use Law, and
    - (b) applicable requirements within other titles of Tribal Law, Land Use Regulations adopted, Council Resolutions, Tribal Policy or applicable federal rules.
  - (2) Individually, Commissioners shall deliberate the matter at hand in context of compliance with applicable MPTN Land Use Regulations, or other applicable federal requirements, pertinent to the subject discipline they represent on the Commission. Commissioners may exercise a veto only when compliance with such is at issue.
- d. Absent a veto the motion shall carry upon a majority of those present (e.g., if 7 are present the motion passes only if 4 Commissioners approve, regardless of abstentions).
- (1) Deadlocked Votes
    - (a) In the event of a tie vote, the motion shall be re-voted, and decided upon a simple majority (e.g. if 7 are present the motion would pass if 3 voted for, 2 against and 2 abstained).
    - (b) If the vote is still deadlocked, and all Commissioners are not present, the motion shall be tabled for a vote by all members, either at a meeting or electronically, and decided upon a simple majority.
    - (c) If the vote remains tied after these voting efforts are exhausted the motion will be deemed defeated.
  - (2) Veto Vote

In situations where a Commissioner exercises a veto vote the Administrator shall immediately table consideration of the application and move the meeting to executive session to discuss the relevant issue.

    - (i) The Commissioner exercising the veto shall specifically state the provision of regulation believed in non-compliance.
    - (ii) The Administrator will provide the Commission with a copy of the applicable provision to guide discussion.
    - (iii) If following the executive session the Commissioner remains committed to exercising the veto, the applicant shall be invited to present a remedy.
    - (iv) If the Commissioner's compliance concern cannot be remedied the Administrator shall inform the Applicant that his application has been denied, provide specific reference to the provision at issue, and offer an explanation of the applicable appeal procedures contain in 14 M.P.T.L ch10. Such notice must be followed in writing within 48-hours.
- e. Denied Permit Applications
- (1) If a Permit Application is denied, the Applicant may:
    - (a) if making minor accommodations to the Application, request a Hearing for Commission reconsideration pursuant to 14 M.P.T.L. ch. 10;
    - (b) submit a new Application - an additional land use fee shall not be required for subsequent Applications which are substantially similar to a previously denied Application; or,

- (c) request the return of any balance of the Land Use Fee provided with the Application, pursuant to Ch. 3, §4e.
- (2) The Administrator shall, to the extent practicable, expedite the Commission review period for any new Application submitted in response to one previously denied.

#### § 4. Electronic Polling

- a. The Administrator may move consideration of any matter at hand for electronic vote (polling by email).
- b. Any Commissioner may respond to an electronic poll by requesting that a meeting be convened to consider the matter, thus nullifying the electronic poll.
- c. If any Commissioner cast a dissenting vote, the electronic poll shall be nullified and a meeting convened to consider the matter.
- d. If any Commissioner approves conditionally, the current electronic poll shall be nullified and a new electronic poll distributed with the Commissioners condition.
- e. Once the Administrator receives affirmative votes from a majority of the Commissioners the matter will be deemed approved, provided that:
  - (1) a period of at least 24-Hours (during regular business days) had transpired, or
  - (2) all Commissioners who the Administrator would reasonably expect could have a concern with the subject matter, had voted.

#### § 5. Special Sessions

- a. Executive Session
  - (1) When an executive session is called:
    - (a) the room shall be cleared of all except for Commissioners, the Administrative Assistant and, if present, the representative from the Office of Legal Counsel, and
    - (b) the recording shall be stopped.
    - (c) Subject Matter Experts may be subsequently invited back upon unanimous consent of the Commissioners.
  - (2) When the executive session is concluded and the regular meeting reconvenes, the recording shall be restarted and the Administrator shall summarize the general discussion of the executive session for the record.
  - (3) No official business is to be decided within an executive session.
- b. Enforcement Hearing
  - (1) Enforcement Hearings shall be conducted as a regular Commission meeting.
  - (2) A quorum need not be present to hear testimony from the person issued the Show Cause Order.
    - (a) Absent a quorum, the Commission shall take no further official action at the hearing except that,
    - (b) in the event that the person issued the Show Cause Order fails to appear there will be a presumptive conclusion that the alleged violation has occurred and the Administrator may issue a subsequent Compliance Order or Cease and Desist Order without further action by the Commission.

- (3) Following a hearing the Commission may issue an Enforcement Order to any Person who the Commission found to have violated any Permit term or condition. Such Orders may include penalties.
  - (4) A quorum must be present when the Commission decides to levy a penalty.
  - (5) In determining the amount of the penalty, the Commission may consider the following factors:
    - (a) the reasonable costs and expenses of the Commission in investigating, controlling, and abating such violations;
    - (b) penalties established within Land Use Regulation;
    - (c) the actual and potential impact or damages to the environment, or the general health, safety, and welfare of the Tribe;
    - (d) any measures taken to prevent or mitigate the violation;
    - (e) any prior violations or previous failure to comply with the Land Use Law, any Permit term or condition, tribal policy, Land Use Regulation, or Enforcement Order;
    - (f) the financial gain, if any, derived by the source as a result of operating out of compliance;
    - (g) the deterrence of future potential violations;
    - (h) whether the failure to comply was intentional, willful or knowing and not the result of an error; and,
    - (i) any other factor(s) that may be relevant to determining the amount of the penalty, provided that such factor(s) shall be set forth in the written notice of assessment of the penalty.
- c. Hearings for Reconsideration
- (1) A Person may request a Hearing before the Commission if:
    - (a) an Enforcement Order has commenced against them;
    - (b) a penalty has been levied upon them;
    - (c) the Commission denied a Permit, Variance, or a Certificate of Completion; or,
    - (d) they are seeking relief from a specific Permit condition.
  - (2) Hearings shall be conducted as specified within the MPTN Administrative Procedures Act (40 M.P.T.L.) with the Commission serving as the Agency and the Administrator serving as the Hearing Official.
    - (a) The Administrator shall decide whether a Formal or Informal Hearing is required.
    - (b) In general, an appeal of a Commission's decision on a Permit Application should be the Informal type of hearing, whereas an appeal of an Enforcement Action should be a Formal type of hearing.
    - (c) Regardless of the type of hearing specified, the hearing shall be recorded and minutes prepared as part of the official Commission record.
  - (3) In addition to a quorum, prior to taking any official action on an appeal, the Administrator will ensure participation of all Commissioners who were present when the original action was taken.
  - (4) A person may present new information, for the record, at the meeting which was not part of the record when the original action was taken.
  - (5) When reconsidering a vetoed permit application it shall be incumbent upon the Commissioner who vetoed the application to defend his reasons for doing so.
    - (a) Following completion of introductory business, the Administrator shall request that the Commissioner who vetoed the application reiterate his reason for doing so and reference the specific provision of law or regulation he believed to be at issue.
    - (b) The appellant may then state his reason for pursuing his appeal and present arguments supporting his position.



- (c) Prior to final consideration the Administrator shall ensure that the Commissioner who originally cast the veto has a final opportunity to express his opinion.
- (6) Commissioners may not exercise a veto during an appeal.
- d. Variance Consideration
  - (1) A Person may request a hearing for a variance from a specific provision of:
    - (a) a Code or Standard, or
    - (b) a Regulation, only in cases where the Regulation itself specifies a procedure for Commission issued variances.
  - (2) A variance request shall be considered as a regular business item at a Commission meeting.
  - (3) In addition to a quorum, prior to taking any official action on a variance request, the Administrator will ensure participation of the Commissioner representing the program discipline most affected by the variance request.
  - (4) When considering a variance Commissioners are reminded that a Regulation may contain specific variance procedures which must be followed.
  - (5) The Commission may grant the variance if the Applicant provides sufficient evidence that:
    - (a) the granting of the variance will not undermine the purposes of the Land Use Law;
    - (b) the proposed variance will not have the potential to adversely affect the environment or, the potential to affect the general health, safety and welfare of the Tribe, it's employees and guests;
    - (c) denying the variance will cause the Applicant to suffer hardship out of proportion to the benefit intended by the Tribal Land Use Regulation; and,
    - (d) the Tribal Land Use Regulation from which the variance is sought can be properly mitigated or the effect of the variance is neutral.
  - (6) The Commission may condition its approval of the variance by stipulating alternative equivalents, or alternative compliance methods than those proposed by the applicant.

## CHAPTER 7. PERMIT CONDITIONS

### § 1. Program Specific Permits and Notifications

- a. The issuance of a Land Use Permit does not relieve any Person from complying with any other applicable provisions of Tribal or applicable federal law or from any provision, ordinance, or regulation of the Mashantucket Pequot Tribal Nation that may require approval, license, or permit to accomplish, engage in, carry on, or maintain a particular business, enterprise, occupation, transaction, or use.
- b. Commissioners shall endeavor to apprise the Permittee of all anticipated post permitting requirements pertinent to their subject discipline.
  - (1) Such typical requirements shall be codified within applicable Land Use Regulation or otherwise available through direct reference to publically available tribal or federal policy, regulation or law.
  - (2) Requirements not specifically noted during the Application Review Period shall be communicated to the Permittee either in person during a Commission meeting or in writing upon permit issuance. In cases where such requirements were not anticipated, the Applicant shall be notified in writing as soon as the Commissioner becomes aware that such requirements are applicable.

- (3) Common requirements may assume to have been communicated to the Applicant if summarized, with reference to the specific provision, within a Land Use Commission fact sheet available to the public via the internet.

c. The Applicant shall not be excused for non-compliance with any requirement which the Commission failed to communicate; however, the Commission shall consider such fact during any subsequent enforcement proceeding where penalty assessment is considered.

## § 2. Monitoring by Commissioners

a. It is the responsibility of each Commissioner to monitor the progress of permitted Land Use Activities to assess compliance with those elements of a Land Use Regulation specific to the subject discipline they represent on the Commission.

- (1) Commissioners should utilize members of their staff and/or coordinate with other Commissioners to facilitate their duties in this regard.
- (2) Commissioners should attempt to resolve minor issues or concerns directly with the Project Manager for the Activity.
- (3) Commissioners, who fail to attain satisfactory resolution of any issues or concerns, may request intervention by the Administrator.
- (4) If the Administrator fails to reach an accommodation acceptable to the Commissioner, the Administrator shall:
  - (a) add the issue to the agenda of next Commission meeting as a topic for discussion and possible consideration for enforcement action;
  - (b) issue the appropriate person a Show Cause Order, if the Administrator determines that reasonable grounds exist to find that there is a violation; or
  - (c) issue a Cease and Desist Order, if the Administrator determines that reasonable grounds exist to find that there is a violation and substantial harm to the environment, the general health, safety, and welfare of the Tribe is likely to occur without the instigation or cessation of such activity.

b. Commissioners, and their authorized representatives, have the authority, at all reasonable times, to enter a Facility, or upon any property associated with a permitted activity. This inspection authority is detailed within 14 M.P.T.L Ch. 9 § 1.

- (1) A Commissioner who is refused, or unreasonably delayed, access shall notify the Administrator.
- (2) The Administrator shall make a reasonable effort to resolve the situation with the Permittee prior to commencing enforcement action.

c. Commissioners who suspect a permitted activity to be in non-compliance with any Permit condition or tribal or federal law or regulation shall have the responsibility to document those conditions which lead them to suspect that a violation has occurred. All such supporting documentation must be provided to the Administrator when making a request to initiate enforcement action.

d. Commissioners shall ensure that all outstanding issues related to their subject discipline are addressed prior to the issuance of a final Certificate of Completion.

- (1) It is incumbent on each Commissioner to be aware of the status of all activities relevant to the subject discipline they represent on the Commission.
- (2) Commissioners are cautioned that the issuance of a final Certificate of Completion is an acknowledgement that, to the best of their knowledge, all outstanding issues related to the permitted activity have been addressed to their satisfaction.

- (3) Commissioners are cautioned of the difficulty of pursuing subsequent enforcement action, to address issues which may have been informally agreed to between them and the Applicant, after issuance of the final Certificate of Completion.

### § 3. Plan Modifications and Deferred Submittals

a. Land Use Activities shall be completed in accordance with plans, specifications and submittals approved by the Commission. Changes, including deferred submittals, made after a Permit is issued require the Commission's review and approval of the proposed changes, before the work proceeds.

b. The Permittee shall supply copies of all deferred submittals to the Building Official. Upon request, the Permittee shall also provide a copy to any Commissioner whose discipline, as represented on the Commission, meets the subject matter contained within the submittal.

- (1) The Applicant shall submit all deferred submittals to the Design Professional in Responsible Charge who shall review them prior to being forwarded to the Building Official, et al.
- (2) The Design Professional in Responsible Charge shall provide a notation on each submittal indicating that the documents have been reviewed and have been found to be in general conformance to the design of the building.
- (3) Deferred submittal items shall not be installed until the design and submittal documents have been approved by the Building Official, et al.

c. Minor changes to the approved plans may be approved administratively by the Building Official and any other Commissioner whose discipline, as represented on the Commission, meets the subject matter of the modification.

- (1) Minor changes do not include changes in the size, location, change of use, or drawings with multiple changes that will require a substantial plan review.
- (2) The reviewing Commissioner may require submittal of a letter, signed and Stamped by the Design Professional in Responsible Charge, detailing the change required.
- (3) The reviewing Commissioner is to consider the minor change in context of whether it relates to other Commissioners' program disciplines and seek concurrence with all such Commissioners who may have a related interest in review of the change.
- (4) If the reviewing Commissioners cannot resolve their concerns with the Permittee or otherwise desires involvement of the Commission they may defer such review to the Commission.
  - (a) A quorum is not required to review minor changes to a permitted activity provided that the Administrator ensures that there is participation of all Commissioners who would reasonably be expected to have concern with the changes proposed.
  - (b) When reviewing changes the Commissioners present shall determine whether those changes require a permit modification as provided in 14 M.P.T.L. Ch. 6, § 3.
- (5) Significant and material changes require, as stipulated within 14 M.P.T.L. Ch. 6, § 3, a formal permit modification and consideration by the entire Commission.

#### § 4. Notification of Violations

Commissioners shall notify the Permittee and Administrator in writing within twenty-four (24) hours of becoming aware of any Permit violation, failed sample or test, or any activity which is or may become a violation of the Permit or any Land Use Regulation.

#### § 5. Notification of an Emergency Situation

In the event that a Commissioner becomes aware that a permitted activity has caused, or is likely to cause, an emergency situation where there is an imminent threat to life, health, property, environment, or essential public service, the Commissioner shall immediately contact MPTN Emergency Services, request that site personnel cease all activity, and notify the Administrator.

#### § 6. Bonding

The Commission may require the posting of a performance or maintenance bond after consulting with any relevant MPTN departments or teams, in an amount and of duration satisfactory to the Commission to assure and guarantee the completion of site improvements including, but not limited to, grading, regrading, drainage, pollution prevention, site remediation, environmental controls, erosion control, lighting, screening, planting, building or safety improvements and other reasonable conditions indicated on a site plan which will assure compliance with this Law, or applicable Tribal Program regulations.

a. A performance or payment bond shall be delivered to the Mashantucket Pequot Tribal Nation, in the form of a certified check, pledge of a bank book, fully insured by an agency of the United States government, with irrevocable power of attorney and acknowledged by the bank in which the funds are deposited, or a corporate surety bond, at the discretion of the Commission, shall be posted by the Applicant, to insure the completion of required improvements and utilities in the event the Applicant shall fail to install same within five years from the date of the bond. The term of the performance bond may be extended by the Commission upon approval of a petition from the Applicant to the Commission and subject to agreement of such extension by the surety company.

b. The Applicant may apply to the Commission for a reduction in bond when 50% of the Total Cost of the Project for the project have been completed and, after at least 180 days from any prior reduction, may apply to the Commission for further reduction in the bond when 75% of the Total Cost of the Project for the project has been completed. Requests for such reduction shall be made in writing to the Commission with a fully executed copy of the Commission's bond form attached thereto.

c. Prior to the release of the performance bond, the Applicant shall present a maintenance bond equal to at least 10% of the initial performance bond. Such bond shall be for a period of one year and shall guarantee the improvements installed.

### CHAPTER 8. PENALTIES

a. Except as provided within paragraphs b. and c. of this Section, in connection with an Enforcement Order, the Commission shall have the authority to issue penalties to any Person, Owner or Permittee who, after notice and hearing, the Commission finds to have violated any Permit term or condition, Land Use Regulation, or Enforcement Order.

b. Penalties for violations of a Land Use Regulation that contain specific penalty assessment procedures shall be assessed as specified within that Regulation.

c. Pursuant to 14 M.P.T.L. Ch. 9, § 3a., the following schedule of common penalties is established for violations of L.U.R. Title 2, the Building Code, and L.U.R. Title, the Fire Prevention Code.

- (1) If, upon inspection or investigation, the Building Official or Fire Marshal believes that a Person has violated a requirement of Title 3 or Title 4 of L.U.R., he shall with reasonable promptness issue a citation to the Person.
- (2) The citation may include the assessment of penalties as stipulated below:
  - (a) \$100 for commencing work without an approved permit;
  - (b) \$50 for failing to provide timely notice for inspection;
  - (c) \$50 for a repeated failed inspection;
  - (d) up to \$500 for blockage of an emergency egress;
  - (e) up to \$500 for a unauthorized storage within an egress corridor
  - (f) up to \$500 for failure to provide proof that a citation has been abated within the time specified on such citation;