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Mashantucket Pequot Tribal Laws

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All changes to this law are noted in red text

TITLE 4. TORT CLAIMS (GAMING ENTERPRISE)

CHAPTER 1

Section 1. Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

a. “Mashantucket Pequot Gaming Enterprise” or “Gaming Enterprise” means the arm of the tribal government established by the Mashantucket Pequot Tribal Council to conduct the gaming operations of the Tribe, and includes its officers, agents, servants and employees.

b. “Gaming Enterprise Site” means the building or buildings in which Foxwoods Resort Casino is situated, and all parking areas and access roads appurtenant thereto and located on the Reservation of the Tribe.

c. “Claim” means a petition for an award under this Law. A claim may be filed with respect to any injury as defined in this Title.

d. “Person” means any individual, firm, partnership, corporation, limited liability company, association, or any other legal entity.

e. “Dangerous Condition” means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent acts or omissions of the Gaming Enterprise in constructing or maintaining such facility. For the purposes of this subsection, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate or due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this Section shall preclude an accumulation of water, snow, or ice from being found to constitute a dangerous condition when the Gaming Enterprise fails to use existing means available to it for the removal of such accumulation and when the Gaming Enterprise had notice of such accumulation and reasonable time to act.

f. “Injury” means death, harm to a person, or damage to or loss of property which if inflicted by another constitutes a tort under tribal law.

g. “Actual Damages” means the ascertainable loss of money or property sustained as a result of an injury without any reduction for collateral sources.

Section 2. Effective Date of Amendments

a. The amendments to this Law made pursuant to TCR101200-03 of 07 shall be applicable to claims accruing after the enactment date of the Resolution.

b. The amendments to this Law made pursuant to TCR122702-02 of 02 shall be applicable to claims pending and accruing as of the enactment date of the Resolution.

c. The amendments to this law pursuant to TCR052907-06 of 09 shall be applicable to claims accruing after May 29, 2007, the date of the enactment of TCR052907-06 of 09.

Legislative History. Effective October 12, 200 - TCR101200-03 amended ch. 1, § 2 to remove references to negligence, allowing a cause of action for intentional torts. *Effective July 6, 2007, TCR070607-07 amended Ch.1§2 by adding §(c) regarding the applicability of amendment approved by TCR052907-06.*

Section 3. Jurisdiction over Tort Claims and Waiver of Sovereign Immunity from Suit

a. The tribal court shall have jurisdiction over tort claims against the Gaming Enterprise or arising at the Gaming Enterprise Site.

Legislative History. Effective October 12, 200 - TCR101200-03 amended Ch. 1, § 3(a) to clarify that the Tribal Court has jurisdiction over tort actions arising at the Gaming Enterprise site that do not involve the Gaming Enterprise as a party.

b. The Tribe hereby waives the sovereign immunity from suit of the Gaming Enterprise for actions in the tribal court founded upon a tort of the Gaming Enterprise. Nothing herein shall be construed as a waiver of the sovereign immunity from suit of the Tribe or the Gaming Enterprise in state or federal court or in any action before any state or federal agency or in any other forum or context.

c. Members of the Tribal Council remain immune from suit for actions taken within the scope of their duties and responsibilities as members of the Tribal Council.

Section 4. Awards

In any judgment under this Law against the Gaming Enterprise, the court may award damages as hereinafter provided:

a. The court may enter an award for actual damages.

b. For any injury resulting in death, the Court may enter an award for actual damages, but in no event shall the award be less than \$100,000.

c. In addition to an award for actual damages, the court may enter an award for any injury resulting in permanent significant disfigurement or permanent significant scar of the face, head, or neck, or, on any other area of the body only if the resulting permanent significant disfigurement or permanent significant scar handicaps the claimant in obtaining or continuing to work. In determining an appropriate damage award for a permanent significant disfigurement or permanent significant scar, the court shall calculate such an award pursuant to XIII M.P.T.L. ch. 4, Sections 12(c) and 12(d); except that when the claimant is not employed, the court shall use the rate of \$200 per week, without deduction.

d. In addition to an award for actual damages, the court may enter an award for:

(1) pain and suffering or mental anguish in an amount which shall not exceed 200% of the actual damages sustained.

(2) for purposes of calculating pain and suffering or mental anguish, actual damages shall include the reasonable value of expenses or losses incurred, notwithstanding offsets resulting from adjustments or write offs based on contractual relationships or other arrangements between third party payors, including but not limited to Medicare or private insurance carriers.

e. No other award or judgment shall enter under this Law, including:

(1) no award based upon a rule of law imposing absolute or strict liability;

(2) no award for punitive or exemplary damages;

(3) no award based upon a claim of loss of consortium; and

(4) no judgment for declaratory or injunctive relief against the Gaming Enterprise.

(5) in causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was less than or equal to the combined negligence of the person or persons against whom recovery is sought. Any award for damages to a person shall be reduced in proportion to the person's contributory negligence. However the person shall recover nothing if claimant's contributory negligence is determined to be greater than 50%.

Legislative History. Effective October 12, 2000 - TCR101200-03 amended Ch. 1, § 4 to add a minimum recovery of \$100,000 in wrongful death actions, to provide an additional award for injuries resulting in permanent significant disfigurement or scarring, and to increase maximum pain and suffering awards from 50% to 100% of actual damages. Effective May 29, 2007 TCR052907-06 amended Ch. 1, §1(d)(1) changing the amount of recoverable due to pain and suffering or mental anguish from 100% to 200%, in addition Ch.1, §(2)(5) define how damages are calculated.

Section 5. Limitation on Presentation of Claim

a. Any action under this Law must be filed within one year from the date the claim accrued. Claims brought under this Law shall be deemed to accrue on the date when the injury is sustained.

b. The defendant must present the issue of failure to file a claim as stated in Section 5(a) to the Court as an affirmative defense. Such defense shall not be considered jurisdictional in nature.

Legislative History. Effective October 12, 2000 - TCR101200-03 amended Ch. 1, § 5 to extend the statute of limitations from 180 days to one year. Effective December 27, 2002 - TCR122702-02 amended by adding Ch. 1, § 5(b) which repealed the procedural requirement of filing a formal Notice of Claim within 180 days from the date of the claim.

Section 6. Attachment Prohibition

Neither execution nor attachment shall issue against the Gaming Enterprise or the Tribe in any claim for injury or proceedings initiated under this Law.

Section 7. Miscellaneous

a. This Law shall govern all tort claims against the Mashantucket Pequot Gaming Enterprise or arising at the Gaming Enterprise Site. When interpreting this law, the court shall follow tribal law and precedent and may be guided by the common law of other jurisdictions.

b. All actions brought under this Law shall be tried to the court and not to a jury. No costs shall be taxed against the Gaming Enterprise.

c. When it is alleged that the liability of the Gaming Enterprise is based upon the action of an officer, agent, servant, or employee of the Gaming Enterprise acting within the scope of his or her employment there shall be no separate cause of action against said officer, agent, servant or employee, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe or the Gaming Enterprise to the extent that it extends to such an individual.

LEGISLATIVE HISTORY REVISIONS TO TITLE IV TORT CLAIMS (GAMING ENTERPRISE)

A. Background

Title 4 of the Mashantucket Pequot Tribal Laws was originally enacted in 1992 as TCR011092-01, called the “Sovereign Immunity Waiver Ordinance.” In adopting that Resolution, the Tribal Council provided “reasonable procedures for the disposition of tort claims arising from alleged injuries to patrons of its gaming facilities,” as required by the Mashantucket Pequot Gaming Procedures, 56 Fed.Reg. 24996 (May 31, 1991). Since 1992, tort claims against the Gaming Enterprise have been resolved pursuant to this Law. In addition, the Gaming Enterprise has grown and the Tribal Council has enacted several other laws. In its continuous review of tribal laws and in an effort to respond to the needs of the community and address issues or ambiguities that have arisen, the Judicial Committee conducted an extensive review of the tort claims law and recommended changes to the Tribal Council.

The following is a summary of the amendments to Title IV. Tort Claims (Gaming Enterprise) and the intent of the Tribal Council in adopting these amendments.

B. Summary of Amendments

1. Jurisdiction and Waiver of Sovereign Immunity from Suit

Waiver of Sovereign Immunity From Suit.

Prior to the amendments, Title IV contained a waiver of sovereign immunity that allowed suits against the Gaming Enterprise, an arm of the tribal government, for three specific types of tort claims: 1. injuries proximately caused by the negligent acts or omissions of the Gaming Enterprise (including its employees); 2. injuries proximately caused by the negligent acts or omissions of tribal security officers; and 3. injuries proximately caused by the dangerous condition of the property at the Gaming Enterprise (dangerous condition being defined in the law).

The amendment to this Section aligns the waiver of sovereign immunity with the waiver in Title XII, Section 2.a., for actions “founded upon a tort.” Thus, the waiver no longer is limited to claims based upon negligence. This waiver is intended to include intentional torts, but would not include so called “constitutional” torts or statutory torts. A “constitutional” tort depends upon rights guaranteed by either the U.S. Constitution or the various state constitutions. Facially, these claims would not be applicable to the Gaming Enterprise or the Tribe, since neither the U.S. Constitution nor state constitutions are applicable to the Tribe, as a sovereign predating the state and federal governments. The Tribe’s Constitution does not provide for or address individual rights vis-à-vis the tribal government and, therefore, could not form the basis of the typical constitutional tort.

Nor does this waiver encompass any type of analogous claim based upon the rights recognized in the Indian Civil Rights Act, which contains similar, although not identical, restraints against tribal governmental actions regarding the civil rights of individuals. The Tribal Council intends to provide separately for claims based upon alleged violations of civil rights and thus, such claims are not within the purview of the waiver of immunity contained in this Law.

All references to or reliance upon the law of the state of Connecticut have been deleted with the intent of clarifying that the tribal court is not bound by state law in any respect. The waiver of immunity does not extend to any type of “statutory” torts defined by any other jurisdiction.

2. Jurisdiction

The amendments clarify that the tribal court has jurisdiction over tort action against the Gaming Enterprise and arising at the Gaming Enterprise site that may not involve the Gaming Enterprise as a party (i.e., private party actions).

3. Damage Awards

Prior to the amendments, Title 4 Limited damage awards in several ways. In reviewing the tribal law and its implementation over the past nine years, the Council has amended the law to change some of the limitations on damages. The amendments include the following:

a. Increase awards for pain and suffering. The tribal court system has been limited in its authority to render awards for pain and suffering, in comparison to other judicial systems. Plaintiffs’ attorneys generally have been critical of this limitation and the judiciary has expressed some concern in not being able to award greater damages in some cases. The tribal court system also has been complimented by those who favor tort reform and believe there should be some limits placed upon excessive awards. In addition, the claims handling and adjudication processes in the Tribal system, in large part, have worked well in resolving and paying claims quickly and without the delays found in other systems. The amendments increase the cap on damages for pain and suffering from 50% of actual damages to 100% of actual damages.

b. Minimum award in injuries resulting in death. Although there has never been a claim brought against the Gaming Enterprise involving a death, the present system may not be able to adequately compensate the family or survivors in the event of a death proximately caused by the Gaming Enterprise. The law has been amended to provide for a minimum recovery of \$100,000 in wrongful death cases which will address the potentially inadequate recovery that might result in some cases where the actual damages are negligible. In addition to the minimum award for actual damages, a litigant could seek an award for pain and suffering not to exceed a total of 100% of the actual award.

c. Damages for permanent disfigurement or scarring. Another change to the present system is to provide relief to an injured person when a plaintiff has a permanent significant disfigurement or scar on the face, neck or head, or if on any other area of the body when the person can demonstrate that it handicaps the person in obtaining or continuing to work. The amendment allows a plaintiff in this instance to receive an additional award for such disfigurement or scarring, and directs the court to calculate this award in accordance with the Tribe’s Workers’ Compensation Code approach, which ties the award to average weekly salary for a limited number of weeks.

d. Elimination of language which limits awards to extent covered by insurance. The amendments eliminate language limiting claims against the Gaming Enterprise to only those covered by insurance. Previously, the definitions of “Injury” and “Actual Damages” included language defining them as having to be “expressly covered by the liability insurance of the Gaming Enterprise without regard to any deductible amount

contained in the insurance policy.” The Gaming Enterprise has extensive insurance coverage and this particular provision has not been used to deny liability.

e. Limitation on awards as to claims against the Gaming Enterprise. The limitations on damages concern claims against the sovereign only, and do not limit awards in claims between private individuals.

4. Private Party Actions

Prior to the amendments, Title 4 did not directly address claims between private parties and to which the Gaming Enterprise was not a party. The amendments clarify that the tribal court has jurisdiction over both tort claims against the Gaming Enterprise, as well as tort claims arising on the Gaming Enterprise site. This change allows individuals to proceed in tribal court for injuries occurring at the Gaming Enterprise. In addition, this provision is intended to provide the tribal court with jurisdiction in cases where both the Gaming Enterprise and a non-tribal entity are parties and to avoid separate actions in different forums: one in tribal court against the Gaming Enterprise and one in state court against the non-tribal entity or individual.

5. Statute of Limitations

Prior to the amendments, all claims and notices of claims had to be filed within 180 days from the date the injury is sustained. The amendment lengthens the time for bringing the claim in tribal court to one year from the date of injury, while maintaining a requirement that the claimant file a notice of claim with the tribal court within 180 days of the date of the injury. This procedure is consistent with Title 12 governing tort claims against the Tribe and other tribal divisions or enterprises.

6. Other Changes/Deletions

The amendments also remove certain provisions of the original laws: the Section addressing Volunteers (Section 6); employee actions outside the scope of employment (Section 7); potential reimbursement to the Gaming Enterprise if it is determined that an employee acted in a willful and wanton manner or otherwise outside the scope of employment (Section 8); referral of matters under \$10,000 to the office of the magistrate (Section 10(d)); application of the laws of the state of Connecticut (Section 12); provision making Sections severable (Section 14); and construction provisions (Sections 15(a), 15(b), 15(c)).

These Sections have been deleted because they have not been used or are no longer relevant to the tort law in the tribal court. For instance, the office of the magistrate has never been used for the disposition of claims and referral to such an office is not possible. The reference to state law has been deleted because the tribal court and tribal law continue to develop and there is no need to direct the court to follow state law as tribal law.

The amendments are effective for any claim accruing after the enactment of the amendments and shall not be applicable to either pending claims or those accruing prior to the adoption of the amendments. In addition, because of the substantial and significant changes to the tort law, and for ease of codification, the amendments will wholly replace the current law.

Legislative History. Derivation: Effective January 10, 1992 - TCR011092-01 enacted the “Sovereign Immunity Waiver Ordinance” as required by the federal Mashantucket Pequot Gaming Procedures, 56 Fed. Reg. 24996 (May 31, 1991). **Amendments.** Effective October 12, 2000 - TCR101200-03 Former ch. 1, §10(d) was deleted to eliminate references to the Office of the Magistrate. Former ch. 1, § 6, Volunteers, § 7, Employee Actions Outside the Scope of Employment; § 8, Liability for Expense; and § 14, Severability, were deleted. In addition, codification of a Legislative History Revisions to IV M.P.T.L. was approved. Former ch. 1, § 12 was deleted to remove references to the applicability of Connecticut law.

All changes to this law are noted in red text

TITLE 12. CIVIL ACTIONS

CHAPTER 1. CIVIL ACTIONS LAW

Section 1. Tribal Forum

a. The Mashantucket Pequot Tribal Council recognizes that it is in the best interest of the Tribe to provide a forum to address civil causes of action, including civil actions by or against the Tribe, tribal enterprises, tribal members and any other person or entity who, through their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with the Tribe or on tribal lands, are entitled to civil redress or incur civil obligations. For purposes of this law, “tribal lands” means Indian country, as that term is defined in 18 U.S.C. § 1151. The intent of this law is that the jurisdictional powers of the Mashantucket Pequot Tribal Court shall be exercised to the fullest extent possible and construed to serve the ends of justice.

b. Jurisdiction. Except as may be limited by tribal or federal law, the tribal court shall have jurisdiction over all civil causes of action and the tribal court shall have the power to fashion any equitable or legal remedy reasonably required to enforce judgments, including but not limited to, attachments, garnishments and executions. The Tribal Court shall have jurisdiction to hear and decide, through a declaratory judgment action, matters pertaining to the legal sufficiency or validity of a petition presented pursuant to Article VIII Section 1 of the Mashantucket (Western) Pequot Constitution, and the sovereign immunity of the Tribe is hereby waived for the limited purpose of such a declaratory judgment action in Tribal Court provided such action is commenced within 20 days from the time the Tribal Council does not accept the validity or sufficiency of the petition.

Legislative History. Effective May 16, 2000 - TCR051600-03 amended ch. 1, § 1(b) to establish that the Tribal Court has the power to fashion any remedy reasonably required to enforce judgments, consistent with concurrent amendments to the Tribal Court’s jurisdiction in I M.P.T.L. Effective October 5, 2000 - TCR100500-03 amended ch. 1, § 1(b) to include the following language: “Except as may be limited by Tribal or Federal Law, the Tribal Court shall have jurisdiction over all causes of action” to clarify the scope of Tribal Court jurisdiction as addressed in TCR051600-05 and to be consistent with I M.P.T.L. Effective June 4, 2002 - TCR060402-05 amended ch. 1, § 1(b) to clarify that the Tribal Court has jurisdiction over all civil causes of action and has the power to fashion any equitable or legal remedy. Effective December 26, 2002 - TCR122602-01 amended ch. 1, § 1(b), granting the Tribal Court jurisdiction to determine through a declaratory judgment action the legal sufficiency or validity of a petition presented pursuant to Article VIII, § 1 of the Mashantucket (Western) Pequot Constitution.

c. Personal Jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, the tribal court may exercise personal jurisdiction over any person, Indian or non-Indian, or any entity,

- (1) who is served with process on tribal lands;
- (2) who consents to such jurisdiction;
- (3) who in person or through an agent
 - (a) transacts any business or activity on tribal lands;
 - (b) commits a tortious act on tribal lands;
 - (c) commits a tortious act outside tribal lands causing injury to person or property within tribal lands if the person either regularly does or solicits business, or engages in any other regular course of conduct, or derives substantial revenue from goods used or consumed or services rendered on tribal lands, or otherwise expects or should reasonably expect the act to have consequences on tribal lands;
 - (d) owns, uses, or possesses any property real or personal, or any interest therein, within tribal lands;
 - (e) enters into any contract made on tribal lands or to be performed on tribal lands;
 - (f) engages in any business solicited on tribal lands by mail, telecommunication, or otherwise if the person has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without tribal lands; or
 - (g) engages, directly or indirectly, in the production, manufacture or distribution of goods by a person with the reasonable expectation that such goods are to be used or consumed on tribal lands and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or

(4) who violates the civil rights of any person, as defined in the XX M.P.T.L. Civil Rights Code. None of the foregoing bases of jurisdiction is exclusive or exhaustive, and jurisdiction may be established upon any one or more bases as applicable.

d. Limitation on Jurisdiction.

(1) As provided in the tribal law establishing the Tribal Court, I M.P.T.L. ch. 1, §2(c), the tribal court shall not exercise civil jurisdiction over any action arising from a contract or agreement to which the Tribe is a party or by which it may be bound if such contract contains an express provision prohibiting the exercise of jurisdiction by the tribal court, whether approved prior to or subsequent to the enactment of this law, provided that the tribal court shall have jurisdiction to enforce an agreement to arbitrate or an arbitration award relating to such contract if the contract provides for such action.

(2) Nothing provided in this law shall be deemed to be a waiver of the sovereign immunity of the Tribe or a tribal enterprise unless such immunity has been waived in the context of the particular case before the tribal court, or has been expressly waived by this law. Nothing contained in this law shall be construed to be a waiver of the sovereign immunity of the Tribe or any tribal enterprise from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.

(3) There shall be no cause of action in the tribal court for alleged gaming losses, the jurisdiction of which has been specifically reserved for consideration by the Mashantucket Pequot Gaming Commission. For purposes of this section, "gaming loss" means any claim brought to recover damages for pecuniary loss resulting from the engagement by any person in activities classified as "class I gaming," "class II gaming," or "class III gaming," as those terms are defined in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721.

(4) There shall be no cause of action in the tribal court relating to, or which may affect, banishments or exclusions, except that this provision shall not prohibit the tribal court from imposing civil or criminal penalties for the violation of a banishment or exclusion order.

Section 2. Tort Actions to which the Tribe is a Party

a. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for actions founded upon a tort of the Tribe or its agents, servants, or employees acting within the scope of their employment.

b. In any judgment under this law against the Tribe, the court may award damages as hereinafter provided:

(1) The court may enter an award for actual damages.

(2) For any injury resulting in death, the court may enter an award for actual damages, but in no event shall the award be less than \$100,000.

(3) In addition to an award for actual damages, the court may enter an award for any injury resulting in permanent significant disfigurement or permanent significant scar of the face, head, or neck, or, on any other area of the body only if the resulting permanent significant disfigurement or permanent significant scar handicaps the claimant in obtaining or continuing to work. In determining an appropriate damage award for a permanent significant disfigurement or permanent significant scar, the court shall calculate such an award pursuant to Title XIII M.P.T.L. ch. 4, §§ 12(c) and 12(d); except that when the claimant is not employed, the court shall use the rate of \$200 per week, without deduction.

(4) In addition to an award for actual damages, the court may enter an award for pain and suffering or mental anguish in an amount which shall not exceed 200% of the actual damages sustained.

(5) "Actual Damages" means the ascertainable loss of money or property sustained as a result of an injury without any reduction for collateral sources.

(6) For purposes of calculating pain and suffering or mental anguish, actual damages shall include the reasonable value of expenses or losses incurred, notwithstanding offsets resulting from adjustments or write offs based on contractual relationships or other arrangements between third party payors, including but not limited to Medicare or private insurance carriers

(7) In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was less than or equal to the combined negligence of the person or persons against whom recovery is sought. Any award for damages to a

person shall be reduced in proportion to the person's contributory negligence. However the person shall recover nothing if claimant's contributory negligence is determined to be greater than fifty (50) percent.

Legislative History. Effective June 4, 2002 - TCR060402-05 amended Ch. 1, § 2(b) to provide a minimum recovery of \$100,000 in wrongful death actions and to increase allowable damage awards for pain and suffering from 50% to 100% of actual damages. Effective May 29, 2007, TCR052907-06 amended Ch.1, §2(b) by increasing the maximum allowable award for an award for pain and suffering or mental anguish from 100% to 200% of actual damages and redefined Ch.1, §2(b)(5) Actual damages to mean ascertainable loss without reduction for collateral sources. Ch..1, §2(b)(6) has been added regarding calculating the reasonable value of expenses and losses incurred and Ch..1, §2(b)(7) explains the calculation of damages in cases of contributory negligence.

c. Nothing in this law shall affect the provisions of the tribal law applicable to the Gaming Enterprise, IV M.P.T.L. ch. 1., which shall remain in full force and effect.

d. The amendments to this law pursuant to TCR052907-06 of 09 shall be applicable to claims accruing after May 29, 2007, the date of the enactment of TCR052907-06 or 09.

Legislative History. Effective July 6, 2007, TCR070607-07 amended Ch.1§2 by adding §(d) regarding the applicability of amendment approved by TCR052907-06.

Section 3. Contract Actions to which the Tribe is a Party

Except as provided in Section 1(d)(1) of this law, the Tribe hereby expressly waives its sovereign immunity from suit in the tribal court and the immunity of its tribal enterprises for actions upon written contracts or agreements in which the Tribe or a tribal enterprise is a party, and which have been approved and executed by a duly authorized tribal officer or official acting within the scope of his or her actual authority and in the ordinary course of business. This law shall be deemed an "other instrument" as used and referenced in the Arbitration Law, X M.P.T.L.

Legislative History. Effective June 4, 2002 - TCR060402-05 amended Ch. 1, § 3 was to include: "This Law shall be deemed an 'other instrument' as used and referenced in the Arbitration Law, X M.P.T.L."

Section 4. Limitations on Civil Actions

a. Statute of Limitations.

(1) Actions upon contract. No action upon any contract may be brought but within one year after the right of action accrues, except as provided in subsection (3) of this Section, and further, except for actions based on a credit instrument which shall be instituted within six years from the date the cause of action arises. "Credit Instrument" means any writing which evidences a debt owed to the Tribe at the time the debt is created, and includes counter checks, markers, personal checks, cash equivalents, and any writing taken in consolidation, redemption or payment of a prior credit instrument, which are cashed in conformity with procedures governing the issuance of credit at the Tribe.

Legislative History. Effective June 4, 2002 - TCR060402-05 added ch. 1, § 4(a)(1), providing a six-year statute of limitations on credit instruments. This provision originated from the repealed Debt Collection Law (former IX M.P.T.L. ch. 2).

(2) Action founded upon a tort. No action to recover damages caused by negligence or founded upon a tort shall be brought but within one year from the date of the act or omission complained of. All claims brought pursuant to this law shall be deemed to accrue on the date when the injury is sustained. The defendant must present the issue of failure to file a claim as stated herein to the court as an affirmative defense. Such defense shall not be considered jurisdictional in nature.

(3) Limitations of action by or against architects, professional engineers, land surveyors, contractors and other construction entities.

(a) For purposes of this subsection (3), no action, whether in contract, in tort, or otherwise, (i) to recover damages (a) for any deficiency in the planning, design, engineering, construction, repair or alteration, construction administration, management, supervision or inspection, or land surveying, in connection with an improvement to real property; (b) for injury to property, real or personal, arising out of any such deficiency; (c) for injury to the person or for wrongful

death arising out of any such deficiency, or (ii) for contribution or indemnity which is brought as a result of any such claim for damages shall be brought against any architect, professional engineer, contractor, construction manager, inspector or land surveyor furnishing or performing such services, more than seven years after substantial completion of such improvement.

(b) Notwithstanding the provisions of subsection (3)(a), in the case of such an injury to property or the person or such an injury causing wrongful death, which injury occurred during the seventh year after such substantial completion, an action in tort to recover damages for such an injury or wrongful death may be brought within one year after the date on which such injury occurred, irrespective of the date of death, but in no event may such an action be brought more than eight years after the substantial completion of construction of such an improvement.

(c) Any person, firm or corporation which has entered into a contract with the Tribe or tribal enterprises, for the performance of work, services or activities of the nature described in subsection (3)(a) may, in the event of any disputed claims under such contract, bring an action in tribal court for the purpose of having such claims determined; provided, however, that no such action shall be brought more than three years after substantial completion of such improvement.

(d) For purposes of subsections (3)(a), (b) and (c) of this law, an improvement to real property or any discrete portion thereof, shall be considered "substantially complete" when: (i) the Mashantucket Pequot Tribal Land Use Commission has issued a final Certificate of Occupancy for the entire improvement or any discrete portion thereof or, in the event that no such certificate is issued, (ii) when the entire improvement or any discrete portion thereof is occupied or beneficially used by the owner or tenant thereof or, in the event that it is not occupied, (iii) when the entire improvement is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any punch list or agreed changes to the contract or agreement.

(e) Notwithstanding any other provision of tribal law, the limitation periods prescribed herein shall apply both prospectively and retroactively to all claims, as described in subsections (a), (b) and (c) herein, accruing prior or subsequent to the date of passage of this provision.

(f) The provisions of this subsection (3) shall not modify the statute of limitations provisions of Title IV. Any claim for injury occurring at the Gaming Enterprise based upon a deficiency as described in subsection (a) shall be limited to a claim against the Gaming Enterprise under Title IV.

Legislative History . Effective May 31, 2002 - TCR053100-03 added ch. 1, § 4(a)(3), providing a specific statute of limitations for actions by and against architects, professional engineers, land surveyors or construction managers.

b. Written Agreements; Statute of Frauds. No action on a contract may be maintained in the following cases unless the contract, or memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged:

- (1) against any person upon any special promise to answer for the debt, default, or miscarriage of another;
- (2) upon any agreement made upon the consideration of marriage;
- (3) upon any agreement for the sale of real property or any interest in or concerning real property;
- (4) upon any agreement that is not to be performed within one year from the making thereof; or
- (5) upon any agreement for a loan in an amount which exceeds \$50,000. In all actions against the Tribe founded upon a contract, the contract to be enforced must be in writing as provided in Section 3 of this law.

c. Notwithstanding any provision of tribal law to the contrary, the Tribe, its subdivisions and instrumentalities, including, without limitation, any officers, agents and employees thereof shall not be held liable for any losses arising from, or in any way related to, the failure of a computer, software program, database, network information system or any other device containing a computer processor to accurately or properly recognize,

calculate, display, sort, or otherwise process dates or times, including, but not limited to, dates occurring before, on or after December 31, 1999; provided, however, that nothing contained herein shall limit the Tribe's right(s) to bring an action against any person alleging a loss or failure described herein.

Legislative History. Effective December 3, 1999 - TCR120399-05 added ch. 1, §4(c) to provide Year 2000 (Y2K) immunity for the Mashantucket Pequot Tribal Nation and its enterprises.

d. Defenses in Actions on a Credit Instrument.

(1) When Presented. Every defense, in law or in fact, to a claim for relief shall be affirmatively set forth in particularity in the answer.

(2) Types Recognized. The court shall recognize only these affirmative defenses:

- (i) accord and satisfaction;
- (ii) discharge in bankruptcy;
- (iii) fraud or duress;
- (iv) incapacity;
- (v) lack of service of process;
- (vi) lack of in personam jurisdiction;
- (vii) lack of subject matter jurisdiction;
- (viii) payment or release;
- (ix) res judicata; and
- (x) statute of limitations.

Legislative History. Effective June 4, 2002 - TCR060402-05 added ch. 1, § 4(d), providing defenses on a credit instrument. This provision originated from the repealed Debt Collection Law (former IX M.P.T.L. ch. 2).

Section 5. Miscellaneous

a. All actions against the Tribe or a tribal enterprise shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe or its enterprises.

b. In all actions where it is alleged that the liability of the Tribe is based upon the action of an agent, servant, or employee of the Tribe acting within the scope of his or her employment there shall be no separate cause of action existing against said agent, servant, or employee, and nothing in this Law shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual and such sovereign immunity is waived only for purposes of an action against the Tribe as specifically permitted in tribal court pursuant to Section 2 of this law.

c. The following shall not apply to claims against the Tribe or its enterprises:

- (1) any rule of law imposing absolute or strict liability;
- (2) any award or other judgment imposing punitive or exemplary damages;
- (3) any award for loss of consortium; and
- (4) any order for injunctive relief, provided that the Court may order injunctive or prospective relief against the Tribe or its enterprises when a claim arises from a written contract in which the Tribe or a tribal enterprise is a party and the contract is signed by a duly authorized tribal representative acting within the scope of his or her actual authority and in the ordinary course of business, and the contract expressly provides for injunctive relief.

Legislative History: Effective October 10, 2003 - TCR101003-03 amended ch. 1, § 5(c)(4), allowing the Tribal Court to order injunctive or prospective relief against the Tribe in claims under a duly executed written contract in which the Tribe is a party.

d. When interpreting this Law, the court shall follow tribal law and precedent and may be guided by the common law of other jurisdictions.

Legislative History. Effective June 4, 2002 - TCR060402-05 Ch. 1, § 5(d) was added.

Section 6. Application of Law

This law shall apply to:

- a. all civil causes of action which accrue on or after its enactment;
- b. all civil causes of action in which suit has not been brought and which had accrued within one year prior to the enactment of this law, provided a suit shall have been commenced within one year from the enactment of this law, and notice of said suit, if required, shall be sufficient if given within 180 days from the enactment of this law; and
- c. all civil causes of action which may be pending in any court on the effective date of the original enactment of this law. This law shall not apply to any civil causes of action that have gone to final judgment. Final judgment, for the purposes of this section, shall include the disposition of an entire cause of action or the dismissal of any count of the complaint or theory of recovery in such pending action.

Section 7. Amendments

- a. Notwithstanding Section 6 of this law, any amendment made to this law shall apply only to claims filed subsequent to the date of enactment of the amendment. (June 4, 2002)
- b. The amendments to this law made pursuant to TCR122702 of 02 shall be applicable to claims pending and accruing as of the enactment date of the Resolution.

Legislative History. Effective June 4, 2002 - TCR060402-05 Ch. 1, § 7 was added. Effective December 27, 2002 - TCR122702-02 repealed the procedural requirement of filing a formal Notice of Claim within 180 days from the date of the claim. Ch. 1, § 7(b) was added.

Section 8. Waiver of Tribal Sovereign Immunity for Off-Reservation Automobile Accidents

Any person injured through the negligence of any Mashantucket Pequot Tribal employee while acting within the scope of his/her employment and while operating a motor vehicle shall have a right of action against said employee to recover damages for injuries to person or property sustained in an accident occurring outside the Mashantucket Pequot Reservation. The Mashantucket Pequot Tribe hereby expressly waives its immunity from suit for such claims; provided that the suit is brought in the courts of the state of Connecticut and the suit names the employee, not the Mashantucket Pequot Tribe, as a defendant. This waiver of tribal sovereign immunity from suit is expressly limited to the extent of the Tribe's commercial automobile policy, and is further limited to claims arising after the enactment of this Resolution [TCR021303-01 of 09] and to claims that are pending in the courts of the State of Connecticut on the date of enactment of this Resolution [on February 13, 2003].

Legislative History Effective February 13, 2003 - TCR021303-01 added ch. 1, § 8, waiving the Tribe's sovereign immunity in state court for off-Reservation automobile accidents.

CHAPTER 2. FALSE CLAIMS ACT

Section 1. Title

This law shall be known and may be cited as the False Claims Act.

Section 2. Definitions

- a. "Claim" includes any request, application, or demand for money, property, or services made to any employee, officer, or agent of the Mashantucket Pequot Tribe (the "Tribe") and any of its instrumentalities or political subdivisions (including but not limited to Foxwoods Resort & Casino). A Claim may, but need not be made, pursuant to a contract.
- b. "Indian" shall mean any person as defined by the same term in Chapter 2 (Criminal Laws) of the Mashantucket Pequot Tribal Laws as it may be amended from time to time.
- c. "Knowing" and "knowingly" means that a person, with respect to information, does any of the following:
 - (1) Has actual knowledge of the information or;
 - (2) Acts in deliberate ignorance of the truth or falsity of the information or;

(3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required under this definition.

d. "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Section 3. False Claims

a. The term to make a "False Claim(s)" means:

(1) to knowingly present, or cause to be presented to the Tribe, a false or fraudulent claim for payment or approval or;

(2) to knowingly make, use, or cause to be made or used, a false record, statement, pay application or Change Order request, to get a false or fraudulent claim paid or approved by the Tribe or;

(3) to knowingly conspire to defraud the Tribe by getting a false or fraudulent claim allowed or paid by the Tribe or;

(4) has possession, custody, or control of property or money used, or to be used, by the Tribe and knowingly delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt or;

(5) is authorized to make or deliver a document certifying receipt of property on behalf of the Tribe, and knowingly makes or delivers a receipt that falsely represents that the property was received without reasonably knowing that the information on the receipt is true or;

(6) knowingly buys, or receives as a pledge of an obligation or debt of the Tribe from an officer, Tribal member, or employee of the Tribe who lawfully may not sell or pledge the property or;

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Tribe or;

(8) Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the Tribe, and who subsequently discovers the falsity of the claim, and who fails to disclose the false or fraudulent claim to the Tribe within a reasonable time after discovery thereof or;

(9) knowingly makes a false statement that reasonably causes the Tribe to investigate or expend funds to prove or disprove the statement.

Section 4. Investigation, Civil Action and Criminal Prosecution

a. The Office of Inspector General or the Internal Audit Department (the "Investigator") of the Tribe shall diligently investigate an alleged violation of this law.

b. In the event that the Investigator finds that it is more likely than not that a person has violated or is violating this law then the Investigator shall make a full report to the Office of Legal Counsel. The Office of Legal Counsel, or their designee, may bring a civil action on behalf of the Tribe against the person who allegedly made the False Claim, may decline to bring an action or may require additional investigation to support an action. The Office of Legal Counsel may also refer the matter to the tribal prosecutor with the recommendation that a separate criminal action be brought.

c. In the event that a False Claim has been made by an Indian, then the Office of the Tribal Prosecutor, may, in addition to the remedy provided by subsection (b) of this section, may bring a separate criminal action.

d. Individuals may not bring an action to enforce the provisions of this law.

Section 5. Jurisdiction

a. The Mashantucket Pequot Tribal Court (the "Court") shall have exclusive jurisdiction to hear matters arising under this law.

b. There shall be no right to trial by jury for civil actions brought under this law.

c. In any civil action brought under this law, the Tribe shall be required to prove the cause of action, including damages, by a preponderance of the evidence.

d. No civil action may be brought under this law more than six years after the date on which the False Claim was allegedly made.

Section 6. Civil Penalties

The Court may assess a civil penalty, which shall include the amount of actual damages, of not less than two times and not more than ten times the amount of damages which the Tribe sustained or likely would have sustained because of the False Claim.

Section 7. Criminal Penalties

a. If an Indian files a False Claim in an amount greater than Five Thousand Dollars they may, in addition to any civil action, be incarcerated for a term not to exceed one year for each False Claim. A finding of guilt shall be supported by a finding that the False Claim was made beyond a reasonable doubt. In the event that the person incarcerated is a member of the Mashantucket Pequot Tribal Nation then the penalty and/or cost of incarceration shall be deducted from that Tribal member's future incentive payment or payroll in an amount not to exceed one third of the said compensation until the amount of the penalty and/or cost of incarceration is paid in full.

b. Upon a plea of guilty or no contest the Court may modify or otherwise limit any penalty based upon the fact that the person committing a violation of this subsection;

(1) fully cooperated with Tribal authorities charged with investigation of False Claims against the Tribe (provided that a prosecution for the False Claim has not occurred at the time the information is first offered); and

(2) provides restitution to the Tribe in double the amount of the False Claim within thirty days of notice of an investigation into a False Claim; and

(3) has submitted a False Claim in an amount less than \$10,000.

c. Liability under this section shall be joint and several for any act committed by two or more persons.

Section 8. Reward

a. Any person who supplies direct information to the Tribe, which is not already known to the Tribe, and which results in a successful prosecution of any person filing a False Claim, provided that the recovery is in excess of \$5,000, such person shall be entitled to a reward equal to 15% percent of any amount actually recovered by the Tribe, including but not limited to the amount of any fine or other levy imposed by the Tribal Court. The maximum amount that may be awarded pursuant to this provision is \$20,000.

b. In the event that two or more persons supply the initial information the reward provided in this section shall be equitably awarded by the Court. In no event will the reward paid by the Tribe exceed 15% as provided in this section.

c. The Office of Legal Counsel may settle any action brought under this law and any such determination of the Office of Legal Counsel shall be final. Individuals who are or may be entitled to a reward under this law shall have no standing to challenge or otherwise object to the decision of the Office of Legal Counsel regarding any such settlement.

d. No person shall be eligible for a reward if:

(1) the information supplied is a part of an audit, report or other investigation commenced by the Tribe.

(2) the claimant has participated in the development, submission, approval, or attempted approval of the False Claim.

(3) if the claimants are an employee or consultant of the Tribe and, as a normal part of their duties, they would reasonably be required to guard against the False Claim.

e. No person who collects a reward or otherwise assists in the development of the prosecution of a False Claim pursuant to this law may be retaliated against as a result of assisting in the investigation or testifying in any hearing to establish the existence of a False Claim.

Legislative History. Effective 27, 2004 - TCR122704-01 enacted the "False Claims Act."

LEGISLATIVE HISTORY TO THE CIVIL ACTIONS LAW

TITLE 12 M.P.T.L. ch. 1 (Enacted February 4, 1997)

Background

According to the Constitution of the Mashantucket Pequot Tribe, the Tribal Council is the legislative body of the Tribe. Constitution, Article VI, §1. The Judicial Committee is the standing committee of the Tribal Council with responsibility for the initial development and continued review of the laws of the Tribe. Constitution, Article VI, §8. In determining the meaning of a law and discerning the intent of the legislature, a court will first look to the words of the statute, and, if there is any ambiguity, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same subject matter. In drafting the Civil Actions Law, the Committee reviewed several issues about the scope of the proposed law's application, particularly with respect to the jurisdiction of the court, the Tribe's sovereign immunity, the types of cases which could be brought, and potential awards and damages authorized thereunder. The purpose of this legislative history is to provide insight into the Committee's discussions and deliberations, and to articulate the intent of the law so that it may be properly interpreted and applied.

A. Jurisdiction of the Tribal Court

The foundation of a court system is its jurisdiction. The federal court system has its jurisdictional foundation in the federal Constitution – likewise with state court systems and the constitutions. The Constitution of the Mashantucket Pequot Tribe, however, does not specifically address the exercise of the Tribe's judicial authority, and, until recently, the Tribal Council had exercised all the judicial powers to the Tribe.

In 1992 the Tribal Council formally established the Mashantucket Pequot Tribal Court “to adjudicate civil disputes that arise on the Reservation involving all persons.” Mashantucket Pequot TCR011092-02, codified at 1 M.P.T.L. ch. 1. The Tribal Council provided in that law that tribal court shall have “original and general jurisdiction over all causes of action except as may be limited by the Tribal Council and by federal law.” *Id.* The Tribal Council then enacted the Sovereign Immunity Waiver Law which, as indicated by its name, waived the immunity of the Mashantucket Pequot Gaming Enterprise, operating as an arm of the tribal government, for certain negligence and personal injury claims arising on the Gaming Enterprise site. 4 M.P.T.L. ch. 1.

The tribal court's jurisdiction has gradually been expanded to include criminal, traffic, child welfare, family relations, debt collection, and probate matters. Through these legislative actions, the Tribal Council seeks to protect important tribal interests such as promoting the goal of self-government and the overriding goal of encouraging tribal self-sufficiency, accountability and economic development.

The Tribal Council had not previously provided a forum for other civil causes of actions or had specifically authorized the tribal court to hear any cases brought directly against the Tribe. Such cases have been brought in state and federal courts where those courts' jurisdiction over the Tribe and ability to provide a remedy are being tested in light of the Tribe's sovereign immunity and the doctrine of exhaustion of tribal remedies. This immunity is rooted in the unique relationship between the United States government and Indian tribes whose sovereignty substantially predates the federal Constitution. Such immunity is necessary to preserve the autonomous political existence of the Tribe and to preserve tribal assets. The Mashantucket Pequot Tribe considers its sovereignty as a necessary corollary to self-government and further considers the jurisdiction of its tribal court as a principle element of self-government.

Accordingly, the Civil Actions Law establishes several significant jurisdictional components:

a. Subject Matter Jurisdiction. The tribal court will have jurisdiction over all civil causes of action involving any party who has had certain defined significant contacts with the Tribe or on tribal lands, except those causes of action specifically prohibited by tribal or federal law.

b. In Personam Jurisdiction. The Tribal Council will be authorized to exercise jurisdiction over any person or entity who is served with process on the Reservation or who, by presence or activities on tribal lands, is deemed to have consented to the Tribe's jurisdiction. “Tribal lands” is defined as “Indian country” pursuant to 18 U.S.C. § 1151, which includes the Reservation, trust lands, and dependent Indian communities.

c. Sovereign Immunity. The Civil Actions Law provides a limited waiver of the Tribe's sovereign immunity for cases brought against the Tribe in tribal court. This includes cases involving bodily injury or physical harm to a

person, loss of personal property caused by the negligence or other tortious acts of the Tribe or of a tribal law enforcement officer, civil rights violations, and any written contract executed by a tribal official within the scope of his or her authority.

B. Negligence and Torts

The Civil Actions Law does not attempt to define the parameters of the court's jurisdiction over particular kinds of civil actions except to the extent they must be founded on negligence or tortious conduct or on a written contract. It is difficult to define all such actions particularly from a policy perspective. Nonetheless, the scope and extent of the tribal court's jurisdiction over these causes of action have been defined to a great extent by the developing body of tribal common law. As a court of general jurisdiction, the tribal court will be available to all litigants who have significant contacts with the Tribe or on tribal lands and to all causes of action founded on negligence or other tortious acts arising from such contacts.

C. Civil Rights

The tribal court will have jurisdiction to adjudicate matters involving the violation of a person's civil rights as defined in the Indian Civil Rights Act, 25 U.S.C. §§1301-1303 ("ICRA"). The ICRA imposes certain restrictions somewhat similar to the Bill of Rights and the Fourteenth Amendment of the United States Constitution upon Indian tribes when exercising powers of self-government.

D. The Doctrine of Sovereign Immunity

Indian tribes exercise inherent sovereign authority over their members and their territory. Tribal sovereign immunity protects the Tribe from suit without its consent. The Tribe may waive its immunity from suit and allow itself to be sued, but that waiver must be unequivocally expressed by the Tribe and cannot be implied by the judicial branch. Moreover, such waivers or conditional limitations on the Tribe's immunity from suit must be strictly construed and interpreted liberally in favor of the Tribe. The Gaming Enterprise, as an arm of the tribal government, is cloaked with the same immunity from suit as the tribe itself. By waiving the Gaming Enterprise's immunity from suit, however, the Tribe does not waive its governmental immunity from suit.

Tribal officials also generally enjoy the government's immunity from suit when they act within the scope of the government's authority. Thus, where a tribal officer or official has been duly authorized to act, that official is cloaked with the same immunity from suit as the Tribe itself.

The Tribe has previously provided an express waiver of the Gaming Enterprise's immunity from suit for certain negligence claims arising on the Gaming Enterprise site and specifically for certain employee rights claims against the Gaming Enterprise. The Civil Actions Law provides a further waiver of the Tribe's sovereign immunity and consent to suit in the tribal court for particular subject matters.

Thus, in keeping with the strict construction of tribal law, waivers of sovereign immunity must be clearly and unequivocally expressed. Such expression is only by action of the Tribal Council through Resolution and cannot be effected by any other independent action. The Tribe has intentionally limited its waiver of immunity from suit to the tribal court and has specifically retained its immunity in any other matters which may be brought against it in any other forum.

E. Damages and Awards

The Civil Actions Law allows for damages to be awarded against the Tribe and maintains the same limits on those damages as those applicable to the Gaming Enterprise.

Consistent with current tribal law, there is no jury trial for actions against the Tribe. In addition, the Civil Actions Law prohibits any award against the Tribe based on strict liability, punitive or exemplary damages, loss of consortium or injunctive relief. The Civil Actions Law also maintains the tribal law applicable to the Gaming Enterprise as the exclusive authority under which to bring an action against the Gaming Enterprise for torts committed on Gaming Enterprise property.

The Civil Actions Law establishes a different statute of limitations than provided by previous tribal law. All written contract actions must be brought within one year after the right of action accrues and for any tort action, the

injured party must bring his claim within one year from the date of the act or omission complained of, and for torts the party must file a written notice of the claim with the tribal clerk within 180 days from the date of injury. The Civil Actions Law requires that any contract action in tribal court must be founded on a written agreement, and not an oral agreement. It is also specifically authorizes the tribal court to fashion remedies reasonably required to enforce a judgment. These remedies include attachments, garnishments and execution. The tribal court is expressly prohibited, however, to hear any action relating to a banishment or exclusion. Those actions have been left to the authority of the tribal government. The Tribe will enact a comprehensive enforcement of judgment and remedies law in the near future.

Conclusion

The intent of the Civil Actions Law is to provide a forum to adjudicate any right and provide a remedy for any aggrieved party with significant contacts with the Tribe or tribal lands. The court should employ a strong presumption of tribal court jurisdiction wherever the facts and circumstances indicate such significant contacts. The United States Supreme Court has firmly established a policy of abstention in favor of tribal court jurisdiction. The requirement of exhaustion of tribal remedies is necessary as a matter of comity and respect for tribal forums. Tribal authority over the activities on or relating to tribal lands is an important part of tribal sovereignty. Thus, civil jurisdiction over all such activities presumptively lies in the tribal court unless affirmatively limited by specific treaty provision or by federal statute or tribal law. Tribal courts play a vital role in tribal self-government. Through this law's expression of the tribal court's jurisdiction as to civil actions, the Tribe further recognizes and achieves an important attribute of its sovereignty.

Legislative History. Derivation. Effective February 4, 1997 - TCR020497-05 enacted the "Civil Actions Law," authorizing certain contract and tort claims to be adjudicated in Tribal Court. **Amendments.** Effective April 15, 1998 - TCR041598-04 approved the codification of the Legislative History to the Civil Actions Law to illustrate the purpose and intent of the Law to aid in the Tribal Court's deliberations.

All changes to Title 14 are noted in red text. In addition, a publishing error deleted ch.13 and replaced it with a new ch.14. and ch.15 was omitted. Ch. 14 and 15 are new as reflected in the legislative history.

TITLE 14. LAND USE LAW

CHAPTER 1. DECLARATION OF PURPOSE AND POLICY

Section 1. Goals and Jurisdiction

The Tribal Council declares its commitment to establish and maintain the policies and procedures established herein to promote the health, safety, and welfare of the Mashantucket Pequot Tribe and the natural resources of the Tribe. The Tribal Council declares that the goal of this Land Use Law is to guide and facilitate, in a timely and efficient manner, tribal development that has the potential to affect the environment, the general health, safety and welfare of the Tribe. The Tribal Council declares that the policies and procedures established herein shall apply to all land use activities and projects on the Mashantucket Pequot Reservation and trust lands.

Section 2. Policies

The Tribe recognizes the critical importance of establishing sound, uniform land use procedures to govern development of or upon tribal lands, thus ensuring the overall welfare of the Tribe and maintaining environmental quality throughout all land use activities or projects. In all land use activities and projects, the Tribe shall:

- a. diligently advocate achievement of self-determination and self-governance;
- b. protect and enhance both human and natural resources for succeeding generations;
- c. promote beneficial land uses without environmental degradation, risk to health or safety, or other undesirable and unintended consequences;
- d. preserve the Tribe's historical, cultural, and natural resources; and
- e. facilitate timely, efficient and safe development of approved and permitted Land Use activities.

CHAPTER 2. DEFINITIONS

- a. "Administrative Review" means an abbreviated review and permitting procedure for Residential Use only, whereby the commissioner may, at his/her discretion, issue a permit without commission approval.
- b. "Appellant" means the Person appealing a decision of the commissioner or commission to the appeal board.
- c. "Applicant" means the Person responsible for a Land Use activity or project or any Person designated by the Tribal Council as being responsible for completing any activities and projects.
- d. "Commercial and/or Government Community Use" means any structure or activity that is not for Residential Use as defined herein.
- e. "Commission" means the Mashantucket Pequot Tribal Land Use Commission.
- f. "Commissioner" means the Commissioner of the Mashantucket Pequot Tribal Land Use Commission.
- g. "Land Use" means activities such as zoning; real property development, including the construction or modification of structures; and any activity or project that has the potential to affect the environment or the health, safety, or general welfare of the Tribe.
- h. "Permit" means the whole or any part of any license, certificate, approval or similar form of permission which may be required of any person by provisions of this Land Use law.
- i. "Permittee" means the person listed on a permit as being responsible for any Land Use activity or project.
- j. "Person" means any tribal member, tribal employee, individual, partnership, firm, company, subcontractors or contractors, corporation, association, organization, estate, governmental entity or any other legal entity or its representative, agents or assigns. Use of the singular shall also include the plural.
- k. "Potential to Affect the Environment" means any activity or project that alters the chemical, physical, and biological integrity of the natural environment and its resources.

l. “Potential to Affect the General Health, safety or welfare of the Tribe” means any activity or project that has any affect, harmful or beneficial, on the general health, safety or welfare of the Mashantucket Pequot Tribe.

m. “Residential Use” means any structure or activity with a primary purpose to provide sleeping and eating quarters for people residing therein or any structure or activity directly adjacent to the same. Said structures shall be limited to dwelling units that have no more than four dwelling units in one structure.

n. “Tribal Council” means the governing body of the Mashantucket Pequot Tribe.

o. “Tribal Land Use Regulations” means the standards and procedures prescribed by Tribal programs in accordance with this Law and approved by the Mashantucket Pequot Tribal Council. Tribal Land Use Regulations shall include all tribal programs standards and procedures existing upon the effective date of this Law and those adopted after the effective date of this Law.

p. “Tribal Programs” means the duly established governmental departments, divisions, agencies or enterprises of the Mashantucket Pequot Tribe.

q. “Tribal Lands” means the Mashantucket Pequot Reservation and trust lands.

r. “Tribal Policies” means the policies set forth in this Law.

CHAPTER 3. LAND USE COMMISSION

Section 1. Establishment

There is hereby established a Land Use Commission (the “Commission”) which shall operate as an administrative and enforcement arm of the Mashantucket Pequot Tribal Council.

Section 2. Authority

The Commission shall have the authority to regulate all land use activities and projects on tribal lands. The Commission shall have the authority to review for compliance with this Law any and all land use activities and projects on tribally owned fee lands. The Commission shall have the specific authority to:

- a. oversee the promulgation of and assist in the development of tribal land use regulations for Tribal Council’s review and approval;
- b. coordinate and supervise the timely and efficient review and processing of permit applications;
- c. issue Permits and certificates of occupancy or completion;
- d. review and monitor all land use activities and projects on tribal lands;
- e. enforce compliance with a permit through tribal policies and tribal land use regulations; and
- f. enforce compliance with tribal policies and tribal land use regulations by issuing administrative orders to any land use activity or project that has not been issued a permit, which may include an assessment of a fine or penalty.

Section 3. Composition of the Commission

a. The Tribal Council shall appoint a land use commissioner who shall have primary responsibility for carrying out the duties of the Commission. The commissioner’s staff shall include a field inspector/enforcement officer.

b. The Commission shall be composed of six members, one from each of the following Tribal Programs: Natural Resources Protection; New Projects; Mashantucket Pequot Fire Department; Legal Counsel; the Tribal Manager; and the Mashantucket Pequot Gaming Enterprise (MPGE). The Commissioner shall sit on the commission as a member. 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. The Commission shall consist of existing staff.

Legislative History. Amendments. Effective February 2, 2001 - TCR020201-02 amended ch. 3, § 3(b) to enlarge the Land Use Commission from 5 to 6 members, to add a representative of the Mashantucket Pequot Fire Department as a permanent member, and to replace

the representative of the Planning and Community Development Department with a representative of the Property Department. Effective June 7, 2001 - TCR060701-04 amended ch. 3, § 3(b) to add a representative of the Department of Utilities to the Land Use Commission.

Section 4. Cooperation with Tribal Programs

The Commissioner shall coordinate his/her responsibilities with the tribal programs having an interest in any land use activity or project. The tribal programs shall have the following duties:

- a. develop tribal land use regulations, in consultation with the Commission, to be submitted to the appropriate standing committee of the Tribal Council for review and recommended action to the Tribal Council;
- b. assist the Commission in implementing and enforcing tribal policies and tribal land use regulations;
- c. assist in reviewing permit applications and making findings and recommendations to the Commission as to whether the proposed land use activity or project complies with tribal policies and tribal land use regulations; and
- d. assist in monitoring land use activities and projects to ensure compliance with tribal policies and tribal land use regulations.

CHAPTER 4. PRELIMINARY SCREENING AND APPROVAL PROCEDURE

Section 1. Residential Use

Any person who desires to undertake a residential use shall provide a brief written description of the proposed residential use and the location of the residential use to the tribal housing authority for obtaining initial approval of the residential use by the tribal housing authority. If the tribal housing authority grants initial approval of the residential use, said person shall submit a permit application to the Commission in accordance with Chapter 5 of this Law.

Section 2. Commercial Use

a. Any person who desires to undertake a commercial use shall provide the following information to Tribal Council to obtain initial approval of the proposed commercial use:

- (1) a brief written description of the proposed commercial use;
- (2) the location of the proposed commercial use;
- (3) a proposed budget, if necessary, for the cost of developing plans and specifications for the proposed commercial use; and
- (4) any other reasonable information required by Tribal Council.

b. Initial approval by the Tribal Council shall consist of preliminary approval of the proposed commercial use and a budget for developing the plans and specifications for said commercial use. If the Tribal Council grants initial approval of the commercial use, said person shall submit a permit application to the Commission in accordance with Chapter 5 of this Law.

CHAPTER 5. PERMIT PROCESS AND PROCEDURE

Section 1. Permit Required

Any person who undertakes any land use activity or project on tribal lands shall obtain a permit from the Commission as provided herein and any other permits required by applicable federal, state, or local Law.

Section 2. Permit Application

a. An application for a land use permit shall be made through the use of forms designated by the Commission and approved by the Economic Development and Planning Committee and Tribal Council. The applicant shall submit a permit application and any studies, reports, or other reasonable information requested by the commissioner, the Commission or tribal programs.

b. Every application shall contain, at a minimum, the following information:

- (1) the name and title of the applicant;
- (2) the location of the proposed activity;
- (3) a concise and factual description of the proposed activity including:
 - (a) any proposed physical construction;
 - (b) any use of natural resources; and
 - (c) any potential impacts to the environment, whether adverse or beneficial.
- (4) a detailed site plan if necessary or appropriate;
- (5) a period of time for which the permit is requested;
- (6) a reference to the tribal land use regulations governing the proposed land use activity or project;
- (7) a complete set of detailed plans and specifications, including but not limited to, any proposed structures showing compliance with building, fire, and safety codes; and
- (8) in the case of a phased land use activity or project, the applicant shall submit a complete set of detailed plans and specifications for that portion of the land use activity or project.

Section 3. Permit Application Fees

Upon the submission of the permit application, the applicant shall pay a permit application fee according to the following schedule:

- a. A permit fee of \$5 per \$1,000 of the total cost of the residential land use activity or project; and,
- b. A permit fee of \$10 per \$1,000 of the total cost of the commercial/governmental-community land use activities or projects.

Section 4. Permit Application Review

a. The Commissioner may conduct an administrative review of applications for residential use only and issue a permit, if the Commissioner determines that the application complies with tribal polices and all applicable tribal land use regulations. When the Commissioner conducts an administrative review of an application he/she shall issue or deny a permit within two weeks of receiving a complete application.

b. For all other applications, the commissioner shall review the permit application and determine whether the permit application is complete. If a permit application is complete, the commissioner shall then direct the appropriate Tribal Programs to review the application and establish a time period for the submission of written findings to the Commissioner. The Commissioner may request review of permit applications by tribal offices, agencies or programs whose regulations are enforced under this Law, including the following: Planning and Community Development; Health and Human Services; Housing; Natural Resources Protection; Public Safety; Utilities; Archeology; Public Works; and Wastewater.

c. Within one week of receiving the application, the Commissioner or the Tribal Program may request the applicant to submit additional information, studies or reports to assist in the review of the permit application. The additional information must be relevant to the purposes and policies of this Law. If the additional information is requested, the Commissioner shall notify the applicant of the requested information and shall set a reasonable time period for the submission of the information.

d. Within one week of receiving the application or additionally requested information, the Commissioner or tribal office or program shall submit written findings on the permit application. If additional review time is requested, the Commissioner may grant one extension of time not to exceed two weeks. The written findings shall address whether or not the activity or project proposed by the application complies with tribal policies and the Tribal Land Use Regulations. The written findings shall provide specific recommendations indicating how the proposed land use activity or project should be tailored to ensure such compliance.

- e. The Commissioner shall provide the written findings to the applicant within one week of receipt thereof.

Section 5. Permit Application Review Meeting

a. The Commissioner shall schedule regular permit application review meetings on a weekly basis, or as needed, to review the written findings with the applicant and the Tribal programs. The Commissioner shall notify the applicant and the appropriate Tribal Programs of the meeting scheduled for the application.

b. At the permit application review meeting, the Commissioner may determine, based on the written findings and discussion with the Tribal Programs, that the permit application requires either no and/or minor changes; or significant material changes.

(1) if the Applicant agrees with the written findings or recommended changes, the applicant shall incorporate such changes into his/her application and the application shall be scheduled for final review by the Commission;

(2) if the Applicant does not agree with the recommended changes, the Applicant will have an opportunity to review the written findings and recommendations with the Commission at the next scheduled Commission review meeting following the permit application review meeting. The Applicant shall provide a narrative detailing why the applicant does not agree with the requirements prior to the meeting.

Section 6. Commission Review and Decision Meeting

a. The Commission shall meet on at least a monthly basis or as necessary, to review, approve, modify or deny permits. The Commissioner shall notify the Applicant and the appropriate Tribal Programs of the meeting scheduled on his/her application. The Commissioner and the Tribal Programs shall review the written findings with the Applicant.

b. The Commission shall reach a unanimous decision to approve or deny a Permit and render a written decision and notify the parties within 45 days of the initial Commission review meeting at which the application was scheduled for review. The Commission's decision may specify terms and conditions to be included in the Permit. At the applicant's request, the Commission may grant one extension of time, up to 45 days, to render the commission's decision.

c. If the permit application is denied or not approved through unanimous decision of the Commission, the applicant may either submit a new application or appeal the Commission's decision pursuant to Chapter 11 of this Law.

Section 7. Bonding Requirements

The Commission may require the posting of a performance bond, in an amount and of duration satisfactory to the Commission to assure and guarantee the completing 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 and/or owner may apply to the Commission for a reduction in bond when 50% of the cost of required improvements for the project have been completed and may apply to the Commission for further reduction in the bond when 75% of the cost of required improvements for the project have 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 and/or owner 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.

Section 8. Final Tribal Council Approval

Once a Permit has been issued for a commercial use, the Permittee shall obtain Tribal Council approval for the necessary funding before commencing the permitted commercial use.

CHAPTER 6. PERMIT CONDITIONS

Section 1. Permit Terms and Conditions

Upon approving a Permit application, the Commission or the Commissioner in an administrative review matter, may include terms and conditions that are reasonably necessary and appropriate for ensuring compliance with tribal policies and Tribal Land Use Regulations.

Section 2. Permit Modification

a. If significant and material changes have occurred since the approval of the Permit, the Permittee shall file a Permit modification application describing the changes, the proposed modifications to the Permit, and any necessary information regarding the implementation of such changes.

b. The Permit modification application shall demonstrate that the proposed changes comply with the tribal policies and Tribal Land Use Regulations.

c. The Commissioner shall review the Permit modification application with the Permittee and inspect the project. The Commission, based on the Commissioner's recommendations, may either approve the application and modify the Permit or deny the application.

d. If the Permit modification application is denied, the existing Permit shall remain in full force and effect and the Permittee may request a hearing with the Commission to review the Commissioner's decision.

Section 3. Permit Duration and Extension

a. All Permits shall be effective for a limited period of time, ranging from less than a one year period and not exceeding five years. If a Permittee requires an extension of time in order to complete any activity under an approved Permit, the Permittee shall file an extension request no later than 45 days prior to the expiration of the Permittee's existing Permit.

b. The Commissioner shall review the Permit extension request with the Permittee and inspect the project. The Commissioner shall either approve the extension under such terms and conditions as the Commissioner deems necessary or appropriate or request that the Permittee obtain a Permit modification.

CHAPTER 7. CERTIFICATE OF OCCUPANCY OR COMPLETION

Section 1. Certificate Required

No land use activity or project shall be occupied, used, or operated, in whole or in part, until a certificate of occupancy or completion (hereafter "CO") has been issued by the Commissioner stating that the land use activity or project complies with all building, fire and safety codes, and the terms and conditions of the Permit.

Section 2. CO Application

a. Upon the completion of the land use activity or project, the Permittee shall apply for a CO. Within one week of receiving the CO application, the Commissioner shall review the CO application and inspect the project with the appropriate Tribal Programs.

b. Within one week of reviewing the CO application, the Commissioner may either approve the CO application, and thereupon issue a CO, or notify the Permittee in writing of the measures required to attain compliance with the terms and conditions of the Permit.

c. Upon completion of the required compliance measures, the Permittee shall submit a revised CO application demonstrating evidence of compliance.

d. The Commissioner may, at his/her discretion, issue a temporary or a partial CO if the land use activity or project is substantially complete and the completed portion of the land use activity or project has satisfied the required compliance measures. The temporary CO shall specify the time-frame within which the remaining required compliance measures shall be completed. The partial CO shall specify the portion of the structure that may be occupied or used. Failure to complete the required compliance measures within the established time-frame may result in enforcement action.

e. If the Permittee fails or refuses to comply with the terms and conditions of the Permit, or if the activity or project fails to meet the tribal policies or Tribal Land Use Regulations, the Commissioner shall not issue a CO and the land use activity or project shall not be occupied, used, or operated in any way. The Commissioner shall set forth his/her reasons for such denial in a detailed written decision, and shall send a copy of his/her decision to the Permittee.

f. The Permittee may appeal the Commissioner's decision pursuant to Chapter 11 of this Law.

CHAPTER 8. VARIANCE

Section 1. Application

Any person or Permittee who requires a variance from a specific Tribal Land Use Regulation shall file a variance application with the Commissioner setting out the specific regulation for which the variance is requested and the justification for the requested variance.

Section 2. Criteria

The Commission may grant a variance if the person or Permittee provides sufficient evidence that:

- a. the granting of a variance will not undermine the purposes and policies of this Law; and
- b. the proposed variance will not adversely affect the environment, the general health, safety and welfare of the Tribe or Tribal Lands; and
- c. denying the variance will cause the person or Permittee to suffer hardship out of proportion to the benefit intended by the Tribal Policies or Tribal Land Use Regulations; and
- d. the Tribal Land Use Regulation from which a variance is sought can be properly mitigated or the affect of the variance is neutral.

CHAPTER 9. MONITORING

Section 1. Authority to Inspect, Sample, Meter, Monitor

a. The Commissioner shall have the right to enter the property or facilities of any person, Permittee, or owner engaged in a land use activity or project on Tribal Lands to determine whether or not the land use activity or project complies with this Law. The Commissioner shall have access to all parts of the property or facility for the purposes of inspection, sampling, records examination and copying, and any additional duties required by this Law. The Commissioner shall make best efforts to provide adequate notice prior to the inspection, however, lack of notice shall not prevent the Commissioner from gaining access to the facility or the property.

b. Where access to the property or facility is restricted by any security measure or device, the person or Permittee shall promptly allow access to the Commissioner upon presentation of proper identification.

c. The Commissioner shall have the right to install or require the installation of such devices, as are necessary, to conduct sampling, metering, and/or monitoring of the land use activity or project at the person's, Permittee's or owner's expense. The sampling, metering and monitoring equipment shall be maintained at all times in a safe and proper operating condition at the person's, Permittee's, or owner's expense.

d. Any refusal or unreasonable delay in allowing the Commissioner access to the land use activity or project shall be deemed a violation of this Law, and may subject the person, Permittee, or owner to fines and penalties as provided herein.

Section 2. Records and Monitoring

All Permittees shall maintain monitoring records substantiating the information supplied in the Permit application, including but not limited to, self-monitoring compliance reports and any other information or records required by the Permit or Tribal Land Use Regulations.

Section 3. Reporting Requirements

a. Sampling Violations. If the sampling indicates a violation of the Permit or any Tribal Land Use Regulation, the Permittee shall notify the Commissioner within 24 hours of the violation or as soon as the Permittee is aware of the violation. The Permittee shall submit to the Commission, within two weeks of initially becoming aware of the violation, a written summary describing the violation, including but not limited to, the sampling analysis results. The Permittee shall not be required to re-sample if the Commission performs its own sampling or monitoring.

b. Potential Problems. In the event of an imminent and substantial harm to the environment, the general health, safety, and welfare of the Tribe, any person or Permittee shall notify the Commissioner within 24 hours of the incident or as soon he/she becomes aware of the incident. Such notice shall include the location, the type of imminent and substantial harm to the environment, the general health, safety, and welfare of the Tribe, and any corrective or remediation actions undertaken:

- (1) within five days of the imminent and substantial harm to the environment, the general health, safety, and welfare of the Tribe, the person or Permittee shall submit a detailed written report to the Commission describing the nature and cause of the emergency;
- (2) notice will not exempt the person or Permittee from any fines, civil or criminal penalties, or any other liability which may result from the incident; and
- (3) the person or Permittee may request the assistance of the Commission to provide corrective or remedial actions.

CHAPTER 10. ENFORCEMENT

Section 1. Enforcement Authority of the Commission

The Commission and the Commissioner, in conjunction with the field inspector/ enforcement officer, shall have the authority to enforce compliance with any Tribal Land Use Regulation and to investigate or inspect suspected violations of a Permit or non-compliance or of any land use activity or project. Whenever the Commissioner determines, after an investigation, that reasonable grounds exist to find that the person or Permittee has violated any Permit term or condition or any applicable Tribal Land Use Regulation or Commission order, the Commissioner may institute appropriate administrative proceedings in the name of the Commission against any person or Permittee.

Section 2. Commission Orders

The Commissioner shall have the authority to issue cease and desist orders (“CDO”), show cause orders (“SCO”), or consent orders.

Section 3. Cease and Desist Order

a. The Commissioner may issue a CDO whenever he/she determines that reasonable grounds exist to find that a land use activity, activities or lack of activity presents a violation of any Permit term or condition, any Tribal Land Use Regulation or Commission order, and that imminent and substantial harm to the environment, the general health, safety, and welfare of the Tribe is likely to occur without the cessation of such activity.

b. The Commissioner may, without a prior hearing, issue a written CDO to any person or Permittee to cease such activity within a specified time period, and the person or Permittee shall immediately take all necessary steps or measures to comply with the CDO.

c. The Commissioner, or his/her designated representative, shall serve the person or Permittee with the CDO.

d. The CDO shall be scheduled for a hearing in accordance with Chapter 11, Section 1, at the Commission's next scheduled meeting, to determine the status of the alleged violation, any necessary remediation, or whether any other action or enforcement measure should be applied.

Section 4. Show Cause Order

a. The Commissioner may issue a SCO whenever he/she determines that reasonable grounds exist to find that a certain activity, activities or lack of activity presents a violation of any Permit term or condition, any Tribal Land Use Regulation or Commission order.

b. The Commissioner may issue a written SCO to any person or Permittee directing such person or Permittee to appear before the Commission to review the status of the alleged violation, respond to and explain the alleged violation, and determine whether any remediation or additional Permit terms and conditions are necessary, or any other action or enforcement measure should be applied.

c. The SCO shall be scheduled for a hearing, in accordance with Chapter 11, Section 1, at the Commission's next scheduled meeting to determine the status of the alleged violation, any necessary remediation, or whether any other action or enforcement measure should be applied.

d. If the person or Permittee fails to appear at the hearing, the Commission may issue a CDO or institute other enforcement action.

Section 5. Consent Order

The Commissioner may issue a consent order whenever it is determined that a land use activity, activities, or lack of activities presents a violation of any Permit term or condition, any Tribal Land Use Regulation or Commission order, and the person or Permittee admits to the alleged violations and is willing to resolve the matter without formal Commission involvement. The Commissioner may require the performance of any necessary remediation, other reasonable action, or enforcement measure as part of the consent order.

Section 6. Fines

a. The Commissioner shall have the authority to issue fines to any person or Permittee who is found to have violated any Permit term or condition, Tribal Land Use Regulation or commission order in an amount not to exceed \$25,000 for each day during which the violation occurs. The Commissioner may impose escalating fines in instances of continued non-compliance. No fine shall exceed \$250,000. The fines assessed may be associated with the cost of re-mediating or mitigating a violation.

b. In determining the amount of the fine, the Commissioner may consider the following factors:

- (1) the reasonable costs and expenses of the Commission in investigating, controlling, and abating such violations;
- (2) the fines established by the Tribal Land Use Regulations;
- (3) the actual and potential impact or damages to the environment, or the general health, safety, and welfare of the Tribe;
- (4) any measures taken to prevent or mitigate the violation;
- (5) any previous violations or failure to comply with any Permit term or condition, the tribal policies or Tribal Land Use Regulations, or a Commission order;
- (6) making compliance less costly than non-compliance;
- (7) the deterrence of future potential violations;
- (8) whether the failure to comply was intentional, willful or knowing and not the result of an error; and
- (9) any other factor(s) that may be relevant to determining the amount of the fine, provided that such factor shall be set forth in the written notice of assessment of the fine.

c. If a Tribal Program is assessed a fine, payment shall be made to the general fund of the Tribe which shall be designated as revenue of the Land Use Commission:

- (1) the Tribal Programs shall pay the fine to the Commission within 30 days from the date the fine is assessed;
 - (2) if the fine is not paid within 30 days, the Finance Department shall be authorized to automatically withdraw the amount of the fine from the tribal program's budget.
- d. If a tribal member or a non-tribal entity is assessed a fine, payment shall be made as follows:
- (1) the tribal member or the non-tribal entity shall pay the fine to the Commission within 30 days from the date the fine is assessed;
 - (2) if the fine is not paid within 30 days, an additional fine of 10% of the original fine shall be assessed every 30 days until the 90th day, at which time the Commissioner may issue a CDO .

CHAPTER 11. APPEAL PROCESS AND PROCEDURE

Section 1. Right to a Hearing with the Commission

Any person or Permittee who has had an enforcement action commenced against them may request a hearing with the Commission at the Commission's next scheduled meeting to discuss the reasons for such action.

Section 2. Right to Appeal

a. Any Applicant who has been denied a Permit or any person who has been the subject of an enforcement action may file an appeal with the appeal board within two weeks of the Commissioner's or the Commission's decision.

b. An appeal is commenced by filing a notice of appeal with the Commissioner. The notice of appeal shall state the reasons for the appeal and the specific request for relief.

Section 3. Appeal Board

a. The appeal board shall convene on a monthly basis, or as necessary, to address the matters on appeal.

b. The appeal board shall be composed of three Tribal Council members and a tribal attorney. The composition of the appeal board shall rotate among the membership of the Tribal Council. The tribal attorney shall be selected on a random basis. No individual who has personally been involved in, carried out any part of an investigation, or has had any prior review of the issue on appeal, may serve on the appeal board. The staff to the appeal board shall be comprised of existing staff of the tribal government. Members of the appeal board shall serve without compensation.

Section 4. Record on Appeal

a. All records on file with the Commissioner that pertain to the appeal shall constitute the record on appeal.

b. The Commissioner shall photocopy or reproduce the record on appeal and distribute it to the Appellant, the appeal board, and the tribal program whose regulations may be at issue.

Section 5. Appeal Hearing

a. Upon receiving the notice of appeal, the Commissioner shall set a hearing for the matter on the appeal board's next scheduled meeting. The Commission shall provide written notice to the Appellant and the appropriate Tribal Program of the time and place for the hearing.

b. At the appeal hearing, the Commissioner and the Appellant may provide a presentation of the facts as established by the record. The presentation shall be limited to a review of the record on the issue from which the appeal has been taken. The appeal board may ask questions and request relevant and reasonable additional information of any of the parties.

c. The appeal board shall review the record and evidence presented to determine whether or not the Commissioner's or the Commission's actions or decisions were consistent with tribal policies and Tribal Land Use Regulations or were arbitrary and capricious.

d. If the appeal board finds that the Commission's or the Commissioner's decision was arbitrary and capricious, the appeal board shall remand the matter back to the Commission with its conclusions and conditions for further action consistent with the appeal board's decision.

e. The appeal board shall render its final decision within three weeks from the conclusion of the appeal hearing. The appeal board shall set forth written findings of facts and conclusions, and may establish such conditions for the Permit or land use activity or project as it deems necessary and appropriate.

f. The Appeal Board's decision shall be final and not subject to further review.

CHAPTER 12. EFFECTIVE DATE AND APPLICATION

Section 1. Effective upon Enactment of Tribal Council

This Law shall be effective upon enactment by the Tribal Council.

Section 2. Publication and Distribution of Tribal Land Use Regulations

The Commissioner shall distribute copies of this Law and all Tribal Land Use Regulations to every tribal department and program and to any person responsible for any known or anticipated land use activities or projects.

Section 3. Application to Existing Activities and Projects

This Law shall apply to any and all land use activities or projects on tribal lands that are commenced after the effective date of this Law. Any existing building or structure on tribal lands shall not be required to obtain a Permit pursuant to Chapter 5. Nonetheless, the operation of any existing land use activities or projects, including buildings and structures, shall be required to comply with all other provisions of this Law.

CHAPTER 13. LAND USE REGULATORY STANDARD FOR NEW HOUSING PROJECTS

Section 1. Interpretation of TOSHA Regulations

The TOSHA Commissioner shall ensure that TOSHA regulations are interpreted in a manner that is consistent with the interpretation of OSHA regulations applied to home construction that generally occurs within New London County, Connecticut, and that, to the greatest extent consistent with good construction practice, the TOSHA Commissioner shall minimize the regulatory cost of Home construction in the Phase VII development and to all other Home construction and renovation that occurs on the Mashantucket Pequot Reservation.

Section 2. Orders and Fines - TOSHA

Any order or fine issued by TOSHA shall be consistent with the application of OSHA regulations as generally applied in Connecticut. Any order or fine shall, to the greatest extent consistent with good construction practice generally, minimize the regulatory cost of Home construction and renovation that occurs on the Mashantucket Pequot Reservation.

Section 3. Appeal of any Order or Fine Issued by TOSHA Commissioner

Notwithstanding any other provision of Tribal Law, any order or fine issued by the TOSHA Commissioner may be appealed to the Mashantucket Pequot Tribal Court who shall hear the matter de novo. The Tribal Court may overturn an order or fine of the TOSHA Commissioner in the event that the Court determines that the appealed order or fine was, based upon a preponderance of the evidence, inconsistent with the application of OSHA regulations in Connecticut generally.

Section 4. Regulatory Interpretation of Building Codes

The Land Use Commissioner shall, with respect to all Home construction that takes place on the Mashantucket Pequot Reservation, apply regulatory interpretation that is consistent with the interpretation of similar building code provisions in New London County, Connecticut, and, to the greatest extent consistent with good construction practice, the Land Use Commissioner shall minimize the regulatory cost of Home construction and renovation that occurs on the Mashantucket Pequot Reservation.

Section 5. Order and Fines – Land Use Commission

Any order or fine issued by the Land Use Commissioner, with respect to all Home construction that takes place on the Mashantucket Pequot Reservation, shall be consistent with orders or fines that are issued for similar violations of building codes that may occur in developments of a similar nature located within New London, Connecticut, generally.

Section 6. Appeal of any Orders and Fines may be Appealed Issued by Land Use Commissioner

Any order or fine issued by the Land Use Commissioner may first be appealed to the Land Use Commission. Appeals to the Land Use Commission shall be heard de novo. Notwithstanding any other provision of Tribal Law, a simple majority of the voting members of the Land Use Commission present shall decide the outcome of any appeal. The Land Use Commissioner, as the issuing official, shall not participate in the appeal either by acting as the Chair or by participating in the vote of the Commission. He shall, however, present the reasons for the issuance of the order or fine at the Land Use Commission hearing. The decision of the Land Use Commission may subsequently be appealed by the person or entity subject to the order or fine to the Mashantucket Pequot Tribal Court who shall hear the matter de novo. The Tribal Court shall sustain the determination of the Land Use Commission unless it can be shown, by a preponderance of the evidence, that the Commission was arbitrary or capricious.

CHAPTER 14. NEW HOME WARRANTIES

Section 1. Express Warranties

a. Express warranties by a vendor are created as follows:

- (1) Any written affirmation of fact or promise which relates to the improvement and is made a part of the basis of the bargain between the vendor and the purchaser shall create an express warranty that the improvement conforms to such affirmation or promise;
- (2) Any written description of the improvement, including plans and specifications thereof which is made a part of the basis of the bargain between the vendor and the purchaser shall create an express warranty that the improvement conforms to such description; and
- (3) Any sample or model which is made a part of the basis of the bargain between the vendor and the purchaser shall create an express warranty that the improvement conforms substantially to such sample or model.

b. No formal words, such as “warranty” or “guarantee”, nor any specific intention to make a warranty shall be necessary to create an express warranty, provided a simple affirmation of the value of the improvement or a statement purporting to be an opinion or commendation of the improvement shall not itself create such a warranty.

c. No words in the contract of sale or the Assignment under Tribal Law, nor merger of the contract of sale into such Assignment shall exclude or modify any express warranty made pursuant to subsection (a) of this section. Such warranty may, at any time after the execution of the contract of sale, be excluded or modified wholly or partially by any written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to such exclusion or modification and the terms of the new agreement.

d. An express warranty shall terminate: (1) in the case of an improvement completed at the time of the delivery of the Assignment to the purchaser, two years after the delivery of the Assignment or two years after the taking of possession by the purchaser, whichever occurs first; and (2) in the case of an improvement not completed at the time of delivery of the deed to the purchaser, two years after the date of completion or two years after taking possession by the purchaser, whichever occurs first.

Section 2. Implied Warranties

a. In every sale of an improvement by a vendor to a purchaser, except as provided in subsection (b) of this section or excluded or modified pursuant to subsection (d), warranties are implied that the improvement is:

- (1) free from faulty materials;
- (2) constructed according to sound engineering standards;
- (3) constructed in a workmanlike manner; and
- (4) fit for habitation, at the time of the delivery of the deed to a completed improvement, or at the time of completion of an improvement not completed when the Assignment is delivered.

b. The implied warranties of subsection (a) of this section shall not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

c. If the purchaser, expressly or by implication, makes known to the vendor the particular purpose for which the improvement is required, and it appears that the purchaser relies on the vendor's skill and judgment, there is an implied warranty that the improvement is reasonably fit for the purpose.

d. Neither words in the contract of sale, nor the Assignment, nor merger of the contract of sale into the Assignment is effective to exclude or modify any implied warranty; provided, if the contract of sale pertains to an improvement then completed, an implied warranty may be excluded or modified wholly or partially by a written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to exclusion or modification, and the terms of the new agreement with respect to it.

e. The implied warranties created in this section shall terminate: (1) in the case of an improvement completed at the time of delivery of the Assignment to the purchaser, two years after the delivery or two years after taking possession by the purchaser, whichever occurs first; and (2) in the case of an improvement not completed at the time of delivery of the deed to the purchaser, two years after the date of the completion or two years after taking possession by the purchaser, whichever occurs first.

Section 3. Vendor Not To Evade by Intermediate Transfer

Any vendor who conveys an improvement to an intermediate purchaser to evade the provision of this chapter shall be liable to the subsequent purchaser as if the subsequent conveyance had been effectuated by the vendor to the subsequent purchaser.

Section 4. Warranties Created by Chapter Additional to Any Other Warranties

The warranties created in this chapter shall be in addition to any other warranties created or implied in Tribal law.

Section 5. Implied Warranty with Certificate of Occupancy

Subject to the provisions of the Land Use Law, the issuance by the Land Use Commission of a certificate of occupancy for any newly constructed single-family dwelling shall carry an implied warranty to the purchaser of such dwelling from the vendor who constructed it that such vendor has complied with the building code or the customary application and interpretation of the building code as adopted by the Mashantucket Pequot Tribal Nation as shown on the Tribe's webpage (www.mptnprocurement.com). No action shall be brought on such implied warranty but within three years next from the date of the issuance of such certificate of occupancy.

Legislative History. Effective October 27, 2004 - TCR102704-02 added Chapter 13, "Land Use Regulatory Standard for New Housing Projects." **Derivation.** Effective May 29, 1996 - TCR052996-09 enacted the "Land Use Enabling Law," consisting of current Chapters 1-12.

CHAPTER 15. NEW HOME CONSTRUCTION CONTRACTORS

Section 1. Definitions.

The following definitions shall apply in this Law:

- a. "Certificate" means a certificate of registration issued under Section 2 (b);
- b. "Commissioner" means the Land Use Commissioner or any person designated by the commissioner to administer and enforce this Law;
- c. "Contract" means any agreement between a Contractor and a consumer for the construction or sale of a New Home or any portion of a New Home prior to occupancy;
- d. "Engage in the business" means that the person engages in the business for the purpose of compensation or profit;
- e. "Contractor" means any Person (as further defined herein) who seeks to work for, enter into a contract with or who contracts with a Consumer to construct or sell on the Mashantucket Pequot Reservation a New Home or any portion of a New Home prior to occupancy;
- f. "New home" means any newly constructed (1) single-family dwelling unit, (2) dwelling consisting of not more than two units, or (3) unit, common element or limited common element in a condominium;
- g. "Mashantucket Pequot Reservation" means the land as defined in 25 U.S.C. §1752(7).
- h. "Person" means one or more individuals, partnerships, associations, corporations, limited liability companies, business trusts, legal representatives or any organized group of persons;
- i. "Consumer" means any Tribal Member who is the buyer or prospective buyer, or the buyer's or prospective buyer's heirs or designated representatives, of any New Home or the owner of property on which a New Home is being or will be constructed regardless of whether such owner obtains a building permit as the owner of the premises affected; and
- j "Completion" means the stage of construction of a New Home in which the Contractor is in receipt of such new home's certificate of occupancy issued by the Tribal Land Use Commissioner.

Section 2. Registration of contractors required. Application. Fees. Renewal.

- a. No Contractor shall engage in the business of New Home construction or hold himself or herself out as a Contractor for hire on the Mashantucket Pequot Reservation unless such Contractor has been issued a certificate of registration by the Commissioner.
- b. The provisions of this Law shall not extend beyond the Mashantucket Pequot Reservation.
- c. Any Contractor seeking a Certificate of Registration to engage in the business of New Home construction on the Mashantucket Pequot Reservation shall apply to the Commissioner, in writing, on a form provided by the Commissioner. The application shall include:
 - (1) the applicant's name, business street address and business telephone number,
 - (2) the identity of the insurer that provides the applicant with insurance coverage for liability,
 - (3) the identity of the insurer that provides the applicant with workers' compensation coverage, and
 - (4) the name and address of the Contractor's agent for service of process.
 - (5) the State or States in which the Contractor is or within the past five years has been registered to do business, and
 - (6) a copy of the status, whether in good standing or otherwise, of all such registrations, and
- d. Each such application shall be accompanied by an application fee of \$25.
- e. Certificates of Registration issued to Contractors shall not be transferable or assignable.
- f. all Certificates of Registration issued shall expire biennially. The fee for renewal of a Certificate of Registration shall be the same as the fee charged for an original application provided that the renewal application and fee is filed within six months of the original expiration date.
- g. a Certificate of Registration that is not renewed within six months of the renewal date shall be renewed upon a payment of a fee of \$50.
- h. failure to receive a notice of expiration or a renewal application shall not exempt a contractor from the obligation to renew.

Section 3. Revocation, suspension or refusal to issue or renew registration.

The Commissioner may revoke, suspend, or refuse to issue or renew any Certificate of Registration issued pursuant to this Law, or place a registrant on probation or issue a letter of reprimand after notice and hearing before the full Land Use Commission if it is shown that the holder of such certificate has:

- a. failed to comply with any provision of Tribal Law or of the State of Connecticut;
- b. obtained the certificate through fraud or misrepresentation;
- c. engaged in conduct of a character that is likely to mislead, deceive or defraud Consumers, the public or the Commissioner;
- d. engaged in any untruthful or misleading advertising;
- e. engaged in an unfair or deceptive business practice;
- f. failed to timely complete any task, as specified in a written contract of sale;
- g. failed to remedy any violation of the MPTN warranty law;
- h. failed to remedy any violation of Tribal or State of Connecticut Building Code; and
- i. failed to be in good standing with MPTN or the Secretary of the State of Connecticut.

Section 4. Holder to exhibit and advertise certificate, when. Required contract provision. Written disclosure notice to consumers. Prohibited acts.

- a. Prior to entering into a Contract with a consumer for New Home construction, a Contractor shall:
 - (1) provide to the Consumer a copy of the Contractor's certificate of registration and a written notice that:
 - (a) discloses that the certificate of registration does not represent that such Contractor's registration constitutes an endorsement of the quality of the Contractor's work or of such Contractor's competency by the Commissioner,
 - (b) advises the consumer to contact the Land Use Department to determine;
 - (i) if such Contractor is registered and is in good standing with the Commissioner,
 - (ii) if any complaints have been filed against such contractor, and
 - (iii) the disposition of any such complaints, and
 - (c) advises the Consumer to request from such Contractor a list of Consumers of the new homes constructed by the contractor during the previous 24 months, or if the contractor has not constructed at least 12 new homes to completion during the previous twenty four months with sufficient information to enable a Consumer to contact several individuals on the list to discuss the quality of such contractor's New Home construction work,
 - (2) state in any advertisement directed to Consumers on the Mashantucket Pequot Reservation that the Contractor is registered pursuant to this Law;
 - (3) include such contractor's registration number in any such advertisement.
- b. A Contractor shall include in every contract with a Consumer a provision advising the Consumer that the Consumer may be contacted by the Contractor's prospective Consumers concerning the quality and timeliness of such Contractor's New Home construction work, unless the Consumer advises the Contractor, in writing, at the time the contract is executed, that the Consumer prefers not to be contacted.
- c. The written notice required in this sub section shall be in capital letters, not less than ten-point bold face type, and shall include a statement in substantially the following form as set forth in Attachment A to this Law.
- d. No person shall:
 - (1) present, or attempt to present as such person's own, the Certificate of another;
 - (2) knowingly or negligently give false evidence of a material nature to the Commissioner for the purpose of procuring a certificate;
 - (3) represent themselves falsely as, or impersonate, a registered Contractor;
 - (4) knowingly use or attempt to use a certificate which has expired or which has been suspended or revoked;
 - (5) engage in the business of a Contractor or hold himself or herself out as a Contractor on the Mashantucket Reservation without having a current, valid Certificate of Registration as required by this Law;
 - (6) represent in any manner that such Contractor's registration constitutes an endorsement of the quality of such person's work or of such person's competency by the Commissioner; or
 - (7) fail to refund a deposit paid to a Contractor not later than ten days after a written request mailed or delivered to the Contractor's last known address, if
 - (a) the consumer has substantially complied with the terms of the written contract up to the time of the request,

- (b) no substantial portion of the contracted work has been performed at the time of the request,
- (c) more than 30 days has elapsed since the starting date specified in the written contract or more than thirty days has elapsed since the date of the contract if such contract does not specify a starting date, and
- (d) the Contractor has failed to provide a reasonable explanation to the consumer concerning such contractor's failure to perform a substantial portion of the contracted work. For purposes of this subdivision, "substantial portion of the contracted work" includes, but is not limited to, work performed by the Contractor to
 - (i) secure permits and approvals,
 - (ii) redraft plans or obtain engineer, architect, surveyor or other approvals for changes requested by the consumer or made necessary by site conditions discovered after the contract is executed,
 - (iii) schedule site work or arrange for other contractors to perform services related to the construction of the consumer's new home, and
 - (iv) do any other work referred to in the contract as a "substantial portion of the contracted work".

Section 5. Building and construction permits

No Contractor shall commence work unless each applicable building or construction permit has been obtained as required by Tribal law. The Land Use Commissioner shall issue a contractor a building or construction permit when the Contractor has presented to a building official the Certificate of Registration and registration number of the Contractor.

Section 6. Civil Penalties

Any person who enters into a contract for the construction of a New Home without first obtaining a Certificate of Registration shall be subject to a fine of \$500 and/or may have his application for a Certificate of Registration denied. Contracts entered into by persons who do not hold a valid Certificate of Registration are voidable at the election of the Consumer.

Attachment A

**CONTRACTOR
REGISTRATION NOTICE**

A CERTIFICATE OF REGISTRATION AS A CONTRACTOR DOES NOT REPRESENT IN ANY MANNER THAT THE LAND USE DEPARTMENT ENDORSES THE QUALITY OF THE CONTRACTOR'S NEW HOMECONSTRUCTION WORK OR THE CONTRACTOR'S COMPETENCY TO ENGAGE IN NEW HOMECONSTRUCTION.

ACCORDINGLY, YOU ARE ADVISED TO:

(1) REQUEST FROM THE CONTRACTOR A LIST OF CONSUMERS OF THE LAST 12 NEW HOMES CONSTRUCTED TO COMPLETION BY THE CONTRACTOR DURING THE PREVIOUS 24 MONTHS, OR IF THE CONTRACTOR HAS NOT CONSTRUCTED AT LEAST 12 NEW HOMES TO COMPLETION DURING THE PREVIOUS 24 MONTHS, THEN A LIST OF ALL CONSUMERS FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW HOME TO COMPLETION DURING THE PREVIOUS 24 MONTHS,

(2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO DISCUSS THE QUALITY AND THE TIMELINESS OF THE CONTRACTOR'S NEW HOMECONSTRUCTION WORK, AND

(3) CONTACT THE LAND USE DEPARTMENT TO VERIFY THE REGISTRATION INFORMATION PRESENTED BY THE CONTRACTOR AND TO ASCERTAIN THE CONTRACTOR'S COMPLAINT HISTORY WITH THE DEPARTMENT.

IN ADDITION, YOU ARE ADVISED TO DISCUSS WITH THE CONTRACTOR:

(1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE POLICY AND IF SO, THE IDENTITY OF THE PERSON DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT ABOUT THE CONTRACTOR'S WORK,

(2) WHETHER THE CONTRACTOR WILL HOLD YOU HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR HIRED BY THE CONTRACTOR, AND

(3) THE INSTALLATION OF AN AUTOMATIC FIRE EXTINGUISHING SYSTEM.

THIS NOTICE DOES NOT CONTAIN AN EXHAUSTIVE LIST OF THE INQUIRIES YOU SHOULD MAKE BEFORE CONTRACTING WITH A CONTRACTOR. ADDITIONAL INFORMATION TO ASSIST YOU IN YOUR SELECTION OF A CONTRACTOR MAY BE OBTAINED BY CONTACTING THE LAND USE DEPARTMENT."

Legislative History: Derivation: Effective May 29, 1996 - TCR052996-09 enacted the "Land Use Enabling Law," consisting of current Chapters 1-12. Effective October 27, 2004 - TCR102704-02 added Chapter 13, "Land Use Regulatory Standard for New Housing Projects." Effective April 28, 2006 - TCR042806-01 OF 01 added Chapter 15, "New Home Construction Contractors."

TITLE 23 FOREIGN JUDGMENTS, WAGE EXECUTIONS & SUBPOENAS

CHAPTER 1. RECOGNITION OF FOREIGN JUDGMENTS

Section 1. Definitions

The following words and phrases are defined for the purposes of this Title:

- a. "Foreign Judgment" means any final judgment of a court or agency of competent jurisdiction in the United States, other than the Mashantucket Pequot Tribal Courts.
- b. "Employer" means the Mashantucket Pequot Tribal Nation, its enterprises, governmental divisions or departments thereof, including the Mashantucket Pequot Gaming Enterprise and Pequot Pharmaceutical Network, but does not include any entity owned in whole or part by the Tribe and formed under the laws of any state.
- c. "Issuing Tribunal" means the tribunal which rendered the Foreign Judgment.
- d. "Judgment Creditor" means a party to whom an obligation is owed under the Foreign Judgment.
- e. "Judgment Debtor" means a party who owes and is responsible for payment of an obligation under the foreign judgment.
- f. "Tribal Court" means the Mashantucket Pequot Tribal Court.

Section 2. Filing of Foreign Judgment. Enforcement

- a. Any party seeking to have a Foreign Judgment recognized and enforced in the Tribal Court, may do so by:
 - (1) Filing a certified copy of the Foreign Judgment with the Tribal Court; and
 - (2) Filing a certification that the Foreign Judgment is final, has not been modified, altered, amended, set aside or vacated, and that the enforcement of the Foreign Judgment has not been stayed or suspended. The certification shall set forth the full name and last-known address of the Judgment Debtor and the name and address of the Issuing Tribunal; and
 - (3) Filing with the Tribal Court proof that the filings required by subsections 1 and 2 above, have been sent via certified mail or personally served upon the party against whom the Foreign Judgment will be enforced; and
 - (4) Payment of a fee of \$25 to the Tribal Court Clerk.
- b. The Tribal Court shall not act upon any Foreign Judgment until the expiration of 20 days from the filing of the items required by subsections (a)(1)-(4) above. A party may file an objection to the recognition and enforcement of a Foreign Judgment within 20 days from the filing of the items required by subsections (a)(1)-(4).

Section 3. Notification

Within five days after the filing of such judgment and certification, the Judgment Creditor or Judgment Creditor's attorney shall present a summons to the Tribal Court Clerk for signature and shall notify the Judgment Debtor of the filing by registered or certified mail at the Judgment Debtor's last known address or by personal service pursuant to Tribal law. The Court shall not act on any Foreign Judgment for a period of 20 days from the filing thereof, and no action to enforce such judgment shall be taken until proof of service has been filed with the Court.

Section 4. Stay of Proceedings, Modifications, Hearings

- a. If either party files an affidavit and supporting documents from the Issuing Tribunal that an appeal from the Foreign Judgment is pending in a foreign jurisdiction or that a stay of execution has been granted, the Court shall stay enforcement of the Foreign Judgment until the appeal is concluded or the stay of execution expires or is vacated.

- b. If either party files an affidavit and supporting documents from the Issuing Tribunal that such Foreign Judgment has been modified or amended, the Court shall enforce such Foreign Judgment as so modified or amended.
- c. The Tribal Court may accept the jurisdictional facts and other information documented in the certified copy of the Foreign Judgment as presumptively true. A Foreign Judgment so recognized shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of the Tribal Court provided that in modifying or altering such Foreign Judgment, the substantive law of the Issuing Tribunal shall be controlling.

Section 5. Enforceability

- a. Upon motion to the Court, either party shall be entitled to a hearing on any disputed issue of fact or law concerning the enforceability of the Foreign Judgment in Tribal Court. A Foreign Judgment shall not be enforceable in Tribal Court if the Issuing Tribunal lacked jurisdiction. The party challenging the enforceability of the Foreign Judgment shall bear the burden of proof.
- b. A Foreign Judgment shall become a judgment of the Tribal Court and shall be enforceable provided that such judgment is valid and enforceable and does not contravene the public policy of the Mashantucket Pequot Tribe.

CHAPTER 2. WAGE EXECUTIONS

Section 1. Application

If a Judgment Debtor fails to comply with an installment payment order or satisfy a Tribal Court judgment, the Judgment Creditor may apply to the Tribal Court for a wage execution. The application shall contain the Judgment Creditor's or the Judgment Creditor's attorney's statement:

- a. Setting forth the particulars of the installment payment order, if any; and
- b. The Judgment Debtor's failure to comply with such installment payment order and Judgment Debtor's failure to otherwise satisfy the Tribal Court Judgment.

Section 2. Installment Payment Order

Prior to issuing a wage execution the Court may in its discretion enter an installment payment order which order shall include direction as to the circumstances under which a wage execution shall be issued.

Section 3. Amount Subject to Levy

- a. Except as provided in subsection b hereof, the maximum part of the aggregate disposable income, as defined in 6 M.P.T.L., Chapter 8, Section 1(d), of a Judgment Debtor for any workweek which may be subject under this law to levy or other withholding for payment of judgments may not exceed:
 - (1) Where such Judgment Debtor is supporting a dependent child pursuant to Title VI, Chapter 8 (other than a child with respect to whose support such order is used), 50% of the Judgment Debtor's disposable income for that week; and
 - (2) Where such Judgment Debtor is not supporting such dependent child described in subsection a(1) hereof, 60% of the Judgment Debtor's disposable income for that week.
- b. The maximum portion of the aggregate disposable income of a Judgment Debtor for any work week which is subject to garnishment for any one judgment shall not exceed:
 - (1) 25% percent of the Judgment Debtor's disposable income for that week; or
 - (2) The amount by which the Judgment Debtor's disposable income for that week exceeds 30 times the Federal minimum hourly wage prescribed by Section 206(a)(1) of Title 29 of the U.S. Code in effect at the time the income is payable, whichever is less.
- c. The restrictions of subsection (b) above do not apply in the case of:
 - (1) Any order for the support of any person issued by a Foreign Tribunal or in accordance with an administrative procedure, which is established by law, which affords substantial due process, and which is subject to judicial review.
 - (2) Any order of any tribunal or court of the United States having jurisdiction over cases under Chapter 13 of Title 11 of the United States Code.
 - (3) Any debt due for any tribal or federal tax.

Section 4. Issuance

Upon receipt of the application and subject to the provisions of this law, the Tribal Court shall issue a wage execution against the Judgment Debtor to enforce payment of the judgment.

Section 5. Contents

The wage execution shall include:

- a. the names and last-known addresses of the Judgment Creditor and Judgment Debtor;
- b. the name of the Issuing Tribunal and the date on which the money judgment was rendered, if not the Mashantucket Pequot Tribal Court, then as recognized by the Tribal Court;
- c. the original amount of the money judgment and the amount due thereon;
- d. any limitation on the execution ordered by the Tribal Court pursuant to a motion for modification thereof;
- e. the portion of the Judgment Debtor's income which is subject to levy thereunder, or the information necessary to determine such portion;
- f. any information which the Judgment Creditor provides to identify the Judgment Debtor's Employer; and
- g. the signature of the Tribal Court Judge.

The wage execution shall notify the Employer in the manner prescribed by this section for complying with the wage execution and shall be accompanied by a notice of Judgment Debtor's right and a claim form.

Section 6. Service

a. The Tribal Court shall deliver the wage execution to the Senior Financial Officer for all Mashantucket Pequot Gaming Enterprise employees or to the Chief Financial Officer of the Mashantucket Pequot Tribal Nation for all other employees and receipt thereof shall be deemed service upon the Employer as required herein. The Employer will be served with:

- (1) two copies of the wage execution,
- (2) the required notice of Judgment Debtor's rights, and
- (3) the claim forms.

b. On receipt thereof, the Employer shall forthwith deliver a copy thereof to the Judgment Debtor, or mail such copy postage prepaid to the Judgment Debtor at Judgment Debtor's last-known address. Upon service of the wage execution on the Employer, the wage execution shall automatically be stayed for a period of 20 days and shall thereafter immediately become a lien and continuing levy on such portion of the Judgment Debtor's income as is specified therein, provided if a claim is filed within 20 days of such service on the Employer, the stay shall continue until determination of the claim.

c. The Employer shall levy on all salary or wages which are due or become due to the Judgment Debtor to the extent specified in the wage execution, until the judgment is satisfied, or the wage execution is modified pursuant to the provision of Chapter 2, Section 9 hereof, or set aside.

d. Any income withholding order for child support pursuant to Title 6, Chapter 8 shall take priority over any wage execution issued in accordance herewith.

e. Any income withheld for the Internal Revenue Service shall take precedence over all other garnishments.

Section 7. Expiration of Wage Execution

A wage execution shall be served within one year from its issuance and returned to the Tribal Court within 30 days from the satisfaction of the judgment.

Section 8. Employer Responsibilities

Any Employer served with a wage execution shall, upon expiration of the automatic 20 day stay of execution and subject to any further stay pursuant to a claim, pay over to the Judgment Creditor or the Judgment Creditor's attorney such portion of the Judgment Debtor's nonexempt income as the wage execution prescribes until the judgment is satisfied or the wage execution modified or set aside. The payments to the Judgment Creditor or the

Judgment Creditor's attorney in compliance with the wage execution shall bar any action against the Employer for such payments. Any amount so recovered by the Judgment Creditor shall be applied toward payment of the judgment.

Section 9. Modification

Either party may apply at any time to the Issuing Tribunal for a modification of the wage execution. After notice and hearing or pursuant to a stipulation, the Tribal Court may make such modification of the wage execution as is reasonable.

Section 10. Assignment of Income

Any assignment by the Judgment Debtor of the Judgment Debtor's income shall be void except payments due for support in child support cases including payments pursuant to an income withholding order for child support in accordance with Title 6 of the Tribal Laws. Assignment of Incentive payments is prohibited except if it is both for payment due as described in this section and is in writing signed by the tribal member and approved by the General Counsel or the Chief Operating Officer for the Mashantucket Pequot Tribe.

Section 11. Other Attachment

In the event that a Judgment Creditor has obtained a judgment for monetary damages in the Tribal Court including recognition of a Foreign Judgment and such judgment remains unsatisfied for 30 days after awarded or filed, the Tribal Court may, upon motion filed by the Judgment Creditor to attach the assets, or any part thereof, of the Judgment Debtor, notice of which has been given to the Judgment Debtor as provided herein, issue an order for the attachment of personal property of the Judgment Debtor or the garnishment of any debts owed to such Judgment Debtor as shall be reasonably necessary to satisfy said judgment. Furthermore, in the event that a judgment has been entered which is on appeal, the Tribal Court may, in its discretion, issue an order of attachment or garnishment while said appeal is pending if the Court deems such order is reasonably necessary to preserve the ability of the Judgment Creditor to obtain satisfaction of said judgment, or the Court, in its discretion, has determined that such appeal has been taken solely for the purposes of delay or in order to frustrate the collections of any eventual judgment. The motion for attachment must state the day, time, and place of hearing, and the Judgment Creditor shall mail a copy of such motion to the Judgment Debtor, by registered or certified mail, at the Judgment Debtor's last known address or by personal service pursuant to Tribal law.

CHAPTER 3. SUBPOENAS DIRECTED TO THE MASHANTUCKET PEQUOT TRIBAL NATION, ITS ENTITIES FOR APPEARANCE OR PRODUCTION OF DOCUMENTS

Section 1. Issuance

The Tribal Court may issue a subpoena requiring the appearance of a witness or production of a specified document(s) or other thing pursuant to a letter of request issued by a Foreign Tribunal.

Section 2. Requirements

Any active member of any Bar may file with the Tribal Court a letter of request and finding from any Foreign Tribunal that the particular testimony or the production of the document(s) or other thing is necessary in the interest of justice, and in other than a criminal action or proceeding, that it is not possible to obtain the production of the document or other thing in any other manner, issued by a Judge or Clerk of said Foreign Tribunal requesting the issuance of a subpoena directed to the Mashantucket Pequot Tribe, its entities, and/ or its employees. Notice of the intention to request the issuance of such subpoena from the Mashantucket Pequot Tribal Court shall be given by the requesting party to the subject of the request prior to the filing for the issuance of such subpoena, and a copy of said notice shall be filed with the letter of request. Within five days after the filing of such letter, the Tribal Court shall cause a subpoena to be issued in accordance with Rule 45 of the Mashantucket Pequot Tribal Laws.

Section 3. Service

The subpoena shall be served by the Tribal Police within the Mashantucket Pequot Tribal lands by delivering a copy thereof to the witness or Records Keeper with a copy to the Office of Legal Counsel for the Mashantucket Pequot Tribe. Proof of service when necessary shall be made by filing with the Clerk of the Tribal

Court a true and attested copy of the subpoena endorsed with a statement of the date, manner of service, and the name of the persons served, certified by the person who made the service.

Section 4. Objection

The Office of Legal Counsel or any interested party thereto may within 14 days after service of the subpoena or request for a subpoena or before the time specified for appearance or compliance if such time is less than 14 days after service, notify by regular or certified mail the party or attorney designated in the subpoena written objection to the issuance of such subpoena.

Upon timely motion, the Court shall quash or modify the subpoena if it

- (1) lacks jurisdiction;
- (2) fails to allow reasonable time for compliance;
- (3) requires a person who is not a named party to travel to a place more than 30 miles of the Mashantucket Pequot Reservation;
- (4) is overly broad, vague or frivolous;
- (5) requires disclosure of privileged or other protected matter and no exception or waiver applies;
- (6) subjects the Mashantucket Pequot Tribe, its entities and employee to undue burden; or
- (7) requires disclosure of a trade secret or other confidential research, development or commercial information.

Section 5. Service Upon Governmental Authority

When a subpoena for the production of books, papers, documents or tangible things is served upon the Mashantucket Pequot Tribe, its entities and employee, it shall be deemed a sufficient response to the subpoena if the employee of the entity charged with the responsibility of being custodian of the original records promptly provides the attorney for the party causing service of the subpoena copies of all documents requested by the subpoena pursuant to this law. All responses to the subpoena shall contain a certificate which shall be signed before a Notary Public by the employee of the entity charged with the responsibility of being custodian of the records and shall include a legend substantially to the following effect:

“The copies of records for which this certification is made are true and complete reproductions of the original records which are in the possession of the Mashantucket Pequot Tribal Nation and if it is the case the original records were made in the regular course of business, and it was the regular course of Mashantucket Pequot Tribal Nation to make such records at or near the time of the matter recorded. This certification is given pursuant to the Mashantucket Pequot Tribal Laws by the custodian of the records in lieu of his or her personal appearance.”

Documents or records of the Mashantucket Pequot Tribal Nation that are susceptible to photostatic reproduction may be proved as to foundation, identity, and authenticity without any preliminary testimony, by use of legible and durable copies, certified in the manner prescribed above by the employee of the Mashantucket Pequot Tribal Nation charged with the responsibility of being custodian of the originals thereof. The copies may be used in any trial hearing, deposition, or any other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original documents or records which, however, the entity shall hold available for inspection and comparison by the foreign court, tribunal, or hearing officers and by the parties and their attorneys of record.

In the event any of the entities are unable to provide the documents requested in the subpoena due to the timeliness of the service of the subpoena or for other legal reasons, then the employee charged with the responsibility of being custodian of the records for the entity shall set forth in the certificate required hereunder the specific reasons for the noncompliance, the time of service of the subpoena, and if appropriate the time anticipated in complying with the subpoena.

Section 6. Deposition

Pursuant to the above requirements of this law, the Tribal Court Clerk may issue a subpoena for the appearance of the employee charged with the responsibility of being custodian of the original records to appear at a place within the borders of the Mashantucket Pequot Reservation for a deposition.

Section 7. Testimony

If the deposition of any employee charged with the responsibility of being custodian of the original records is inadmissible at trial through no fault of either party, the Tribal Court Clerk shall issue a subpoena for the

appearance of the custodian of the original records to appear at trial provided such appearance of said custodian is within 30 miles of the Mashantucket Pequot Reservation.

Legislative History: Effective May 29, 2007 TCR052907-07 enacted the Foreign Judgment and Subpoena Law.

This replaces 28 M.P.T.L. in its entirety

TITLE 28 RIGHT TO WORK LAW

Section 1. Findings, Purpose, and Authority

- a. The Tribe finds that:
 - (1) It has exercised its sovereignty in enacting laws to govern employment relationships on the Reservation, and has determined that it is in the best interests of all Employees on the Reservation to have the right to choose to work and not be prohibited from working on the Reservation based upon requirements of membership in, affiliation with, or financial support of a labor organization.
 - (2) Employees should have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.
 - (3) It is the public policy of the Tribe that in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of individuals to work on the Reservation shall not be denied or hindered based upon membership in a labor organization.
 - (4) It has the inherent authority to exclude persons from the Reservation and to place conditions on entry, on continued presence and on conduct within the Reservation.
 - (5) The Tribe's position is that the National Labor Relations Act does not apply to it as a government given the significant impact its application would have on the Tribe's exercise of sovereignty, including the numerous laws adopted that currently govern employment on the Reservation. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe's right to enact this law providing all Employees on the Reservation, whether working for the Tribe or not, with the right to work and not requiring any Employee to affiliate with, join, or financially support a labor organization in order to work on the Reservation.
- b. The purpose of this law is to ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.
- c. The Mashantucket Pequot Tribal Council, the governing body of the Tribe, enacts this law governing employment and labor on its Reservation pursuant to the Tribe's inherent sovereign authority to govern activities on the Reservation, whether the activities are of tribal members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the Reservation community including members, Employees, vendors, patrons and others who enter the Reservation.

Section 2. Definitions

- a. "Employee" means any individual employed by an Employer.
- b. "Employer" means any person, firm, association, corporation and other entity operating in or upon the Mashantucket Pequot Reservation and directly or indirectly employing one or more Employees to perform work, and includes the Tribe. This Law does not apply to any such person, firm, association, corporation or other entity which has a principal place of business located outside the Mashantucket Pequot Reservation and operates in or upon the Mashantucket Pequot Reservation pursuant to an agreement with the Tribe to perform construction-related activities.
- c. "Labor organization" means any organization or agency or group of Employees or Employee committee or plan in which Employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.
- d. "Tribe" means the Mashantucket (Western) Pequot Tribe also know as the Mashantucket Pequot Tribal Nation and includes any subdivision, agency, arm or department thereof including but not limited to the Mashantucket Pequot Gaming Enterprise, the Pequot Pharmaceutical Network, the Mashantucket Pequot Museum &

Research Center, but does not include any legal entity established and organized by the Tribe under the laws of any state with a principal place of business located outside of the Reservation.

e. "Mashantucket Pequot Reservation" means the "reservation" as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe and all other lands subject to the jurisdiction of the Tribe.

f. "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity.

g. "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

Section 3. Right to Work

a. No person shall be required, in order to obtain employment or as a condition of employment or continuation of employment on the Mashantucket Pequot Reservation, to do any of the following:

1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
2. Become or remain a member of a labor organization or be affiliated with a labor organization;
- or
3. Pay union dues as defined in this Law.

b. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Law or otherwise violates the rights of Employees as defined by this Law, is against the public policy of the Tribe and is hereby declared to be null and void and of no legal effect.

c. No Employer shall deduct labor organization dues, charges, fees, contributions, fines or assessments from an Employee's earnings, wages or compensation, unless the Employer has first received from the Employee a written order or consent signed by the Employee, which written order or consent shall be terminable at any time by the Employee by giving at least thirty days written notice of such desire to terminate the order or consent to the Employer.

d. No Employer shall discriminate or retaliate against any Employee on the basis of an Employee's decision to participate or refrain from participating in any labor organization, or based upon an Employee's activities related to such participation in or refusal to participate in any labor organization.

e. No Person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof shall threaten or intimidate, in any manner, any Person, Employer, or Employee or prospective employee or any member of an Employee's family to compel or attempt to compel such Employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit rights guaranteed under this Law.

Section 4. Jurisdiction

a. The Mashantucket Pequot Tribal Court shall have jurisdiction over all causes of action alleging violations of this Law.

b. The Tribe hereby expressly waives its sovereign immunity from suit for claims alleging violations of this Law against the Tribe in the Mashantucket Pequot Tribal Court. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe in the state or federal courts, or any other forum or context.

Section 5. Civil Remedies

a. Any person injured as a result of any violation or threatened violation of the provisions of this Law shall be entitled to petition the Mashantucket Pequot Tribal Court for injunctive relief from or against any person who violates or threatens any violation of this Law, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable Law.

b. Any claim brought under this Law must be commenced by the filing of a complaint with the Tribal Court in accordance with the Mashantucket Pequot Rules of Civil Procedure and within 180 days from the date of the violation(s) or threatened violation(s) of the Law which form the basis of the complaint.

Legislative History: Derivation: Effective June 7, 2005 – TCR060705-04 of 04 adopted the Right to Work Law. Effective July 13, 2007 TCR 071307-03 amended the right to work law to clearly state the findings, purpose, and authority upon which the law is based, to amend the definitions of employee, employer, and reservation in the law, to provide a waiver of tribal immunity, to include a statute of limitations.

31 M.P.T.L. Mashantucket Employee Rights Law is a new Title

TITLE 31 MASHANTUCKET EMPLOYMENT RIGHTS LAW

CHAPTER ONE

Section 1. Short Title

This law shall be known as the Mashantucket Employment Rights Law.

Section 2. Findings, Purpose and Authority

a. The Tribe finds that:

1. It has enacted various laws that govern aspects of employment on the Reservation; however, it does not have a centralized office to oversee the regulation of employment on the Reservation whether it concerns tribal or non-tribal employees.
2. There is a need for a centralized employment process for all employers on the Reservation and the establishment of a Commission to hear claims under tribal employment laws.
3. There is a need for an administrative process that utilizes the cultural preference for the resolution of disputes through a non-adversarial process such as the Peacemaker's Council. It is therefore important to the Tribe that employees and employers have an avenue to mediate and resolve disputes in this manner.
4. It recognizes its continued commitment to create and foster a diverse employment atmosphere where differences are respected. This commitment can best be fulfilled through the establishment of the Mashantucket Pequot Employment Rights Office to oversee, coordinate and enforce tribal employment laws and assist employees and employers in understanding the requirements of those laws.

b. The purpose of this Law is:

1. To promote responsible Tribal governance and self sufficiency of the Mashantucket Pequot Tribal Nation by creating a centralized Mashantucket Employee Rights Office to coordinate and regulate equitable employment on the Mashantucket Pequot Reservation and various other Tribal Entities.
2. To create a structure for the Mashantucket Employee Rights Office that includes the position of Director to oversee the office, a Commission to hear and decide complaints, and a Mediation panel to bring the culture of the Tribe and its preference for non-adversarial resolution of disputes to this structure.

c. Authority. The Tribe enacts this law as an exercise of its inherent sovereign powers and the powers delegated to it by the Constitution of the Mashantucket (Western) Pequot Tribe.

Section 3. Definitions

For purposes of this Title:

a. The term "conflict of interest" means the existence of a relationship between a person in a decision-making position with another person, employer or entity that may improperly influence the person's decision making to the detriment of the Tribe and shall include the appearance of a conflict even if the person believes the relationship would not affect his or her judgment in a matter.

b. The term "Commission" shall mean the Mashantucket Employment Rights Commission as established in Chapter 2 of this law.

c. The term "Commissioner" shall mean an individual who is hired to serve and does serve as a member of the Mashantucket Employment Rights Commission.

d. The term "Employee" shall mean any individual employed by an employer with or without a contract. This includes but is not limited to part-time employees, full time employees, and regular.

e. The term "Employer" shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, trust lands and all area within the exterior boundaries of the reservation employing two or more persons, without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Mashantucket (Western) Pequot Tribe or not. The term "employer" excludes Federal, State and County governments.

f. The term "MERO" means the Mashantucket Employment Rights Office.

- g. The term “order of agreement” shall mean a written explanation of the agreement contemplated by the two parties and witnessed by the mediation panel.
- h. The term “Person” means both persons and artificial persons, including, but not limited to corporations, partnerships, joint ventures, lessees, contractors, subcontractors, sole proprietorships, associations, trustees, public officials, Board members, fiduciaries and a private interest or private party and their agents.
- i. The term “Reservation” means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe’s jurisdiction.
- j. The term “Record” means the written documentation of all evidence (whether by way of testimony or documentary) presented to the Commission in a particular case or matter before the Commission.
- k. The term “Tribal Council” shall mean the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Tribal Constitution.
- l. The term “Tribal Entity” shall include all departments, businesses, boards and entities owned and operated by or under the auspices of the government and/or any branch of the government of the Tribe.
- m. The terms “Tribal Member” and “Member” shall mean any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.
- n. The term “Tribe” shall mean the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation.

CHAPTER TWO

Section 1. Establishment of Mashantucket Employment Rights Office

There is hereby established the Mashantucket Employment Rights Office charged with carrying out all tasks assigned to it by tribal law related to the regulation of employment on the Reservation. The Director of MERO shall be the head of the office as more fully established and described in Chapter 2, Section 4 of this law, and shall carry out the day to day functions and duties of the MERO. The Commission, established in Chapter 2, Section 2 of this law, shall hear all matters as provided by tribal law, while the Mediation panel established by Chapter 2, Section 5 of this law shall provide employees and employers with an opportunity to resolve disputes through a non-adversarial process.

Section 2. Establishment of MERO Commission

a. There shall be a MERO Commission with five members: one tribal member, two non-tribal members; alternates include one Tribal Member and one non-tribal Member. The Commission will consist of three regular members that will sit for hearings and make a decision. If there is a conflict of interest between a party and one of the Commissioners, or a particular member of the Commission can not attend the hearing, then an alternate Commissioner will be selected by the Director based on availability. The Commissioners shall be on an as needed basis.

b. The non-tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon the recommendation of the joint action of the Judicial Committee and Administrative Support Committee after review of the qualifications of each candidate and an interview with each qualified candidate. If the Tribal Council does not choose one of the Committee’s qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the non-tribal member Commissioner positions must meet the following minimum qualifications:

1. Be licensed to practice law and be in good standing in the state of Connecticut;
2. Have a minimum of ten years of experience in labor and employment law;
3. Have the highest moral and ethical character;
4. Submit to and pass a background check, including a criminal background check and any required licensing; and
5. Knowledge and experience in federal Indian law and tribal law or agreement to obtain training and education in these areas, and passage of the Tribal Bar exam.
6. Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

c. The tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon recommendation by the joint action of the Judicial Committee and Administrative Support Committee after the committee reviews the qualifications of each candidate and conducts interviews with each qualified candidate. If the Tribal Council does not choose one of the Committee’s qualified candidates for hire, the process goes back to the

committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the tribal member Commissioners position must meet the following minimum qualifications:

1. Have a bachelor's degree;
2. Have a minimum of 3-5 years experience in one of the following or a combination of the following areas: human resources, law, compliance or regulatory work;
3. Have the highest moral and ethical character;
4. Submit to and pass a background check, including a criminal background check and any required licensing;
5. Successfully complete an interview and be selected through a majority vote of the Joint Committee of the Judicial Committee and the Administrative Support Committee;
6. Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience;
7. Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

d. The Judicial Committee and Administrative Support Committee will interview and recommend candidates to the Tribal Council for appointment by the majority vote as Commissioners. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. The Commissioners will be appointed for a three year term, and shall serve on an as needed with a competitive compensation being set by Tribal Council.

e. Any Commissioner shall be disqualified from involvement in decisions in which he or she has a conflict of interest or the Commissioner's involvement would present an appearance of a conflict of interest. It shall be the decision of the Commission as a whole to decide if one Commissioner has a conflict of interest and should be disqualified from a particular decision.

f. A Commissioner may be removed from office by a majority vote of the Tribal Council at a duly called meeting where a quorum is present; provided that there has first been a complete investigation of the matter giving rise to the removal. A Commissioner may be subject to suspension or removal from office for: 1. conduct prejudicial to the impartial and effective administration of justice which may impair the ability of the Commission to effectively hear and decide matters; 2. violation of any applicable code of ethics; 3. commission of a crime; or 4. gross neglect of duty, misfeasance or malfeasance in office.

h. If a Commissioner shall resign, become incapacitated, is banished, excluded, or dies the Commissioner's position shall be considered vacated automatically, and the Administrative Support and Judicial Committees shall seek candidates to fill the vacancy and bring their recommendation to Tribal Council.

Section 3. Powers and Duties of the Commission.

The Commission shall:

1. Adopt procedures or regulations governing the activities of the Commission, including procedures for hearings before the Commission;
2. Hold hearings and make decisions on labor and employment matters within its jurisdiction as provided in tribal law, and to administer oaths to witnesses and enforce all rules, regulations, procedures and/or guidelines promulgated by the Commission;
3. Keep a written record of all proceedings before it and compile an official Record in all matters before it that shall include, at a minimum, a transcript of all testimony given before the Commission and true and accurate copies of all documentary evidence considered by the Commission in the matter;
4. Have the power to summon and examine under oath such witnesses, and direct the production of, and examine or cause to be produced or examined such documents in relation to any matter at issue as the Commission may find proper;
5. Have the power to certify official acts and have all powers necessary to enable the Commission to perform the duties imposed upon it by the provisions of tribal law;
6. Have the power to select one of the Commissioners to act as the Chair of the Commission for administrative purposes and if necessary for the orderly conduct of hearings and matters before the Commission;
7. To grant any remedy, penalty, fine, or other relief as provided by tribal law; and
8. Any and all other duties that are deemed necessary to carry out the purpose of this MERO Law.

Section 4. Establishment of the MERO Director Position.

a. There is hereby established the position of the Director of MERO who shall have primary responsibility for day-to-day administration and operation of MERO and its employees. The compensation for this position shall be competitive and set by Tribal Council and the Director shall report directly to Tribal Council.

b. The Director shall be appointed by the majority vote of the Tribal Council based only on the recommendation of the joint action of the Judicial Committee and Administrative Support Committee which shall select a candidate provided that the candidate must meet the following minimum qualifications:

1. Be licensed to practice law and be in good standing in the state of Connecticut and have practiced in the area of labor and employment law for a minimum of 10 years, or have a either a Juris Doctorate or a Master's Degree and have a minimum of 10 years experience in government regulation, employment or administration;
2. Demonstrate an ability to organize and manage a newly formed government office in the nature of MERO;
3. Have familiarity with or experience in tribal employment rights or equivalent type of experience;
4. Demonstrate excellent communication and organizational skills;
5. Be of the highest ethical and moral character; and
6. Submit to and pass a background check, including a criminal background check and any required licensing.

c. The Director shall have those powers deemed necessary to properly carry out the duties and functions of the MERO which include but are not limited to the following:

1. To develop a budget for MERO for submission and approval by Tribal Council;
2. To supervise expenditures pursuant to the approved budget, and guard against and report any misuse or fraudulent use of the monies allocated pursuant to the budget;
3. To develop, execute, and oversee a plan for implementation and distribution of this law and for any rules, regulations, procedures and/or guidelines established by MERO, to all employers and to all government or tribal entities receiving contracts or grants for work to be done on the Reservation;
4. To perform any duty or requirement imposed upon the Director by any tribal law, including but not limited to any and all requirements related to Indian and tribal preferences;
5. To adopt rules, regulations and/or procedures for the operation of the MERO and recommend the adoption of rules and regulations to the Commission for conduct of its hearings or for any other related matter;
6. To hire personnel as required for the efficient operation of the MERO and as approved in the MERO budget. Initially, such personnel shall, at a minimum, include an administrative assistant and an investigator;
7. To accept and review any claims, complaints, requests for information or any other matter related to the MERO office or as referred to MERO by any other tribal law;
8. To conduct or direct personnel to conduct any necessary investigations;
9. To assign, where appropriate, any of the above duties to MERO personnel; and
10. To conduct surveys including those of Tribal Members, Native Americans, employers and tribal entities that work for the Tribe to ensure effectiveness and efficiency of tribal employment rights laws.
11. To create and generate quarterly reports and statistics of MERO complaints; including but not limited to the success of the complaint, how it was resolved, and who were the parties to the complaint and bring those statistics to Tribal Council.

Section 5. Establishment of Mediation Panel

a. There is hereby established a mediation panel to help resolve disputes between employers and employees arising under the Tribe's labor and employment laws. The mediation panel shall be comprised of three (3) members from the Tribe's Peacemaker's Council who will be designated, on a case by case basis, by the Chair of the Peacemaker's Council provided that each member of the panel meet the following qualifications:

1. Have a bachelor's degree or equivalent work experience with the Tribe;
2. Have the highest moral and ethical character;
3. Submit to and pass a background check, including a criminal background check and any required licensing
4. Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience; and

5. Complete training or educational programs in Indian and tribal preference in employment, non-discrimination law, tribal law, federal Indian law, and other areas as determined by the Director of MERO.
- b. The Chair of the Peacemaker's Council shall establish rules and regulations to govern mediation before the panel, and for determining the composition of the mediation panel.
- c. The Director shall establish rules and regulations for an employer or employee to request mediation and referral to mediation.
- d. All parties to any mediation before this panel must agree to the mediation as a first step to the resolution of a dispute between the parties.
- e. At the end of a mediation agreement, there shall be a written order of agreement between the parties that shall be signed by the parties and the mediation panel.
- f. If an agreement can not be met at the end of the mediation process, or if there is a violation of the order of agreement that the parties signed after mediation, the process will continue to a MERO Commissioner's Hearing for resolution.

CHAPTER THREE

Section 1. Scope of Coverage.

- a. This Law shall apply to all areas within the Reservation and shall apply to all persons, employees, employers, whether tribal or non-tribal, subject to the jurisdiction of the Tribe and Tribal law.
- b. This Law shall be effective as of the date of its enactment.

Section 2. Conflict With Other Laws Or Policies.

To the extent that any provision of this Law conflicts with any other law or any policy or procedure issued by any person, employer or Tribal entity, this law shall govern; except if expressly provided otherwise herein.

Section 3. Severability.

If any provision or part of this Law or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Law and the unaffected provisions of the Law shall continue to be in full force and effect.

Section 4. Sovereign Immunity.

Nothing contained in this Title shall be construed to waive the sovereign immunity of the Tribe or any arm, subdivision, department, commission, office, officer, employee or agent of the Tribe, including the MERO, the MERO Commission, the MERO Mediation Panel, and the MERO Director all as established by this title.

Legislative History: Derivation. Effective July 6, 2007, TCR070607-08 enacted the Mashantucket Employee Rights Ordinance (MERO).

TITLE 32 MASHANTUCKET PEQUOT LABOR RELATIONS LAW

CHAPTER 1.

Section 1. Title; Authority

This act may be cited as the “Mashantucket Pequot Labor Relations Law”. This act is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

Section 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council, finds that:

a. The public policy of the Tribe is that all employees working within tribal territory be treated fairly: that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the Tribe has adopted employment laws governing tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through tribal employment and labor relations laws and policies, fair treatment to its employees without the intervention of a third party such as a labor organization.

c. The Tribe’s labor relations policy is to deal directly with its employees regarding wages, hours and other terms and conditions of employment, and believes that it is in the best interests of employees and the Tribe, as an employer, to maintain that direct relationship. However, based on the recent reversal of 30 years of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek, and at least one is currently seeking, the right to represent tribal employees pursuant to federal law, commonly known as the National Labor Relations Act (“NLRA”) 29 U.S.C. §§ 151-169.

d. The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiating the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of “employer,” recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique harms in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between the respective government as an employer and its employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.

e. The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian tribes in the Indian Reorganization Act of 1934 (“IRA”), 25 U.S.C. §§ 461 *et seq.*, which protects tribal self-governance and promotes tribal economic development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the IRA sought to “rehabilitate the Indian’s

economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.” H.R. Rep. No. 73-804 (1934).

f. Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 *et seq.* (“the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities”); the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 (“the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government”); the Indian Financing Act of 1974, 25 U.S.C. § 1451 (“to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources”); the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa *et seq.* (“transferring control to tribal governments ... over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination”); and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701 *et seq.* (“to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the tribal government as an employer. Application of the NLRA to the tribal government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining tribal employment laws, subjecting the tribal government to the threat of strikes, and disrupting the tribal government’s ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the tribal government, which operates (under the Tribal Council’s control and oversight) the tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe’s gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the tribal employees at the Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. *See Johnson v. Mashantucket Pequot Gaming Enterprise*, 1 MPR 15 (1996).

i. Despite the Tribe’s public policy and the guarantees under tribal law set forth above, the Tribe has considered and determined that it is appropriate to provide tribal employees with a procedure under Tribal law to determine whether they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Law.

Section 3. Purpose

The purpose of the Mashantucket Pequot Labor Relations Law is to provide tribal employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and tribal employees, and to protect the health, safety, political integrity and economic security of the Tribe.

Section 4. Definitions

a. “Tribal Employer” or “Tribe” means the Mashantucket Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.

b. “Tribal Employee” means any employee of a Tribal Employer except:

1. Appointed or elected officials of the Tribe including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or
2. Supervisory employees, Managerial employees, or Confidential employees (as those terms of defined herein),

c. “Supervisory employees” or “supervisor” means any individual having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;.

d. “Managerial employees” or “manager” means any individual who represents a Tribal Employer’s interest and who formulates and effectuates a Tribal Employer’s policies by expressing and making operative the decisions of the Tribal Employer.

e. “Confidential employees” means any individual who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate a Tribal Employer’s policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other tribal interests, or those who regularly substitute for employees having such duties.

f. “MERO” means the Mashantucket Pequot Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

g. “MERO Commission” means the commission established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

h. “Labor organization” means any lawful organization whose primary purpose is the representation of Tribal employees in collective bargaining.

i. “Exclusive representative” means a labor organization that, as a result of certification under this Law, has the right to represent Tribal employees in an appropriate bargaining unit for the purpose of collective bargaining.

j. “Certification” means the designation by the MERO of a labor organization as the exclusive representative for all Tribal employees in an appropriate bargaining unit.

k. “Appropriate bargaining unit” means a group of Tribal employees designated as such by the MERO in accordance with the provisions of this Law and particularly subsection 12(g) for the purpose of collective bargaining.

l. “Collective bargaining” is defined in Section 9 of this Law.

m. “Impasse” means failure of a Tribal Employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

n. “Lockout” means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their bargaining representative to accept the Tribal Employer’s bargaining proposals.

o. “Strike” means a Tribal employee’s refusal, in concerted action with other Tribal employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of Tribal employment;

p. “Tribal Court” means that Mashantucket Pequot Tribal Court as created and established by Title I of the Mashantucket Pequot Tribal Laws.

Section 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations

a. Tribal Employees shall have the right of free choice: to refrain from or engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, and from engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities.

b. When a labor organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that labor organization shall be recognized by the Tribal Employer as the exclusive bargaining agent for the Tribal Employees of such unit.

c. When a labor organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, it shall have the right to act for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership; and such labor organization shall have the duty of fair representation to the members of that unit.

d. A Tribal Employee represented by a labor organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a labor organization; provided that the resolution of such grievance may not violate the terms of a

collective bargaining agreement then in effect. The Tribal Employee shall notify the appropriate labor organization of the grievance and resolution thereof.

e. The Tribal Employer and such labor organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined herein in Section 9 of this Law.

Section 6. Prohibited Practices

- a. A Tribal Employer shall not:
 1. Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;
 2. Dominate or interfere with the formation, existence or administration of any labor organization;
 3. Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;
 4. Refuse to bargain collectively in good faith with a labor organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit; and
 5. Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive representative.
- b. A labor organization shall not:
 1. Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;
 2. Restrain or Coerce a Tribal Employer in the selection of its exclusive representative for purposes of collectively bargaining or the adjustment of grievances;
 3. Discriminate against a Tribal Employee with regard to labor organization Membership, or because of race, color, religion, creed, age, sex, national origin or membership in a Native American Tribe;
 4. Force or require a Tribal Employer to recognize or bargain with a particular labor organization as the representative of Tribal Employees if another labor organization has been certified as the exclusive representative of such Tribal Employees under the provisions of this Law;
 5. Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;
 6. Refuse or fail to comply with a collective bargaining or other agreement with the a Tribal Employer;
 7. Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;
 8. Picket homes or private businesses of elected Tribal officials or Tribal employees;
 9. Breach a labor organization's duty of fair representation as provided in subsection 5(c) of this Law.

Section 7. Dispute Resolution for Prohibited Practices Questions.

a. *Filing a Claim.* When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO Commission for a determination of whether the prohibited practice alleged has been or is being committed. The MERO Commission shall adopt procedures for the consideration of such claims and expedite such claims as it deems necessary.

b. *Substitution of a Court Appointed Special Master.* Until such time as the MERO Commission is appointed and the MERO is fully staffed, or if the MERO Commission is unable to hear and determine a claim filed pursuant to subsection (a) such claim shall be filed with the Tribal Court which shall appoint an impartial special master with substantial experience in labor relations and labor law to assume the responsibilities and duties of the MERO Commission to hear and determine the claim. The Tribal Court may adopt special procedures for these claims; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before the special master and be considered in the same manner as any other civil matter. If a special master is appointed the decision

of the special master shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines that the decision is wholly without basis in law or fact.

c. *Decision; Cease and Desist Orders.* If, after all evidence is considered and arguments heard, the MERO Commission (or the special master as the case may be) determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice an order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to: (1) Withdrawal of certification of a labor organization established or assisted by any action defined in this Law as a prohibited practice; (2) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (3) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

d. *Dismissal.* If, after all evidence is considered and arguments heard, the MERO Commission (or the special master as the case may be) determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and conclusions of law and shall issue an order dismissing the complaint. If it is determined that the claim was frivolous and had no basis in fact and law, the MERO Commission may order the claimant to pay the costs and reasonable attorneys' fees of the other party.

e. *Appeals.* Any final decision of the MERO Commission (or the special master as the case may be) may be appealed to the Tribal Court.

f. *Sovereign Immunity.* The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the MERO Commission and the Tribal Court. Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

Section 8. Free Speech Provision

The expressing of any views, argument, or opinion by a Tribal Employer or a labor organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

Section 9. Collective Bargaining

a. *Duty to Bargain Collectively.* To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated representative of the Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or to agree to a proposal that would contradict or violate tribal law.

b. *Exceptions Concerning Tribal Gaming Regulatory Authority.* Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

1. the enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;
2. ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;
3. the physical safeguarding of assets transported to, within, and from the gaming facility;
4. the prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;
5. the recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;

6. the establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;
7. the conduct of audits of the gaming operation;
8. the specifications, standards and procedures for each game;
9. the maintenance of a cashier's cage; or
10. minimum employee and supervisor staffing requirements related to such regulation of gaming.

c. *Union Security Clauses.* Nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, and dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a labor organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

d. *Indian and Tribal Preference.* Pursuant to existing Tribal law and policy Tribal Employers are required to give preference in employment opportunities, including but not limited to hiring, transfers, promotions, layoffs, and retention to members of the Tribe and to members of other federally recognized Indian tribes. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law and policy regarding Indian and tribal preference, or shall in any way affect a Tribal Employer's obligation to follow tribal law, policies or custom and traditions regarding Indian preference in employment opportunities. In the event of a conflict between the Tribal law and policy regarding Indian and tribal preference and this Law, the Tribal law and policy on Indian and tribal preference shall govern.

e. *Modification or Termination of Collective Bargaining Agreement.* If there is in effect a collective-bargaining contract covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification--

1. Serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications; and
3. Complies with Section 11 of this Law prohibiting Strikes and Lock Outs.

Section 10. Negotiations Timetable; Dispute and Impasse Resolution

a. *Negotiations Timetable.* If either a Tribal Employer or a labor organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than 120 days prior to the expiration of the existing collective bargaining agreement and no later than 60 days prior thereto. Negotiations shall commence within 30 days of such service, unless the parties mutually agree to a different date.

b. *Mediation.* Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemaker's Council shall designate a Mediation Panel, pursuant to Title 31 of M.P.T.L. to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. *Impasse.* If the parties to negotiations do not reach an agreement within 150 days after negotiations have begun, then either party may file a petition with the MERO Commission to resolve the impasse and all issues on which the parties cannot agree. Until such time as the MERO Commission is appointed and the MERO is staffed, or if the MERO Commission is unable to hear and determine a petition filed pursuant to this sub-section, such petition shall be filed with the Tribal Court which shall appoint an arbitrator to assume the responsibilities and duties of the MERO Commission and resolve the impasse and all issues on which the parties cannot agree. If the parties can agree on the selection of an arbitrator within 15 calendar days after a petition has been filed in the Tribal Court, the Court shall appoint that arbitrator. Otherwise, if the parties cannot agree to an arbitrator, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association.

- (i) Both parties shall submit to the arbitrator, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

- (ii) The arbitrator shall convene a hearing to allow the parties to provide evidence and argument to the arbitrator. The parties shall have the right to submit written briefs to the arbitrator. The arbitration record is officially closed at the later of the close of the hearing, or the arbitrator's receipt of briefs.
- (iii) The arbitrator's authority is limited to selecting one party or the other's complete proposal and shall issue an award addressing each of the unresolved issues based on the complete proposal selected. The arbitrator shall issue an award within 45 days after the close of the record.
- (iv) The costs of the arbitrator and any fees associated with the arbitration proceeding shall be shared equally by the parties.

Section 11. Strikes and Lockouts prohibited

Strikes of any kind and lockouts are strictly prohibited. A labor organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

Section 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights

a. *Petition for Election.* Any labor organization may file a petition with the MERO stating that thirty per cent or more of the Tribal employees in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty per cent of the Tribal employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty per cent of the Tribal employees in the bargaining unit. The petition must also describe the bargaining unit including a designation of each job category or position which the labor organization states should be included in the bargaining unit.

b. *Receipt of Petition for Election.* Upon receipt of such a petition the MERO Commission shall review the petition, verify the labor organization's showing of interest, certify that it is in compliance with this Law, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. *Hearings.* The MERO Commission shall have authority to convene a hearing for the purpose of addressing any and all issues relating to the petition. At the hearing, the parties shall have the opportunity to present evidence on any and all issues relating to the petition. The parties shall have the right to submit briefs to the MERO Commission. The parties may appeal any determinations of the MERO Commission to the Tribal Court and its decision shall be final as to such issues.

d. *Secret Ballot Election.* When all issues, if any, relating to the petition have been resolved, the MERO Commission shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the special election shall contain the name of any labor organization submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal employees with a choice to either select the labor organization that filed the petition as the exclusive representative for the Tribal employees within the bargaining unit or to choose not to be represented by any labor organization.

e. *Election Result and Appeal.* If a majority (fifty percent plus one) of the Tribal employees in the proposed bargaining unit vote in favor of certification of a labor organization, the special master shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If a labor organization does not receive a majority vote for certification, then the labor organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the MERO Commission. The MERO Commission shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the MERO Commission. Any determination of the MERO Commission on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues.

f. *Time Limitation.* No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve-month period immediately preceding the proposed representation election.

g. *Determination of Appropriateness of Bargaining Unit.* In determining the appropriateness of a bargaining unit, the MERO Commission shall take into consideration but shall not be limited to considering the following factors:

1. That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
2. The effects of over-fragmentation;
3. Principles of efficient administration of the tribal government; and
4. Any history of collective bargaining for Tribal employees.

h. *Guards or Other Security Personnel.* A labor organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

i. *Substitution of Court-Appointed Special Master.* Until such time as the MERO

Commission is appointed and the MERO is staffed, or if the MERO Commission is unable to hear and determine a petition for certification election filed pursuant to this Section 12, or a petition for decertification election filed pursuant to Section 13, such petition shall be filed with the Tribal Court which shall appoint a special master to assume the responsibilities and duties of the MERO Commission. The special master designated by the Court must be an individual who has substantial, current experience in labor relations and who can serve in an impartial manner to oversee the election, designation or denial of certification process. If either the labor organization filing the petition or the Tribal Employer has reason to believe that the special master appointed cannot serve in an impartial manner, either the Tribal Employer or the labor organization may file an objection with the Tribal Court within ten days of the Tribal Court's appointment of the special master. The Tribal Court shall rule on any such objection after conducting a hearing at which both parties have an opportunity to be heard on the issues raised. The Tribal Court shall determine whether to replace the special master selected or maintain the appointment within 15 days of the close of the hearing on the objection.

Section 13. Decertification of exclusive representative

a. A Tribal employee or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the Tribal employees in the bargaining unit make a written request to the MERO Commission for a decertification election. If such a request is filed, the MERO Commission shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A union will be decertified as the exclusive representative of an appropriate bargaining unit if a majority (fifty percent plus one) of the Tribal employees in the bargaining unit vote for decertification.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO Commission no earlier than ninety days and no later than 45 days before the expiration of the collective bargaining agreement or at any time after the agreement has expired; provided, however, that if the term of a collective bargaining agreement is more than three years, a request for decertification may be made at any time after the expiration of the third year.

Section 14. Registration of Labor Organization

a. *Requirement to Register.* Every labor organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before 60 days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization or another duly authorized officer of the labor organization, shall contain the following information:

1. The name and address of the labor organization;
2. The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
3. The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;
4. A copy of the collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Tribe;
5. A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization; and
6. A copy of the Labor Organization's Annual Report.

b. *Submission of New Information.* The president of the labor organization shall file with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within 30 days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. *Violations.* It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Law.

Section 15. Licensing of business agents.

a. No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

1. Any person who seeks such a license shall pay a license fee of \$25, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

2. No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.

3. If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4. All licenses shall expire at midnight on December 31 of each year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of an annual renewal fee of \$25. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

5. Any person denied a license or whose license is suspended shall have the right to a hearing before the MERO Commission to challenge such action and all rules and procedures established by the MERO Commission for hearings shall apply.

b. It shall be a violation of this Article for any person to:

1. Act as a business agent for a labor organization without having obtained a valid license;

2. To act as a business agent of any labor organization without the authority of the labor organization to do so;

3. To make any false statement on any reports required to be filed pursuant to this Law;

4. To make any false statement in an application for a business agent's license.

c. If the MERO Director, after investigation, determines that any person is in violation of this section of the Law, the Director may request that the MERO Commission impose penalties which may include an order of exclusion, or, if the violation affects the Tribe's gaming operation, a referral to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, Section 5, of the Mashantucket Pequot Tribal Laws. Any person adversely affected by the imposition of penalties by the MERO Commission shall have the right to a hearing before the MERO Commission to challenge the imposition of any such penalty and all rules and procedures established by the MERO Commission for hearings shall apply.

d. Until such time as the MERO Commission is appointed and the MERO is staffed, the duties and obligations of the MERO under this Section shall be performed by the Mashantucket Pequot Tribal Gaming Commission.

Legislative History: Derivation. Effective August 16, 2007 – EXTCR081607-01 enacted the Mashantucket Pequot Labor Law.

33 M.P.T.L. Mashantucket Pequot Tribal and Native American Preference Law is a new Title

TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW

Section 1. Title; Authority

This title may be cited as the “Mashantucket Pequot Tribal and Native American Preference Law”. This title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate labor and employment within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

Section 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council finds that:

- a. It has an Indian Preference Policy that requires preference in employment decisions for Tribal Members and Native Americans. This policy is applicable to the Tribe, its arms, subdivisions, entities and organizations and does not contain an enforcement mechanism or an administrative process to ensure compliance.
- b. There are an increasing number of non-tribal employers on the Reservation and there is a need to establish the requirements of Native American and Tribal preferences for all employers, as well as establish a process for enforcing the requirements of the law.
- c. There continues to be a need and desire to promote individual and tribal economic development within the Mashantucket Pequot Tribal Nation, both through Employment Opportunities and through contracting opportunities. To further the Tribe's goal to provide opportunities for professional growth and economic empowerment of its Tribal Members and Native Americans, and in recognition of the importance of cultural and traditional beliefs of Native Americans and the need for this influence in the employment environment, the Tribe recognizes that it is important to provide individuals and employers with guidance on these issues, the administrative structure to regulate this area, and a forum to address any issues that may arise concerning compliance with this Law.
- d. In order to foster and advance its culture, mission, and laws, it is important to support the preservation and development of tribal families including tribal member spouses. As part of its culture and community, the Tribe recognizes that a person who is not married to a tribal member but who qualifies as a significant other, as provided under tribal custom and practice, is part of the tribal family and treated the same as a tribal spouse. Providing preference in employment opportunities to tribal members and their spouses furthers the important goal of preserving tribal families by promoting the economic well being of the tribal family and assuring that all family members can share in the benefits and responsibilities of tribal employment.

Section 3. Purpose

The purposes of this Law are:

- a. To clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job; and
- b. To designate duties and obligations of the Mashantucket Employment Rights Office regarding the implementation of the various provisions and requirements of this Law, including the investigation and resolution of any claimed violations of the law, providing guidance to both individuals who may qualify for preference and Employers, and communicating the requirements of this Law to Employers and others.

Section 4. Definitions

- a. "Employment Opportunities" means hiring, transfer, promotion, training, and retention including

in any reorganization or layoff.

b. "Employer" means any Person that employs five or more employees who, during any 30 day period, each spend, cumulatively, 40 or more hours performing work on the Mashantucket Pequot Reservation. Employer shall include the Tribe and any agency, subdivision, arm, department, instrumentality, or entity thereof located or engaged in work on the Reservation. The term Employer excludes federal, state, local or other tribal governments.

c. "MERO Commission" or "Commission" means the MERO Commission established and defined in Title 31 M.P.T.L.

d. "MERO Director" or "Director" means the Director of MERO as established and defined in Title 31I M.P.T.L.

e. "MERO" or "Office" means the Mashantucket Employment Rights Office as established and defined in Title 31 M.P.T.L.

f. "Minimum Necessary Qualifications" shall mean those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, training and job-related experience. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

g. "Native American" means an individual enrolled in and recognized as a member by his or her tribe or tribal community; provided that the tribe or tribal community is recognized by the Mashantucket Pequot Tribe (through a Mashantucket Pequot Tribal Council Resolution), the Federal Government, by a state in the United States, or as a First Nation in Canada.

h. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.

i. "Reservation" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. "Spouse" shall mean a husband or wife joined in lawful marriage, or a significant other who is now and has been residing with a member of the Mashantucket Pequot Tribe for no less than three years and has been issued an identification badge as a tribal spouse by the Tribal Clerk's Office.

k. "Tribal Member" means a duly enrolled member of the Mashantucket Pequot Tribe who is in good standing.

l. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe. Tribe does not include any entity created under state laws that is owned by the Tribe and operates primarily outside of the Tribe's Reservation.

Section 5. Preference In Employment

a. *Preference; Tribe as Employer.* When the Tribe is the Employer, it shall give preference in Employment Opportunities first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans; provided that the Tribal Member, Spouse of Tribal Member or Native American, as the case may be, meets the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans, who are capable of being trained to the

Minimum Necessary Qualifications of the position. The requirement for giving preference provided in this subsection 5.a. also applies to the hiring of student interns throughout the year or for after school, weekend, or summer vacation employment.

b. *Preference; Non-tribal Employers.* For Employers other than the Tribe, preference in Employment Opportunities shall be given to individuals who are members of a federally recognized Indian tribe and who live on or near a reservation; provided that they meet the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no individual in the foregoing situations meet the Minimum Necessary Qualifications, then preference shall be given to a member of a federally recognized Indian tribe living on or near a reservation who is capable of being trained to the Minimum Necessary Qualifications of the position, if such an individual has applied for the position.

c. *Posting Requirements.* Employers are required to comply with all job posting requirements which may be mandated in any rules, regulations and/or guidelines promulgated by the MERO Director. All Employers shall include and specify a Native American employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. When the Tribe is the Employer it shall also include and specify a Tribal employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. A copy of all such job announcements and advertisements and employer personnel policies shall be forwarded to the MERO as soon as available, but no later than publication date.

d. *Exclusion; Key Employees.* The preference in Employment Opportunities required by and set forth in this Law shall not be applicable to personnel actions regarding any key employee. For the purposes of this Law, a "key employee" includes: (1) One who is an owner of the Employer; or (2) One who is in a high-level supervisory position or who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer. Within a deadline established by the MERO Director, Employers shall identify and submit a list of all key employee positions to the MERO Director. The MERO Director shall notify, in writing, the Employer of the approval or disapproval of said list within a reasonable time of its receipt.

e. *Collective Bargaining Agreement.* Every collective bargaining agreement covering employees on the Reservation must include the Native American preference and, if the Employer is the Tribe, the Tribal Member preference requirements of this Law. To the extent that any such agreement is in effect prior to enactment of this Law, such agreement shall include the preference requirements of this Law in the next renewal or extension of the agreement.

f. *Reports.* Each Employer shall submit to the MERO Director on or before September 30th of each year, a report on a form prescribed by the MERO stating the number of employees hired by the Employer during the previous year and whether such employees remain employed by the Employer at the time the report is submitted. Such report shall also indicate the number of Native Americans employed by job category, number hired, number terminated and length of employment. All Employers shall also submit to the MERO Director, in a timely manner, such information (including documentation) as the MERO Director requests to enable him or her to determine whether the Employer is in compliance with this Law and any rules and regulations promulgated pursuant to this Law. If a Person subject to the provisions of this Law fails to provide the requested information, the MERO Director may impose penalties as provided under Section 10 of this Law; provided that the MERO Director sends written notice to the affected Person detailing the penalties being imposed and the reasons for such penalties and notice that the affected Person has the right to request a hearing before the MERO Commission within 14 business days of the mailing of the notice by the MERO Director. If a hearing is requested, the procedures set forth in Section 9 of this Law shall apply.

Section 6. Application Skills Bank

a. *Establish Skills Bank* The MERO Director shall establish an application skills bank to assist Employers in placing Tribal Members and Native Americans in jobs on the Reservation. The MERO Director shall communicate with Tribal Members, and to the extent possible other Native Americans, to obtain a resume or

application setting forth all necessary information in order to compile a list of Tribal Members and Native Americans who may be available for employment and the skills and qualifications of each individual.

b. Annual update The MERO Director shall update the skills bank on an annual basis including the determination of any additional Tribal Members or Native Americans who should be included in the skills bank and to update qualifications of each individual in the skills bank.

Section 7. Preference In Awarding Contracts (RESERVED).

Section 8. Certification For Tribally Owned and Native American Owned Businesses (RESERVED).

Section 9. Investigations; Complaint Procedures; Hearing.

a. Investigations. Upon a written claim filed by an interested Person, or as initiated by the MERO Director, the MERO Office shall investigate alleged non-compliance with this Law. All Persons subject to this Law have a duty to cooperate with any investigation conducted by the MERO Office under this Law. Failure to cooperate, as determined by the Commission, may subject a Person to the penalties provided in Section 10 of this Law.

b. Claim. A claim filed hereunder must be made in writing on a form prescribed by the MERO Office and must be filed within 180 days after the alleged noncompliance. The MERO Office may require additional information from the claimant, including a sworn statement, and must complete its investigation within a reasonable time after the claim is made, but in no event later than 90 days following the filing of the claim. The MERO Office shall notify the Person against which a claim is made and shall give such Person an opportunity to provide information concerning the alleged non-compliance. If after conducting the investigation, the Director determines that a violation of this Law has occurred, the Director shall notify the Person found to be in violation or to have violated the Law of the sanctions and/or remedy being imposed by the MERO Office to address the non-compliance, and provide the affected party with an opportunity to request a hearing before the Commission. If the affected party does not request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice, the proposed sanction and/or remedy shall be imposed. If the MERO Director, after investigation, determines that there is no violation of this Law, the Director shall send notice to all interested parties of its decision to dismiss the claim, and shall provide notice to the claimant of the right to request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice of dismissal of the claim.

c. Mediation. After investigation, if all parties agree, any matter may be referred to the MERO mediation panel for resolution as provided under Title 31 M.P.T.L. If the mediation does not produce an agreement between the parties, then each party shall have 30 days after the close of the mediation to request a hearing before the MERO Commission. Upon receipt of a request, a hearing shall be scheduled and conducted as provided in this Law.

d. Commission Hearing.

(1) Notice. Upon receipt by the MERO Office of a request for a hearing under subsection 9(b), the Commission, within 30 days after the request for a hearing is filed, shall set a date for a hearing and shall give written notice of the hearing, by certified mail return receipt requested, to all interested parties including the claimant, the party against whom the allegations have been made, and the MERO Director. At a minimum, the notice shall include:

- (a) the date, time and location of the hearing;
- (b) the nature of the hearing;
- (c) the right to be present and to participate in the hearing;
- (d) the right to present witnesses and documentary evidence and to cross examine witnesses;
- (e) the right to be represented by legal counsel at the party's own expense; and
- (f) provide the parties with any rules or regulations governing the hearing.

(2) Subpoena. On its own initiative or upon request of any Person notified of the hearing, the Commission may subpoena identified witnesses, documents or records.

(3) Hearing Procedures. Pursuant to Title 31 of the Mashantucket Pequot Tribal Laws, the Commission has the authority to adopt rules and/or regulations governing the conduct of its hearings. Any such rules or regulations adopted shall apply to hearings conducted under this Law; provided that they provide, at a minimum, for the following:

- (a) Each party notified of the hearing shall have the right to be present at and participate in the hearing. Other persons claiming to be interested in the matter may petition the Commission to participate.

- (b) Each party shall have the right to present relevant sworn testimony and documentary evidence with all relevancy determinations being made by the Commission;
 - (c) Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;
 - (d) The chairperson of the Commission or another Commissioner designated by the chairperson shall preside over the hearing;
 - (e) Compliance with formal rules of evidence is not required, provided that the Commission shall determine the facts in an orderly and reasonable manner;
 - (f) All proceedings shall be recorded and a complete transcript shall be made and maintained by the Commission;
 - (g) The proceedings may be adjourned, postponed, or continued at the discretion of the Commission when it determines it is advisable or necessary; and
 - (h) Any matter to be proven must be done so to the satisfaction of the Commission by a preponderance of the evidence, unless otherwise provided in this Law.
- (4) Conflict of Interest. Pursuant to Section 2(e) of Title 31 M.P.T.L., if, at any hearing before the MERO Commission, the Commission determines that a Conflict of Interest, as that term is defined in Title 31, exists involving any individual Commissioner and a participant in the hearing, the Commission shall disqualify that individual Commissioner from participation in the hearing and an alternate Commissioner shall be appointed for the hearing.
- (5) Commission Decision. When the Commission has heard all evidence and arguments that it deems necessary to make a decision, it shall close the hearing. The Commission shall take the matter under advisement and issue a written decision no later than 30 days after closing the hearing; provided that, if the Commission requires a review of the hearing transcript in order to render its decision, the close of the hearing shall be deemed to be the date upon which the full transcript of the hearing is received by the Commission. At a minimum, the Commission's decision shall include findings of fact and of law; a detailed description of any order, penalty and/or remedy imposed, if any; and a statement of the right to appeal to the Mashantucket Pequot Tribal Court as provided in this Law.

Section 10. Sanctions, Penalties, or Awards.

Any one or a combination of the following may be imposed by the MERO Director, after an investigation and if a party does not request a hearing, or by the Commission after a hearing, upon a determination that a Person has failed to comply with the requirements of this Law, or any rules or regulations promulgated hereunder:

- a. An order for compensatory damages to the person affected which may include but not exceed one year of lost wages, which the affected person has a duty to mitigate. If however the affected person has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.
- b. If it is determined that a violation of this Law was intentional or due to gross negligence, an award of attorney's fees may be made; provided that no award for such may exceed one third of a lost wage award, if there is such an award, and such award must be substantiated by contemporaneous records of hours billed and the billing rate(s) charged which must be consistent with prevailing billing rates of attorneys practicing before the Tribal Court.
- c. Reinstatement or hiring of the affected Person either into the position sought or into a comparable position provided that the Person meets the Minimum Necessary Qualifications for that comparable position;
 - (1) Require employment, promotion, transfer, retention and/or training of the Tribal Member or Native American injured by the violation.
 - (2) If it is determined that an Employer's noncompliance with this Law was intentional then a civil monetary fine not to exceed \$250 per violation may be assessed. Each day that an Employer has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.
 - (3) An order that the Employer implement such changes in policies, procedures and/or conduct as are deemed necessary for the purpose of securing compliance with any requirement of this Law

Section 11. Appeals to Tribal Court; Waiver of Sovereign Immunity From Suit

a. *Appeal.* Any Person who is aggrieved by a final decision of the MERO Commission may appeal that decision to the Mashantucket Pequot Tribal Court; provided that any such appeal must be filed within 30 days after the Commission mails written notification of its final decision to the parties. Any party filing an appeal to the Tribal

Court must send written notice of the appeal to the other parties to the Commission decision being appealed and to the MERO Director. The notice of appeal must include a copy of the Commission decision being appealed. The Tribal Court is hereby granted jurisdiction over any such appeal

b. *Waiver of Sovereign Immunity.* To the extent that a claim filed in the MERO Office is against the Tribe or a hearing before the Commission concerns claimed violations of this Law against the Tribe, or an appeal to the Tribal Court concerns claims against the Tribe, the Tribe hereby expressly waives its sovereign immunity from suit for such claims and in such forums for the limited purpose of resolving the dispute as provided in this Law. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in any other forum or for any other claim, including any claim in state or federal court or in any state or federal agency, or in any other forum or context.

c. *Record; Procedure.* In any appeal filed under this Section, the MERO Commission shall file with the Tribal Court a copy of the Record before the Commission including all evidence whether documentary or testimony, a full transcript of the hearing before the Commission, any decision of the MERO Director, and the MERO Commission's decision. The Record shall be filed with the Tribal Court within 30 days after the appeal is filed. The procedure governing appeals under Title 8 M.P.T.L. shall generally govern an appeal under this Law; provided that the Tribal Court may grant exceptions to such procedure as it deems necessary given the circumstances and differences between this Law and Title 8. The Tribal Court shall review the final decision of the Commission using an abuse of discretion standard of review. A final decision of the Tribal Court hereunder may be appealed to the Mashantucket Pequot Court of Appeals.

Section 12. Confidentiality

The MERO Director shall adopt rules and/or regulations to insure that confidential or sensitive information, including sensitive business information is kept confidential by the MERO Office and its employees, and other interested parties.

Derivation: Effective July 6, 2007, TCR070607-08 enacted the Mashantucket Employee Rights Ordinance (MERO).