

**TITLE 14. LAND USE LAW**

**CHAPTER 1. DECLARATION OF PURPOSE AND POLICY**

14 M.P.T.L. ch. 1 § 1

**§ 1. Purpose**

The Tribal Council declares that the purpose of this Law is to provide for sound regulation and oversight of Land Use Activities within Mashantucket through a fair, timely, and organizationally sensible permitting process. The Tribal Council declares that this Law shall apply to all Land Use Activities within Mashantucket.

14 M.P.T.L. ch. 1 § 2

**§ 2. Overall Policy**

The Tribe recognizes the critical importance of establishing sound, uniform Land Use procedures to govern development upon tribal lands, thus ensuring the protection of tribal lands, the maintenance of environmental quality and the overall welfare of the Tribe. The underlying policies of this Law are to:

- a. protect and enhance both human and natural resources for future generations;
- b. promote beneficial land uses without environmental degradation, risk to health or safety, or other undesirable and unintended consequences;
- c. preserve the Tribe's historical, cultural, and natural resources; and,
- d. facilitate timely, efficient and safe execution of approved and permitted Land Use Activities.

**CHAPTER 2. DEFINITIONS**

14 M.P.T.L. ch. 2 § 1

**§ 1. Definitions**

- a. For purposes of this Title, all terms not defined herein will have the meaning given within applicable Land Use Regulations. Use of the singular shall also include the plural.
- b. Definitions
  - (1) "Administrator" means the MPTN Regulatory Affairs Officer. The Administrator has the primary responsibilities of running the Land Use Commission meetings, ensuring compliance with the Commission Procedures, and carrying out the decisions of the Commission.
  - (2) "Applicant" means the Owner, the Design Professional in Responsible Charge, or the Project Manager, as defined herein, who applies for a Permit to conduct a Land Use Activity.

- (3) "As-built Drawings" means drawings prepared by the contractor that show, in red ink, changes to the original construction documents. The accurate locations of concealed items such as structural elements, accessories, equipment, devices, plumbing lines, valves, mechanical equipment, and the like, shall be measured and their sizes and nature noted. As-built drawings are typically associated with interior construction work.
- (4) "Building Code" means Title 3 of Land Use Regulation which specifies the nationally recognized model building codes, reference standards and Mashantucket contingent supplements, adopted by the Commission.
- (5) "Building Official" means the Commissioner representing the Building Code Enforcement program discipline.
- (6) "Certificate of Completion" means the final certificate issued by the Commission granting final authorization to occupy or use the permitted Land Use Activity, which include:
  - (a) A Certification of Occupancy, which shall be required for activities involving:
    - (i) new Facilities or expansions of existing Facilities, or
    - (ii) new uses, expansions of existing uses, or material changes of uses.
  - (b) A Certificate of Use, which shall be required for all other permitted Land Use Activities; and
  - (c) Temporary and Partial Certificates of Occupancy or Use authorizing the conditional occupancy or use and are not final Certificates of Completion.
- (7) "Certificate of Substantial Completion" means a certificate issued to the Land Use Commission by the Design Professional in Responsible Charge attesting that the work is substantially complete. Certificates of Substantial Completion must be in a format approved by the Commission.
- (8) "Code" means a nationally recognized model code or reference standard adopted by the Commission, including any Mashantucket contingent supplement, that specifies the minimum standards necessary to ensure the health, safety, and welfare of all residents, employees, and guests within Mashantucket.
- (9) "Commercial Activity" means any structure or project that is not a Residential Project as defined herein.
- (10) "Commission" means the Mashantucket Pequot Tribal Land Use Commission.
- (11) "Commissioner" means any person serving on the Commission who represents a department or program discipline identified within Ch. 3, § 4 of this Title.
- (12) "Commission Procedures" means the rules of procedure, specified within Title 1 of the Land Use Regulations, which govern the conduct of Commission business. Such rules shall:

- (a) ensure efficient and fair conduct of Commission business, and
  - (b) be consistent with applicable Tribal Laws and Land Use Regulations.
- (13) "Deferred Submittal" means documents pertaining to any portion of the design that were not submitted with the Application.
- (14) "Design Professional in Responsible Charge" means a licensed professional responsible for reviewing and coordinating all submittal documents prepared by others for the compatibility with the design of the building. The purpose is to coordinate the diverse submitted documents, prepared by various consultants, which may include deferred submittals, special inspections, and structural observations.
- (15) "Facility" means any part of a building, or an entire building.
- (16) "Fire Prevention Code" means Title 4 of Land Use Regulation which specifies the nationally recognized model codes, reference standards and Mashantucket contingent supplements adopted by the Commission for fire protection and life safety.
- (17) "Fire Marshal" means, for the purpose of this Title, the Commissioner representing the Fire Safety program discipline.
- (18) "Land Use Activity" means any construction or other activity which materially changes the use, appearance, or occupancy of land or a Facility, or the intensity of use of land or a Facility.
- (a) Land Use Activities include, but are not limited to:
    - (i) new Facilities, expansions of existing Facilities, new uses, material changes in or expansions of existing uses;
    - (ii) a change to, or use of, utility infrastructure such as new utility services, a change to interior circuits, cabling or plumbing, a change resulting in an increase of utility demand, a change in the character of sanitary discharge, or installation of any equipment intended to treat or condition utility provided resources;
    - (iii) an activity with the potential to impact natural resources including the deposit or discharge to air, water or land, cutting of native vegetation, or a project with the potential to cause a release of a polluting substance;
    - (iv) an activity or change of use with the potential to impact public safety, impact existing life safety systems, changes to occupancy of a room or that necessitates a change to any emergency plan or procedure;
    - (v) an activity determined to have the potential to impact cultural or historic resources of the Tribe; or,
    - (vi) any activity which is specifically designated as a Land Use Activity within a Land Use Regulation.

- (b) Land Use Activities do not include:
  - (i) routine maintenance, including like for like replacement of equipment, or installation of finishes or fixtures which would not typically require inspection by a code official or fire marshal;
  - (ii) activities involving construction of culturally traditional Facilities, such as wetus, provided that they are constructed utilizing traditional methods; or,
  - (iii) emergency situations where there is a clear, sudden, unexpected, and imminent threat to life, health, property, environment, or essential public service demanding immediate action to prevent or mitigate loss of, or damage to such, if corrective action is not undertaken immediately.
- (19) "Land Use Regulations" or "L.U.R." means Commission Procedures, Regulations, Codes, and Standards, promulgated or otherwise adopted by the Commission. Land Use Regulations shall include any rule or standard, applicable to a program discipline represented on the Commission, existing upon the effective date of this Law.
- (20) "Mashantucket" means the Mashantucket (Western) Pequot Reservation, which shall include all lands held in trust by the United States of America for the benefit of the Mashantucket (Western) Pequot Tribe.
- (21) "Owner" means any person who owns, leases, operates, or controls, the Land Use Activity.
- (22) "Passive Consent" means that no Commissioner has objected after having received notice, from the Administrator, of the proposed action, and
  - (a) a period of at least 24-hours has transpired, or
  - (b) the Administrator actively polled a majority of Commissioners, including all those the Administrator would reasonably expect could have a concern with the subject matter, and received no single objection.
- (23) "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.
- (24) "Permittee" means the Person, responsible for any Land Use Activity, to whom a Land Use Permit was issued.
- (25) "Person" means any individual, partnership, firm, company, contractor or subcontractor, corporation, association, organization, estate, governmental entity or any other legal entity or its representative, agent or assign.
- (26) "Private Residence" means:
  - (a) a Facility that is occupied and used exclusively as a place of residence, or
  - (b) if only part of a Facility is occupied as a private residence, that part of the Facility.

- (27) "Project Manager" means the individual selected by the Owner who is:
- (a) authorized to make decisions and take action on behalf of the Owner; and,
  - (b) responsible for, or directly oversees, those individuals responsible for, all aspects of the Land Use Activity.
- (28) "Punchlist" means a list of those finishing items required to complete the Land Use Activity, the completion of which shall not materially interrupt nor affect the safe occupancy or use of the permitted project after Substantial Completion.
- (29) "Qualified Surveyor" means a person who holds a valid license as a land surveyor or other competent person approved by the MPTN Planning program.
- (30) "Quorum" means, for an in-person meeting, that four (4) Commissioners are present. For an electronic vote, at least Four (4) Commissioners must submit a vote for a quorum to be present.
- (31) "Record Drawings" means drawings prepared by the Design Professional in Responsible Charge that reflect all information recorded on the As-built and Survey Drawings. They are to be compiled as a complete set of all site changes as a result of the Land Use Activity.
- (32) "Residential Activity" means any activity involving a Private Residence or any Facility or project directly adjacent to the same. Said Facilities shall be limited to dwelling units that have no more than four dwelling units in one structure.
- (33) "Significant" means, as used to determine whether a significant change in Total Cost of the Activity has occurred which will impact the Land Use Fee:
- (a) Any change increasing or decreasing Total Cost of the Activity by ten (10) percent or more, except that,
  - (b) changes less than fifty thousand dollars (\$50,000) shall not be deemed Significant.
- (34) "Special Inspections" are inspections of selected materials, equipment, installation, fabrication, erection or placement of components and connections; these inspections confirm compliance with approved construction documents and referenced standards.
- (35) "Stamped" means, in general, bearing the stamp and signature of the Design Professional in Responsible Charge. Specifically, the term "Stamped" when applied to submittals made to the Commission, shall mean on the title page, and on every sheet of the documents, drawings, or specifications, including modifications to the documents, drawings, and specifications that become part of change orders or addenda to alter those documents, drawings, or specifications.
- (36) "Standards" means program-specific criteria that specify requirements and preferences in addition to those in the applicable Codes and Regulations.

- (37) "Substantial Completion" means the point at which the project is sufficiently in compliance with all Permit terms and conditions and suitable for occupancy or use for its intended purpose.
- (38) "Survey Drawings" means drawings prepared by a Qualified Surveyor during construction for the purpose of site documentation. Survey drawings are typically associated with exterior work and must record the accurate location, size, and nature of all items required, and to the standards specified, with Title 9 of the Land Use Regulations.
- (39) "Total Cost of the Activity" means:
- (a) the total design and construction cost related to the activity for which a permit is being sought, including:
    - (i) project management and all design professional services;
    - (ii) costs associated with all necessary permitting;
    - (iii) cost to mobilize, demolish, construct, fabricate, or install and all management services related to such;
    - (iv) budgeted contingency;
    - (v) any testing, inspection or monitoring services;
    - (vi) all equipment and materials, which are to be attached to a structure in any manner whether permanently or semi-permanently.
  - (b) wages for direct employees of the Owner, that are not included within the Owner's project budget, are not part of the Total Cost of the Activity.
- (40) "Tribal Council" means the governing body of the Mashantucket Pequot Tribe.
- (41) "Tribe" or "Tribal Nation" or "MPTN" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation. "Tribal" refers to this Tribe.

### **CHAPTER 3. LAND USE COMMISSION**

14 M.P.T.L. ch. 3 § 1

#### **§ 1. Establishment**

There is hereby established a Land Use Commission charged with carrying out all tasks related to the regulation of Land Use activity within Mashantucket.

14 M.P.T.L. ch. 3 § 2

#### **§ 2. Authority**

The Commission shall have the authority to regulate all Land Use activity within Mashantucket as set forth in this Law and in Land Use Regulations. The Commission shall have the specific authority to:

a. Promulgate, in accordance with Chapter 4 of this Title, Land Use Regulations as the Commission finds necessary or appropriate to carry out the provisions of this Law;

b. Issue Permits, Variances, and Certificates of Completion;

c. Inspect, monitor, meter, sample and examine records necessary to determine whether or not the Land Use Activity complies with this Law and Land Use Regulations; and,

d. Enforce compliance with this Law and Land Use Regulations pursuant to Chapter 9 of this Law.

14 M.P.T.L. ch. 3 § 3

### **§ 3. Administration**

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

b. The Administrator shall have responsibility for running the Commission meetings, carrying out the decisions of the Commission, and ensuring compliance with the Commission Procedures.

(1) The Administrator shall have authority to delegate Commission-related business to the Commissioner(s) whose department or program discipline has expertise in a subject matter.

(2) The Administrator shall have the authority to draft Commission Procedures which, when adopted by majority vote of the Commission, will govern the conduct of the Commission business.

(3) The Administrator shall appoint an Administrative Assistant who shall serve as an agent of the Commission responsible for maintaining the record of Commission business.

14 M.P.T.L. ch. 3 § 4

### **§ 4. Composition of the Commission**

a. The Commission shall be composed of one representative from the following departments or program disciplines:

(1) Fire Safety;

(2) Historic Preservation;

(3) Natural Resources Protection;

(4) Building Code Enforcement;

(5) Utilities;

(6) Planning & Zoning;

(7) Tribal Member Community;

(8) Mashantucket Pequot Gaming Enterprise; and,

(9) Food Safety and Sanitation.

b. Unless specifically appointed by Tribal Council, each department or program discipline shall be represented as described in the Commission Procedures.

c. The Administrator shall notify Tribal Council, within five (5) business days, of any changes to the composition of the Land Use Commission.

#### **CHAPTER 4. LAND USE REGULATIONS**

14 M.P.T.L. ch. 4 § 1

##### **§ 1. Land Use Regulations**

a. The Commission shall have the authority to promulgate and adopt Land Use Regulations, which shall consist of Commission Procedures, Regulations, Codes, and Standards.

b. Each Commissioner is responsible for drafting or proposing for adoption Regulations, Codes, and Standards specific to the program discipline that he or she represents on the Commission.

c. Following submission to the Commission for preliminary approval, draft Land Use Regulations will be forwarded, with a statement of the principal reason it was drafted, to the Office of Legal Counsel, which will review the draft Land Use Regulation for legal sufficiency. The Office of Legal Counsel will have fifteen (15) calendar days to provide a written opinion on whether:

- (1) the draft Land Use Regulation addresses the principal reason it was drafted; and,
- (2) it conflicts with any Tribal or federal law or regulation.

d. If the Commission makes substantive changes after receiving an opinion from the Office of Legal Counsel, the draft Land Use Regulation will be forwarded to the Office of the Legal Counsel for further review.

e. To adopt a draft Land Use Regulation, the Commission will hold a vote.

f. Codes and Standards will be adopted by majority vote of the Commission. provided that:

- (1) the code is the same nationally recognized model code or reference standard, including reference year, as that currently enforced by the jurisdiction immediately surrounding Mashantucket, and
- (2) any proposed Mashantucket contingent supplement to that code contains no provision more rigorous than that stipulated within the referenced model code or the contingent supplement enforced by the jurisdiction immediately surrounding Mashantucket.

g. Regulations will be adopted by a majority vote of the Commission; provided that following such vote the Commission will forward the Regulation to the Standing Committee, as defined in Article VI § 8 of the Constitution of the Mashantucket Pequot Tribe, with jurisdiction over the subject matter of the proposed Regulation.

- (1) The Standing Committee may vote to approve or disapprove the Regulation, or may vote to recommend changes for the Commission to consider.
- (2) If, after thirty (30) calendar days, the Committee has not approved, disapproved, submitted recommended changes, or requested additional time to review the proposed Regulation, the proposed Regulation or amendment will be deemed approved by the Standing Committee.

h. Following approval by the Committee, the proposed Regulation shall be forwarded to the Tribal Council. The proposed Regulation or amendment shall be effective after thirty (30) calendar days unless Tribal Council has taken action.

i. Posting of Land Use Regulations

The Administrator shall post to a website, accessible to the general public, all Land Use Regulations. Nationally recognized model codes that are adopted may be represented by reference.

j. Administrative Changes

The Administrator may make administrative changes to an existing Land Use Regulation provided that they are necessary to:

- (1) Correct typographical errors;
- (2) Clarify requirements, if it is determined through consultation with the Office of Legal Counsel that such changes do not alter any substantive requirement or provision within the regulation; or
- (3) Make consistent with any new, or change to existing, federal regulation.

## CHAPTER 5. LAND USE PERMIT

14 M.P.T.L. ch. 5 § 1

### § 1. Permit Required; Authorization

Any person, prior to commencing any Land Use Activity within Mashantucket, shall obtain a Permit from the Commission as provided herein.

14 M.P.T.L. ch. 5 § 2

### § 2. Pre-Application Consultation

a. Prospective applicants can consult with the Commission early in the project design process by:

- (1) requesting formal pre-application review consultation which shall take place during an official Commission meeting; or,
- (2) directly engaging individual Commissioners for informal pre-application review consultation.

b. Direction given by a Commissioner during informal consultation, as described in (a) (2), cannot be subsequently used as a basis for appeal unless it is made part of the official record as stipulated within the Commission Procedures.

c. Direction provided during consultation contrary to a Land Use Regulation cannot be used as a basis for appeal unless such direction has been formalized within a Variance.

14 M.P.T.L. ch. 5 § 3

### **§ 3. Permit Application**

a. An application for a Land Use Permit shall be made through the use of forms designated by the Administrator. The application shall include all plans, specifications, studies, reports, or other reasonable information requested by the Administrator, the Commission, or an expert providing a recommendation to the Commission.

b. Minimum application requirements shall be specified with Commission Procedures (1 L.U.R. 3, §1).

c. An application shall not be deemed complete unless accompanied by the applicable land use fee as specified within § 4 of this Chapter.

d. The Commission will require that drawings and specifications be Stamped by the Design Professional in Responsible Charge for certain activities as provided in the Commission Procedures.

(1) When required, drawings must be prepared, signed and dated by an architect or engineer duly authorized and licensed to practice in the state of Connecticut.

(2) The Commission, at their discretion, may accept documents Stamped by Design Professionals in Responsible Charge licensed by states other than Connecticut.

14 M.P.T.L. ch. 5 § 4

### **§ 4. Fee**

a. The land use fee shall be calculated according to the following schedule:

(1) For all Commercial Activities, the fee shall be ten dollars per thousand (\$10 per \$1,000) of Total Cost of the Activity. The minimum fee for Commercial Projects will be twenty dollars (\$20).

(2) For Residential Activities, the fee shall be five dollars per thousand (\$5 per \$1,000) of the Total Cost of the Activity.

(3) Under the following circumstances the Commission may set, in lieu of the fee outlined in (1) or (2), the land use fee equal to the direct cost associated with any necessary third party review or inspection service the Commission requires:

(a) When specifically requested by Tribal Council;

(b) when the Commission determines that the project benefits the Tribal Member Community, and is either a temporary Tribal Member Community event or involves no physical construction other than erection of culturally traditional structures; or,

(c) when a Variance request to an existing Permit, or other project not requiring a Permit, is submitted to the Commission for consideration.

b. The Applicant shall notify the Administrator within fifteen (15) calendar days of learning of any significant change in the estimated Total Cost of the Activity used to calculate the land use fee.

c. Failure to provide timely notice to the Commission of a significant change in Total Cost of the Activity may result in enforcement action including suspension or revocation of the permit issued.

d. Any person who requires a Permit from the Commission must pay the land use fee.

(1) Except as provided in §4(d) (2), the land use fee shall be paid upon submittal of the Permit Application.

(2) Under unique circumstances, as specified within the Commission Procedures, the Commission may reduce the fee due with the Application and establish a payment schedule for the balance of the land use fee prior to consideration of the project provided that:

(a) Failure to pay any installment established will void the issued Permit; and

(b) Upon a change in ownership of the Land Use Activity, the full balance of the land use fee is immediately due and payable within 40 calendar days; otherwise, the issued Permit shall become null & void and require a new Permit consistent with all provisions specified within this Title.

(3) In addition to the land use fee, the Commission may issue invoices to the Applicant for any fees incurred as a result of third-party review or inspection services required by the Commission.

e. The Administrator shall specify within Commission Procedures a process to reconcile any land use fee balance.

14 M.P.T.L. ch. 5 § 5

#### **§ 5. Permit Application Review**

a. When the Application and supporting materials are received and deemed to be substantially complete, the Administrator shall notify the Commission and commence the review period.

b. The Administrator, when notifying the Commission, may recommend Administrative Review for any Application which he believes is pertinent mainly to one program discipline represented on the Commission, or multiple disciplines that are likely to share similar project-related concerns (e.g. Building Code Enforcement and Fire Safety). If a Commissioner objects to Administrative Review, the full Commission will review the pending Application. If there is no objection to Administrative Review, the Administrator will forward the entire application package for review to the representative of the relevant discipline.

c. The Commission Procedures shall contain procedures governing both Administrative Review and Commission review. Such procedures shall:

(1) Ensure effective communication between Commissioners and the Applicant concerning status of the review and all Commission issues raised;

- (2) Provide for maintenance of an accurate and complete record of Commission requests and plan review comments, and plan modifications made by the Applicant in response to review comments;
- (3) Specify that the Applicant and any Commissioner has the right to reject Administrative Review and request consideration by the entire Commission; and,
- (4) Define a reasonable limit for the Commission's review period.

14 M.P.T.L. ch. 5 § 6

**§ 6. Commission Consideration of Permit Applications**

a. The Administrator shall schedule Commission meetings to consider Applications, not otherwise considered administratively, within two (2) weeks of the conclusion of the Commission's review period.

b. Before the Commission may take action on a Permit Application a Quorum must be present.

c. The Commissioners may take the following information into account when taking action on an Application:

- (1) the Application;
- (2) any relevant information from a pre-application consultation;
- (3) recommendations from experts before the Commission; and,
- (4) any other information deemed relevant by the Commission.

d. A Commissioner may move the Application for conditional approval provided that the Commissioner states for the record the precise language of the proposed condition(s) and the motion is seconded by an additional Commissioner.

- (1) If the Application is approved conditionally, the precise language of the condition(s) shall be provided to the Applicant and such conditions of approval shall become part of the Application and constitute enforceable Permit provisions.
- (2) If an Application is approved conditionally, the Applicant shall have the right to request a hearing for reconsideration and removal of the conditions pursuant to Chapter 10 of this Law.

e. The Administrator may, for the convenience of Commissioners, move consideration of any matter, including an Application, for electronic vote, provided that the process for electronic voting is established within the Commission Procedures, and the process contains at a minimum:

- (1) the right of any Commissioner to request that a meeting be convened to consider the matter; and,
- (2) that the vote shall be nullified and a meeting convened in the event of any single dissenting vote cast.

f. Commissioners may cast a vote in favor of, against, abstain, or veto a motion.

- (1) A Commissioner who believes compliance with this law, the Land Use Regulations, or applicable federal law and regulations to be an issue, and is unable to resolve those compliance issues prior to final Commission consideration may exercise a veto vote.
- (2) If a Commissioner exercises a veto vote, the Commissioner shall specify the provision of the Land Use Law, Land Use Regulation, or federal law or regulation, pertinent to the subject discipline they represent, at issue.

g. If a Permit Application is denied, the Applicant may either submit a new Application or request a Hearing for reconsideration the of the Commission's decision pursuant to Chapter 10 of this Law.

- (1) An additional land us fee shall not be required for subsequent Applications which are substantially similar to a previously denied Application.
- (2) The Administrator shall, to the extent practicable, expedite the Commission review period for any new Application submitted in response to one previously denied.

#### **CHAPTER 6. PERMIT CONDITIONS**

14 M.P.T.L. ch. 6 § 1

##### **§ 1. Standard Permit Terms and Conditions**

a. The issuance of a Land Use Permit does not waive a Person's obligation to comply with any provision of this Law or the Land Use Regulations, unless otherwise stated in a Variance.

b. The issuance of a Land Use Permit does not relieve any Person from complying with any other applicable provisions of Tribal or applicable federal law or from any provision, ordinance, or regulation of the Mashantucket Pequot Tribal Nation that may require approval, license, or permit to accomplish, engage in, carry on, or maintain a particular business, enterprise, occupation, transaction, or use.

c. The issuance of a Permit based on plans, specifications or other data will not prevent the Commission from requiring correction of errors in said plans, specifications and other data, or from preventing any activity being conducted thereunder when in violation of this Law.

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

- (1) Minor changes to the approved plans and deferred submittals may be approved administratively as described within the Commission Procedures.
- (2) Significant and material changes require a formal permit modification as described within §3 of this Chapter.

- (3) Unapproved changes to the project will halt the inspection process and may result in issuance of an Enforcement Order and/or Penalties.

e. As required by any Land Use Regulation, the Applicant shall have performed, by a qualified independent inspector approved by the Building Official, all required Special Inspections.

14 M.P.T.L. ch. 6 § 2

## **§ 2. Record Keeping and Reporting**

a. All Permittees shall maintain records substantiating the information supplied in the Permit Application, including but not limited to minor alterations, self-monitoring compliance reports and any other information or records required by the Permit, Land Use Regulation or other applicable federal requirements.

b. Record Drawings, as defined in ch. 2 b(31), must be submitted to the Commission prior to issuance of the final Certificate of Completion.

- (1) Record Drawings are to be prepared by the Design Professional in Responsible Charge and reflect all information recorded on the As-built and Survey Drawings.
- (2) The Permittee shall ensure that up-to-date As-built Drawings, as defined in Ch. 2b(3), are maintained by all contractors during construction. Such drawings shall include:
  - (i) all changes to the original construction documents shown in red ink; and,
  - (ii) the accurate measured location, size and nature of any concealed project element, such as structural elements, accessories, equipment, devices, plumbing lines, valves, mechanical equipment, and the like.
- (3) The Permittee shall insure that up-to-date Survey drawings, as defined in ch. 2b(38), are maintained by a Qualified Surveyor during construction. Survey Drawings record the accurate location, size, and nature of all items required, and to the standards specified, within Title 9 of the Land Use Regulations.
- (4) The amended set of construction documents shall be made available for inspection during normal business hours.
- (5) The Commission has the right to request drawings from time to time, in electronic or paper format, to confirm that sufficient as-built and survey information is being recorded in conformance with MPTN Record Drawing Standards (Title 9 L.U.R.).

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

d. In the event that a permitted project causes, or is likely to cause, an emergency situation where there is an imminent threat to life, health, property, environment, or essential public service, the Permittee or his

designee shall immediately cease all activity, contact MPTN emergency response, and notify the Administrator.

14 M.P.T.L. ch. 6 § 3

### **§ 3. Permit Modification**

a. Significant and material changes proposed after the approval of the Permit require a Permit Modification.

b. 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.

(1) If the drawings change, a cover letter, signed and sealed by the Design Professional in Responsible Charge, describing the change is required, as well as at least three (3) new stamped sets of drawings with all changes clearly noted and clouded.

(2) The Permit modification application shall demonstrate that the proposed changes comply with the Tribal Policies, Laws, and Land Use Regulations.

c. The Commission 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 in accordance with Chapter 10 of this Title.

14 M.P.T.L. ch. 6 § 4

### **§ 4. Permit Duration and Schedule Modification**

a. Unless the Administrator issues a schedule modification, Permits shall expire and become null and void if:

(1) the work authorized is not commenced within twelve (12) months from the issue date of such permit,

(2) the work authorized by such permit is unexpectedly suspended or abandoned for a period of sixty (60) calendar days or more at any time after work is commenced; or,

(3) the work continues beyond sixty (60) calendar days from the completion date provide on the Permit application.

b. If a Permittee requires a schedule modification in order to complete any activity under an approved Permit, the Permittee shall file a schedule modification request no later than thirty (30) calendar days prior to the expiration of the Permit.

c. The Administrator shall review the schedule modification request with the Permittee and either approve the modification under such terms and conditions as the Administrator deems necessary and appropriate, or request that the Permittee obtain a Permit modification.

14 M.P.T.L. ch. 6 § 5

**§ 5. Bonding Requirements**

The Commission may require the posting of a performance or maintenance bond as specified in the Commission Procedures.

**CHAPTER 7. CERTIFICATES OF COMPLETION**

14 M.P.T.L. ch. 7 § 1

**§ 1. Certificate Required**

No Land Use Activity shall be occupied, used, or operated, in whole or in part, without:

- a. the Commission issuing a final Certificate of Completion; or,
- b. the Administrator issuing a valid Temporary or Partial Certificate of Occupancy, or Use.

14 M.P.T.L. ch. 7 § 2

**§ 2. Request for Occupancy or Use**

a. The Permittee shall request a Certificate of Completion from the Administrator when the project is complete and ready for use or occupancy.

- b. The Permittee may request a final Certificate of Completion when:
  - (1) There is no outstanding balance of the land use fee due from the Permittee,
  - (2) The Land Use Activity meets the requirements and conditions of the Permit and, at a minimum, both the Fire Marshal and Building Official have completed their final inspections and found there to be no outstanding issues; and,
  - (3) All closeout documents, including as-built record drawings and any outstanding submittals, have been submitted.
  - (4) If the project was issued a Permit based on Stamped plans from a Design Professional in Responsible Charge, the following must also be submitted:
    - (a) a Stamped letter or, as warranted, a Certificate of Substantial Completion from the Design Professional in Responsible Charge;
    - (b) a copy of the Punchlist and evidence that each item has been completed or otherwise resolved; and,
    - (c) Record Drawings in conformance with MPTN Record Drawing Standards (Title 9 L.U.R.).

c. The Permittee may request a Temporary Certificate of Occupancy, or Use, when the project is substantially complete, the Punchlist has been created, and no life safety issues exist.

- (1) Such requests shall only be considered when the Land Use Activity substantially meets the requirements and conditions of the Permit and,

at a minimum, both the Fire Marshal and Building Official have confirmed that there are no outstanding life safety concerns.

- (2) Temporary Certificates shall be issued for a period of time no greater than ninety (90) calendar days.
- (3) Subsequent Temporary Certificates may be issued as necessary provided that:
  - (a) either reasonable progress is being made toward final completion, or other excusable mitigating circumstances exist which have prevented final completion;
  - (b) the project is re-inspected by, at a minimum, both the Fire Marshal and Building Official to again determine that there are no outstanding concerns regarding the general safety of employees or public; and,
  - (c) the fee, established within Commission Procedures to cover costs associated with the additional inspections and administrative processing, is paid.

d. The Permittee may request a Partial Certificate of Occupancy, or Use, when a certain distinct portion of a larger activity is substantially complete and ready for use or occupancy.

- (1) The Permittee must provide, for the portion of the activity which the certificate is sought:
  - (a) a detailed description of that portion of the activity; and
  - (b) all applicable items specified within §2b of this Chapter specific to portion of the activity for which the Partial Certificate is being requested.
- (2) Such requests shall only be considered when, at a minimum, both the Fire Marshal and Building Official have completed their final inspections and found there to be no outstanding issues related to the portion of the activity for which the certificate is sought.
- (3) While the Permittee is completing the activity the Commission retains the authority to inspect all portions of the activity even the portion for which the Partial Certificate was issued.
- (4) The Commission may revoke a Partial Certificate at any time for non-compliance with the Law or Land Use Regulations related to the project regardless of whether the non-compliance pertains to the portion of the project for which the Partial Certificate was granted.

14 M.P.T.L. ch. 7 § 3

### **§ 3. Issuance of a Certificate of Completion**

a. When a request for a Certificate of Completion is received, the Administrator shall have the project inspected by the appropriate Commissioners, including experts who do not sit on the Commission, as warranted.

b. Within one week of receiving the certificate request, the Administrator may either notify the Permittee in writing of any outstanding items required

to attain compliance with the terms and conditions of the Permit, approve and issue a Temporary or Partial Certificate, or refer the request to the Commission for final consideration.

- (1) If outstanding issues were noted, the Permittee shall submit a revised request upon completion of all required compliance measures.
- (2) The Administrator may only issue a Temporary or a Partial Certificate:
  - (a) when all the applicable conditions and requirements specified in §2(c) or (d) of this chapter are satisfied; and,
  - (b) with Passive Consent of the Commission.
- (3) The Commission shall take action within one (1) week of the Certificate of Completion being referred by the Administrator.

c. If the Permittee fails or refuses to comply with the terms and conditions of the Permit, or if the project fails to meet any applicable Tribal law or regulation, the Commission shall not issue a Certificate of Completion and the Land Use Activity shall not be occupied, used, or operated in any way. The Commission shall set forth the reasons for such denial in a detailed written decision, and shall send a copy of the decision to the Permittee.

d. The Permittee may request a hearing for reconsideration of the Commission's decision pursuant to Chapter 10 of this Title.

## **CHAPTER 8. VARIANCE**

14 M.P.T.L. ch. 8 § 1

### **§ 1. Application**

a. Any Applicant, Permittee, or Owner may request a variance from a specific provision within the Land Use Regulations by filing an application with the Administrator.

b. An application for a variance shall include:

- (1) a reference to the specific provision(s) within a Land Use Regulation for which the variance is requested;
- (2) a description of the practical difficulty or unnecessary hardship that strict compliance with that provision(s) would create;
- (3) a detailed description of any proposed equivalent or alternative compliance method proposed;
- (4) a variance fee, if required pursuant §2b(1) and (2) of this Chapter; and,
- (5) any other required information specified within the specific Land Use Regulation for which the variance is being requested.

c. If a Variance is denied, the Permittee may request a hearing for reconsideration of the Commission's decision pursuant to Chapter 10 of this Title.

**§ 2. Commission Review and Consideration**

a. The Administrator shall provide the application for variance to all Commission members and commence the Commission Review Period as specified within ch. 5 §5c.

b. The Commissioner(s) whose program discipline is affected by the variance request shall be responsible for providing the Commission with a synopsis of the variance impact and their recommendation.

(1) If that Commissioner determines that additional third-party expertise is required in order to provide such recommendation he shall notify the Administrator prior to the conclusion of the initial review period.

(2) The Commissioner shall provide notice to the Applicant that such third-party review is required and that a variance fee, no greater than the direct cost incurred by the Commission, will be required.

c. Final consideration of the variance application shall be conducted in accordance with the provisions specified within Ch. 5 §6 of this title.

d. The Commission may grant the variance if the Applicant provides sufficient evidence that:

(1) the granting of the variance will not undermine the purposes of this Law;

(2) the proposed variance will not have the potential to adversely affect the environment or, the potential to affect the general health, safety and welfare of the Tribe, employees, or the general public;

(3) denying the variance will cause the Applicant to suffer hardship out of proportion to the benefit intended by the Tribal Laws or Tribal Land Use Regulations; and,

(4) the Tribal Land Use Regulation from which the variance is sought can be properly mitigated or the effect of the variance is generally neutral.

e. The Commission may condition its approval of the variance by stipulating alternative equivalents, or alternative compliance methods than those proposed by the Applicant.

**CHAPTER 9. ENFORCEMENT**

**§ 1. Enforcement Authority**

a. The Commission shall have the authority to enforce compliance with this Title and any Land Use Regulation, Permit, or Enforcement Order issued pursuant to it.

b. Authority to Inspect

- (1) At all reasonable times, authorized representatives of the Commission shall have the authority to enter a Facility, or upon any property within Mashantucket, to:
  - (a) inspect through observations, sampling, and testing, to evaluate compliance with any applicable standard;
  - (b) investigate any complaint or report of non-compliance, including interviewing management, employees, or contractors;
  - (c) examine any records, and take copies, that any Person or entity maintained or that was required to maintain under any applicable Permit, Regulation, or Order; and,
  - (d) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with a Permit, Regulation, or Order.
- (2) The authority to enter a Private Residence to conduct activities specified within paragraph (1) of this Section shall only extend to the time period between issuance of a Permit and final unconditional issuance of an associated Certificate of Completion; except that, when requested by the Fire Marshal, authorized representatives of the Commission shall have the authority to enter a Private Residence immediately following an emergency response.
- (3) The authorized representative shall make best efforts to provide adequate notice prior to the inspection; however, lack of notice shall not prevent the representative from gaining access to the Facility or the property.
- (4) Where access to the property or Facility is restricted by any security measure or device, the Person or Owner shall promptly allow access to the authorized representative upon presentation of proper identification.
- (5) The Commission 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 at the expense of the Person, Permittee, or Owner. The sampling, metering and monitoring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Person, Permittee, or Owner.
- (6) Any refusal or unreasonable delay in allowing the authorized representative access to the Land Use Activity shall be deemed a violation of this Law, and may subject the Person, Permittee, or Owner to enforcement action penalties as provided herein.

14 M.P.T.L. ch. 9 § 2

**§ 2. Enforcement Procedure**

a. Citations

- (1) If, upon inspection or investigation, the Building Official, Fire Marshal, or Food Safety and Sanitation Inspector believes that a Person has violated a requirement of Titles 3, 4, or 11 of L.U.R., the

Building Code, Fire Prevention Code and Salons, or 26 M.P.T.L. (Food Code) he or she shall with reasonable promptness issue a citation to the Person. The citation:

- (a) shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the MPTN Public Safety Code alleged to have been violated;
- (b) shall fix a reasonable time for the person to provide proof that violation has been corrected;
- (c) shall state that the Person cited has ten (10) calendar days within which to notify the Administrator that the Person wishes to be heard by the Commission pursuant to Chapter 10;
- (d) may include the assessment of penalties provided that it does not exceed a specific penalty for the type of violation cited that has been established within the Procedures of the Commission or the maximum penalty set forth in the relevant Land Use Regulation; and,
- (e) If, within ten (10) calendar days from the mailing of the notice issued by the Building Official or the Fire Marshal, the Person fails to request a hearing, the citation and the penalty, as proposed, shall be deemed final. If a Person requests a hearing pursuant to this Section, and such hearing is held but a settlement is not entered, the citation and penalty shall become a final order of the Commission.

b. A Commissioner, for the purpose of ensuring or compelling compliance with this Title, with any Land Use Regulation, or with any Permit, Variance or Order issued under this Title, may file a request with the Administrator to issue an Enforcement Order.

c. If after review, the Administrator determines there is reason to believe there is a violation or non-compliance, he shall issue, in writing, either a Show Cause Order or Cease and Desist Order to the appropriate Person or Permittee.

d. Show Cause Order

- (1) Unless the Administrator believes that imminent and substantial harm to the environment, or the general health, safety, and welfare of the Tribe, employees, or general public is likely to occur without the instigation or cessation of an activity, the Administrator shall issue a Show Cause Order whenever it is established that reasonable grounds exist to suspect that a certain action or inaction may have resulted in a violation of this Title, or any Regulation, Permit or Enforcement Order issued under it. The Show Cause Order shall order the appropriate Person to:
  - (a) respond to the Order by supplying all information requested or otherwise necessary to determine the validity of the alleged violation; or,
  - (b) 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 enforcement measure should be applied.

- (2) Show Cause Hearings shall follow the procedures established within 40 M.P.T.L, with the Commission serving as the Hearing Official.
- (3) If the Person issued a Show Cause Order fails to respond within the time frame noted within the Order, or fails to appear before the Commission or make a reasonable effort to reschedule before the time specified, there is a presumptive conclusion that the alleged violation has occurred and a Compliance Order or Cease and Desist Order will be issued.

e. Consent Order

- (1) Following the issuance of a Show Cause Order, the Commission may issue a Consent Order whenever the Person or Permittee is willing to resolve the matter without a hearing. A Consent Order creates a conclusive presumption that the Land Use Activity, or lack of activity, in question presents a violation of a Permit term or condition, this Law, any Land Use Regulation, or Enforcement Order.
- (2) A Consent Order shall specify the agreed upon compliance actions and may:
  - (a) require the performance of any necessary remediation, other reasonable action, or enforcement measure as part of the Consent Order;
  - (b) levy a penalty in accordance with § 3 of this Chapter; and,
  - (c) issue additional Show Cause Orders to facilitate review of the status of compliance with the Consent Order.

f. Compliance Orders

- (1) Following the issuance of an Show Cause Order and a hearing, the Commission may issue a Compliance Order whenever it is determined that a Land Use Activity or lack of Land Use Activity presents a violation of any Permit term or condition, this Law, any Land Use Regulation, or Enforcement Order requiring compliance.
- (2) Compliance Orders will be issued in writing and will specify the nature and extent of the violation, the basis for the Commission's finding of a violation, the action required for the Person or Permittee to come into compliance, the amount of a penalty, if any, and the date by which the Person or Permittee is ordered to complete the required action.

g. Cease and Desist Order

- (1) The Administrator may issue a Cease and Desist Order whenever he/she determines that reasonable grounds exist to find that there is a violation of any Permit term or condition, this Law, any Land Use Regulation, or Enforcement 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 instigation or cessation of such activity.
- (2) The Administrator, or his/her designated representative, shall deliver or mail the Cease and Desist Order to the Person or Permittee.
- (3) The Cease and Desist Order shall specify the date for a hearing in accordance with the Administrative Procedures Act, 40 M.P.T.L., to

determine the status of the alleged violation, any necessary remediation, or whether any other action or enforcement measure should be applied.

h. If a person to whom an Enforcement Order has been issued fails to comply with the terms of the Order within the time period specified, the Commission is authorized to file a complaint in the Mashantucket Pequot Tribal Court seeking injunctive relief and Court enforcement of the order pursuant to M.P.T.L. Title 40 (APA).

14 M.P.T.L. ch. 9 § 3

### **§ 3. Penalties**

a. The Administrator may specify a schedule of common penalties for violations of Title 3 or Title 4 of L.U.R., the Building Code and Fire Prevention Code, within Commission Procedures.

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

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

- (1) The Commission may impose escalating penalties in instances of continued non-compliance.
- (2) Penalties shall not exceed \$5,000 for each day during which the violation occurs and no total penalty shall exceed \$250,000.
- (3) The penalties assessed may be associated with the cost of remediating or mitigating a violation.
- (4) Penalties not previously established within Commission Procedures shall be determined by a majority vote of the Commission.

d. In determining the amount of the penalty, the Commission may consider the following factors:

- (1) The reasonable costs and expenses of the Commission in investigating, controlling, and abating such violations;
- (2) The penalties established by the 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 this Law, any Permit term or condition, the Tribal Policies or Land Use Regulations, or an Enforcement Order;

- (6) Making compliance less costly than non-compliance (e.g.: the financial gain, if any, derived by the source as a result of operating out of 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 penalty, provided that such factor shall be set forth in the written notice of assessment of the penalty.

e. If a Person is assessed a penalty, payment shall be made to the general fund of the Tribe which shall not be designated as revenue of the Land Use Commission:

- (1) the Person shall pay the penalty to the Commission within thirty (30) calendar days from the date the penalty is assessed;
- (2) if the penalty is not paid within thirty (30) calendar days and the Person is a Tribal entity, the Tribe shall be authorized to automatically withdraw the amount of the penalty from any funds owed to the Tribal entities budget.
- (3) if the penalty is not paid within thirty (30) calendar days and the Person is an individual or a non-Tribal entity, an additional rate of 1% per month of the original penalty (without proration during the month of payment). After ninety (90) days, the Commission may seek an order from the Mashantucket Pequot Tribal Court in accordance with 40 M.P.T.L. or pursue other steps that the law may allow.

f. Funds collected may be utilized by the Commission to mitigate violations related to the reason the original penalty was issued but only up to the amount of the penalties collected in the current fiscal year.

#### **CHAPTER 10. HEARING AND JUDICIAL REVIEW**

14 M.P.T.L. ch. 10 § 1

##### **§ 1. Right to a Hearing**

a. A Person may request a hearing before the Commission if:

- (1) A penalty has been levied upon them;
- (2) The Commission denied a Permit, Variance, or a Certificate of Completion; or,
- (3) They are seeking relief from a specific Permit condition.

b. A request for a hearing must be filed with the Administrator within thirty (30) calendar days of the issuance of an Enforcement Order or penalty; denial of a Permit, variance, or Certificate of Completion; or imposition of a Permit condition.

14 M.P.T.L. ch. 10 § 2

**§ 2. Hearing Procedure**

Unless there are other applicable procedures specified within a Land Use Regulation, the Hearing shall follow the procedures established within 40 M.P.T.L., with the Commission serving as the Hearing Official.

14 M.P.T.L. ch. 10 § 3

**§ 3. Right of Judicial Review**

A Person dissatisfied with a final decision of the Commission is entitled to Tribal Court review provided that a complaint is filed pursuant to the procedures set forth in the Tribal Administrative Procedures Act.

14 M.P.T.L. ch. 10 § 4

**§ 4. Enforcement Action**

If a Person does not comply with a final decision of the Commission, including the issuance of penalties or an Enforcement Order, the Commission may commence an enforcement action in the Mashantucket Pequot Tribal Court.

- (1) Prior to filing an enforcement action with the Tribal Court, the Commission must issue the Person who is non-compliant a notice that includes a description of the non-compliance (e.g., failure to pay a penalty) and the date by which the non-compliance must be resolved.
  
- (2) Enforcement actions shall be commenced by the Administrator on behalf of the Commission by filing a complaint with the Tribal Court clerk in the Mashantucket Pequot Tribal Court. The complaint shall be filed within sixty (60) calendar days of the expiration of the deadline set forth in the notice issued pursuant to paragraph (1) of this Section.

**CHAPTER 11. EFFECTIVE DATE AND APPLICATION**

14 M.P.T.L. ch. 11

This Law shall be effective upon enactment by Tribal Council.

**Historical and Statutory Notes**

**Derivation.**

Effective May 29, 1996, TCR052996-09 enacted the "Land Use Enabling Law".

**Amendments.**

Effective February 7, 2001, TCR020201-02 amended ch. 3 §3(b) to enlarge the Land Use Commission and change the composition of the members.

Effective June 7, 2001, TCR060701-04 amended ch. 3 §d(b) to add an additional member to the Land Use Commission.

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".

TCR052914-04 of 10 repealed and replaced Title 14, Land Use Law, in its entirety.

TCR090414-07 of 09 amended 27 M.P.T.L making amendments to ch. 1 § 4 and to ch. 6 § 6. Amendments to this law are indicated in red.