

**TITLE 40. ADMINISTRATIVE PROCEDURE ACT**

**CHAPTER 1. PURPOSE, APPLICABILITY, and DEFINITIONS**

40 M.P.T.L. ch. 1, § 1

**§ 1 Purpose**

a. The Mashantucket Pequot Tribal Nation has an interest in assuring that the administrative procedures carried out by the Tribe, and implemented through its administrative bodies pursuant to its Constitution and Tribal Law, are consistent with the basic principles of common sense, justice, and fairness. This Administrative Procedure Act is intended to implement the following major principles:

- i. Administrative adjudicatory hearings, whether Formal or Informal, shall be fundamentally fair, particularly in regard to such matters as notice, the opportunity to be heard, and the preparation of the Agency Record;
- ii. Responsible deciding Agency officials in quasi-judicial cases shall be personally familiar with the evidence presented in that proceeding; and,
- iii. Adequate provision shall be made for judicial review of administrative decisions.

b. The Mashantucket Pequot Tribal Nation has jurisdiction to adopt and enforce the Administrative Procedure Act to insure that all persons are provided with due process of law when a liberty or property interest is at stake. Tribal jurisdiction of all such persons and over tribal territory is necessary to protect the economy, health, safety, and welfare of the Tribal community including Tribal Members, Tribal family members, employees, patrons and others visiting the Reservation.

40 M.P.T.L. ch. 1, § 2

**§ 2 Applicability**

a. This Title shall apply to Agencies that hold a Hearing to determine the legal rights, duties, or privileges of specific Persons.

40 M.P.T.L. ch. 1, § 3

**§ 3 Definitions**

For purposes of this Title:

- a. "Agency Record" means the official account of an Agency Hearing.
- b. "Agency" means each commission, committee as defined in Article VI of the Tribal Constitution, or regulatory official of the Mashantucket Pequot Tribal

Nation authorized by Tribal Law or such other official as specifically granted authority by Tribal Council Resolution to determine Contested Matters. Agency does not include the Mashantucket Pequot Tribal Council, Mashantucket Pequot Elders Council, the Mashantucket Pequot Peacemakers, the Mashantucket Pequot Tribal Gaming Commission, the Mashantucket Pequot Tribal Court, the Mashantucket Pequot Police Department, the Mashantucket Pequot Workers Compensation Commissioner, Child Protective Services, decisions appealable under 15 M.P.T.L. and concerning a tribally-sponsored employee benefit plan, the TOSHA Commissioner, the Captive Insurance Commissioner, the Housing Committee with respect to Hearings held regarding evictions and foreclosures, the MERO with respect to Hearings held pursuant to Title 32 of the Mashantucket Pequot Tribal Law, Hearings held pursuant to a collective bargaining agreement, or a Board of Review as defined in Title 8 of the Mashantucket Pequot Tribal Law. Notwithstanding the exclusion of the Mashantucket Pequot Police Department from the definition of Agency, final decisions of the Chief of Police under the Complaints Alleging Misconduct by Law Enforcement Agency Personnel Policy are subject to review in the Tribal Court pursuant to 40 M.P.T.L. ch.3.

c. "Contested Matter" means a matter before an Agency in which the Agency makes a determination of the legal rights, duties, or privileges of specific Persons. This term includes all cases of Permitting where a Permit is revoked, suspended, or modified, or in which the granting of an application is contested by a Person having standing to contest such matter under Tribal Law.

d. "Declaratory Judgment" or "Declaratory Ruling" means a judgment affirming a right or establishing the legal status or interpretation of a Tribal Law or instrument. It is binding but it does not include an executive element (an order that something be done); instead it simply declares or defines rights to be observed or wrongs to be eschewed by litigants, or expresses the Tribal Court's or Agency's view on a contested question of law.

e. "Final Decision" means (1) an Agency determination at the conclusion of a Hearing, (2) a Declaratory Ruling issued by an Agency, or (3) an Agency determination after Reconsideration. The term does not include a ruling of an Agency granting or denying a petition for Reconsideration.

f. "Formal Hearing" means an in-person, trial-type proceeding, which may include cross-examination of witnesses, and which is recorded and/or transcribed.

g. "Hearing" means an Agency proceeding to determine legal rights or responsibilities of the parties. Hearings may either be Formal or Informal.

h. "Hearing Official" means an individual or individuals designated by an Agency or by Tribal Law to conduct a Hearing and issue Proposed and Final Decisions on behalf of the Agency.

i. "Informal Hearing" means an investigation by inquiry and taking of evidence through means other than an in-person trial type hearing.

j. "Permit" means the whole or part of an Agency permit, certificate, approval, registration, charter, statutory exemption, or other form of permission. Permit does not include a gaming license or a non-gaming license if such licenses are implemented by Tribal Law.

k. "Permitting" means the Agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a Permit.

l. "Person" means any individual, association of individuals; partnership; private, public, tribal, or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal, state, or local government; or governmental entity.

m. "Proposed Decision" means a Decision proposed by an Agency or Hearing Official prior to it becoming final.

n. "Reconsideration" means to consider a prior decision with the possibility of altering the outcome.

## **CHAPTER 2. HEARINGS**

40 M.P.T.L. ch. 2, § 1

### **§ 1 Right to Hearing**

A Person may request a Hearing when permitted by Tribal Law or Agency rules or regulations, or when there is a Contested Matter. The Agency or Hearing Official will determine whether a Formal or Informal Hearing is required on a case-by-case basis. Unless otherwise provided by Tribal Law, Hearings are open only to those parties with an interest in the Contested Matter, persons compelled to appear in person before an Agency, and their counsel, unless otherwise provided by Agency rules.

40 M.P.T.L. ch. 2, § 2

### **§ 2 Factors for Determining Type of Hearing.**

The Agency or Hearing Official shall consider the following factors to determine whether a Formal or Informal Hearing is necessary.

a. Factors weighing in favor of a Formal Hearing:

- i. The credibility or truthfulness of witnesses may be at issue; or,
- ii. An evidentiary hearing would likely yield a more reliable determination.

b. Factors weighing in favor of an Informal Hearing:

- i. The matter may be determined through an interpretation of Tribal Law without reference to the facts in a particular case;
- ii. The parties may request reconsideration of the Proposed Decision and submit additional documentation; or,
- iii. The decision rests solely on inspections, tests, or document review.

40 M.P.T.L. ch. 2, § 3

**§ 3. Formal Hearing.**

a. The Agency or Hearing Official will give all parties advance notice of a Formal Hearing of at least twenty (20) days. The notice shall include:

- i. The time, place, and nature of the proceeding;
- ii. A statement of the legal authority and jurisdiction under which the Hearing is to be held;
- iii. A reference to applicable sections of Tribal Law;
- iv. Whether the Tribal Rules of Civil Procedure and Evidence will be used as general guides for the Formal Hearing. These rules do not need to be used provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner; and,
- v. A short and plain statement of the issues and matters asserted.

b. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.

c. The Hearing Official may:

- i. Administer oaths and affirmations, examine witnesses, and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
- ii. Rule upon offers of proof and receive relevant evidence;
- iii. Dispose of procedural matters by decision;
- iv. Hold conferences for settlement or simplification of the issues; and,
- v. Take any other action authorized by Tribal Law consistent with this chapter.

d. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

e. Any oral or documentary evidence, including hearsay, may be received, but the Hearing Official shall exclude any irrelevant, immaterial, or unduly repetitious evidence.

f. Oral proceedings shall be recorded and transcribed. A copy of the entire Agency Record or any part thereof shall be furnished to any party upon their written request thereof and payment of the costs thereof.

g. The Agency Record shall include:

- i. All pleadings, motions, intermediate rulings;
- ii. Evidence received or considered;
- iii. A list of documents considered *in camera*, if any;
- iv. A statement of matters officially noticed;
- v. Questions and offers of proof, objections, and rulings thereon;
- vi. Transcript of the proceeding;
- vii. Proposed findings and exceptions; and,
- viii. Any decision, opinion, or report by the Hearing Official.

h. Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.

i. The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument or evidence. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

40 M.P.T.L. ch. 2, § 4

**§4. Informal Hearing.**

a. An Informal Hearing may include or consist of a review of statements, affidavits, and documents submitted by the parties to a Hearing Official; or, an informal meeting between the parties and the Hearing Official.

b. The Hearing Official will determine the form of the Informal Hearing.

c. The Agency or Hearing Official will give all parties advance notice of an Informal Hearing. The notice shall include:

- i. The time and place, if applicable, and nature of the proceeding;
- ii. A statement of the legal authority and jurisdiction under which the Hearing is to be held;
- iii. A reference to the particular sections of Tribal Law involved; and,
- iv. A short and plain statement of the issues and matters asserted.

d. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues noticed.

e. The Hearing Official may:

- i. Examine witnesses and receive evidence, but no person shall be compelled to divulge information which he or she could not be compelled to divulge in Tribal Court;
- ii. Rule upon offers of proof and receive relevant evidence;
- iii. Hold conferences for settlement or simplification of the issues; and,
- iv. Take any other action authorized by Tribal Law consistent with this chapter.

f. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

g. Informal Hearings are not to be recorded or transcribed. The Hearing Official will issue a summary of the proceedings with his or her Proposed Decision, when permitted under Tribal Law, and Final Decision.

h. The Agency Record shall include:

- i. All pleadings, statements, and affidavits;
- ii. Evidence received or considered;
- iii. A list of documents considered *in camera*;
- iv. A statement of matters officially noticed;
- v. Questions and offers of proof, objections, and rulings thereon;
- vi. Proposed findings and exceptions; and,
- vii. Any decision, opinion, and summary by the Hearing Official.

i. Unless precluded by Tribal Law, Contested Matters may be disposed of by stipulation, agreed settlement, consent order, or default.

j. The Hearing Official shall personally consider the whole Agency Record or such portions thereof as may be cited by the parties. Subsequent to the close of the Hearing and when determined to be in the interest of justice, the Hearing Official may temporarily postpone his or her Proposed or Final Decision and elect to re-open the Agency Record to request that the parties submit additional argument. After fully considering such additional written presentations, the Hearing Official shall promptly render his or her decision.

40 M.P.T.L. ch. 2, § 5

**§ 5. Decisions and Requests for Reconsideration.**

a. All Proposed and Final Decisions by a Hearing Official shall be reasoned decisions issued in writing and shall be accompanied by a summary of the facts and conclusions of law.

b. Parties to the Contested Matter shall be notified of the Proposed and Final Decisions by mail.

c. When permitted by Tribal Law, parties may request Reconsideration of the Proposed Decision.

**CHAPTER 3. JUDICIAL REVIEW**

40 M.P.T.L. ch. 3, § 1

**§ 1. Applicability**

This chapter applies to all Agency Final Decisions except to the extent that a statute precludes judicial review. To the extent that any provision of this Chapter conflicts with any other law, this law shall govern for claims filed on or after the Effective Date.

40 M.P.T.L. ch. 3, § 2

**§ 2. Jurisdiction**

a. The Tribal Court is hereby granted jurisdiction to review a Final Decision including the Hearing Official's decision under 40 M.P.T.L. Ch. 2, §§ 1 and 2 concerning whether to conduct a Formal or Informal Hearing.

b. The Tribe hereby expressly waives its sovereign immunity and the sovereign immunity of an Agency from suit in the Tribal Court for actions founded upon a review of a Final Decision; provided that the parties have exhausted all administrative remedies provided under statute and the Agency policies, and the suit has been timely filed. A party does not need to file a request for reconsideration to exhaust administrative remedies.

c. An action pursuant to this Title shall be the Person's exclusive cause of action against the Tribe and the Agency, unless otherwise authorized by Tribal Law.

d. When it is alleged that the liability of the Agency is based upon the action of an officer, agent, servant, or employee of the Agency 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 Agency to the extent that it extends to such an individual.

40 M.P.T.L. ch. 3, § 3

### **§ 3 Right of Review**

a. A Person dissatisfied with a Final Decision of an Agency is entitled to Tribal Court review thereof, unless decisions by the Agency are expressly exempt from judicial review by Tribal Law.

b. After the exhaustion of administrative remedies, a Person challenging the issuance of a penalty by an Agency is entitled to Tribal Court review thereof, unless penalties by the Agency are expressly exempt from judicial review by Tribal Law.

c. If a Person does not comply with an Agency Final Decision, including the issuance of a penalty or citation, the Agency may institute an enforcement action.

i. Prior to filing an enforcement action with the Tribal Court, the Agency that issued the Final Decision to a Person who is non-compliant must issue that Person a notice that includes a description of the non-compliance (e.g., failure to pay a fine) and the date by which the non-compliance must be resolved.

ii. Enforcement actions shall be instituted by the Agency's filing of a complaint with the Tribal Court clerk in the Mashantucket Pequot Tribal Court. The complaint shall be filed within thirty (30) days of the expiration of the deadline set forth in the notice issued pursuant to (i).

iii. Copies of the complaint shall be served by the Tribal Court clerk upon the non-compliant party, with a copy to the General Counsel of the Mashantucket Pequot Tribal Nation.

40 M.P.T.L. ch. 3, § 4

### **§ 4 Procedures**

a. Review under this Chapter shall be instituted by the filing of a form provided by the Tribal Court clerk in the Mashantucket Pequot Tribal Court and complying with any filing requirements under Tribal Law.



b. An appeal shall be filed within thirty (30) days of mailing to the addresses provided by the parties or hand delivery of the Final Decision by the Agency making the Final Decision. Copies of any such appeal shall be served by the Tribal Court clerk upon the Agency and all other parties before the Agency with a copy to the General Counsel of the Mashantucket Pequot Tribal Nation.

c. The filing of an appeal shall not stay enforcement of the Final Decision. Where other Tribal Laws provide for a stay, it may be stayed by the Agency or Tribal Court only as provided therein.

d. Within thirty (30) days after service of the appeal, or within such further time as the Tribal Court may allow, the Agency shall accumulate the Agency Record on appeal and shall certify to the Tribal Court that it is a true and correct copy of the original documents on file with the Agency, and shall file the Agency Record with the Tribal Court. The Agency shall organize the Agency Record in such a manner that allows the Tribal Court to easily locate significant materials, such as binding and consecutively numbering pages of the Agency Record with a Table of Contents indicating the identity of separate documents. A copy of the certified Agency Record shall be provided by the Agency to all parties at no charge.

40 M.P.T.L. ch. 3, § 5

**§ 5 Pre-Hearing Conference**

a. Within thirty (30) days of the filing of the Agency Record on appeal, the Tribal Court shall schedule and conduct a pre-hearing conference to address the following matters:

- i. Correction of the Agency Record, if needed;
- ii. Clarification of the issues;
- iii. The treatment of documents submitted *in camera* during the Hearing;
- iv. Preparation of stipulations;
- v. Scheduling of briefs or other written argument;
- vi. Setting the hearing date and such other deadlines as the court deems appropriate;
- vii. Setting a date for an additional pre-hearing conference, if necessary; or
- viii. Other matters that may facilitate the resolution of the matter.

b. At the conclusion of the pre-hearing conference, the Tribal Court may issue any necessary orders.

c. The Tribal Court may extend or shorten deadlines in the interest of fairness or expediting the proceedings.

40 M.P.T.L. ch. 3, § 6

**§ 6 Briefing**

a. No later than sixty (60) days from the filing of the Agency Record, the appellant shall file two (2) copies of a typed or clearly legible copies of a brief that shall clearly and concisely set forth the specific reasons for requesting judicial review of the Final Decision. The brief shall not exceed twenty-five (25) double-spaced pages in length, unless permission is granted by the Tribal Court, and shall include citations to any legal authorities relied upon and specific references to the Agency Record.

b. The appellee's brief shall be filed within thirty (30) days of the filing of the appellant's brief and shall conform with the page limit and other rules set forth above.

c. The appellant shall have the right to submit a reply brief within ten (10) days of the filing of the appellee's brief. The reply brief shall not exceed ten (10) double spaced pages in length and shall be limited to the issues raised in the appellee's brief.

d. At the conclusion of its hearing, if any, the Tribal Court may order additional briefs, as the court deems necessary.

e. The Tribal Court, on its own or by way of motion by either party, may modify the foregoing briefing timetable as necessary and appropriate to accommodate its own calendar or that of the movant, provided that doing so would not cause undue hardship to the non-moving party.

40 M.P.T.L. ch. 3, § 7

**§ 7 Tribal Court Oral Argument**

a. If necessary, an oral argument shall be held within ten (10) days of the filing due date of the reply brief, unless the Tribal Court orders otherwise. The Tribal Court may decide the matter on the filings.

b. All actions brought pursuant to this Title shall be heard by the Tribal Court and not a jury. No costs shall be taxed against the Tribe or its enterprises.

40 M.P.T.L. ch. 3, § 8

**§ 8 Scope of Review**

a. The Tribal Court's review shall be limited to the Agency Record before the court, any briefs filed by the parties, and oral argument presented by the parties.

b. The Tribal Court shall not substitute its judgment for that of the Agency as to the weight of the evidence or credibility of any witnesses.

c. Upon a showing of exceptional circumstances, the Tribal Court must remand the matter to the Agency to review new or additional evidence, provided that such new or additional evidence has been shown not to have been available for consideration at the Hearing through no fault of any party, that such new evidence is relevant and probative of the party's appeal, and that failure to consider such evidence would be prejudicial; or, the Hearing Official improperly excluded the evidence from the Agency's review.

d. If the Tribal Court determines that a Formal Hearing was required and a Formal Hearing was not conducted, it shall remand the matter to the Agency for further proceedings.

e. The Tribal Court shall affirm the Final Decision unless the court finds that the Final Decision is:

i. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with Tribal Law; or,

ii. In excess of statutory jurisdiction or authority.

40 M.P.T.L. ch. 3, § 9

#### **§ 9 Rulings**

a. The Tribal Court shall issue a written reasoned decision supported by reference to the Agency Record.

b. If the Tribal Court finds that the Agency's Final Decision was arbitrary and capricious, it may render a judgment under subsection (c.) of this Section or remand the matter to the Agency for further proceedings in accordance with the Court's decision.

c. If a particular Agency action is required by Tribal Law, the Tribal Court, on sustaining the appeal, may render a judgment that modifies the Agency decision, orders the particular Agency action, or orders the particular Agency to take such action as may be necessary to effect the particular action.

d. If the Tribal Court upholds an enforcement action brought by an Agency, the Tribal Court may take such action as necessary to compel compliance.

40 M.P.T.L. ch. 3, § 10

#### **§ 10 Appeal of Tribal Court Decision**

The decision of the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. The decision of the Court of Appeals shall be final.

40 M.P.T.L. ch. 3, § 11

**§ 11 Application of the Law**

Any matter brought pursuant to this Title shall be determined in accordance with Tribal Law. The court may be guided, but shall not be bound, by the common law of other jurisdictions.

**CHAPTER 4. MISCELLANEOUS**

40 M.P.T.L. ch. 4, § 1

**§ 1 Effective Date**

The Title and any amendments thereto shall be effective upon the day the Tribal Council enacts this Title or amendment thereto.

**Historical & Statutory Notes**

**Derivation.**

Effective May 29, 2015, TCR025914-03 enacted 40 M.P.T.L. The "Mashantucket Pequot Administrative Procedures Act".

**Amendments.**

Effective February 29, 2016, TCR022916-01 amended 40 M.P.T.L. Ch. 1, § 3b amending the definition of Agency to include the Mashantucket Pequot Police Department for decisions issued pursuant to the Mashantucket Pequot Tribal Police Department policy "Complaints Alleging Misconduct by Law Enforcement Agency Personnel". TCR022916-01 also amended 40 M.P.T.L. Ch. 3, §2c adding the language "unless otherwise authorized by Tribal Law".