

**MASHANTUCKET PEQUOT TRIBAL LAWS ANNOTATED  
2010-2011 POCKET PART**

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## TITLE 1. JUDICIARY

### CHAPTER 2. COURT ADMINISTRATION

1 M.P.T.L. ch. 2 § 1

#### § 1. Judges

a. Judges of the tribal court shall be appointed by the Tribal Council to serve a term of three years. Judges of the tribal court shall have the following qualifications: highest moral and ethical character; licensed to practice law in the highest court of any state of the United States; at least five years experience as a practicing attorney and/or judge; and significant experience and knowledge in federal Indian and tribal law. The Tribal Council may waive any of the above qualifications in exceptional circumstances.

b. Duties of Judges. Judges shall (1) faithfully uphold the Constitution and Laws of the Tribe; (2) hear and decide all claims properly brought before the court in a judicious, impartial, and efficient manner; and (3) seek continued legal and judicial education, particularly in federal Indian law.

c. The salary of the judges shall be established by the Tribal Council, and once set, shall not be reduced during the length of the appointment. Judges shall not be entitled to participate in any employee bonus compensation plan.

d. The Tribal Council finds that for the impartial and effective administration of justice, the continued independence of the judiciary is indispensable. It is in the interest of the Tribe to foster the dignity and integrity of the judiciary, and to these ends, it is desirable to establish appropriate procedures for the maintenance of judicial discipline, recognizing that the making of unpopular or erroneous decisions is not a sufficient ground for judicial discipline or a finding of a want of judicial integrity. Judges shall be subject to suspension or removal from office for (1) conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute; (2) violation of any canon of judicial ethics; (3) failure to perform the duties of the office; (4) arrest and/or a final conviction of a felony or of a misdemeanor involving dishonesty or moral turpitude; (5) disbarment or suspension as an attorney at law; or (6) temperament which adversely affects the orderly carriage of justice.

e. Judges may be removed by a majority vote of the Tribal Council at a duly called meeting where such members are present and vote on the specific issue, provided that the Judicial Committee has first reviewed and investigated the matter giving rise to such removal action.

f. Judges shall be evaluated no less frequently than every three years.

### CHAPTER 3. OFFICE OF THE PROSECUTOR

1 M.P.T.L. ch. 3 § 1

#### § 1. Definitions

a. The Prosecutor/Special Tribal Advocate shall be appointed by the Tribal Council to serve either a part-time or full-time appointment for a term of three years.

b. The Prosecutor/Special Tribal Advocate shall have the following qualifications: (1) highest moral and ethical character; (2) license to practice law in the state of Connecticut and in the Mashantucket Pequot tribal court; (3) at least five years experience as a practicing attorney and/or judge, preferably in a prosecutorial capacity; and (4) significant experience and knowledge in federal Indian and tribal law. The Tribal Council may waive any of the above qualifications in exceptional circumstances.

c. The Prosecutor/Special Tribal Advocate shall: (1) faithfully uphold the Constitution and laws of the Tribe; (2) diligently present all criminal and child welfare matters, and any other matter as may be designated by tribal law before the tribal court; (3) represent the Tribe, upon the advice and consultation of the Office of Legal Counsel, in Indian child welfare matters in non-tribal forums; (4) present community education programs on subjects relative to the roles and responsibilities of the tribal prosecutor and tribal police; and (5) seek continued legal and judicial education, particularly in federal Indian law.

d. The salary of the Prosecutor/Special Tribal Advocate shall be established by the Tribal Council, and once set, shall not be reduced during the length of the appointment. The Prosecutor/Special Tribal Advocate shall not be entitled to participate in any employee bonus compensation plan.

e. The Prosecutor/Special Tribal Advocate shall be evaluated no less frequently than every three years.

f. The Prosecutor/Special Tribal Advocate may be removed by a majority vote of the Tribal Council at a duly called meeting where such members are present and vote on the specific issue, provided that the Judicial Committee has first reviewed and investigated the matter giving rise to such removal action.

## TITLE 2. CRIMINAL LAW

### CHAPTER 8. SEX OFFENDER NOTIFICATION AND REGISTRATION

2 M.P.T.L. ch. 8 § 1

#### § 1. Declaration of Policy

(a) The Mashantucket Pequot Tribal Council finds that sex offenders present a risk to re-offend and that the efforts of law enforcement to protect the community, conduct investigations and to apprehend those who commit sex offenses is impaired by the lack of information available about individuals who have pled to, or have been found guilty of, sex offenses.

(b) The Mashantucket Pequot Tribal Council hereby establishes its policy to assist the efforts of federal, state and tribal law enforcement by requiring sex offenders who visit or reside on the Mashantucket Pequot Reservation to notify and register with the Mashantucket Pequot Tribal Police Department.

2 M.P.T.L. ch. 8 § 2

#### § 2. Definitions

Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this law. Terms used in this section shall have the following meaning, except where the context indicates otherwise:

(a) "Department" means the Mashantucket Pequot Tribal Police Department;

(b) "Chief" means the Chief of the Mashantucket Pequot Tribal Police Department, or his designee;

(c) "Indian" means a person who is a member of an Indian tribe;

(d) "Indian Tribe" means any federally recognized tribe, band, nation, rancheria, pueblo, colony, community or any other group of Indians, including any Alaska Native Village or Corporation;

(e) "Non-Indian" means a person who is not an Indian;

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

(g) "Resident" means any person who occupies a dwelling within the Reservation for a period of no less than 30 consecutive days in a calendar year;

(h) "Tribal Court" means the Mashantucket Pequot Tribal Court or any court

established by the Tribe to adjudicate and enforce the provisions of this law or violations of other tribal laws;

(i) "Tribal Member" means a person who is enrolled as a member of the Mashantucket Pequot Tribe;

(j) "Tribe" means the Mashantucket (Western) Pequot Tribe also known as The Mashantucket Pequot Tribal Nation.

(k) "Visitor" means any person within the Reservation who is not a resident.

2 M.P.T.L. ch. 8 § 3

### **§ 3. Application**

The notification and registration provisions of this law shall apply to any adult or juvenile residing on, or visiting, the Reservation:

(a) Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity to any sex offense under Mashantucket Pequot Tribal Law; or

(b) Who has pled guilty to, been found guilty of, or who has been found not guilty by reason of insanity, to any attempt, solicitation or conspiracy to commit a crime that requires or would require that person to register as a sex offender under federal law, or under the law of any state, other Indian tribe, territory, commonwealth, foreign country or other jurisdiction.

2 M.P.T.L. ch. 8 § 4

### **§ 4. Risk to the Community**

(a) Sex offenders present various "Levels of Risk" to the tribal community and shall be classified by the level of risk presented to the tribal community as identified by the Chief of the Mashantucket Pequot Tribal Police Department:

(1) The Chief is hereby authorized on behalf of the Tribe to take any and all necessary steps, including coordinating with other tribal, state and federal agencies, to obtain relevant and necessary information in determining the status and risk assessment level of each sex offender;

(2) The Chief shall determine the status and risk assessment level of each sex offender based upon the available information at the time of notification and registration;

(3) The Chief may change a sex offender's identified level of risk and/or further restrict activities and movements of a sex offender in accordance with his duty to best serve and protect the tribal community; provided that the Chief shall not change the initial level of risk of a sex offender without prior consultation with the Tribal Council; and

(4) The Chief shall, at a minimum, follow the guidelines set forth in subsection (2); provided that the Chief may impose more restrictive conditions on a case by case basis following consultation with the Mashantucket Pequot Tribal Council for a period not to exceed thirty (30) days; provided further that any extension of such restrictive conditions must be approved by the Tribal Council.

(b) Assigned assessment, parameters of tribal community concern, restrictions placed upon the movements and activities of a sex offender, and law enforcement notification requirements shall be as follows:

| Risk Assessment | Level of Concern   | Restrictions   | Notifications   |
|-----------------|--|--|---|
| Level I         | Low risk to re-offend within the community at large      | No harassment or intimidation of and no contact with victim or witnesses   | Victims, witnesses, immediate neighbors, school (if attending), family members  |
| Level II        | Moderate risk to re-offend within the community at large | All Level I restrictions; May not enter nor remain upon any property where there are minor children and a responsible adult is not present. May not stop, stand, loiter or enter within two hundred (200) feet of the external property lines or boundaries of any public or private school, day care or child care providers, child learning center, Headstart, school bus stop, crosswalk, or playground regardless of the presence of children. | All Level I notifications and day care, child care providers, Headstart, child learning centers, groups, organizations and businesses that serve women and children |
| Level III       | High risk to re-offend within the community at large     | All Level II restrictions; May not reside within five hundred (500) feet of the external property lines of any location listed in the Level II criteria.   | All level II notifications and the public at large, law enforcement agencies that monitor the exercising of this law or any other Tribal Law.                       |

**§ 5. Exceptions**

Sex offenders, less than eighteen (18) years of age who are not legally emancipated, or have not been tried and found guilty as an adult, and have been assessed as a Level II or III offender, or the equivalent:

(a) Shall, if an Indian child, be referred to Indian Child Welfare Program within the Mashantucket Pequot Tribal Department of Social Services, and if a non-Indian child, be referred to Connecticut Child Protective Services, for an independent evaluation as to the danger presented, and any restrictions to be imposed, by the attendance of the child at any public or private school located on the Mashantucket Pequot Reservation.

(b) The Tribal Court shall decide if the cost of any evaluation will be the responsibility of the legal parent or guardian of the child.

**§ 6. Release of Information/Community Notification/Immunity**

(1) Release of Information. Tribal officials are authorized to release relevant and necessary information regarding sex offenders to the public when such information is reasonably necessary for protection of the tribal community.

(2) Tribal Community Notification Requirements. Within seventy two (72) hours of the registration of a sex offender, the Chief shall notify the individuals, groups and organizations identified according to the risk assessment levels of Section 4(b) by any reasonable method, including public posting, mailing, or personal delivery.

(3) Immunity. Tribal officials are immune from civil liability for damages for any discretionary decision to release relevant and necessary information pursuant to this law.

**§ 7. Sex Offender Notification Requirements**

(a) Visitors. All persons to whom this law is applicable must notify the Chief, through the Mashantucket Pequot Tribal Police Department, upon entering and remaining on the Mashantucket Pequot Reservation as follows:

(1) Any person visiting or intending to visit the Reservation for a period exceeding twenty four (24) hours, but less than seven (7) calendar days, shall notify the Chief and provide their current physical address(es) and/or the location(s) within eight (8) hours of arrival; and

(2) Any person visiting or intending to visit the Reservation for a period exceeding seven (7) calendar days must notify the Chief and complete all the registration requirements of this law within eight (8) hours of arrival.

(b) Residents. All persons to whom this law is applicable must notify the Chief, through the Mashantucket Pequot Tribal Police Department, upon entering and remaining on the Mashantucket Pequot Reservation as follows:

(1) Any person currently residing on the Reservation at the time of enactment of this law shall notify and register with the Chief within thirty (30) calendar days;

(2) Any person intending to reside within the external boundaries of the Reservation must notify the Chief and complete all the registration requirements of this law at least fourteen (14) calendar days prior to moving to the Reservation;

(3) Any person that resides on the Reservation shall provide notification to the Chief at least fourteen (14) calendar days prior to a change of residence.

2 M.P.T.L. ch. 8 § 8

#### **§ 8. Sex Offender Registration Requirements**

All persons to whom this law is applicable and who are required to register as a sex offender under its provisions shall:

(a) At the time of registration, provide the Chief, through the Mashantucket Pequot Tribal Police Department, with a copy of any required registration form from the foreign jurisdiction.

(b) Complete the registration form provided by the Department which shall include the following information:

(1) Full name and all aliases which the person has used or under which the person has been known;

(2) A complete description of the person including height, weight, eyes, hair, any tattoos and/or scars, date of birth and social security number;

(3) A current photograph (a new photograph shall be provided on an annual basis during the month of January to the Department);

(4) Name of each offense to which the person pled guilty or was found guilty; the name used at the time of conviction; the names of victims and witnesses to each offense; where each offense was committed; and the name of the court and location of jurisdiction;

(5) The name and location of each jail, facility or institution to which the person was committed for each offense; and

(6) Physical address and telephone number of current residence and place of employment.

2 M.P.T.L. ch. 8 § 9

#### **§ 9. Duration of Registration**

(a) Any person to whom this law applies shall be required to register during any period of probation, parole or community placement.

(b) Except as otherwise specifically provided herein, any person to whom this law applies shall continue to comply with the requirements of this law for life while residing on the Mashantucket Pequot Reservation.

2 M.P.T.L. ch. 8 § 10

#### **§ 10. Exemption from Registration**

(a) Petition to Tribal Court. Any person required to register as a sex offender pursuant to this law may, after a period of fifteen (15) years from the last date of discharge from probation, parole or release from incarceration, whichever is greater, petition the Tribal Court for a show cause hearing to determine if an exemption from the registration requirements is appropriate. In the petition, the petitioner shall provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or any crime related to the requirements of registration as a sex offender based upon:

(1) An affidavit indicating that the petitioner is not knowingly under investigation for, has not pled guilty to, nor been convicted of any crime in any jurisdiction for the period of the previous twelve (12) consecutive years;

(2) A certified copy of any and all judgments of conviction which caused the petitioner to report as a sex offender;

(3) An affidavit and copy of notice as proof that the petitioner, at their own expense, has for the previous fourteen (14) calendar days posted notices at all tribal buildings of their intent to petition the Court to obtain an exemption from sex offender registration.

(b) Show Cause Hearing.

(1) The Tribal Court may grant a hearing if it finds that the petition is sufficient; and

(2) The Tribal Court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court. The Tribal Court shall base its decision only upon a finding by clear and convincing evidence that the petitioner is not a risk to commit a new violation of any violent crime or any crime related to the requirements of registration as a sex

offender.

2 M.P.T.L. ch. 8 § 11

#### **§ 11. Violations and Penalties**

(a) Failure to Notify. No person, required to provide notice of their status as a sex offender pursuant to the provisions of this law, shall knowingly fail to notify the Department of their status as a sex offender.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class C criminal offense;

(2) Violation of this section by a non-Indian is a civil offense and the Tribal Court shall impose a minimum civil fine of five-hundred dollars (\$500), not to exceed one-thousand dollars (\$1,000).

(b) Failure to Register. No person, required to register as a sex offender pursuant to the provisions of this law, shall knowingly fail to register as a sex offender with the Department.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class B criminal offense:

(A) First Violation

Tribal Court shall impose a minimum penalty of 60 days jail time and a fine of \$1,000.00;

(B) Second and Subsequent Violations

Tribal Court shall impose a minimum penalty of 180 days jail time and a fine of \$2,500.00; provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of any Indian other than a Mashantucket Pequot tribal member upon his or her second violation of this section.

(2) Violation of this section by a non-Indian is a civil offense. The Tribal Court shall impose a minimum civil fine of two-thousand and five hundred dollars (\$2,500); provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such non-Indian.

(c) Furnishing False or Misleading Information. No person shall knowingly furnish, or cause to be furnished, any false or misleading information to be included on the Sex Offender Registration form.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class B criminal offense.

(2) Violation of this section by a non-Indian is punishable by a civil fine of no less than one-thousand dollars (\$1,000); provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such non-Indian.

(d) Obstruction of Tribal Community Notification

No person shall, without prior approval of the Chief, remove, alter, mutilate or destroy any notice to the tribal community posted pursuant to this law.

(1) Violation of this section by a Mashantucket Pequot tribal member or other Indian is a class C criminal offense;

(2) Violation of this section by a non-Indian is a civil offense and the Tribal Court shall impose a minimum civil fine of five-hundred dollars (\$500), not to exceed one-thousand dollars (\$1,000).

2 M.P.T.L. ch. 8 § 12

**§ 12. Payment of Fines/Payment for Incarceration Costs**

(a) Any monetary penalty or civil fine assessed by the Tribal Court pursuant to this law shall be paid in full within three (3) months from judgment.

(b) Except as provided in sub-section (d) of this section, all persons subject to this law shall be required to repay the Mashantucket Pequot Tribe within one (1) year of the date of their release for the costs of their incarceration and any related expenses. The conditions of such repayment shall be set by the Tribal Court.

(c) All portions of any sentence not served, or fine not paid, may be construed as a subsequent violation and may be added to the penalties incurred; provided that the Tribal Court upon its own initiative or any person authorized pursuant to tribal law may file a complaint for the exclusion and removal of such person.

(d) The Tribal Court shall determine if a parent or legal guardian of an offender that is a minor child shall be responsible for any monetary penalties or incarceration costs required by this section.

2 M.P.T.L. ch. 8 § 13

**§ 13. Severability**

In the event any provision of this law is found to be invalid or unenforceable for any reason, such determination shall not affect the remaining terms.

**§ 14. Effective Date**

This law shall become effective as of the date of passage by tribal council resolution approving and adopting the same. The Department shall cause to be published and/or posted at tribal buildings a notice to the tribal community of the notification and registration requirements of sex offenders.

**TITLE 3. GAMING**

**CHAPTER 1. GAMING LAW**

**§ 7. Tribal Gaming Commission**

a. Establishment of Commission. There shall be established a Mashantucket Pequot Tribal Gaming Commission consisting of a chairman, vice chairman and three other members who shall be appointed by the Tribal Chairman with the advice and consent of the Tribal Council, at least three of whom shall be members of the Tribe, but none of whom shall be employees or directors of the Enterprise, and who shall each serve for a term of three years commencing on the date of their appointment; provided, that the initial members so appointed shall serve for terms deemed to commence on January 31, 1993 and one of the initial members appointed shall be designated to serve for an initial term of one year and one of the initial members appointed shall be designated to serve for an initial term of two years. No less than three members of the Commission shall serve on a full time basis. The Commission shall establish the compensation of members of the Commission with approval of the Tribal Council. Full-time members of the Commission, who are tribal members may be removed for cause by a vote of a majority of the members of the Tribal Council then in office, and upon expiration of their term they shall be reappointed unless the Tribal Council finds cause not to reappoint said members. Members of the Commission who are part time or are not tribal members may be removed by the Tribal Council with or without cause. Vacancies in the Commission shall be filled by the Tribal Council. No member or employee of the Commission shall participate as a player in any gaming activity conducted by the Tribe.

b. Powers and duties of Commission. The Commission shall have the following powers and duties:

(1) The Commission shall have primary responsibility for oversight of tribal gaming operations to assure the integrity of such operations and shall, for that purpose, employ non-uniformed inspectors who shall be present in all gaming facilities during all hours of operation and who shall be under the sole supervision of the Commission and not to any management employees of the tribal gaming operations. Such inspectors shall have unfettered access to all areas

of the gaming facilities at all times, and personnel employed by the Enterprise shall for such purposes provide such inspectors access to locked and secured areas of the gaming facilities in accordance with the standards of maintenance and operation promulgated pursuant to the Compact. Such inspectors shall report to the Commission regarding any failure by the Enterprise to comply with any of the provisions of the Compact or this Law and any other applicable laws of the Tribe. Inspectors assigned by the Commission shall also receive consumer complaints within the gaming facilities and shall assist in seeking voluntary resolution of such complaints. Inspectors appointed by the Commission shall be licensed as gaming employees by the State in accordance with the Compact.

(2) The Commission may on its own initiative investigate any aspect of the operations of the Enterprise in order to protect the public interest in the integrity of such gaming activities and to prevent improper or unlawful conduct in the course of such gaming activities, and shall investigate any report of a failure of the Enterprise to comply with the provisions of the Compact or this Law and may require the Enterprise to take any corrective action deemed necessary by the Commission upon such terms and conditions as the Commission may determine appropriate. The Commission may compel any person employed by or doing business with the Enterprise to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any such investigation.

(3) The Commission shall carry out each of the responsibilities and duties set forth for the tribal gaming agency in the Compact and in the Standards of Operation and Management.

(4) The Commission shall prepare a plan for the protection of public safety and the physical security of patrons in each of its gaming facilities, following consultation and agreement with the state police, setting forth the respective responsibilities of the Commission, the security department of the Enterprise, any tribal police agency, and the state police.

(5) The Commission shall review and approve floor plans and surveillance systems for each gaming facility and shall confer with the State gaming agency regarding the adequacy of such plans and systems.

(6) The Commission shall establish and revise Standards of Operation and Management for Class III gaming activities in accordance with the Compact.

(7) The Commission may issue and revoke licenses for Class II gaming employees in accordance with Section 5(e) (ii) of this Law.

(8) The Commission may issue and revoke licenses to any person providing gaming equipment to the Class II gaming operations of the Enterprise who is not otherwise registered as a gaming service enterprise by the State pursuant to the Compact and who transacts business with the Enterprise with a value in excess of \$50,000 within any two year period. No person shall transact such business without a valid license from the Commission. For purposes of such licensing, the Commission shall apply the same standards as are applied to gaming service enterprises registered by the State pursuant to the Compact.

The Commission may conduct such investigation into such enterprises as it deems necessary or appropriate to satisfy such standards.

(9) The Commission shall establish a list of persons barred from the gaming facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the gaming activities of the Tribe.

(10) The Commission shall approve the rules of each game of chance operated by the Tribe pursuant to Section 7 of the Compact and shall in accordance with the provisions of the Compact notify the State Gaming Agency of such rules and of any change in such rules.

(11) The Commission shall enforce the health and safety standards applicable to the gaming facilities of the Enterprise in accordance with Section 5(d) of this Law. Prior to the opening of any facility for Class III gaming, the Enterprise shall obtain a certificate of compliance from the Commission relating to the Class III gaming facilities. The Commission shall issue a certificate of compliance to the Enterprise upon a determination that the gaming facilities of the Enterprise comply with such standards.

(12) The Commission may impose penalties for violations of this Law, the Compact or the Standards of Operation and Management in accordance with Section 5 of this Law.

(13) The Commission may in the name of the Tribe bring any civil action or criminal complaint in the courts of the State or the United States to enforce the provisions of this Law or to enjoin or otherwise prevent any violation of this Law, the Act or the Compact, occurring on the Reservation.

(14) The Commission may receive any complaint from an employee of the Enterprise or any member of the public who is or claims to be adversely affected by an act or omission of the Enterprise which is asserted to violate this Law, the Compact, or the Standards of Management and Operation adopted pursuant to this Law, and may upon consideration of such complaint order such remedial action as it deems appropriate to bring the Enterprise into compliance with such provisions. The Commission may for this purpose, in its sole discretion, conduct a hearing and receive evidence with regard to such complaint if it deems an evidentiary proceeding useful in the resolution of such complaint.

(15) The Commission may adopt an annual operating budget which shall be subject to the approval of the Tribal Council and may in accordance with said budget employ such staff from time to time as it deems necessary to fulfill its responsibilities under this Law, and may retain legal counsel and other professional services including investigative services to assist the Commission with respect to any of the issues over which the Commission exercises jurisdiction. The expenses of the Commission in accordance with such budget shall be assessed against the Enterprise and the Enterprise shall pay such assessments to the Tribe.

c. Chairman.

(1) The Tribal Council shall appoint the Chairman of the Commission who shall serve on a full-time basis. The Executive Director or any other member of the Commission acting in the absence of the Chairman may, whenever he deems it necessary to protect the public interest in the integrity of tribal gaming operations, issue in the name of the Commission any order which the Commission has the power to issue, to the Enterprise or to any employee or contractor of the Enterprise or to any other person within the jurisdiction of the Tribe, to take any action or cease and desist from any action as may be required to protect to the public interest; provided, that such order shall be subject to review by the Commission at its earliest opportunity, whereupon it may be confirmed or vacated by the Commission.

(2) Vice Chairman. The Vice Chairman shall, in the absence of the Chairman, have all the powers and duties of the Chairman as described herein.

d. Executive Director. The Commission shall appoint an individual to serve as a full time Executive Director of the Commission to administer its responsibilities on a day to day basis and to oversee inspectors appointed by the Commission as well as such other staff as the Commission may from time to time employ or, in the alternative, assign responsibilities of the Executive Director to various supervisory positions. The Executive Director's role shall include coordination of the functions of the Commission with the state police and the State Gaming Agency. The Chairman may request the Executive Director to conduct a preliminary investigation and render a recommendation to the Commission with respect to the grant or denial of any license, the imposition of any penalty, the investigation of any complaint, or any other action within the jurisdiction of the Commission. The executive director shall have the power, in the name of the Commission, to conduct any hearing, investigation or inquiry, compel the production of any information or documents, and otherwise exercise the investigatory powers of the Commission, which the Commission may exercise under this Law.

e. Procedures of the Commission.

(1) Regular meetings of the Commission may be held upon such notice, or without notice, and at such time and place as shall from time to time be fixed by the Commission. Unless otherwise specified by the Commission, no notice of such regular meetings shall be necessary.

(2) Special meetings of the Commission may be called by the chairman or the executive director. The person or persons calling the special meeting shall fix the time and place thereof. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Commission need to be specified in the notice of the meeting.

(3) At any meeting of the Commission, a majority of the members then in office shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission. The chairman shall preside at all meetings of the Commission unless the Chairman designates another member to preside in his

absence.

(4) Any action required or permitted to be taken at a meeting of the Commission may be taken without a meeting if all of the members sign written consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of the Commission and shall have the same effect as a unanimous vote or resolution of the Commission at a legal meeting thereof. Any such action taken by unanimous written consents may, but need not be, set forth in such consents in the form of resolutions or votes.

(5) Members of the Commission may participate in a meeting of the Commission by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting in such matter by any member who does not object at the beginning of such meeting to the holding thereof in such manner shall constitute presence in person at such meeting.

(6) No action of the Commission to impose a penalty pursuant to Section 5 of this Law, or to revoke a license for a gaming employee previously issued by the Commission, shall be valid unless the person affected is given at least seven days notice of the proposed action and the opportunity to appear and be heard before the Commission, either in person or through a representative or legal counsel, and to submit such evidence as the Commission deems relevant to the matter at issue; provided, that if the Commission deems it necessary to protect the public interest in the integrity of the gaming activities, the Commission may take such action with immediate effect as it deems required, and shall thereupon provide notice and an opportunity to be heard to the affected person as soon as is reasonably practicable following such action. Any person who is denied an initial gaming employee license or who is barred from the gaming facilities by action of the Commission may request a hearing before the Commission by written request submitted within 30 days following receipt of notice of the action of the Commission, and the Commission shall thereupon afford an opportunity to appear and be heard before the Commissions either in person or through a representative or legal counsel, and to submit such evidence as the Commission deems relevant to the matter at issue and thereafter the Commission shall either affirm or reconsider its decision. Any hearing conducted under this subsection may at the direction of the Commission be conducted by the executive director or by one or more members of the Commission designated by the Commission for that purpose.

(7) The Commission may adopt such additional procedures and rules as it deems necessary or convenient to govern its affairs and which are consistent with this Law.

## **TITLE 6. FAMILY RELATIONS**

### **CHAPTER 3. MARRIAGES**

6 M.P.T.L. ch. 3 § 1

#### **§ 1. Governing Law**

Upon enactment of this law or any amendment thereto, the provisions herein shall govern all matters relating to the performance of marriages on the Mashantucket Pequot Reservation.

6 M.P.T.L. ch. 3 § 2

#### **§ 2. Authority to Perform Marriages**

a. Persons Authorized to Perform Marriages. Mashantucket Pequot Tribal officials authorized to join persons in marriage include Tribal Council Members, the Chair or Vice Chair of the Elders Council, and other officiators who are certified by the Tribal Clerk as having the authority to perform marriages on the Mashantucket Pequot Reservation pursuant to this Law.

b. Qualifications of Officiators. Persons authorized to perform marriages, other than Tribal Officials, shall meet the following qualifications:

(1) if a Mashantucket Pequot Tribal member, be in good standing with the Tribe, and ordained or licensed and in good standing with his or her religious affiliation, which affiliation is recognized by a state, tribe or other jurisdiction within the United States, or licensed to perform marriages under the laws of a state, tribe or other jurisdiction within the United States.

(2) if not a Mashantucket Pequot Tribal member, be ordained or licensed and in good standing with his or her religious affiliation, which affiliation is recognized by a state, tribe or other jurisdiction within the United States, or licensed to perform marriages under the laws of a state, tribe or other jurisdiction within the United States.

(3) if an official from a federally recognized Indian tribe, other than the Mashantucket Pequot Tribal Nation, the person must be authorized to perform marriages under the laws of a federally recognized Indian tribe.

c. Application. Qualified Officiators, other than Mashantucket Pequot Tribal officials under Section 2(a) of this Chapter 3, seeking authority to perform marriages on the Mashantucket Pequot Reservation shall file an application with the Tribal Clerk and certify his or her familiarity with the Tribal Law, in particular, 6 M.P.T.L. ch. 3, and shall submit such application and a seventy five dollar (\$75.00) application fee to the Tribal Clerk.

d. Certification Procedure.

(1) Upon review and determination that the qualifications have been satisfied and the application is in order, the Tribal Clerk shall certify the application and administer the Oath of office to the Officiator.

(2) Each Officiator, after taking the Oath, shall furnish his or her signature to the Tribal Clerk upon a certificate prescribed and provided by the Tribal Clerk, provided that failure to take the Oath or to furnish a signature to the Tribal Clerk shall disqualify such person from performing marriages on the Mashantucket Pequot Reservation.

(3) The Tribal Clerk shall keep a record of the names of Officiators having been certified as having the authority to perform marriages pursuant to this Law.

(4) The Tribal Clerk shall transmit a copy of the certificate to the Officiator.

(5) The certificate shall be sufficient evidence that the Officiator is duly authorized to perform marriages on the Mashantucket Pequot Reservation and Officiators shall cause the certificate to be displayed to any person who seeks his or her service to marry.

(6) Such certification shall be valid for a period of three years, at which time the Officiator may renew his or her certification providing that he or she remains in good standing with the Tribe and with his or her religious affiliation or the jurisdiction in which he or she is licensed.

e. Authority of Tribal Officials and Officiators.

(1) Tribal Officials and Officiators may perform marriages on the Mashantucket Pequot Reservation provided that persons being married have obtained a tribal marriage license pursuant to Section 4 of this Law.

(2) At the conclusion of the marriage ceremony, the Officiator shall recite either of the following depending on the preference of the couple being married: "By the authority vested in me by the Mashantucket Pequot Tribal Nation, I now pronounce you married" Or By the authority vested in me by the Mashantucket Pequot Tribal Nation, I now pronounce you husband and wife.

(3) Tribal Officials and Officiators may accept a modest gift or remuneration for their services, and shall not perform such services for profit or commercial purposes.

6 M.P.T.L. ch. 3 § 3

**§ 3. Marriage License Required**

a. Two persons may be joined in marriage on the Mashantucket Pequot Reservation provided that:

- (1) both applicants have attained the age of 18 years;
- (2) both applicants have complied with the license requirements of this law;
- (3) neither applicant is married;
- (4) the marriage is performed by an authorized Tribal Official or Officiator pursuant to tribal law;
- (5) the marriage is not between a person and such person's parent, grandparent, child, grandchild, sibling, parent's sibling, sibling's child, stepparent or stepchild; and
- (6) neither applicant is under the supervision or control of a conservator or, if under said supervision and control, the conservator provides written consent to such marriage.

6 M.P.T.L. ch. 3 § 4

#### **§ 4. Requirements for Issuance of Marriage License**

- a. The Tribal Clerk shall issue a marriage license when both applicants have appeared before the Clerk, made application for a license, and provided the requisite information as provided in this law. The application shall be dated, signed and sworn to, or affirmed by, each applicant. In the event that the applicants make application separately, the first dated application shall be deemed the date of the application and the license shall be valid for 65 days from the date of application.
- b. The application shall state each applicants' name, age, tribal affiliation (if any) address, birth place, marital status (including whether divorced, annulled or widowed and proof of that status), conservatorship or guardianship status, if any; and both applicants shall submit proof of identification as required by the Tribal Clerk. Any person who intentionally provides false information may be subject to the full penalties provided by Tribal law.
- c. Marriage license applications and copies of the marriage license shall be filed with the Tribal Clerk as part of the official records of the Tribe, and a duplicate original marriage license shall be given to the married parties. The Tribal Clerk may charge reasonable fees for the issuance of a marriage license and for certified copies of any records held by the Tribal clerk; provided that the Tribal Clerk shall publish a schedule for any such fees charged.

6 M.P.T.L. ch. 3 § 5

#### **§ 5. Marriage Certificate**

The person who joins any persons in marriage shall certify upon the marriage license certificate the fact, time and place of the marriage, and return it to

the Tribal Clerk for filing within ten days of the marriage ceremony.

6 M.P.T.L. ch. 3 § 6

#### **§ 6. Recognition of Marriages Performed off the Reservation**

All marriages celebrated off of the Mashantucket Pequot Reservation shall be recognized as valid pursuant to Tribal law, provided the marriage was legal in the jurisdiction where celebrated and consistent with Tribal customs and policy.

6 M.P.T.L. ch. 3 § 7

#### **§ 7. Validation of Marriages Performed**

All marriages performed on the Mashantucket Pequot Reservation prior to June 1, 2002 pursuant to a state marriage license are hereby recognized as valid pursuant to Tribal law.

### **CHAPTER 8. RECOGNITION AND ENFORCEMENT OF FOREIGN SUPPORT ORDERS**

6 M.P.T.L. ch. 8 § 4

#### **§ 4. Maximum Amount of Withholding. Time Periods. Priority of Multiple Orders**

In determining the maximum amount permitted to be withheld from the obligor's disposable income for any time period which is subject to an income withholding order, the time periods within which the employer/payer must implement the support order, the priorities for withholding and allocating income withheld for multiple child support obligees, and any other withholding terms or conditions not specified in the order, an employer/payer shall comply with Section 1673 of Title 15 of the United States Code and Section 52-362 of the Connecticut General Statutes, to the extent such provisions do not contravene tribal law. In addition to foreign support orders this section shall be applicable to income withholding orders and support orders issued by the Mashantucket Pequot Tribal Court.

## **TITLE 8. EMPLOYMENT**

### **CHAPTER 1. EMPLOYEE REVIEW CODE**

8 M.P.T.L. ch. 1 § 1

#### **§ 1. Definitions**

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

a. "Active Discipline" means discipline for the past 12 month period. In situations where identifiable similar policy violations, behavior issues, or performance problems consistently reoccur over a period of years, the Active Discipline may extend beyond the 12 month standard.

b. "Arbitration Award" means a determination, decision or award rendered by an independent third-party arbitrator or arbitrators in a grievance arbitration pursuant to a Collective Bargaining Agreement entered under Title 32 M.P.T.L. between an Employer and the exclusive bargaining representative of employees of the Employer.

c. "Benefits" means vacation, sick leave, medical coverage or other employment enhancements provided to employees.

d. "Board of Review" means an impartial panel of employees who are assembled to review a Disciplinary Action and issue a Final Decision which may be appealed by either party to the tribal court.

e. "Board of Review Record" or "Record" means the evidence presented to the Board of Review. This Record shall include all Active Discipline and any other relevant material in the Employee's personnel file. In connection with the determination required pursuant to § 8(f) (3) herein, the Record may include performance reviews, character witness statements, commendations, and other discipline.

f. "Collective Bargaining Agreement" means an agreement entered between an Employer and an exclusive bargaining representative certified under tribal law, with respect to wages, hours and other terms and conditions of employment as provided under Title 32 M.P.T.L.

g. "Day" means calendar day. Whenever a deadline falls on a weekend or holiday observed by the Mashantucket Pequot Tribe, the deadline shall be extended to the next business day.

h. "Disciplinary Action" means any action by an Employer that results in an employee being suspended or separated from employment due to the Employee's violation of any of the Employer's policies and/or procedures or, in the case of employees covered by a Collective Bargaining Agreement, the Employee's violation of any term of the Collective Bargaining Agreement or any applicable Employer policy and/or procedure.

i. "Employee" means a natural person employed by an Employer who has been the subject of Disciplinary Action and who properly requested and participated in a Board of Review hearing. Employee shall also refer, where appropriate, to an Employee's attorney. The term "Employee" will not include the following categories: High Level Executives; probationary employees; Political Appointees; casual and part-time employees; any employee who is voluntarily or involuntarily separated from employment as a direct result of the implementation of the Staffing Reorganization/Reassignment Policy; any employee who is terminated due to a violation of a condition of employment, such as, a licensing requirement, or an employee who is excluded by the Mashantucket

Pequot Tribal Gaming Commission or the Mashantucket Pequot Elders Council.

j. "Employer" means the Mashantucket Pequot Tribal Nation, the Mashantucket Pequot Gaming Enterprise, or any other subdivision, arm, agency, department, entity or enterprise of the Tribal Nation.

k. "File" means to physically place into the possession of the Mashantucket Pequot Tribal Court Clerk. Filing is not effective upon mailing.

l. "Final Decision" means the decision of the Board of Review as to whether to uphold or rescind a Disciplinary Action and shall include articulated findings with respect to the factors set forth in § 8(f)(1-4).

m. "High Level Executive" means a Director or above and/or a professional who may not oversee other employees but who has specialized knowledge, such as an advanced degree, in a particular field.

n. "Moderator" means the person appointed by the Mashantucket Pequot Tribal Council to facilitate the Board of Review hearing including receiving the requests for a Board of Review, communications with the Employee and Employer concerning the Board of Review, the appointment of panels, assembling the Board of Review Record, the conduct of the hearing and transmittal of the Record to the tribal court when necessary.

o. "Political Appointee" means an employee on the staff of a member of the Mashantucket Pequot Tribal Council or an employee who is appointed to his or her position by Tribal Council and reports directly to the Tribal Council.

8 M.P.T.L. ch. 1 § 2

## **§ 2. Jurisdiction**

a. The tribal court is hereby granted jurisdiction to review a Final Decision of the Board of Review. The tribal court is also granted jurisdiction to confirm, vacate or modify an Arbitration Award and to enforce an agreement to arbitrate contained in a Collective Bargaining Agreement entered pursuant to 32 M.P.T.L.

b. The Tribe hereby expressly waives its sovereign immunity and the sovereign immunity of any arm, department, subdivision, agency or entity of the Tribe from suit in the tribal court for actions founded upon a review of a Final Decision; provided that the Employee has exhausted all remedies available under the Employer's policies and/or procedures and the suit has been timely filed. The Tribe hereby further expressly waives its sovereign immunity from suit and the sovereign immunity of any arm, department, subdivision, agency or entity of the Tribe for an arbitration conducted pursuant to a Collective Bargaining Agreement and for actions brought in tribal court pursuant to Section 11 of this Title to enforce an agreement to arbitrate, or to confirm, vacate or modify an Arbitration Award, so long as such suit has been timely filed.

c. An action pursuant to this Title shall be the Employee's exclusive cause of action against the Employer provided that the Employee has first exhausted all administrative remedies. Notwithstanding the foregoing, if there is a Collective Bargaining Agreement in effect and it gives the Employee the option of either a Board of Review or arbitration to challenge Disciplinary Actions, Employees covered by that Collective Bargaining Agreement may select arbitration as provided under the Collective Bargaining Agreement and if an Employee selects arbitration it shall be the Employee's exclusive remedy against the Employer.

8 M.P.T.L. ch. 1 § 3

### **§ 3. Filing an Appeal from a Final Decision**

a. Either party may seek review of a Final Decision with the Mashantucket Pequot Tribal Court by filing an appeal as provided herein.

b. Within 30 days of mailing the Final Decision to the Employer (by regular mail) and the Employee at his/her last known address (by certified mail, return receipt requested) or within 30 days after personal delivery of the Final Decision upon the Employer and Employee, either party may file a notice of appeal in the office of the tribal court clerk on a form provided by the tribal court clerk. Service of the appeal shall be made by the tribal court clerk by registered or certified mail. A fifty dollar filing fee is required to be paid to the tribal court for such an appeal.

c. The filing of an appeal shall stay the implementation of a Final Decision of the Board of Review, such that the Disciplinary Action initially imposed shall govern the Employee's employment status pending the outcome of the appeal.

d. As part of the appeal of the Final Decision, either party may seek review of alleged violation(s) of procedural due process rights, as that term is defined herein, with respect to the conduct of the Board of Review proceeding; provided the party intending to seek review of a violation of procedural due process rights alleges such a claim(s) in the notice of appeal by stating the following information: (1) date of Disciplinary Action; (2) date of the Board of Review; (3) date of Decision of Board of Review; (4) each and every specific procedural error which the party claims constitutes a violation of procedural due process rights, specifying the date on which such act occurred and who committed such act; and (5) the alleged impact of such violation on the appealing party. Failure to comply with the foregoing constitutes a waiver of such claim(s).

e. In an appeal under this Title, other than reviewing the Final Decision, the tribal court may consider only whether the appealing party's procedural due process rights, as those terms are defined herein, were violated and shall not review, any other violations of rights enumerated in 20 M.P.T.L. Civil Rights Code, or in any other tribal or federal statute. Claims based upon rights, other than such procedural due process rights, shall be pursued under 20 M.P.T.L. Civil Rights Code and shall be brought against the Tribe.

f. As to both parties under this Title, procedural due process rights shall mean the parties' rights at the Board of Review to a meaningful opportunity to be heard including an opportunity to present witnesses and to question witnesses. Further, both parties are entitled to representation by legal counsel, if desired, retained at their own expense.

g. As to the Employee under this Title, "procedural due process rights" shall include those rights listed in subsection 3(f) of this Title and the right to adequate notice of the Disciplinary Action, including the basis for such action.

8 M.P.T.L. ch. 1 § 4

#### **§ 4. Record Before the Court**

The Record shall consist of:

- a. a transcript of all recorded proceedings before the Board of Review;
- b. a copy of all evidence, whether testimonial or documentary, presented to the Board of Review;
- c. a copy of the Final Decision rendered by the Board of Review; and
- d. notice of the Final Decision by the Moderator.

8 M.P.T.L. ch. 1 § 5

#### **§ 5. Assembly of the Record**

a. Within 30 days of filing of the appeal, the Moderator shall assemble the Record on appeal, shall certify to the tribal court that it is a true and correct copy of the original documents considered by the Board of Review, and shall file the Record with the tribal court. The Moderator shall bind and consecutively number pages of the Record and shall provide an index indicating the identity and page location of each document.

b. The Moderator shall provide a copy of the certified Record to the parties at no charge.

8 M.P.T.L. ch. 1 § 6

#### **§ 6. Pre-Hearing Conference**

a. Within 30 days of the filing of the Record, the court shall schedule and conduct a pre-hearing conference to deal with the following matters:

- (1) correction of the Record;

- (2) clarification of issues;
- (3) preparation of stipulations;
- (4) scheduling of briefs or other written argument;
- (5) setting of the hearing date and such other deadlines as the court deems appropriate;
- (6) setting a date for an additional pre-hearing conference; or
- (7) other matters that may facilitate the resolution of the matter.

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

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

8 M.P.T.L. ch. 1 § 7

#### **§ 7. Briefs**

a. No later than 60 days from the filing of the Record, the appealing party shall file two copies of a typed or clearly legible copies of a brief which shall clearly and concisely set forth the specific reasons for requesting a review of the Final Decision. The brief shall not exceed 25 double spaced pages in length, unless permission is granted by the court, and shall include proper citations for any legal authorities relied upon and specific references to the Record.

b. The responding party's brief shall be filed within 30 days of the filing of the appealing party's brief and shall conform to the rules as described above.

c. The appealing party shall have the right to submit a reply brief within 10 days of the filing of the responding party's brief. The reply brief shall not exceed 10 double spaced pages in length and shall be limited to the issues raised in the responding party's brief.

d. At the conclusion of the hearing, the court may order additional briefs, as the court deems necessary.

e. The court, on its own or by way of motion filed by either party, may modify the foregoing briefing timetable as necessary and appropriate to accommodate its own calendar and/or that of the movant, so long as doing so would not cause undue hardship to the other party.

**§ 8. Hearing**

a. The hearing shall be held within 10 days of the filing due date of the reply brief, unless the court orders otherwise.

b. The hearing and the court's review shall be limited to the Record before the court, any briefs filed by the parties, and oral argument presented by the parties.

c. The court shall not substitute its judgment for that of the Board of Review as to the weight of the evidence or credibility of the witnesses.

d. The Record may only be supplemented with new evidence as set forth in this Section 8(d) and 8(e). In the interest of a fair review of the Employee's appeal, upon a showing of exceptional circumstances, the court may review new or additional evidence, or may remand the matter to the Board of Review to review new or additional evidence, provided that such new or additional evidence is shown not to have been previously available for consideration at the Board of Review hearing through no fault of either party and that such new evidence is relevant and probative of the appeal.

e. In the unusual circumstance where testimony outside of the Record is deemed necessary and appropriate in connection with the matter being appealed, the court may compel the attendance of necessary witnesses. Prior to taking such testimony in connection with an appeal, however, the court shall assess whether the matter should be remanded to the Board of Review for purposes of taking and considering such testimony.

f. In reviewing an appeal, the court shall determine whether the Board of Review's Final Decision was appropriate by considering whether:

(1) There was a reasonable basis for the Board or Review's consideration that the Employee did or did not violate the policies and/or procedures established by the Employer for the position held by the Employee;

(2) There was a reasonable basis to find that the Employer did or did not substantially comply with the policies and/or procedures regarding discipline;

(3) The Employee was given a description of the offense or conduct that was the basis for the Disciplinary Action and both parties were afforded a reasonable opportunity to present and refute evidence regarding the offense or conduct and/or evidence of aggravating or mitigating circumstances relating thereto;

(4) There was a reasonable basis for the Board of Review's decision as to whether the form of discipline was or was not appropriate for the offense or conduct; and

(5) The Board of Review's decision is in violation of tribal law or exceeds the Board's authority under tribal law;

g. In reviewing an appeal when the Employee is covered by a Collective Bargaining Agreement, the court shall use the same standard of review set forth in subsection 8(f) of this Title, except that the review shall be based on whether or not the Employee violated and whether or not the Employer substantially complied with the Collective Bargaining Agreement and any applicable Employer policies and/or procedures.

8 M.P.T.L. ch. 1 § 9

#### **§ 9. Miscellaneous**

a. All actions brought pursuant to this Title shall be heard by the court and not 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 Employer is based upon or related to the action of an agent, servant, or employee of the Employer 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 Title shall be construed to waive the sovereign immunity of the Tribe to the extent that sovereign immunity would be applicable to such individual.

c. With respect to any action brought hereunder, in addition to possible reinstatement of employment, damages awarded by the tribal court shall be limited to actual damages consisting of ascertainable loss of salary or wages, and/or benefits sustained as a result of a Disciplinary Action.

d. The following shall not apply to appeals against the Tribe or any arm, department, subdivision, agency or entity of the Tribe: (i) any rule of law imposing absolute or strict liability; (ii) any award or other judgment imposing consequential, punitive or exemplary damages; (iii) any award for loss of consortium; (iv) any award for pain and suffering or mental anguish; and (v) any order for injunctive relief.

8 M.P.T.L. ch. 1 § 10

#### **§ 10. Rulings**

a. Upon the consideration of the factors listed in Section 8(f), if the court finds that the Board of Review's decision was not appropriate it shall render a decision in favor of the appealing party pursuant to subsection (b) of this Section.

b. In the event the court renders a decision in favor of the Employee, the court may order reinstatement of the Employee and/or award lost wages and benefits as provided by this Title. Where appropriate, the court may hold a closed hearing with the parties so that the terms of an appropriate employment arrangement and a determination of damages may be made part of any final order of the court.

c. The court shall issue a written reasoned decision supported by references to the Record.

8 M.P.T.L. ch. 1 § 11

## **§ 11. Arbitration**

a. Any party to a Collective Bargaining Agreement aggrieved by the alleged failure, neglect or refusal of another to arbitrate under an agreement to arbitrate contained in a Collective Bargaining Agreement may petition the tribal court for an order directing that such arbitration proceed in the manner provided for in such agreement.

b. At any time within one year after an Arbitration Award has been rendered, any party to the arbitration may petition the tribal court for an order confirming the award. The court shall grant such petition unless the Arbitration Award has been vacated or modified as prescribed in Sections 11(c) & (d) of this Title. If the Arbitration Award requires the performance of any act or payment of money, the tribal court may issue such orders as necessary to enforce such Arbitration Award.

c. Upon application of any party to an Arbitration Award, the tribal court shall make an order vacating an Arbitration Award if it finds, by clear and convincing evidence, any of the following defects: (1) the award has been procured by corruption, fraud or undue means; (2) there has been evident partiality, bias or corruption on the part of any arbitrator; (3) the award is in direct conflict with tribal law; (4) the arbitrator(s) were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. Notwithstanding the time within which an Arbitration Award is required to be rendered, if an award issued pursuant to a grievance taken under a Collective Bargaining Agreement is vacated the court shall direct a rehearing unless either party affirmatively pleads and the court determines that there is no issue in dispute.

d. Upon application of any party to an Arbitration Award, the tribal court shall make an order modifying or correcting an Arbitration Award if it finds, by clear and convincing evidence, any of the following defects: (1) there has been an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award; (2) the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted; or (3) the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to carry out the intent thereof and promote justice between the parties.

e. When interpreting and applying the provisions of Section 11 of Title 8, the tribal court shall be guided by the decisions of the federal courts interpreting similar provisions in the Federal Arbitration Act.

f. At any time during arbitration being conducted pursuant to a Collective Bargaining Agreement entered pursuant to 32 M.P.T.L. the parties to the arbitration may jointly petition or the arbitrator may petition the tribal court for a determination of any issue of tribal law. The tribal court shall issue its determination of tribal law and such determination shall bind the arbitrator(s) in rendering the Arbitration Award. Either party to the arbitration may appeal the tribal court's determination of tribal law to the Mashantucket Pequot Court of Appeals by filing a notice of appeal with the Court of Appeals within 20 days of the tribal court's determination.

g. Any application filed under Section 11(c) or 11(d) must be filed with the tribal court within 30 days after the parties to the Arbitration are notified of the Arbitration Award.

8 M.P.T.L. ch. 1 § 12

#### **§ 12. Appeal**

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

8 M.P.T.L. ch. 1 § 13

#### **§ 13. Application of 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.

8 M.P.T.L. ch. 1 § 14

#### **§ 14. Effective Date**

This Title and any amendments thereto shall apply to any Disciplinary Action imposed on or after its enactment. The amendments to this Title concerning arbitration under Collective Bargaining Agreements shall apply to any Collective Bargaining Agreement in effect on the date of enactment of the amendments and to any Collective Bargaining Agreement entered after their enactment.

## **TITLE 16. GENERAL REVENUE AND TAXATION CODE**

### **CHAPTER 2. HOTEL OCCUPANCY**

16 M.P.T.L. ch. 2 § 2

#### **§ 2. Imposition and Rate of Tax**

a. For the privilege of the use and occupation of a Room in a Hotel located on the Mashantucket Pequot Reservation for a consideration, a tax is hereby imposed on all use and occupancy of any Room or Rooms and Occupancy-related services at a rate of 15% with respect to each use and occupancy of any Room or Rooms in a hotel or lodging house.

b. The tax shall be imposed upon the Person for whom the Room, goods or services are provided and collected by the provider of the Room, goods or services.

### **CHAPTER 3. FOOD AND BEVERAGE**

16 M.P.T.L. ch. 3 § 2

#### **§ 2. Imposition and Rate of Tax**

a. For the sale of food and beverage in any location on the Mashantucket Pequot Reservation, a tax is hereby imposed at a rate of 6.35% of the total sales price.

b. The tax shall be imposed upon the Person purchasing the goods or services and collected by the provider of the goods or services.

### **CHAPTER 4. RETAIL**

16 M.P.T.L. ch. 4 § 2

#### **§ 2. Imposition and Rate of Tax**

a. For the Sale of tangible personal property in any location on the Mashantucket Pequot Reservation, a tax is hereby imposed at a rate of 7.35% of the total sales price.

b. The tax shall be imposed upon the Person purchasing the goods and collected by the provider of the goods.

## **TITLE 18. MANDATORY SCHOOL ATTENDANCE AND TRUANCY**

18 M.P.T.L. § 1

### **§ 1. Mandatory School Attendance**

a. Children and youth of the Mashantucket Pequot Tribe ("Tribe") are the greatest asset of the Tribe and need to acquire skills and experience to lead and govern the Tribe, to make meaningful contributions to the tribal community, and to achieve their full human potential. Accordingly, the purpose of this Law is to set forth the requirements for school attendance and the process for identifying and providing services to children and families when children fail to attend school.

b. All children of school age shall be enrolled in an accredited public or private or approved alternative school program and shall attend every day that school is regularly in session. For purposes of this Law, "truant" means a child age five through eighteen inclusive (excluding an emancipated minor), who is enrolled in a public or private school and has four unexcused absences from school in any one month or ten unexcused absences from school in any school year.

c. Five incidents of unexcused tardiness will be considered as one unexcused absence from school. Fines will be administered accordingly.

18 M.P.T.L. § 2

### **§ 2. Parental Responsibility**

a. It is the responsibility of each parent and/or legal guardian of the child to ensure that his/her child attends school in accordance with the requirements of this Law and the laws of the state in which he/she resides.

b. As a condition of receiving services and benefits from the Tribe, the parent or legal guardian of the child shall sign a release of school information at the beginning of each school year allowing the MPTN Education Department access to school attendance records as determined by the MPTN Education Department.

18 M.P.T.L. § 3

### **§ 3. Applicability**

a. This Law shall apply to all children of age to start kindergarten through and including age 18 residing on the Mashantucket Pequot Reservation, including dependents of members of the Mashantucket Pequot Tribe or of their spouses or significant others, and to all children who receive services and benefits from the Tribe whether residing on or off tribal lands.

b. This Law shall not apply to any child receiving equivalent educational instruction in a qualified home school program, per MPTN Education Department requirements.

c. This Law shall exclude emancipated minors who have provided documentation of their emancipated status to the MPTN Education Department.

18 M.P.T.L. § 4

#### **§ 4. Duties of the MPTN Education Department**

a. The Director of the MPTN Education Department shall have the following authority and duties:

(1) verify that all children subject to this law attend school as required herein;

(2) make inquiries pertaining to the attendance of any child subject to the provisions of this law, to his/her parent or legal guardian and/or to the school in which the child is enrolled; and

b. Whenever a child fails to attend school, the MPTN Education Department shall:

(1) inquire as to the circumstances of the absence, and the child and his/her parent or legal guardian shall explain to the MPTN Education Department the reason for the child's failure to attend school;

(2) Deleted by TCR072811-01 of 07, eff. July 28, 2011.

(3) make a report of the truancy incident, and send a copy of that report to the child's parent or legal guardian.

c. It shall be the duty and obligation of each child and every parent or legal guardian to provide whatever information is reasonably requested by the MPTN Education Department as to the circumstances, activities, and whereabouts of his/her child or other information relating to the child's school attendance.

18 M.P.T.L. § 5

#### **§ 5. MPTN Education Department Policies and Procedures Concerning Mandatory School Attendance and Truancy**

a. The MPTN Education Department shall adopt and implement policies and procedures concerning truants. Such policies and procedures shall include, but need not be limited to, the following:

(1) notifying the parent or legal guardian of a child enrolled in a grade from kindergarten through grade 12, inclusive, in writing on an annual basis of the obligations of the parent or legal guardian pursuant to this Law;

(2) obtaining from the parent or legal guardian of a child a release of information pursuant to Sections 2(b) and 4(c) of this Law, and a home, cell and work telephone number and e-mail address or other means of contacting such parent or legal guardian during the school day;

(3) establishing a system of monitoring individual unexcused absences of children in grade kindergarten through grade twelve, which shall provide that whenever a child in any such grade fails to report to school on a regularly scheduled school day and no indication has been received by the school that the child's parent or legal guardian is aware of the child's absence, an extensive and thorough effort to notify the parent or legal guardian shall be made by the MPTN Education Department;

(4) coordinating service and referrals of children to the Department of Child Protective Services or other tribal departments providing child and family services, when needed (necessary). Inform the parent that if they fail to attend the meeting with the MPTN Education Department, Child Protective Services must be involved;

(5) holding a meeting with the parent or legal guardian of each child who is truant, and appropriate school personnel to review and evaluate the reasons for the child being truant, provided such meeting shall be scheduled not later than four school days after the child's third unexcused absence in a month, or tenth unexcused absence in a school year. Any two absences in a month will require another meeting with parent or guardian. The Director of MPTN Education Department must inform the parent of this Truancy Law.

b. If the parent or legal guardian of a child who is truant fails to attend two (2) meetings scheduled pursuant to Section 5(a) of this Law, or if such parent or legal guardian otherwise fails to cooperate with the MPTN Education Department in attempting to solve the truancy problem, the MPTN Education Department's policies and procedures shall require the Director of Education to file a written complaint within ten school days of the scheduled meeting with the Probation alleging their belief that the acts or omissions of the child are such that his/her family is a family with service needs. Child Protective Services will facilitate a meeting between the MPTN Education Department and the parents.

18 M.P.T.L. § 6

## **§ 6. Notice of Truancy and Fines**

a. Whenever a child is truant, the Tribal Police shall personally serve a written notice to the parent or legal guardian of the child of such truancy and that such truancy violates tribal law. The first notice to the parent or legal guardian of the child shall serve as a warning of this violation and shall require the parent or legal guardian of the child to attend a meeting pursuant to Section 5(a) of this Law. The notice shall also inform the parent or legal guardian of the child that a subsequent notice of an unexcused absence will result in the parent or legal guardian of the child being penalized a mandatory

fine of \$5 per child per day of unexcused absence from school, and in addition, those children 12 years or older will be directed to the MPTN Education Department to make up the missed hours through private tutoring to correct the educational deficit that occurred due to extensive unexcused absences.

b. A subsequent notice of an unexcused absence within a school year shall result in the fines and penalties described above.

c. The first six absences within a school year shall result in the imposition of a fine of not less than \$5 per child per day of unexcused absence from school. Pursuant to Section 5(b) of this Law, the MPTN Education Department shall file a written complaint in accordance with applicable tribal child welfare and juvenile laws alleging the belief that the acts or omissions of the child are such that his/her family is a family with services needs or the child is a youth in crisis.

d. After the first six unexcused absences, the fine will be not less than \$10 per child per day of unexcused absence from school. In addition the MPTN Education Department will report to the Education Committee to meet with the parent and child.

e. After two additional unexcused absences, the fine will be not less than \$20 per child per day of unexcused absence from school. In addition the Education Committee will report to Child Protective Services for mediation with the parent and child.

f. The MPTN Education Department shall send a copy of all notices of truancy fines to the Finance Department to ensure payment of fines, the proceeds from which fines shall be used to cover expenses relating to any parenting classes, tutoring, counseling or truancy prevention programs required by this Law.

g. Any truant child may not participate in the Tribe's Summer Youth Work Program for the summer following the school year in which the child was truant.

h. The Department of Finance shall be authorized to deduct the amount of said fine from any income that may be due and payable to the parent or legal guardian of the child including, but not limited to, salary, incentive payments and any other periodic payment. No deduction authorized under this Law shall exceed 25% of the parent's or legal guardian's disposable weekly income.

i. Any truant child 16 years of age or older shall be personally responsible to pay all truancy fines. This requirement shall not excuse the parent or legal guardian of the child from the obligation to pay any such fines in the first instance unless the fines are paid first by the truant child. In the event the parent or legal guardian of the child pays any such fines, the truant child shall be obligated to reimburse the parent or legal guardian of the child for any such payment. Any future tribal income due and payable to the truant child shall be subject to the obligation to pay outstanding fines or reimbursement at a rate not to exceed 25% of the child's disposable weekly income and the Department of Finance shall ensure that such reimbursement is made accordingly.

**§ 7. Appeals**

a. Any parent or legal guardian of the child who has received a written notice of a fine or penalty from the Chair of the Education Committee may, within ten working days of receipt of the notice, contest such fine or penalty in writing to the Chair of the Education Committee. The fine or penalty shall be upheld except when the parent or legal guardian of the child provides satisfactory information or proof of extraordinary circumstances occasioning the truancy. The Chair of the Education Committee shall make a written determination of their findings concerning the imposition of the truancy fine and shall send such determination to the parent or legal guardian of the child within ten working days of receipt of the notice of contest.

b. The parent or legal guardian of the child may within ten working days of determination appeal the truancy fine to the Tribal Court. The Tribal Court shall have jurisdiction over all truancy appeals. The filing of an appeal shall not bar or toll the payment of the fine.

c. A parent or legal guardian may not use as a legal defense against the imposition of any fine or penalty allowed hereunder the following:

(1) that the child is acting without the knowledge or authority of his or her parent or legal guardian;

(2) that the parent or legal guardian claims to be unaware of the truancy condition;

(3) that the parent or legal guardian claims to be unable to control his or her child;

(4) if the child was seen or found outside of his/her residence and apart from the company of the parent or legal guardian during regular school hours, illness of the child will not be accepted as a defense against the imposition of the penalties or fines hereunder.

**§ 8. Failure to Comply**

Failure to comply with any part of this Law may subject the child or parent or legal guardian of the child to additional fines, penalties and referrals for remedial services, intervention or sanctions.

## **TITLE 20. MASHANTUCKET PEQUOT CIVIL RIGHTS CODE**

### **CHAPTER 1**

20 M.P.T.L. ch. 1 § 2

#### **§ 2. Jurisdiction and Waiver of Sovereign Immunity From Suit**

a. The tribal court shall have jurisdiction over claims alleging a violation or violations of the rights enumerated under Section 1 of this Title.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for claims against the Tribe alleging a violation(s) of the rights enumerated in Section 1, as provided for and defined in this Title. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in state or federal court or in any action before any state or federal agency, or in any other forum or context.

c. There shall be no cause of action in the tribal court under this Title relating to, or which may affect, activities of the Elders Council or Peacemakers Council.

d. There shall be no cause of action in the tribal court under this Title relating to, or which may affect Title 33, M.P.T.L., the Mashantucket Pequot Tribal and Native American Preference Law.

e. There shall be no cause of action in the tribal court under this Title relating to the Second Chance Program.

## **TITLE 21. PUBLIC SAFETY CODE**

### **CHAPTER 1. ANIMAL CONTROL LAW**

21 M.P.T.L. ch. 1 § 1

#### **§ 1. Definitions**

Terms used in this chapter shall be construed as follows, unless another construction is clearly apparent from the language or context in which the term is used or unless the construction is inconsistent with the manifest intention of the Tribal Council:

a. "Abandon" means any Animal left more than 24 hours without a person checking on the condition of the Animal(s) and providing food and water. Any Animal left on private property without the Owner's consent or deserted or dumped on public property or roadways shall be considered abandoned.

- b. "Animal" means any brute creature, including, but not limited to, dogs, cats, monkeys, guinea pigs, hamsters, rabbits, birds and reptiles.
- c. "Animal Control Officer and/or Tribal Police Officer" means any sworn officer of the Mashantucket Pequot Tribal Nation Police Department.
- d. "Bite" means a puncture or tear of the skin inflicted by the teeth of an Animal.
- e. "Citation" means a summons or other legal documents which a Tribal Police Officer or Animal Control Officer are authorized to serve under Tribal Law.
- f. "Dangerous Animal/Dog" means any Animal that without justification attacks a person or domestic Animal causing physical injury or death, or behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of serious injury, or death to one or more persons or domestic Animals.
- g. "Harbor" means the keeping of any Animal and returning daily to give said Animal food and care.
- h. "Humane Manner" means the adequate care of an Animal and shall include, but is not limited to, adequate shelter, shade, heat, ventilation, sanitary shelter, wholesome food, and a fresh adequate source of water, consistent with the normal requirements and feeding habits of the Animal's size, species, and breed.
- i. "Keeper" means any person, other than the Owner, who harbors or has in his possession any dog, cat or Animal.
- j. "Neutered" means a male Animal rendered permanently incapable of reproduction.
- k. "Nuisance" means an Animal that is roaming at large; damages, soils, defiles, or defecates on private property other than the Owner's or on public walks and recreation areas unless such waste is immediately removed and properly disposed of by the Owner; causes unsanitary, dangerous or offensive conditions; causes a disturbance by excessive barking or other noise making; chases vehicles, or molests, attacks, or interferes with persons or other domestic Animals on public property.
- l. "Owner" means a Tribal Member head of household, Surviving Spouse, or guardian of Tribal Member children under the age of 18 residing in the household, having the right of property or custody of an Animal or who keeps or harbors an Animal or knowingly permits an Animal to remain on or about any premises occupied by said person.
- m. "Public Safety Committee" means the standing regulatory committee established pursuant to the Mashantucket Pequot Constitution.
- n. "Quarantine" means to detain or isolate an Animal suspected of being infected with rabies.

o. "Restraint" means an Animal fenced within the real property limits of its Owner or secured by a leash or lead or under the control of an Owner or a responsible person designated by the Owner.

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

q. "Roaming At Large" means an Animal which is off the property of the Owner and not under restraint or control of the Owner.

r. "Spayed" means a female Animal rendered permanently incapable of reproduction.

s. "Surviving Spouse" has the same meaning as provided in 29 M.P.T.L. ch. 1, The Non-Tribal Member Surviving Spouse Law.

t. "Take Charge" means to remove and take custody of and transport to an appropriate holding facility, i.e., veterinarian, pound, and/or Animal rescue for the care and maintenance of such Animal, at the Owner's expense.

u. "Tribe" means the Mashantucket Pequot Tribe, also known as The Mashantucket Pequot Tribal Nation.

v. "Tribal Clerk" refers to the Office of the Tribal Clerk of the Tribe.

21 M.P.T.L. ch. 1 § 2

## **§ 2. Tribal Animal Control**

a. The Tribal Clerk shall make or cause to be made a list of all dogs and cats belonging to any Owner, Keeper or other person owning or caring for dogs or cats residing on the Reservation and to perform such other duties as are prescribed herein.

b. The Animal Control Officer and/or Tribal Police Officer shall have the authority to issue Citations for violations of this Law and to perform such other duties as are prescribed herein.

21 M.P.T.L. ch. 1 § 3

## **§ 3. Enforcement and Authority--Tribal Animal Control Officer and/or Tribal Police Officer**

a. The Animal Control Officer and/or Tribal Police Officer shall be empowered to enforce the provisions of this Law, and may lawfully take charge of any Animal that he finds to be in violation of this Law. Such officer may, in his discretion, transport any Animal found to be in violation of any provision of this Law to a dog pound, veterinarian, or Animal shelter and the Owner shall be

responsible for all charges associated with the shelter and or treatment of the Animal.

b. The Animal Control Officer and/or Tribal Police Officer shall be empowered to issue a Citation and/or a cease and desist order to any Owner or Keeper of an Animal when based upon personal observation, eye witness reports or investigation, the officer has reasonable cause to believe that the Owner or Keeper has committed a violation of this Law, or who otherwise fails to comply with the requirements of this Law.

c. The Animal Control Officer and/or Tribal Police Officer shall have the power to enter property (public or private) when in the course of executing the duties and obligations under this Law, he has reasonable cause to believe a violation of this Law is occurring and has reason to believe that potential harm has occurred or is about to occur.

21 M.P.T.L. ch. 1 § 4

#### **§ 4 Fees and General Provisions--Dogs and Cats to be Licensed**

a. No Owner may keep or harbor more than three (3) dogs of three (3) months of age or older, and/or more than three (3) cats of three (3) months of age or older.

b. The Owner or Keeper of more than three (3) dogs of three (3) months of age or older, and/or more than three (3) cats of three (3) months of age or older who has owned said Animals prior to the enactment and publication of this Law, shall be allowed to maintain ownership of or keep said Animals as long as said Animals are in compliance with all licensing requirements, and Mashantucket Pequot Animal Control Laws.

c. The Owner shall pay to the Tribal Clerk for such license the sum of \$10 for each neutered or spayed dog or cat, and the sum of \$18 for each dog or cat that has not been neutered or spayed. License fees shall not be pro-rated by month for dogs or cats that become three (3) months of age after June 30th, but shall remain the same throughout the year.

d. Any person applying for a license for a dog or cat under subsection (a) of this Section 4 shall submit a Certificate of Rabies Vaccination in accordance with Section 5 herein to the Tribal Clerk signed by a licensed veterinarian, or a copy thereof, stating that such dog or cat has been vaccinated against rabies, the date of the vaccination and the duration of the immunity provided by the vaccine. No license shall be issued unless the certificate indicates that the immunity provided by the vaccine is effective at the time of licensing.

e. The Tribal Clerk may not issue a license for a neutered or spayed dog or cat not previously licensed by the Tribal Clerk unless the person obtaining the license presents a certificate from a licensed veterinarian stating that he has neutered or spayed the dog or cat or that said veterinarian has examined the Animal and found it to be neutered or spayed.

f. Any Owner of an unlicensed dog or cat over three (3) months old must license said dog or cat within thirty (30) days of the acquisition. If the new Owner presents satisfactory evidence that said dog or cat was obtained from a licensed kennel or animal welfare organization, or presents certain proof of new ownership within said thirty (30) days, no penalties for late licensing shall be charged.

g. Owners who fail to license a dog or cat when it becomes three (3) months old shall be subject to a penalty of \$1 per day, until such dog or cat is licensed in accordance with this Law; provided, no penalty shall be charged for the period prior to the date the Owner acquired the Animal as established by certain proof of new ownership.

h. The Owner or Keeper of a licensed dog or cat shall keep around said Animal's neck or body a collar or harness of leather or other suitable material, to which shall be securely attached a tag issued to such Owner by the Tribal Clerk. If any such tag is lost, the Owner of such dog or cat shall forthwith secure a substitute tag from the Tribal Clerk at a cost of \$10.

i. Any blind, deaf or mobility impaired person who is the Owner of a dog which has been trained and educated to guide and assist such person shall receive a license and tag for such dog and no fee shall be charged by the Tribal Clerk. When any such dog has not been previously licensed by the Tribal Clerk, the Tribal Clerk shall not license such dog or issue to the Owner a license and tag unless written evidence is exhibited to the Tribal Clerk that the dog is trained and educated and intended in fact to perform such guide service for such Owner. Dogs between three (3) months and one (1) year of age, placed for training as guide dogs, shall also receive a license and tag at no fee, provided satisfactory evidence is presented that the dog was placed by an organization which supplies such guide dogs.

j. Any Owner of a dog or cat residing on the Reservation which is not duly licensed shall be fined \$25 for the first offense and if not corrected within fourteen (14) days, a fine of \$50 for the second offense. If after thirty (30) days from the first offense the Animal is not licensed, the Animal will be subject to removal and the Owner held responsible for all fees associated with impound, care and possible disposal of said Animal.

k. Any dog or cat found to be without a tag attached to such Animal by means of a collar shall be presumed to be unlicensed.

l. Any person becoming the Owner of an already licensed dog or cat from another Town shall present the license and tag of such Animal to the Tribal Clerk and for a fee of \$5. The Tribal Clerk shall retain the old license and tag in his/her possession.

m. In the case where the Owner resides on tribally owned property in another Town, the dog or cat must be licensed by that Town and a copy of said license given to the Tribal Clerk, to be kept on record in the Tribal Clerk's office.

n. This Section shall not apply to any dog or cat which is imported to the Reservation for exhibition purposes and which does not remain on the Reservation for more than thirty (30) days. Any person may import any licensed dog with a collar, tag and rabies vaccination certificate, and keep the same on the Reservation for not more than thirty (30) days, without complying with the provisions of this Section 4.

21 M.P.T.L. ch. 1 § 5

#### **§ 5. Rabies Vaccination Required for Dogs and Cats**

a. Any Owner or Keeper of a dog or cat of the age of three (3) months or older shall have such dog or cat vaccinated against rabies. Any Animal vaccinated prior to 1 year of age or receiving a primary rabies vaccine at any age shall be considered protected for only 1 year and shall be given a booster.

b. A Certificate of Rabies Vaccination shall be on a form approved by the National Association of Public Health Veterinarians; any form approved by the State of Connecticut Veterinarian or any form that has the following information regarding the vaccinated Animal: The name and address of its Owner; a description of the Animal which specifies its species, breed, age, color or markings and sex; the date of the vaccination, the duration of the immunity provided by the vaccination, the producer of the vaccine and the vaccine serial number; the rabies tag number; and the signature and license number of the veterinarian administering the vaccination. Such certificate shall be the official proof of rabies vaccination submitted to the Tribal Clerk.

c. Any person who owns a dog or cat and who fails to vaccinate the Animal against rabies within ten (10) days of acquiring it shall, in addition to any penalty provided by this Law requiring licensing, be fined \$150.

d. Any Animal that the Animal Control Officer and/or Tribal Police Officer suspects of being rabid shall immediately be impounded at a facility approved by the Public Safety Committee and shall be subject to the provisions of the Connecticut General Statutes relating to the control of rabies.

21 M.P.T.L. ch. 1 § 6

#### **§ 6. Tribal Clerk to Provide Licenses and Tags**

a. Each person shall receive from the Tribal Clerk a temporary license to be renewed annually, during the month of June, on or before June 30, and on a form prescribed by the Public Safety Committee. Said license shall contain a description of the dog or cat, along with a photo of the Animal and the number under which such dog or cat is licensed and the Tribal Clerk shall issue to such person a tag-plate prescribed by the Public Safety Committee.

b. The Tribal Clerk shall provide for renewal through the mail of licenses issued under Section 4 and shall make applications for such licenses available at the Tribal Clerk's Office.

c. The Tribal Clerk shall, annually, at least thirty (30) days before June thirtieth, provide notice that dog and cat licenses must be renewed during the month of June.

d. On or before August 1st of each year, the Tribal Clerk shall provide a list or a copy of all licenses issued to the Tribal Police Department.

e. License tags are non-transferable.

21 M.P.T.L. ch. 1 § 7

#### **§ 7. Nuisance; Barking and/or Howling Dogs**

a. No person shall own, keep, or harbor any dog or dogs which is or are a nuisance by reason of loud, frequent or habitual barking, howling or yelping that shall disturb the peace of any person.

b. No person shall own, keep or harbor any dog that kills, wounds or worries any domestic Animal.

c. No person shall own or harbor a dog which is a nuisance by reason of a vicious disposition, as defined in Section 12.

d. Any person who is in violation of any provision of this Section shall be issued a Citation for the first offense and will be fined not more than \$75. The Owner will then be fined not more than \$100 for any subsequent offense. Failure to comply and remain in compliance will subject the dog to immediate impoundment and/or disposal at the owner's expense.

e. Dogs are personal property and Owners are responsible for damages caused by their dog.

21 M.P.T.L. ch. 1 § 8

#### **§ 8. Dogs Roaming at Large**

a. No Owner or Keeper of any dog shall allow such dog to be Roaming At Large. Violation of any provision of this subsection shall result in a fine of \$75 for the first offense, \$150 for the second offense, and \$300 for each subsequent offense. Failure to comply and remain in compliance with this Section will subject the dog to immediate impoundment in accordance with the provisions contained in Sections 8(b) and 8(c) of this Law.

b. The Animal Control Officer and/or Tribal Police Officer shall make diligent search and inquiry for any violation of this provision and may take into custody any dog found Roaming At Large in violation of this Section. Such Animal shall then be impounded at facility approved by the Public Safety Committee. If the Owner or Keeper is known they shall be notified immediately. An impoundment fee of \$10, in addition to all other costs will be charged to

the Owner or Keeper for the release of the Animal. If the Owner or Keeper is unknown a description of such Animal shall be published in the lost and found column of a newspaper having circulation in the area. If such Animal is not claimed by and released to the Owner within seven (7) days after the date of publication, the Animal Control Officer and/or Tribal Police Officer may sell such Animal to any person who satisfies to the Animal Control Officer and/or Tribal Police Officer that he is purchasing it as a pet and that he can give it a good home and proper care. A fee of \$5 will be charged for the sale of the Animal. If any Animal is not claimed by and released to the Owner or purchased as a pet, the Animal Control Officer and/or Tribal Police Officer may cause such Animal to be euthanized by a licensed veterinarian.

c. Any Owner or Keeper of any dog who, knowing of vicious propensities of such dog and having violated the provisions of subsection (a) of this Section within the preceding year, intentionally or recklessly violates the provisions of subsection (a) of this Section shall be fined not more than \$1,000 or imprisoned not more than six (6) months, or both, and shall be liable for any injuries to any person or Animal caused by the dog Roaming At Large provided that such injured person was not teasing, tormenting or abusing such dog.

21 M.P.T.L. ch. 1 § 9

#### **§ 9. Leash Law**

a. A dog shall not be considered to be Roaming At Large if it is on a leash not to exceed six (6) feet in length and is in the charge of a person competent to restrain such Animal and to prevent it from annoying or worrying pedestrians or trespassing on private property.

b. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such Animal cannot come into contact with another dog or cat except for planned breeding.

21 M.P.T.L. ch. 1 § 10

#### **§ 10. Cruelty to Animals**

a. Any person who tortures, wounds, mutilates, beats, kills, or otherwise unjustifiably injures any Animal or inflicts cruelty upon it or, if a minor child, his/her parent or guardian shall be subject to a fine not to exceed \$5,000 and/or imprisonment for a term not to exceed six (6) months.

b. Any person who, having confined any Animal, fails to give such Animal proper care or fails to supply any such Animal with proper food, drink or protection from the weather or abandons it shall be subject to a fine not to exceed \$5,000 and/or imprisonment for a term not to exceed six (6) months. Proper care shall include, but not be limited to:

(i) Food sufficient to maintain all Animals in good health.

(ii) If potable water is not accessible to the Animals at all times, it shall be provided daily and in sufficient quantity for the health of the Animals.

(iii) The shelter shall provide adequate protection from sunlight. When sunlight is likely to cause heat exhaustion of an Animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the Animal from the direct sunlight.

(iv) If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided. Said shelter shall be structurally sound and in good repair to protect the Animal from injury, and provide sufficient space to allow each Animal adequate freedom of movement. Inadequate space may be indicated by debility, stress or abnormal behavior patterns.

(v) Minimum standards of sanitation shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

c. Any person who unjustifiably administers any poisonous or noxious drug or substance to any domestic Animal or unjustifiably exposes the Animal to any such drug or substance, with intent that the same shall be taken by an Animal, or causes it to be done, shall be subject to a fine not to exceed \$5,000 and/or imprisonment for a term not to exceed six (6) months.

d. The Animal Control Officer and/or Tribal Police Officer may interfere to prevent any act of cruelty upon any dog or other Animal, and any person who interferes with or obstructs or resists such officer in the discharge of such duty shall be subject to a fine not to exceed \$5,000 and/or imprisonment for a term not to exceed six (6) months.

e. The Animal Control Officer and/or Tribal Police Officer may lawfully take charge of any Animal found neglected or cruelly treated, in violation of this Section. If such Animal is so injured or diseased that in the opinion of a licensed veterinarian should be destroyed immediately, such officer may humanely destroy or cause such Animal to be humanely destroyed and the Owner or Keeper of such Animal shall not be permitted to recover damages of any kind for such action. Owner is responsible for any and all costs associated with the action.

f. No person except the Animal Control and/or Tribal Police officer in the pursuit of his duties shall, within the boundaries of the Reservation, shoot or destroy any dog except in situations as stated in subsection (h) of this Section.

g. The provisions of this Section shall not apply to any licensed veterinarian while following accepted standards of practice of the profession, to any member of the Tribal Police while lawfully acting within the scope of their duties, to any person acting pursuant to this Section or to any person while lawfully engaged in the taking of wildlife.

h. Any person may lawfully destroy or injure an Animal provided that such

Animal has suddenly and without provocation assaulted him or another person. The force used shall be the minimum amount necessary to stop the assault.

21 M.P.T.L. ch. 1 § 11

#### **§ 11. Fighting Animals for Amusement or Gain**

a. Any person who knowingly: owns, possesses, keeps, or trains an Animal engaged in an exhibition of fighting for amusement or gain; possesses, keeps, or trains an Animal with the intent that it be engaged in an exhibition of fighting for amusement or gain; permits an act described in this subsection to take place on premises under his control; acts as judge or spectator at an exhibition of Animal fighting for amusement or gain, or bets or wagers on the outcome of an exhibition of Animal fighting for amusement or gain, shall be subject to a fine not to exceed \$5,000.

b. Any person who knowingly permits an Animal who has been trained or who has engaged in an exhibition of fighting for amusement or gain or any Animal who has participated in an exhibition of fighting for amusement or gain to be roaming at large or who has been found to be in violation of this Section 11 shall be strictly liable for the damage caused by such Animal and the court shall have discretion to award triple the amount of such damage.

21 M.P.T.L. ch. 1 § 12

#### **§ 12. Vicious Dogs**

a. It shall be unlawful for any person to own, possess, keep, exercise control over, maintain, harbor, transport, or sell within the Reservation boundaries any dog or dogs fitting the following classification of a vicious or dangerous dog, or by virtue of number or type, being offensive or dangerous to the public health, safety, or welfare:

(i) constitutes a physical threat to human beings or domestic Animals due to a known vicious propensity to endanger life;

(ii) when unprovoked, approaches in a terrorizing manner, any person in an attitude of attack;

(iii) threatens someone, unprovoked, in a public place;

(iv) has a known tendency to attack unprovoked or otherwise endanger people or other domestic Animals;

(v) has behaved, on two (2) or more occasions, in a manner that a reasonable person would believe posed an unjustified threat of serious injury or death to a person or domestic Animal;

(vi) bites, injuries, or attacks a person or domestic Animal without provocation, on public or private property.

(vii) is trained or kept for dog-fighting, or Owner has demonstrated that said dog has been trained for fighting;

(viii) isn't licensed and properly vaccinated;

(ix) has been used in the commission of a crime;

(x) was declared to be a vicious or dangerous dog by the Animal control authority or court of another jurisdiction;

(xi) has been declared to be a vicious or dangerous dog by the Animal Control Officer and/or Tribal Police Officer or Tribal Court on the Mashantucket Pequot Reservation.

b. Exceptions: A dog shall not be deemed vicious solely because:

(i) it bites, attacks or menaces any person assaulting its Owner;

(ii) it bites, attacks or menaces any person or Animal that has tormented or abused it;

(iii) it is otherwise acting in defense of any attack from a person or other Animal upon its Owner or another person;

(iv) it is protecting its young;

(v) it is a dog used by and under the control of Tribal Law Enforcement authorities.

c. If the dog Owner has received six (6) complaints in regards to his dog or dogs in a six (6) month period, and has failed to demonstrate the effort to control the dog or dogs, the Owner shall receive a summons to appear in Tribal Court for a determination of possible disposal of said dog or dogs. Failure by the Owner to comply and remain in compliance will subject the dog or dogs to immediate impoundment and disposal at the Owner's expense.

d. If there is fighting or tumultuous behavior demonstrated by the dog Owner to another member of the public in regards to the activity of said dog, the Owner will be found in violation of MPCC 53a-181, Breach of Peace and/or be fined \$1,000.

e. Whoever is assaulted by a dog, or whose own dog or cat is attacked by a dog, may within thirty (30) days thereafter, make a written complaint to the Animal Control Officer and/or Tribal Police Officer who shall investigate said complaint. Upon the finding of just cause for said complaint, the Animal Control Officer and/or Tribal Police Officer shall file a written report with the Office of the Tribal Prosecutor who shall, within ten (10) days of receipt of the report, file a complaint with the Tribal Court. The Tribal Prosecutor shall cause the Owner of the vicious dog to be served with a complaint if the Tribal Prosecutor believes, or has reason to believe, that said dog is dangerous and/or vicious. If after hearing, the Tribal Court is satisfied that

the complaint is true, the Court shall order the destruction of the dog at the Owner's expense.

f. If an Animal is found to be vicious under this Section, its Owner or Keeper, or if a minor child, his/her parent or guardian may be fined up to \$5,000 and/or imprisonment for a term not to exceed six (6) months and shall be liable for any injuries to person or Animal caused by the vicious dog.

g. The Animal Control Officer and/or Tribal Police Officer shall enter property (public or private) for the purpose of impounding a vicious dog. If said dog attacks the Animal Control Officer and/or Tribal Police Officer in the performance of their duties, the Animal Control Officer and/or Tribal Police Officer will be justified in using deadly force in the protection of himself or others. If said dog is injured or destroyed during an attempt to impound it, neither the Animal Control Officer and/or Tribal Police Officer shall be held liable.

21 M.P.T.L. ch. 1 § 13

### **§ 13. Quarantine of Biting Animals**

a. DUTY TO REPORT: In the event any person is bitten or shows visible evidence of attack by a dog, cat, or other Animal the person injured, or their parent or guardian, and the Owner or Keeper of said Animal shall have the duty to immediately notify the Animal Control Officer or Tribal Police of the incident.

b. QUARANTINE OF ANIMALS: Any Animal which has bitten shall be placed into quarantine for a period of fourteen (14) days. If the Owner of the Animal is known, the quarantine may take place on the Owner's property provided that they are able to comply with the quarantine instructions. Failure to comply will result in the seizure of the Animal for the remainder of the quarantine period and the Owner, or Keeper of the Animal shall be subject to the general penalties provision. If the Owner of the Animal is unknown, the quarantine shall take place at a facility approved by the Public Safety Committee.

c. Any dog, cat or other Animal held in quarantine which is clinically diagnosed as rabid by two (2) licensed veterinarians, at least one (1) of whom shall be engaged in private practice, shall be humanely euthanized immediately without prior notice to the Owner or Keeper of same. No person who destroys any Animal in accordance with this subsection shall be held liable therefore.

d. The Owner of an Animal is responsible for any expenses incurred in connection with keeping the Animal in an isolation facility, supervision and the examination of the Animal by a veterinarian and the euthanization or other treatment of said Animal.

**§ 14. Safety Provisions**

a. Interference with the Animal Control Officer and/or Tribal Police officer or the Animal Control Officer's Representatives: No one shall interfere with, molest, hinder, or prevent such persons in the discharge of their duties as herein prescribed or to violate any of the provisions of this Law.

b. Penalty for Violations: Unless otherwise provided in this Law, any person who violates any of the provisions of this Law shall be fined no less than \$25 and not more than \$10,000 in addition to other penalties prescribed by law.

c. Any person who intentionally kills or injures any specifically certified service Animal while such Animal is in the performance of its duties under the supervision of its Owner shall be subject to a fine no less than \$5,000 and/or imprisonment for a term not to exceed one (1) year or both. In addition to said penalty, in the event the Animal is killed or injured so badly that it is not able to continue its duties, the person who killed or injured the Animal shall pay all costs associated with caring for and/or replacing the Animal.

**§ 15. Private Cause of Action**

a. Nothing in this law shall affect the rights of a person to bring a claim against another person for damage to person or property caused by a dog.

**TITLE 23. FOREIGN JUDGMENTS, WAGE EXECUTIONS & SUBPOENAS**

**CHAPTER 1. RECOGNITION OF FOREIGN JUDGMENTS**

**§ 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 \$50.00 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).

## **TITLE 24. PROBATE LAW**

### **CHAPTER 7. TRUSTS**

24 M.P.T.L. ch. 7 § 37

#### **§ 37. Special Needs Trust**

The Probate Court shall recognize and enforce the terms of any special needs or supplemental needs trust created under tribal or other laws. Such trust shall be enforced in accordance with the general trust provisions of tribal law. Special Needs Trusts may be established by the guardian, conservator, or the beneficiary or other individual with the power to otherwise establish trusts under tribal law.

## **TITLE 28. RIGHT TO WORK LAW**

28 M.P.T.L. § 1

#### **§ 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.

(6) It has enacted the Mashantucket Pequot Labor Relations Law under which Tribal employees have the right to elect to be represented by a labor organization and in order to encourage labor organizations to utilize tribal law and to preserve tribal sovereignty the Tribe, notwithstanding the above findings, recognizes an exception to the absolute prohibitions under Section 3(a) of this Law when Tribal Employees are represented by a labor organization certified under tribal law.

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.

28 M.P.T.L. § 2

## **§ 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 known 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.

28 M.P.T.L. § 3

### **§ 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. Provided, however, that a Labor Organization certified as the exclusive bargaining representative under Tribal Law may lawfully enter into a union security agreement with a Tribal Employer where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302, or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1<sup>1</sup> and no

election has been conducted by a special master or a MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

b. Except as specifically provided in this Law, 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.

<sup>1</sup> In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

28 M.P.T.L. § 4

#### **§ 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.

**§ 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.

**TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW**

**CHAPTER 1**

31 M.P.T.L. ch. 1 § 1

**§ 1. Short Title**

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

31 M.P.T.L. ch. 1 § 2

**§ 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 process to regulate employment for all employers on the Reservation.

(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 Employment 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 Employment Rights Office that includes the position of Director to oversee the office, 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.

31 M.P.T.L. ch. 1 § 3

### **§ 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., c. Deleted by TCR062909-04 of 06, eff. June 29, 2009.

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 MERO in a particular case or matter.
- 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 2**

31 M.P.T.L. ch. 2 § 1

### **§ 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 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.

31 M.P.T.L. ch. 2 § 2

## **§ 2. 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;

- (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;
- (10) To adopt rules and/or regulations to insure that confidential information is kept confidential by the MERO, provided that nothing herein precludes the MERO from providing information to other parties to a case for adequate case processing or to the Tribal Court in conjunction with an appeal or enforcement action;
- (11) To 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 and true and accurate copies of all documentary evidence considered by the MERO;
- (12) 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; and
- (13) 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.

31 M.P.T.L. ch. 2 § 3

### **§ 3. 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 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 cannot 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 in the MERO's processes for the applicable case.

### **CHAPTER 3**

31 M.P.T.L. ch. 3 § 1

#### **§ 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.

31 M.P.T.L. ch. 3 § 2

#### **§ 2. Hearings**

a. Any hearings held before the MERO or in a proceeding under the auspices of the MERO must provide at a minimum the following procedural protections:

1. Written notice of the hearing, by certified mail return receipt requested, or in such other manner determined to be effective under the circumstances, 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) a copy of any rules or regulations governing the hearing.

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

3. 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 MERO to participate;

4. Each party shall have the right to present relevant sworn testimony and documentary evidence;

5. Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;

6. Compliance with formal rules of evidence is not required, provided that the hearing is conducted in a manner that provides for the determination of the facts in an orderly and reasonable manner;

7. All proceedings shall be recorded and a complete transcript shall be made and maintained by the MERO;

8. The proceedings may be adjourned, postponed, or continued at the discretion of the MERO when it determines it is advisable or necessary; and

9. Any matter to be proven must be done so by a preponderance of the evidence, unless otherwise provided in applicable Law.

31 M.P.T.L. ch. 3 § 3

### **§ 3. 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.

31 M.P.T.L. ch. 3 § 4

#### **§ 4. 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.

31 M.P.T.L. ch. 3 § 5

#### **§ 5. 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 Mediation Panel, and the MERO Director all as established by this title.

### **TITLE 32. MASHANTUCKET PEQUOT LABOR RELATIONS LAW**

#### **CHAPTER 1**

32 M.P.T.L. ch. 1 § 1

#### **§ 1. Title; Authority**

This Law may be cited as the "Mashantucket Pequot Labor Relations Law". This Law 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.

32 M.P.T.L. ch. 1 § 2

#### **§ 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.

c. Employees have the right under Tribal law to form, join, or assist labor organizations, to engage in collective bargaining and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as specifically provided in this Law and the right to refrain from any such activities. 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 the right to represent Tribal employees pursuant to federal law, commonly known as the National Labor Relations Act (NLRA) 29 U.S.C. § 151 et seq.

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 their respective governments as employers and their 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 Mashantucket Pequot 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).<sup>1</sup>

i. 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.

<sup>1</sup> See, now, 1 Mash.Rep. 165 (1996).

32 M.P.T.L. ch. 1 § 3

### **§ 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.

32 M.P.T.L. ch. 1 § 4

### **§ 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 are 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 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. "Labor organization" means any lawful organization whose primary purpose is the representation of employees in collective bargaining.

h. "Exclusive bargaining 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.

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

j. "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.

k. "Collective bargaining" is defined in Section 9<sup>1</sup> of this Law.

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

m. "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 exclusive bargaining representative to accept the Tribal Employer's bargaining proposals.

n. "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;

o. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title 1 of the Mashantucket Pequot Tribal Laws.

p. "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.

<sup>1</sup> 32 M.P.T.L. ch. 139.

**§ 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, 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 representative 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 employees in 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 and the exclusive bargaining representative has been given the opportunity to be present at the adjustment of said grievance.

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 in Section 9<sup>1</sup> of this Law.

<sup>1</sup> 32 M.P.T.L. ch. 1 § 9.

**§ 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 bargaining 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 representatives for purposes of collective 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 the Tribe or 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 bargaining 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 bargaining 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 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 its duty of fair representation as provided in Section 5(c)<sup>1</sup> of this Law.

<sup>1</sup> 32 M.P.T.L. ch. 1 § 5(c).

32 M.P.T.L. ch. 1 § 7

## **§ 7. Dispute Resolution for Prohibited Practices Questions**

a. Filing a Claim; Adjudication of 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 for a determination of whether the prohibited practice alleged has been or is being committed. The MERO shall adopt procedures for the administrative processing of such claims. Unless a party requests a MERO Three Member Board as described below, claims filed with the MERO shall be referred to the Tribal Court for the adjudication of the claims. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law and experience or advanced training in Tribal Law to hear and determine the claim. The person filing the claim must give the other party notice of the filing the same day it is filed. Within five (5) days of a claim being filed, either party may request adjudication of the claim under this Law by a MERO Board. If such a request is filed a panel shall be established consisting of three members appointed at the outset of each case. Within five (5) days of the request for the MERO Board, the Tribal Employer and the Labor organization (or if a claim is filed by a Tribal Employee, the Tribal Employee and responding party), will each appoint one member of the Board. The members appointed by each of the parties shall confer and jointly appoint a third member, who shall be the presiding officer of that MERO Board. If the members appointed by the parties cannot agree within five (5) days upon a third member, the MERO shall request from the American Arbitration Association a random panel of seven (7) arbitrators who are members of the National Academy of Arbitrators and the members appointed by the parties shall select a presiding officer from said list within five (5) days of receipt of the list. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The Tribal Court may adopt special procedures for claims to be heard by a special master; 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.

b. Decisions and Orders. If, after all evidence is considered and arguments heard, the special master or the MERO Board, 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 a decision and 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) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (2) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

c. Dismissal. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has not been or is not being committed, it shall state its

findings of fact and conclusions of law and shall issue a decision and order dismissing the claim.

d. Decisions and Appeals. Decisions of a special master and decisions of a MERO Board shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

e. Sovereign Immunity. The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the Tribal Court or MERO including a MERO Board if one is formed at the request of a party or parties. 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.

f. Sanctions for Frivolous Conduct. If it is ultimately determined that a claimant or respondent has engaged in frivolous conduct, including advancing a claim or defense that had no reasonable basis in fact or law, the special master appointed by the Tribal Court or a MERO Board, as the case may be, may order the party engaging in such conduct to pay the costs and reasonable attorneys' fees of the other party.

32 M.P.T.L. ch. 1 § 8

#### **§ 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 a prohibited practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

32 M.P.T.L. ch. 1 § 9

#### **§ 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 exclusive bargaining representative of 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. Nothing in Tribal law shall be construed to preclude a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees from negotiating under Tribal law a procedure for binding resolution of contractual disputes, including disputes related to the discipline or discharge of Tribal Employees; provided that any such procedure shall provide protection for the due process rights of Tribal Employees equal to or greater than the protections provided under Title 8 M.P.T.L.; and provided further, that any Tribal Employee who has a right to review under the Board of Review process and Title 8, shall have the right to elect whether to proceed under the Board of Review and Title 8 or, alternatively, elect to proceed under the procedure established for resolution of contractual disputes pursuant to a collective bargaining agreement.

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.

Provided, however, that the above list is not intended to remove from bargaining subjects that are otherwise appropriate for bargaining and which are not related to the conduct of gaming on the Reservation and safeguarding the integrity of the gaming, including the prevention of illegal activity or influences affecting the gaming on the Reservation. Provided further that whenever practicable, a Tribal Employer shall bargain with a duly certified labor organization regarding the implementation and effects of directives of the Mashantucket Pequot Tribal Gaming Commission.

c. Union Security Clauses. If a labor organization has been certified as the exclusive bargaining representative under Tribal law then a Tribal Employer may lawfully enter into a union security agreement where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302 or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1<sup>1</sup> and no election has been conducted by a special master or MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Other than under these conditions, nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, or 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. Tribal and Native American Preference. Pursuant to the Mashantucket Pequot Tribal and Native American Preference Law, 33 M.P.T.L., Tribal Employers are required to give certain preferences in employment to members of the Tribe, their spouses and Native Americans. 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 regarding Tribal and Native American preference, or shall in any way affect a Tribal Employer's obligation to follow Tribal law, policies or custom and traditions regarding Tribal and Native American preference in employment. In the event of a conflict between the Tribal law regarding Tribal and Native American preference and this Law, the Tribal law on Tribal and Native American preference shall govern.

e. Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective-bargaining agreement covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such agreement 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 agreement of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such agreement 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 agreement or an agreement containing the proposed modifications; and

3. Complies with Section 11<sup>2</sup> of this Law prohibiting Strikes and Lock Outs.

<sup>1</sup> In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

<sup>2</sup> 32 M.P.T.L. ch. 1 § 11.

32 M.P.T.L. ch. 1 § 10

### **§ 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 one hundred twenty (120) days prior to the expiration of the existing collective bargaining agreement and no later than sixty (60) days prior thereto. Negotiations shall commence within thirty (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 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 one hundred fifty (150) days after negotiations have begun, then either party may file a petition with the MERO. If either party requests within five (5) days of the petition being filed, a MERO Board shall be formed as provided in Section 7(a)<sup>1</sup> of this Law to resolve the impasse and all issues on which the parties cannot agree, otherwise the claim shall be referred to the Tribal Court, which shall appoint a special master. The party filing the petition must give the other party notice of the filing on the same day that it is filed.

(i) Upon appointment, the special master or the MERO Board shall immediately adopt procedures for reaching a decision resolving all issues within sixty (60) days of the filing of the petition and shall convene a hearing to allow the parties to provide evidence and argument to the special master or the MERO Board. The parties shall have the right to submit written briefs. The record is officially closed at the later of the close of the hearing, or the special master's or the MERO Board's receipt of briefs.

(ii) Each party shall submit to the special master or the MERO Board, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

(iii) The special master's or the MERO Board's authority is limited to selecting one party or the other's complete proposal with respect to each issue and shall render a decision or award addressing each of the unresolved issues based on the complete proposal selected for that issue. The special master or the MERO Board shall issue an award within 60 days of the filing of the petition, unless the time period is extended by mutual agreement of the parties.

(iv) The costs of the MERO Board and any fees associated with the MERO Board proceeding shall be shared equally by the parties.

<sup>1</sup> 32 M.P.T.L. ch. 1 § 7.

32 M.P.T.L. ch. 1 § 11

#### **§ 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.

32 M.P.T.L. ch. 1 § 12

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

a. Petition for Election. A labor organization may file a petition with the MERO Director stating that thirty (30) percent 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 (30) percent of the Tribal Employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty (30) percent 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 Director shall, unless a party requests a MERO Board as defined in Section 7(a)<sup>1</sup> of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor

relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board 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 special master or the MERO Board 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 special master or the MERO Board. The parties may appeal any determinations of the special master or the MERO Board to the Tribal Court and its decision shall be final as to such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

d. Secret Ballot Election. When all issues, if any, relating to the petition have been resolved, the special master or the MERO Board 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 votes cast are in favor of certification of a labor organization, the special master or MERO Board 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 or prohibited practices affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the special master or the MERO Board within ten (10) days after the election. The special master or the MERO Board 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 special master or the MERO Board. Any determination of the special master or MERO Board on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues. The Tribal Court shall adopt the decision of the

MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

f. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve (12)-month period immediately preceding the proposed representation election.

g. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the special master or MERO Board 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. Deauthorization. Upon the filing with the MERO Director, by thirty (30) per centum or more of the employees in a bargaining unit covered by a collective bargaining agreement containing a union security clause, of a petition alleging they desire that the authorization to enter such an agreement be rescinded, the MERO shall, unless a party requests a MERO Board as defined in Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this Law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall hold a secret ballot election of the employees in such unit and certify the results thereof to the affected labor organization and Tribal Employer. If a majority of the employees in the bargaining unit vote to rescind such authorization, then the provision for a union security clause shall be null and void and of no further force or effect. If the secret ballot election does not result in a majority of employees voting to rescind, then the provision in the collective bargaining agreement shall remain in full force and effect.

<sup>1</sup> 32 M.P.T.L. ch. 1 § 7(a).

32 M.P.T.L. ch. 1 § 13

### **§ 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 (30) percent of the Tribal Employees in the bargaining unit make a written request to the MERO for a decertification election. If such a request is filed, the MERO shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A labor organization 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 no earlier than ninety (90) days and no later than forty-five (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 (3) years, a request for decertification may be made at any time after the expiration of the third year.

32 M.P.T.L. ch. 1 § 14

### **§ 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 sixty (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(s) 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 thirty (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.

32 M.P.T.L. ch. 1 § 15

#### **§ 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 appeal such a determination to the Tribal Court.

It shall be a violation of this section for any person to:

1. Act as a business agent on the Reservation for a labor organization without having obtained a valid license;
2. Act as a business agent of any labor organization without the authority of the labor organization to do so;
3. Make any false statement on any reports required to be filed pursuant to this Law;
4. 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 impose penalties. The MERO Director may also refer the matter to the Mashantucket Pequot Council of Elders to determine if an order of exclusion or banishment is appropriate, or, if the violation affects the Tribe's gaming operation, 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 Director shall have the right to appeal such imposition of penalties to the Tribal Court.

32 M.P.T.L. ch. 1 § 16

#### **§ 16. Time For Filing Appeals**

Any appeal to the Tribal Court allowed under this Law must be filed with the Tribal Court within twenty (20) days after the mailing of the determination, decision or order being appealed. If an appeal is not filed within that time period, the determination, decision or order shall be final.

### **TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW**

33 M.P.T.L. ch. 1 § 1

#### **§ 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.

## **§ 2. Findings**

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

a. It has a Native American 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.

e. As recognized in the Constitution, the Mission Statement and the Strategic Objectives of the Mashantucket Pequot Tribal Nation, it is in the interests of all Tribal Members, the citizens of Mashantucket, to conserve and develop common resources and promote the welfare of Tribal Members and their descendants.

**§ 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.

**§ 4. Definitions**

- a. "Cultural Opportunity" means an accommodation for a cultural conviction unique to an individual's Tribal or Native American culture.
- b. "Employee" means an employee of an Employer who performs work, in whole or in part, on the Reservation, excluding appointed or elected officials of the Tribe.
- c. "Employment Opportunities" means consideration for hire, hire, transfer, promotion, training, and non-disciplinary retention, including in any reorganization or layoff.
- d. "Employer" means any Person that employs five (5) or more employees who, during any thirty (30) day period, each spend, cumulatively, forty (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 or local governments.
- e. "Hardship" means some identifiable direct or indirect operational harm or expense.
- f. "MERO Director" or "Director" means the Director of MERO as established and defined in Title 31 M.P.T.L.
- g. "MERO" or "MERO Office" means the Mashantucket Employment Rights Office as established and defined in Title 31 M.P.T.L.

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

i. "Native American" or "Indian" 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 (Western) 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.

j. "Natural Progression" means an employment position that is a logical next step in a career path for a current Employee.

k. "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.

l. "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.

m. "Shift Assignments" shall mean those shift assignment opportunities resulting from an open position, or those opportunities to maintain a shift assignment during shift reassignments.

n. "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 (3) years and has been issued an identification badge as a tribal spouse by the Tribal Clerk's Office and who is in good standing.

o. "Tribal Council" means the governing body of the Mashantucket (Western) Pequot Tribe.

p. "Tribal Member" means a duly enrolled member of the Mashantucket (Western) Pequot Tribe who is in good standing.

q. "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.

**§ 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. Preference Exception. Preference in the Employment Opportunity of promotion is not required to be given when the position is not otherwise open but results from a restructuring or reorganization and is filled through Natural Progression by an employee already performing substantial duties of the position.

d. Additional Preference; Tribe as Employer. In addition to any other preference provided herein or by practice or policy, when the Tribe is the Employer, it shall provide to Tribal Members and Spouses of Tribal Members notification at least two (2) days in advance of posting or advertising of employment position openings, and preference in Shift Assignments.

e. Cultural Opportunities; Tribe as Employer. In addition to any other preferences provided herein, when the Tribe is the Employer, Cultural Opportunities shall be provided to Tribal Members, Spouses of Tribal Members and Native Americans, unless providing the Cultural Opportunity would cause Hardship to the Employer.

f. Exhaustion of Paid Leave. When a preference in employment involves the Employer's provision of leave or time away from work to a Native American who

is not a Tribal Member or Spouse, the Employer may require the employee to utilize any available paid, accrued leave time prior to receiving leave or time off without pay.

g. 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 preference policy statement in all job announcements and advertisements and applicable employer personnel policies consistent with this Law.

h. Exclusion; Key Employees or Positions. The preference in Employment Opportunities required by and set forth in this Law shall not be applicable to personnel actions regarding any key employees or positions. For the purposes of this Law, a "key employee" includes an individual holding a substantial ownership interest in the Employer or an individual with unique employer or industry knowledge that provides a significant competitive advantage to the Employer. For purposes of this Law, a "key position" includes a high-level managerial or critical function position such that the Employer would risk significant damage or loss if the position were not filled with the best qualified candidate regardless of preference or political appointee as defined by TCR121201-01 of 04. The Person claiming the exclusion bears the burden of proving the key employee or position by a preponderance of the evidence.

i. Collective Bargaining Agreement. Every collective bargaining agreement covering Employees on the Reservation must be in compliance with the preference requirements of this Law.

j. Reports.

(1) 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.

(2) Such report shall also indicate the number of Tribal Members, Tribal Member Spouses and/or Native Americans, as applicable, employed by job category, number hired, number terminated and length of employment.

(3) 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.

(4) 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 11<sup>1</sup> 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 review by the Tribal Court.

k. Tribal and Native American Preference (IP) Officer. The Tribe as an Employer must employ an individual whose job duties include overseeing Tribal Employer

compliance with the employment preferences required by this Law. The individual's responsibilities shall include, without limitation, participation in any employment decisions related to this Law, such as the preferences provided in Section 5<sup>2</sup> and any disciplinary determinations, including discharge. This position shall not be eliminated by the Tribal Employer unless the Mashantucket Pequot Tribal Council approves such action.

<sup>1</sup> 33 M.P.T.L. ch. 1 § 5.

<sup>2</sup> 33 M.P.T.L. ch. 1 § 5.

33 M.P.T.L. ch. 1 § 6

#### **§ 6. Application Skills Bank**

a. Establish Skills Bank. The MERO shall establish an application skills bank to assist Employers in placing Tribal Members and Native Americans in employment positions on the Reservation. The MERO 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 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.

#### **§ 7. Preference in Awarding Contracts (RESERVED)**

#### **§ 8. Certification for Tribally Owned and Native American Owned Businesses (RESERVED)**

33 M.P.T.L. ch. 1 § 9

#### **§ 9. Claim Procedures; Investigations; Mediation**

a. Before Filing a Claim. Before filing a claim with the MERO, an individual is required to follow any complaint processes offered by his/her Employer. If the individual's claim relates to employment with or by the Tribe, the individual must follow any complaint processes offered by the Tribal and Native American Preference Officer. A claimant's unreasonable failure to utilize an effective complaint process prior to filing a claim with the MERO may be raised as a defense to a claim of non-compliance with this Law.

b. Claim. A claim filed hereunder must be in writing on a form prescribed by the MERO. The MERO Office may require additional information from the claimant, including a sworn statement. The MERO 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 MERO Director determines that a violation of this Law has occurred, the MERO 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 to address the non-compliance, and shall provide notice to the affected party of the right to request review by the Tribal Court. If the MERO Director, after investigation, determines that there is no violation of this Law, the Director shall notify all interested parties of the MERO's decision to dismiss the claim, and shall provide notice to the claimant of the right to request review by the Tribal Court.

c. Time Frames for Filing and Investigation.

1. Contract Claims. (RESERVED)

2. Employment and Other Claims. A claim must be filed within one hundred eighty (180) days of the alleged noncompliance. The MERO must complete its investigation within a reasonable time after the claim is filed, but in no event later than ninety (90) days following the filing of the claim.

d. Cooperation in Investigations. All Persons subject to this Law have a duty to cooperate with any investigation conducted by the MERO under this Law. If a Person fails to cooperate, the MERO Director may impose penalties as provided under Section 11<sup>1</sup> of this Law; provided that the MERO Director sends written notice to the affected Person of the penalties being imposed, the reasons for such penalties, and the Person's right to request review by the Tribal Court.

e. Mediation. After investigation of an Employment Claim, 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 within sixty (60) days of referral to the mediation panel, as may be extended by agreement of the parties and consent of the mediation panel, the mediation will be considered closed and the MERO Director's decision and notice of right to request review by the Tribal Court will issue.

<sup>1</sup> 33 M.P.T.L. ch. 1 § 11.

33 M.P.T.L. ch. 1 § 10

**§ 10. Tribal Court Review**

a. Right to Appeal. Any Person may appeal an adverse decision of the MERO Director under Sections 5 or 9<sup>1</sup> to the Tribal Court. A written appeal on a form provided by the Tribal Court Clerk must be submitted to the Tribal Court. The notice of appeal must include a copy of the MERO decision being appealed. The Tribal Court is hereby granted jurisdiction over any such appeal. All appeals under this Title shall be heard by the court, not a jury. No costs shall be taxed against the Tribe.

1. Contract Claim Appeals. (RESERVED)

2. Employment or Other Claim Appeals. Except as provided in Section 10(a)(1)<sup>2</sup>, the Tribal Court must receive an appeal of a MERO decision within thirty (30) days of the MERO's mailing of the decision being appealed. Service of the appeal shall be made on any other parties to the case, and the MERO Director, by the Tribal Court Clerk by registered or certified mail. In any appeal filed under this Section, the MERO shall file with the Tribal Court a copy of the official MERO case record. The case record shall be filed with the Tribal Court within thirty (30) days after the appeal is filed with the court. The Tribal Court shall conduct a de novo hearing, except that no party shall be permitted to introduce evidence not provided to the MERO during the investigation of the claim unless the evidence is newly discovered or was not available to the party during the investigation notwithstanding the party's best efforts to secure the evidence. The MERO Director bears the burden of proof by a preponderance of the evidence.

b. Enforcement Action. Absent a timely appeal to the Tribal Court, the MERO Director's decision and any associated remedy shall be final. The MERO Director may bring an action in Tribal Court to seek enforcement of any final order of the MERO Director within one (1) year of the issuance of the MERO decision. The MERO shall file with the Tribal Court a copy of the official MERO case record within thirty (30) days after the enforcement action is filed with the court. The Tribal Court shall adopt the decision of the MERO unless the MERO decision is arbitrary and capricious, or in direct conflict with Tribal law.

c. Court of Appeals. Any decision by the Tribal Court under Sections 10(a)(2) or 10(b)<sup>3</sup> may be appealed to the Mashantucket Pequot Court of Appeals. Any decision of the Court of Appeals shall be final.

<sup>1</sup> 33 M.P.T.L. ch. 1 §§ 5 to 9.

<sup>2</sup> 33 M.P.T.L. ch. 1 § 10(a)(1).

<sup>3</sup> 33 M.P.T.L. ch. 1 § 10(a)(2) or 10(6).

33 M.P.T.L. ch. 1 § 11

## **§ 11. Sanctions, Penalties, or Awards**

Any one or a combination of the following may be imposed by the MERO Director, after an investigation, or by the Tribal Court on appeal:

a. An order of reinstatement, hiring, promotion, transfer or retention of the affected Employee either into the position sought if still available or into an available comparable position provided that the Employee meets the Minimum Necessary Qualifications, and/or training of the Employee.

b. An order for compensatory damages to the Employee affected, which may include but not exceed one (1) year of lost wages, which the affected Employee has a duty to mitigate. If however the affected Employee has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.

c. 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. No award for attorney's fees may exceed one third of a lost wage award, if there is such an award, or in the absence of a lost wage award, fifty (50) hours of attorney time. Attorneys' fees 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.

d. If it is determined that any Person's noncompliance with this Law was intentional or as otherwise provided in this Law, a civil monetary fine not to exceed \$250.00 per violation may be assessed with a maximum aggregate fine of \$1,000.00 per claim of non-compliance. Each day that a Person has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.

e. An order that the Person cease and desist from non-compliance.

f. An order that the Person 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.

g. The Tribal Court may enter a judgment for declaratory relief.

h. In all claims where it is alleged that liability is based upon the action of an officer, agent, servant, or employee acting within the scope of his or her employment, there shall be no separate cause of action against the officer, agent, servant or employee.

33 M.P.T.L. ch. 1 § 12

## **§ 12. Waiver of Sovereign Immunity From Suit**

a. Waiver of Sovereign Immunity. To the extent that a claim filed in the MERO Office is against the Tribe or review by the Tribal Court concerns claimed violations of this Law 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. 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 the officer, agent, servant or employee.

## **TITLE 34. MASHANTUCKET PEQUOT TRIBAL OCCUPATIONAL SAFETY AND HEALTH LAW**

34 M.P.T.L. § 1

### **§ 1. Title; Authority**

This title may be cited as the Mashantucket Pequot Tribal Occupational Safety and Health Law. This law is enacted by the Mashantucket Pequot Tribal Council as the governing body of the Mashantucket Pequot Tribal Nation and pursuant to the inherent authority of the Mashantucket Pequot Tribal Nation to regulate activities and govern conduct on its Reservation and to place conditions on entry and continued presence on the Reservation.

34 M.P.T.L. § 2

### **§ 2. Findings**

The Mashantucket Pequot Tribal Council finds that:

a. In or about 1998 the Mashantucket Pequot Public Safety Committee received recommendations to develop a centralized Tribal Occupational Safety and Health program to insure safe and healthful working conditions for all employees on the Reservation and to further exercise and enhance Tribal sovereignty.

b. The Tribal Council adopted a resolution in 1998 establishing the Tribal OSHA Program to administer and enforce employee safety and health regulations and practices on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribal Nation. Since 1998 the Tribal OSHA program has fulfilled its mission of insuring safe and healthy working conditions for all employees on the Reservation.

c. It is important to more fully describe the regulatory authority of the Tribal OSHA as it relates to enforcement of the TOSHA law and to clarify the role of the Tribal Court in the enforcement of the law and the rights of appeal.

34 M.P.T.L. § 3

### **§ 3. Definitions**

a. "Employee" means an individual employed by an Employer and who performs work, in whole or in part, for the Employer on the Reservation.

b. "Employer" means any Person that employs Employees who perform work, in whole or in part, on the Reservation. Employer shall include the Tribal Nation. The term Employer excludes federal, state or local governments.

c. "Mashantucket Pequot Tribal Council" or "Tribal Council" means the governing body of the Tribal Nation pursuant to Article VI, Section 1 of the Constitution

of the Mashantucket (Western) Pequot Tribe.

d. "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.

e. "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 and any other area subject to the Tribe's jurisdiction.

f. "TOSHA" or "TOSHA program" means the Tribal Occupational Safety and Health Administration Program.

g. "TOSHA Commissioner" or "Commissioner" means the person appointed by the Tribal Council as the Commissioner of TOSHA.

h. "Tribe" or "Tribal Nation" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise, entity or organization of the Tribe or wholly owned by the Tribe.

34 M.P.T.L. § 4

#### **§ 4. Authority of TOSHA Commissioner**

a. The TOSHA Commissioner shall be responsible for administering and enforcing the TOSHA program which has the purpose and mission of insuring employee safety and health on the Reservation and on all tribally owned or occupied properties including enterprises of the Tribe.

b. The TOSHA Commissioner has the authority to:

(i) Adopt rules, regulations and/or procedures to govern the enforcement and administration of the TOSHA program;

(ii) Conduct educational programs so that all persons, including both Employees and Employers, are advised as to the existence of the TOSHA program and understand the process and procedures established for TOSHA;

(iii) Establish a system of inspection for all Employers located on the Reservation and for all tribally owned enterprises whether located on or off of the Reservation; and

(iv) Establish a system of enforcement as to all violations of safety and health regulations which system shall include a process for follow-up to insure correction of all violations.

**§ 5. Adoption of Federal Standards**

The standards and regulations of the Federal Occupational Safety and Health Administration are adopted as the tribal standards and regulations to be enforced through TOSHA on the Reservation provided that the adoption of such standards and regulations is not intended to and does not waive the Tribe's immunity from suit in any state or federal forum, whether administrative or judicial, or in any other forum except as provided in this Law. To the extent that this Law establishes a process or procedure different from that adopted in the federal regulations, the tribal law shall govern.

**§ 6. Duties of Employers and Employees**

a. Each Employer--

(1) shall furnish to each Employee employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or physical harm to the Employer's Employees;

(2) shall comply with occupational safety and health standards promulgated under or adopted by this Law.

b. Each Employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this law which are applicable to his or her own actions and conduct.

**§ 7. Inspections, Investigations, and Recordkeeping**

a. *Authority to enter, inspect and investigate places of employment.* In order to carry out the purposes of this Law, the Commissioner or her designee, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorizedC

(1) to enter without delay and at reasonable times any workplace or environment where work is performed by an Employee of an Employer including, but not limited to, any factory, plant, establishment, construction site, or other area; and

(2) to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such Employer, owner, operator, agent or Employee.

*b. Maintenance, preservation, and availability of records; issuance of regulations; posting of notices by employer.*

(1) Each Employer shall make, keep and preserve, and make available to the Commissioner or her designee such records regarding the Employer's activities relating to this Law, as the Commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this Law or for developing information regarding the causes and prevention of occupational accidents and illnesses. The Commissioner may also issue regulations requiring that Employers, through posting of notices or other appropriate means, keep their Employees informed of their protections and obligations under this Law.

(2) The Commissioner may prescribe regulations requiring Employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) Any information obtained by the Commissioner under this Law shall be obtained with a minimum burden upon Employers, especially those operating small businesses.

*c. Employer and Employee Representative Accompany Commissioner on inspection of workplace.* Subject to any regulations adopted by the Commissioner, a representative of the Employer and a representative authorized by the Employer's Employees shall be given an opportunity to accompany the Commissioner or her authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner or her authorized representative may consult with a reasonable number of Employees concerning matters of health and safety in the workplace.

*d. Request for inspection by employees or representative of employees.* Any Employee or representative of Employees who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner or her authorized representative of such violation or danger. Any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the Employee or the representative of Employees, and a copy shall be provided to the Employer or his agent no later than at the time of the inspection, except that upon request of the person giving such notice his or her name and the names of the individual Employees referred to therein shall not appear in such copy or on any record published, released, or made available to the public. If upon receipt of such notification the Commissioner determines there are reasonable grounds to believe that such violation or danger exists, she shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Commissioner determines there are no reasonable grounds to believe that a violation or danger exists she shall notify the Employees or representative of Employees in writing of such determination.

e. *Results of enforcement activities; employee evaluations.* The Commissioner shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate any employee involved in enforcement activities under this Law or to impose quotas or goals with regard to the results of such activities.

34 M.P.T.L. § 8

## **§ 8. Citations**

a. *Authority to Issue.* If, upon inspection or investigation, the TOSHA Commissioner or her authorized representative believes that an Employer has violated a requirement of this Law, or of any standard, rule or order adopted pursuant to Sections 4 or 5<sup>1</sup> of this Law, she shall with reasonable promptness issue a citation to the Employer which citation may include the assessment of fines or penalties. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Commissioner may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

b. *Posting.* Each citation issued under this section, or a copy or copies thereof shall be posted as provided in any rules or regulations issued by the TOSHA Commissioner, at or near such place a violation referred to in the citation occurred.

c. *Time for issuance.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation unless such violation is an ongoing violation.

<sup>1</sup> 34 M.P.T.L. § 4 or 5.

34 M.P.T.L. § 9

## **§ 9. Enforcement**

a. *Right to An Informal Conference.* If after an inspection or investigation, the Commissioner issues a citation she shall, within a reasonable time after the termination of such inspection or investigation, notify the Employer of the citation and penalty, if any, proposed to be assessed and that the Employer has ten (10) business days within which to notify the Commissioner that the Employer wishes to be heard by the Commissioner in an informal conference the purpose of which is to discuss an informal resolution of the citation and proposed penalty. Notification of a citation and/or penalties to the Employer must be made by a method of delivery that insures receipt by Employer. If, within ten (10) business days from the mailing of the notice issued by the Commissioner the Employer fails to request an informal conference, the citation

and the assessment or penalty, as proposed, shall be deemed a final order of the Commissioner. If an Employer requests an informal conference pursuant to this Section and such conference is held but an informal settlement agreement is not entered, the citation and assessment or penalty shall become a final order of the Commissioner.

b. *Right to Contest Final Order.* A Person who is aggrieved by a final order of the Commissioner may contest the final order by filing a notice of contest with the Mashantucket Pequot Tribal Court within ten (10) business days from the date that an order of the Commissioner becomes final, whether by failure to enter an informal settlement agreement at the informal conference or due to an Employer's failure to request an informal conference within the time provided in Section 9(a).

c. *Procedure For Contesting Final Order.* The notice of contest shall specify the final order being challenged and attached a copy of such order; the date on which such order became final; the factual and legal basis supporting the requested reversal or modification of the final order; and state whether a hearing is requested. The notice shall name the Commissioner as the defendant. The Person filing the notice of contest shall serve, either by personal delivery or by regular mail, a copy of the notice of contest on the Commissioner. The Commissioner shall, within 10 days of filing of the statement of contest, file with the Court a responsive pleading addressing the factual and legal claims made in the statement of contest, providing a copy of any record before the Commissioner including any reports, citations, communications and/or orders, and a statement as to whether a hearing is requested. The Court may determine whether any further pleading or evidence is required and whether a hearing is necessary; provided that the Court shall make all efforts to expedite the process and decision.

d. *Remedies; Standard of Review.* The Court shall confirm a final order of the Commissioner unless it determines that the Commissioner clearly abused her discretion in rendering the final order. If the Court determines that the Commissioner clearly abused her discretion, the Court may vacate the order or modify the order if it is determined that such a modification would address the abuse of discretion identified by the Court.

e. *Stay of Enforcement.* The filing of a notice of contest shall not, of itself, stay enforcement of a final order of the Commissioner. An application of a stay may be made to the Court.

f. *Failure to Correct Violation; Enforcement Actions.* If an Employer fails to comply with any order issued by the Commissioner, including failure to correct a violation for which a citation has been issued within the period permitted for its correction and failure to pay a penalty assessed by the Commissioner, the Commissioner shall notify the Employer of such failure and of any penalty proposed to be assessed by reason of such failure, and that the Employer has ten (10) business days from receipt of notice to correct the noncompliance including the payment of any penalties assessed. Any notification made to an Employer must be by a method of delivery that insures receipt by the Employer. If an Employer continues to be in noncompliance at the expiration of the 10-day period, the Commissioner may bring an action in the Mashantucket Pequot Tribal

Court seeking enforcement of her order, compliance with a citation and/or payment of penalties imposed, or such other appropriate relief.

34 M.P.T.L. § 10

#### **§ 10. Discharge or Discrimination Prohibited**

a. No Employer shall discharge or cause to be discharged, or in any manner discriminate against any Employee because such Employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Law or has testified or is about to testify in any such proceeding or because of the exercise by such Employee on behalf of himself or others of any right afforded by this Law.

b. Any Employee who believes that she has been discharged or otherwise discriminated against by an Employer in violation of this subsection may, within one hundred and eighty days (180) days after such violation occurs, bring a civil action in the Mashantucket Pequot Tribal Court pursuant to this Law. The Tribal Court shall have jurisdiction over such claims against Employers. The Tribe hereby waives the sovereign immunity from suit of the Tribe and its subdivisions, arms, departments and entities for an action in tribal court under this Section of the Law.

34 M.P.T.L. § 11

#### **§ 11. Tribal Court Jurisdiction; Waiver of Sovereign Immunity**

a. The Mashantucket Pequot Tribal Court shall have jurisdiction to hear and determine the claims established in this Law including those contesting a final order of the Commissioner, a civil claim by an Employee pursuant to Section 10<sup>1</sup> of this Law, and an enforcement action by the Commissioner under Section 9(f)<sup>2</sup> of this Law.

b. The Tribe hereby waives its sovereign immunity from suit and the immunity of any arm, agency, department, subdivision, enterprise, or entity of the Tribe for actions in the Mashantucket Pequot Tribal Court brought under this Law contesting a final order of the Commissioner or pursuant to Section 10 of this Law.

<sup>1</sup> 34 M.P.T.L. § 10.

<sup>2</sup> 34 M.P.T.L. § 9(f).

**§ 12. Preservation of Other Law**

Nothing in this Law shall be construed to supersede or in any manner affect the Tribal Workers' Compensation law, Title 13 M.P.T.L., or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of Employers and Employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

**TITLE 35. MASHANTUCKET PEQUOT TRIBAL ELDERS FINANCIAL ASSISTANCE**

**§ 1. Findings, Purpose and Authority**

The Tribe finds that:

- a. There are elder members of the Tribe who may have chosen to retire or who may have reduced capacity to secure gainful employment or otherwise obtain sufficient income to be self-supporting; and
- b. It is the policy of the Tribe to assure the essential welfare of its members by providing financial assistance to those Elders in need.

**§ 2. Definitions**

a. "Administrator" means the Chief Financial Officer of the Tribe or her designee, or such other officer as may subsequently be appointed by the Tribal Council to make determinations of eligibility under this Title.

b. "Offset Income" means the sum of--

(1) Wages, salaries, tips, and any other income received by the recipient and required to be reported on Form W-2 or added to such amounts for purposes of reported employment income on a United States Individual Income Tax Return, plus

(2) net earnings from self-employment received by the recipient and required to be reported for purposes of the Self-Employment Tax on a United States Individual Income Tax Return, plus

(3) any other distribution of money to the recipient by or on behalf of the Tribe including but not limited to any Incentive program distribution, per capita payment, earned income supplement, meeting stipend, and any workers

compensation payment or long term disability benefit attributable to the recipient's employment by the Tribe.

Notwithstanding the foregoing, the first \$25,000 of such income received by a Participant shall not be included in Offset Income for purposes of calculating the limitation in benefits provided under Section 5 of this Law.

c. "Participant" means a member of the Mashantucket Pequot Tribal Nation in good standing who has reached Benefit Age.

d. "Payment Year" means the calendar year.

e. "Benefit Age" means the age of sixty years of age; provided, however, that solely with respect to any member who had attained the age of fifty-five years of age as of December 31, 2010, Benefit Age shall be deemed to mean the age of fifty-five years of age.

f. "Standard of Need" means the standard established from time to time by the Mashantucket Pequot Tribal Council to measure the amount of income necessary to meet the basic human needs of a Participant. Unless otherwise determined by Tribal Council following the establishment by the Tribal Council of an initial Standard of Need applicable to the Payment Year commencing January 1, 2011, such initial Standard of Need of \$50,000 shall be increased annually on January 1st of each succeeding Payment Year by the rate of increase with respect to the twelve month period concluding on October 1st of the prior year in the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics, or such substitute consumer price index as may subsequently be published in lieu of such statistic and approved by the Administrator as most nearly equivalent to the existing Consumer Price Index for All Urban Consumers.

g. "Exempted Participant" means any member of the Mashantucket Pequot Tribal Nation in good standing who has attained the age of seventy years.

35 M.P.T.L. § 3

### **§ 3. Determination of Eligibility**

a. Any Exempted Participant may apply to the Administrator for financial assistance under this Title on a form made available by the Administrator, and shall not be subject to the limitations on benefits regarding offset income as provided in Section 5<sup>1</sup> of this Law.

b. Any Participant may apply to the Administrator for financial assistance under this Title on a form to be made available by the Administrator. The form shall require that a copy of the applicant's most recent Federal income tax return, complete with all supporting schedules and W-2 forms, be appended to the application.

c. The Administrator shall determine the age of any individual applying for financial assistance under Title 35 through use of birth certificates or, in the case of a missing birth certificate, such other evidence of age as the Administrator finds clear and convincing. The Administrator is authorized to request and receive information from the Tribal Clerk as may be required to determine or verify the birth date and age of any individual applying for financial assistance under Title 35.

d. In the event that the Administrator determines that the individual is not eligible for the full amount of financial assistance under this Title for which such applicant has applied as a result of Offset Income, the Administrator shall notify the applicant of the determination of the amount of assistance, if any, to which such individual is entitled.

e. In the event that the Administrator denies the application for assistance under this Section or determines that the individual is not eligible for the full amount of financial assistance under this Title, the Administrator shall provide a written explanation of her determination setting forth the reason(s) for the determination, and if the individual does not agree with such determination, an appeal of Administrator's decision may be filed with the Finance Committee of the Mashantucket Pequot Tribal Council, which will review the Administrator's determination and decide whether to uphold, reverse or modify the determination. The Finance Committee shall set forth its decision in writing. If an individual is aggrieved by the decision of the Finance Committee, an appeal may be filed in the Tribal Court in accordance with Section 4<sup>2</sup> of this Law.

<sup>1</sup> 35 M.P.T.L. § 5.

<sup>2</sup> 35 M.P.T.L. § 4.

35 M.P.T.L. § 4

#### **§ 4. Tribal Court Review of Finance Committee's Decision**

a. The tribal court is granted jurisdiction over an appeal seeking review of a final determination by the Finance Committee under this Title; provided that such appeal is filed with the tribal court within thirty (30) days following the issuance of the Finance Committee's final determination and is filed by the person aggrieved by such final determination. The tribal court is also granted jurisdiction to hear any claim brought pursuant to Section 6(b)<sup>1</sup> of this Title by the Administrator to recover excess payments.

b. The Tribe hereby expressly waives its sovereign immunity from suit in the tribal court for an appeal seeking review of a final determination by the Finance Committee under this Title.

c. The appeal under this section shall be instituted in the same manner that an employee appeal is instituted under Rule 3 of the Mashantucket Pequot Rules of Civil Procedure<sup>2</sup>, except that the appeal under this section may only be brought against the Mashantucket Pequot Tribal Nation as the defendant. No separate

cause of action shall exist against an agent, servant or employee of the Tribe acting within the scope of his or her employment or authority, and nothing in this law shall be construed to waive the sovereign immunity of the Tribe to the extent applicable to an agent, servant or employee of the Tribe and such sovereign immunity is waived only for purposes of an action against the Tribe in tribal court as specifically provided in this Section 4.

d. Within thirty (30) days of filing the appeal the Finance Committee, or its designee, shall certify to the Tribal Court the record considered in rendering the final determination which record shall consist of all evidence and materials before the Administrator and the Finance Committee, the Administrator's decision, and the Finance Committee's decision.

e. In deciding the appeal, the Court shall consider the record and any additional evidence it decides appropriate pursuant to Section 4(g) of this Title.

f. The Court shall determine whether there was a reasonable basis for the Finance Committee's final determination. If the Court determines that there was no reasonable basis to support the Finance Committee's final determination then the Court may reverse or modify the final determination. Otherwise, the Court shall affirm the Finance Committee's final determination.

g. Either party to the appeal may, within twenty (20) days of the certification of the record, file a request with the Court to present additional evidence to the Court. The party making such request shall specify, in detail, the additional evidence requested, the form of the evidence, and explain how the additional evidence is relevant and probative. In addition, the requesting party shall explain the good and sufficient reasons for failure to present the evidence in the proceedings or record before the Administrator. The other party may file an objection to such additional evidence or seek permission to present responsive evidence.

h. All appeals filed under this Title shall be tried to the tribal court and not to a jury. No costs shall be taxed against the Tribe.

i. The following shall not apply in appeals filed under this Law: (1) any rule of law imposing absolute or strict liability, or providing for punitive or exemplary damages; and (2) any order for injunctive relief.

<sup>1</sup> 35 M.P.T.L. § 6(b).

<sup>2</sup> 35 M.P.R.C.P. Rule 3.

35 M.P.T.L. § 5

## **§ 5. Income Limitation**

a. No Participant who receives Offset Income during any Payment Year in an amount equal to or greater than the Standard of Need shall be eligible for financial assistance under this Title during such Payment Year; provided that

the first \$25,000 of Offset Income shall not be calculated as Offset Income for purposes of this limitation. There is no income limitation or requirement for Exempt Participants.

b. Any Participant who receives Offset Income during any Payment Year in an amount less than the Standard of Need and is otherwise eligible for financial assistance under this Title shall be entitled to financial assistance, with respect to any Payment Year, in an amount equal to the difference between the Standard of Need and the Offset Income received by such Participant during such Payment Year.

c. A Participant who receives financial assistance under this Title shall affirm under penalties of perjury the amount, if any, of Offset Income to which such Participant is entitled with respect to each Payment Year, and shall annually furnish a copy of such individual's Federal income tax return as filed with the Internal Revenue Service within thirty days after filing such return. Every Participant receiving financial assistance under this Title shall also execute in such form as may be required by the Administrator a consent to the disclosure by the Internal Revenue Service to the Administrator of a true copy of such individual's Federal income tax return.

d. Exempted Participants are not subject to the income limitations in this Section 5, beginning as of the date they become Exempted Participants.

35 M.P.T.L. § 6

#### **§ 6. Payment of Benefits; Recovery of Excess Payments**

a. A Participant who is eligible for financial assistance under this Title shall receive an amount on a monthly basis equal to one twelfth, or on a bi-weekly basis equal to one twenty-sixth, of the Standard of Need with respect to such Payment Year, less applicable offsets. The Chief Financial Officer of the Tribe shall make arrangements to disburse financial assistance under this Title through such means of payment as may be feasible and efficient in his or her sole discretion. For any Tribal Member who reaches Benefit Age after December 31, 2010, payments of financial assistance under this Title shall be prorated from the first day of the month following the Participant's 60<sup>th</sup> birthday to the end of the Payment Year.

b. In the event that the Administrator determines that a Participant has received financial assistance under this Title in excess of the amount to which such Participant was properly entitled under this Title, the Administrator shall make demand for return of such excess payment and shall unless such demand is satisfied within thirty days of notice to the Participant (i) offset such excess payments against future financial assistance under this Title that may be payable to the Participant, or (ii) commence an action in Tribal Court to recover such excess payment with interest for the period from the payment of such excess amount to the time of recovery of such excess payment at the interest rate charged with respect to the same period for purposes of late payment of Federal Income Taxes for an individual; provided, however, that the Administrator in his or her sole discretion may waive the demand for interest

in the event that the Administrator determines that the excess payment resulted solely from an error by the Administrator in calculating benefits payable.

35 M.P.T.L. § 7

#### **§ 7. Penalties for Fraud**

a. Any person who provides false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income shall be subject to denial of eligibility for financial assistance under this Title for a period of four years. The Administrator shall notify any individual subject to this penalty of such denial of eligibility. Such denial shall be subject to review by the Tribal Court in accordance with Section 4<sup>1</sup> of this Title.

b. Any person who obtains financial assistance by willfully providing false information on an application to establish eligibility for financial assistance under this Title or for purposes of verification of eligibility of earned income shall be guilty of the criminal offense of defrauding the Tribe. Whoever is convicted of such offense shall be punished by incarceration for up to one year in jail and/or a fine of not more than \$5,000.

<sup>1</sup> 35 M.P.T.L. § 4.

35 M.P.T.L. § 8

#### **§ 8. Income Taxation and Other Deductions and Offsets**

a. Financial assistance payments under this Title are subject to federal taxation and will have applicable tax withheld in accordance with regulations of the Internal Revenue Service. Financial assistance payments under this Title to participants who are not residents of Mashantucket are also subject to state income taxes (where applicable), and will have applicable taxes withheld.

b. The Tribe has the right to deduct from or offset against any amounts otherwise payable to a Participant under this Title 35 for any amounts that may be owed to the Tribe by said Participant, or as otherwise allowed by applicable law.

35 M.P.T.L. § 9

#### **§ 9. Effective Date**

This Title shall take effect upon enactment with respect to the authority of the Administrator to receive and process applications for assistance and to render determinations of eligibility and with respect to the authority of the Tribal Court to review such determinations. The assistance provided pursuant to this Title shall commence on January 1, 2011, unless a later commencement date is established by Tribal Council.

35 M.P.T.L. § 10

**§ 10. Termination of Benefits**

The benefits paid under this Title shall cease upon the death of the recipient and no benefits shall be paid to the estate of a recipient.

**TITLE 36. RESERVED**

**TITLE 37. MASHANTUCKET PEQUOT TRIBAL WHISTLEBLOWER LAW**

37 M.P.T.L. ch. 1 § 1

**§ 1. Title**

This law shall be known and may be cited as the Whistleblower Law.

37 M.P.T.L. ch. 1 § 2

**§ 2. Purpose**

The Tribal Council finds and declares that it is in the vital interest of the Mashantucket Pequot Tribal Nation that its government operates in accordance with law and without fraud, waste or mismanagement. If this interest is to be protected, tribal officials, and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal.

37 M.P.T.L. ch. 1 § 3

**§ 3. Reporting of information to the Office of Inspector General.  
Investigation by Office of Inspector General (OIG)**

a. Protected Employee: Any person having knowledge of any matter involving corruption, unethical practices, violation of tribal, federal or state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any tribal department or at any tribal enterprise, who transmits facts and information in his possession concerning such matter to the Office of Inspector General (OIG) or other appropriate official or employee. The act of reporting shall be deemed protected conduct.

b. Investigation: The OIG, or other office as appropriate, shall review such matter and conduct an investigation into the matter as such office shall deem appropriate. OIG shall have power to question witnesses and require the production of any necessary books, papers or other documents, where necessary,

for the purpose of investigation. Upon the conclusion of the investigation, the Office of Inspector General shall where necessary, report their findings to the Tribal Council.

c. Prohibited Conduct: No tribal officer or employee and no enterprise executive or employee, shall take or threaten to take any personnel action against any Protected Employee in retaliation for such employee's good faith disclosure of information to the appropriate person under the provisions of Section 3(a) above.

d. Relief From Violation: If a Protected Employee alleges that a personnel action has been threatened or taken in retaliation for such employee's disclosure of information to the appropriate person under the provisions of Section 3(a) of this Law, the employee may file a complaint for the retaliatory action with the OIG who shall investigate pursuant to Section 3(b) of this Law. The OIG shall cooperate and share with the Employee the findings of their investigation.

e. False Claims: Any employee of the tribal government, tribal enterprise or large tribal contractor, who is found to have, with knowledge, made false charges under Section 3(c) of this Law, shall be subject to disciplinary action by his employer up to and including dismissal.

37 M.P.T.L. ch. 1 § 4

#### **§ 4. Remedies for Violation**

a. In the event that any Protected Employee has been subject to Prohibited Conduct as described in Section 3(c)<sup>1</sup> hereof, such employee shall have the following remedies:

(i) To the extent that the employee has been the subject of disciplinary action, as defined in 8 M.P.T.L. ch. 1 § 1(e) the disciplined employee may raise such issue in an appeal taken pursuant to Title 8 and if the Court finds that the disciplinary action complained of is Prohibited Conduct, the Court may order reinstatement of the employee and/or award lost wages and benefits suffered by the employee;

(ii) In the alternative a Protected Employee may institute an action in Tribal Court for any harm suffered by the employee as a result of such Prohibited Conduct, and as a remedy the Court may award actual damages for monetary losses, and in addition thereto the Court may fashion a remedy designed to restore the employee to any benefits or conditions of employment which the employee was deprived of by virtue of the Prohibited Conduct. Any cause of action instituted under this subsection shall, in the event of a Gaming Enterprise employee, be brought in the same manner as a tort claim under Title 4, and, in the event of a non-Gaming Enterprise employee, be brought in the same manner as a tort action to which the Tribe is a party under Title 12.

(iii) An action under Section 4(a)(ii) above must be instituted within one (1) year of the Prohibited Conduct. If an employee has asserted Prohibited Conduct

in a proceeding described in Section 4(a) (i) above they are barred from instituting an additional action under Section 4(a) (ii).

<sup>1</sup> 37 M.P.T.L. ch. 1 § 3.

37 M.P.T.L. ch. 1 § 5

#### **§ 5. Waiver of Sovereign Immunity**

The Tribe hereby waives its sovereign immunity from suit against the Tribe and the Gaming Enterprise for actions in the Tribal Court, founded upon Prohibited Conduct as defined herein. Nothing herein shall be construed as a waiver of the sovereign immunity from suit against 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.

### **MASHANTUCKET PEQUOT RULES OF COURT**

#### **RULES OF CIVIL PROCEDURE**

M.P.R.C.P. 4

#### **Rule 4. Process**

a. Summons: Form. The summons shall bear the signature or facsimile signature of the Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

b. Same: Issuance. The summons may be procured in blank from the Clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this Rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

c. Service. Service of the summons and complaint may be made as follows:

(1) By a Tribal police officer within the Mashantucket Pequot Reservation.

(2) By a marshal or a deputy within the marshal's county, or other person authorized by law, or by some person specially appointed by the Court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this Rule or by Tribal law.

d. Summons: Personal Service. The summons and complaint shall be served together. Personal service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by mail pursuant to subdivision (f) of this Rule or by publication pursuant to subdivision (g) of this Rule.

(2) Upon an infant, by delivering a copy of the summons and of the complaint personally:

(a) to the infant; and

(b) also to the infant's guardian, if known to the plaintiff, and if not, then to the infant's father or mother or other person having the infant's care or control, or with whom the infant resides, or if service cannot be made upon any of them, then as provided by order of the Court.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally:

(a) to the guardian of the incompetent person or competent adult member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, unless as provided by order of the Court; and

(b) unless the Court otherwise orders, also to the incompetent person.

(4) Upon an Indian nation or tribe, by delivering a copy of the summons and of the complaint to the Tribal chairperson, chief, governor or other Tribal official designated by Tribal law to accept service.

(5) Upon a town, by delivering a copy of the summons and of the complaint to the town clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons and of the complaint to the city clerk, treasurer, manager or other city official authorized by law.

(7) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district of Connecticut or to an assistant United States attorney or clerical employee designated by the

United States in a writing filed with the Clerk of the United States District Court for the district of Connecticut and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action challenging the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given. Upon an office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this Rule. Upon any other public corporation of the United States, by delivering a copy of the summons and of the complaint to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a corporation established under the laws of any other state or country:

(a) by delivering a copy of the summons and of the complaint to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or

(b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a partnership subject to suit in the partnership's name in any action, and upon all partners in any action on a claim arising out of partnership business:

(a) by delivering a copy of the summons and of the complaint to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership; or

(b) by delivering a copy of the summons and of the complaint to any agent, attorney in fact, or other person authorized by appointment or by statute of any state to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(10) Unless otherwise provided by Tribal law or by these Rules, upon the Mashantucket Pequot Tribe by delivering a copy of the summons and of the complaint to the Chairperson of the Mashantucket Pequot Tribal Council, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action challenging the validity of an order of an office, department or agency of the Mashantucket Pequot Tribe, by also sending a copy of the summons and of the complaint by ordinary mail to such office or agency.

(11) Upon an office, department or agency by also sending a copy of the summons to the person in charge of the department, office or agency of the Mashantucket Pequot Tribe.

(12) Upon a state of the United States by the method prescribed by the law of that state for service of process upon it.

e. Personal Service Outside Tribal Territory. A person who is subject to the jurisdiction of the courts of the Mashantucket Pequot Tribe may be served with the summons and complaint outside the territorial jurisdiction of the Tribe, in the same manner as if such service were made within the territorial jurisdiction of the Tribe, by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the territorial jurisdiction of the Tribe.

f. Service Outside Tribal Territory by Mail in Certain Actions. Where service cannot, with due diligence, be made personally within the territorial jurisdiction of the Tribe, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the Tribe by delivery to that person outside Tribal territory by registered or certified mail, return receipt requested, postage pre-paid, to the person's last known address in the following cases:

(1) Where the pleading demands a judgment for a debt owed to the Mashantucket Pequot Gaming Enterprise evidenced by a credit instrument.

(2) Where the pleading demands a judgment for dissolution of marriage or annulment.

(3) Where the action concerns a petition for protective care or guardianship of a minor child.

(4) Where otherwise permitted by Tribal law.

Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed. The plaintiff shall file with the Court the return receipt and an affidavit by the person effecting service attesting that service was made, the person on whom and the manner in which service was made, including the date and time of service, and the fees of such service, if any.

g. Service by Publication.

(1) When Service May Be Made. The Court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service by publication.

(2) Contents of Order. An order for service by publication shall include:

(a) a brief statement of the object of the action;

(b) that the action may affect any rights and responsibilities of the person to be served;

(c) the time of the hearing, the date of the hearing and the address of the location of the hearing;

(d) that the person to be served has the right to be represented by counsel at the person's own expense, to introduce evidence, and to examine witnesses; and

(e) the possible consequences of the proceeding.

The order shall also direct its publication no less than three (3) separate times, the last date of which is to be at least ten (10) days before the date of the hearing in such action in a newspaper of general circulation in the place of the last-known address of the person to be notified, or if no such address is known, in a newspaper of general circulation in the region where the Court is located.

(3) Time of Publication; When Service Complete. Service by publication is complete on the 10th day after the final publication date. The plaintiff shall file with the Court an affidavit that publication has been made.

h. Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c) (1) of this Rule, return shall be made by the plaintiff's attorney filing with the Court the acknowledgment received pursuant to that paragraph. The attorney filing such proof of service with the Court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a tribal police officer, a marshal or the marshal's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

i. Amendment. At any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

**Rule 90. Schedule of Tribal Court Fees**

The fees of the Tribal Court shall be as follows:

Entry of any action, except as provided by tribal law, \$125.00;

Entry of a Title 8 (Employee Review Code) administrative appeal, \$50.00;

Application or motion to open or modify final judgment, \$75.00;

Notice of appeal to the Court of Appeals, \$125.00;

Pro hac vice admission, \$50.00;

Copies, \$1.00 for first page or part thereof and \$.50 for each additional page or part thereof;

Registration of foreign judgment, \$50.00;

Writ of execution, \$10.00;

Requests for transcription of court proceedings, \$15.00 per audio copy (tape or CD) plus "actual costs of transcription" - \$2.50 per page; \$3.25 per page for expedited services;

Attesting copies, \$2.00;

Certification of any document, \$15.00 in addition to cost of copying;

Exemplifying copies, \$25.00;

Service of any document within the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, \$5.00;

Service of any document without the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, \$5.00 in addition to \$.55 per mile.

**Probate Court.** There shall be no entry fee for any proceedings in the Probate Court. Fees for recordings, notices, service of process and certified copies (other than accountings) shall be \$5.00 per page. There shall be a \$125.00 fee for each accounting filed.

**Exemptions.** Notwithstanding all of the above provisions, neither the Tribal Court, the Court of Appeals, the Office of the Tribal Prosecutor, the Office of Legal Counsel nor counsel appointed by the Tribal Court shall be required to pay any fee.

**MASHANTUCKET PEQUOT RULES OF APPELLATE PROCEDURE**

M.P.R.A.P. 11

**Rule 11. Costs, Fees, Appointment of Counsel in Criminal Cases**

a. At the time of filing the notice of appeal, the appellant shall pay to the Tribal Court Clerk the sum of \$125 as a filing fee.

b. If a party is indigent and desires to appeal, that party may file a notice of appeal accompanied by a statement under oath reciting facts demonstrating the inability to pay the filing fee. Under these circumstances, the filing fee will be waived.

c. In criminal cases, an indigent party may also file a motion for an order from an appellate court judge that the necessary expenses of prosecuting the appeal be paid by the Mashantucket Pequot Tribe and for appointment of appellate counsel.