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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Wampanoag Tribe of Gay Head (Aquinnah) Liquor Control Ordinance 14-01

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the liquor ordinance of the Wampanoag Tribe of Gay Head (Aquinnah). This ordinance regulates and controls the possession, sale and consumption of liquor within the jurisdiction of the Wampanoag Tribe of Gay Head (Aquinnah). The ordinance will increase the ability of the Wampanoag Tribe of Gay Head (Aquinnah) to control liquor distribution and possession on tribal lands and Indian country, and at the same time will provide an important source of revenue for the strengthening of the tribal government and the delivery of tribal services.

DATES: Effective Date: This code shall become effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Acting Regional Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247-1534, Fax: (405) 247-9240; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of

Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240, Telephone: (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the Federal Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Wampanoag Tribe of Gay Head Tribal (Aquinnah) Tribal Council duly adopted the Aquinnah Wampanoag Liquor Ordinance 14-01 on September 17, 2014.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary - Indian Affairs. I certify that the Wampanoag Tribe of Gay Head Tribal (Aquinnah) Tribal Council duly adopted the Aquinnah Wampanoag Liquor Ordinance 14-01 by Resolution No. 2014-34 on September 17, 2014.

Dated: July 14, 2015

Kevin K. Washburn,
Assistant Secretary - Indian Affairs.

Ordinance 14-01 Aquinnah Wampanoag Liquor Ordinance shall read as follows:

SECTION 1.1. TITLE

This Ordinance shall be known as the Aquinnah Wampanoag Liquor Ordinance (“Tribe”) and shall be referenced as the Liquor Ordinance.

SECTION 1.2. FINDINGS AND PURPOSE

A. The introduction, possession, and sale of liquor in Indian Country has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on the Tribe’s Tribal Lands remains exclusively subject to the legislative enactments of the Tribe in its exercise of its governmental powers over Tribal Lands, and the United States.

B. Federal law prohibits the introduction of liquor into Indian Country (18 U.S.C. Sec. 1154), and authorized tribes to decide when and to what extent liquor transactions, sales, possession and service shall be permitted on their Tribal Lands (18 U.S.C. Sec. 1161).

C. Pursuant to the authority in Article VII, Sec. 1 of the Tribe's Constitution, the Tribal Council has the authority “manage, control and administer the affairs of the tribe and shall determine its policies and procedures.”

D. The enactment of this Liquor Ordinance to govern liquor sales and service on Tribal Lands, will increase the ability of the Tribe to control liquor distribution and possession on Tribal Lands, and at the same time will provide an important source of revenue for the continued operation of Tribal government and the delivery of governmental services, as well as provide an amenity to customers at tribal gaming facilities, tribal hotels, concert venues and golf courses.

SECTION 1.3. DEFINITIONS

A. Unless otherwise required by the context, the term “liquor” as used throughout this Liquor Ordinance shall mean “alcohol”, “alcoholic beverages”, “liqueur or cordial”, “malt beverages” and “wine” as those terms are defined by the Massachusetts State Liquor Control Act, M.G.L. Chapter 138 Section 1 as amended and incorporated by reference herein.

B. “Tribal Lands” means all “Settlement Lands” as defined by the Massachusetts Indian Land Claim Settlement Act, 25 U.S.C. § 1771 et seq., as the “private settlement lands” described in paragraph 6 of the Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims” executed on November 22, 1983 (“Settlement Agreement”) and “public settlement lands” described in paragraph 4 of the Settlement Agreement as:

1. Public Settlement Lands: The Common Lands consisting of 238 acres (which include the Cranberry Lands, the Face of the Cliffs, and the Herring Creek), including the Menemsha Lands legally described as:

Parcel One: The Cranberry Lands

These lands consist of the parcels shown on the Assessors Maps of the Town of Gay Head, as those maps configured on the date of this deed (the “Assessors Maps”) as follows: Map 3, Parcel 1 and Map 4, Parcel 63.

Parcel Two: The Face of the Cliffs

“The clay in the cliffs” as set forth in a set-off of the same dated December 21, 1878, in Dukes County Probate Court Proceedings Case No. D1-235, EXCEPTING AND

EXCLUDING all property shown as Lot A on a “Plan of Land in Gay Head, Mass. Surveyed for Trustees of Aquinnah Realty Trust, June 8, 1989, scale 1 in. = 30 ft., Vineyard Haven Surveying, Box 1548, Beach Road, Vineyard Haven, MA 02568,” and consisting of 504 Sq. Ft., which Plan is recorded in the Dukes County Registry of Deeds as Gay Head Case File No. 85.

Parcel Four: The Herring Creek

Those rights reserved in a set off dated December 21, 1878, in Dukes County Probate Proceeding Case No. D1-235, in the Herring Fishery, for the purpose of fishing and clearing the creeks, a strip of land one rod wide on each side of the creek, so long as the said reservation may be needed for that purpose. The approximate location of Herring Creek is shown on Gay Head Assessor’s Map 11. Said Creek runs through Lots 381, 382, 383 and 384 on said Partition Plan, above mentioned, and said Creek also runs through The Cook Lands, which is Parcel Three, above mentioned.

2. Private Settlement Lands: The former Strock Estate consisting of three parcels of about 175 acres legally described as “The land in Gay Head, Dukes County, Massachusetts, shown as Lots 68, 71, 72, 73, 80, 86, 179, 246, 254, 294, 299, 300, 309, 316, 319, 324, and 325 on a “Plan of Gay Head Showing the Partition of the Common Lands as Made by Joseph T. Pease and Richard L. Pease, Commissioners, by John H. Millen, Civil Engineer on file with Dukes County Probate Court.”;

3. Any lands title to which is held in trust by the United States for the benefit of the Tribe or individual tribal member of the Tribe, or held by the Tribe or individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power; and

4. All lands acquired into trust for the benefit of the Tribe.

C. "Tribe" means the Wampanoag Tribe of Gay Head (Aquinnah).

SECTION 1.4. JURISDICTION

To the extent permitted by applicable law, the Tribe asserts jurisdiction to determine whether liquor sales and service are permitted on Tribal Lands. As provided in section 1.6 of this Ordinance, liquor sales and service are limited to tribal gaming facilities, tribal hotels, concert venues and golf courses. Nothing in this Ordinance is intended nor shall be construed to limit the jurisdiction of the Tribe over Tribal Lands.

SECTION 1.5. RELATION TO OTHER LAWS

All prior ordinances, resolutions and motions of the Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Ordinance. No Tribal business licensing law or other Tribal law shall be applied in a manner inconsistent with the provisions of this Ordinance.

SECTION 1.6. AUTHORIZED SALE AND SERVICE OF LIQUOR

Liquor may be offered for sale and may be served on Tribal Lands only at tribal gaming facilities, and at tribal hotels, concert venues, and golf courses. Any other liquor sales are strictly prohibited.

SECTION 1.7. PROHIBITIONS

A. General Prohibitions. The commercial introduction of liquor for sales and service, other than as permitted by this Ordinance, is prohibited within Tribal Lands, and is hereby declared an offense under Tribal law. Federal liquor laws applicable to Indian Country shall remain applicable to any person, act, or transaction which is not authorized by this

Ordinance and violators of this Ordinance shall be subject to federal prosecution as well as to legal action in accordance with the law of the Tribe.

B. Age Restrictions. No person shall be authorized to serve liquor unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. Off Premises Consumption of Liquor.

1. All liquor sales and service authorized by this Ordinance are permitted only at the authorized locations as set forth in section 1.6 of this Ordinance. No open containers of liquor, or unopened containers of liquor in bottles, cans, or otherwise may be permitted outside of those premises.

D. No person shall sell any liquor to any person obviously under the influence of liquor.

E. No person who is obviously under the influence of liquor may purchase or consume liquor on any authorized premises.

SECTION 1.8. CONFORMITY WITH STATE LAW

Authorized liquor sales and service on Tribal Lands shall comply with Massachusetts State Liquor Control Act standards to the extent required by 18 U.S.C. Sec. 1161.

SECTION 1.9. PENALTY

A. Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Ordinance shall be subject to a civil fine of not more than \$500 for each violation involving possession, but up to \$5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Ordinance, and violators may be subject to exclusion from Tribal Lands.

B. In addition, persons or entities subject to the criminal jurisdiction of the Tribe who violate this Ordinance shall be subject to criminal penalties as provided in applicable tribal criminal law.

C. All contraband liquor shall be confiscated by an authorized law enforcement agent.

D. The Aquinnah Judiciary shall have exclusive jurisdiction to enforce this Ordinance and the civil fines, criminal punishment and exclusion authorized by this section.

SECTION 1.10. SOVEREIGN IMMUNITY PRESERVED

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Tribe. No manager or employee of the Tribe or the Aquinnah Wampanoag Gaming Corporation shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Tribe pursuant to this Ordinance.

SECTION 1.11. SEVERABILITY

If any provision or provisions in this Ordinance are held invalid by a court of competent jurisdiction, this Ordinance shall continue in effect as if the invalid provision(s) were not a part hereof.

SECTION 1.12. EFFECTIVE DATE

This Ordinance shall be effective following approval by the Tribal Council and approval by the Secretary of the Interior or his/her designee and publication in the Federal Register as provided by federal law.

[FR Doc. 2015-17903 Filed: 7/20/2015 08:45 am; Publication Date: 7/21/2015]