

# St. Croix Chippewa Indians of Wisconsin

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RESOLUTION NO. 12-3-09-01

## Alcoholic Beverage Control Ordinance of the St. Croix Chippewa Indians of Wisconsin

WHEREAS, the St. Croix Chippewa Indians of Wisconsin (Tribe) is a federally recognized Indian Tribe duly organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, as amended, and established pursuant to the Constitution and By-Laws adopted by the Tribe on August 29, 1942 and approved by the Secretary of the Interior on November 12, 1942; and

WHEREAS, pursuant to Article IV, Section I of the Constitution, the governing body of the Tribe is the Tribal Council (the "Tribal Council"), and

WHEREAS, the St. Croix Tribal Council pursuant to Public Law 83-277, 67 Stat. 588, 18 U.S.C. S. 1161 and Article V of the Constitution of the St. Croix Chippewa Indians of Wisconsin has the authority to develop a Liquor Control Ordinance; and

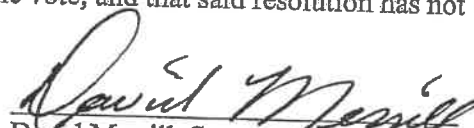
WHEREAS, the control of, or possession and sale of liquor on the St. Croix Chippewa Indian Reservation is essential,

NOW THEREFORE BE IT RESOLVED, that the St. Croix Tribal Council hereby enacts and approves the attached Alcoholic Beverage Control Ordinance of the St. Croix Chippewa Indians of Wisconsin.

BE IT FURTHER RESOLVED that the St. Croix Tribal Council authorizes the Tribe's General Counsel to forward the newly enacted Alcoholic Beverage Control Ordinance of the St. Croix Chippewa Indians of Wisconsin to the Secretary of the Interior for certification and publication in the Federal Register as called for by federal law.

### CERTIFICATION

I, the undersigned as Secretary/Treasurer of the St. Croix Tribal Council, do hereby certify that the Council is composed of five(5) members of whom 3 were present, constituting a quorum, at a meeting duly called, convened and held this 30 day of DECEMBER, 2009 and that the foregoing resolution was adopted at said meeting by an affirmative vote of 3 members for 0 against and 0 members abstaining from the vote, and that said resolution has not been rescinded or amended in any way.

  
David Merrill, Secretary/Treasurer  
St. Croix Tribal Council

Lewis Taylor  
Tribal Chairman  
Big Sand Lake Community

Beverly Benjamin  
Tribal Vice-Chairwoman  
Danbury Community

David "Maabin" Merrill  
Secretary/Treasurer  
Round Lake Community

Elmer J. Emery  
Representative  
Big Sand Lake Community

Jeanne Awonohopay  
Representative  
Maple Plain Community

## **Alcoholic Beverage Control Ordinance of the St. Croix Chippewa Indians of Wisconsin**

The St. Croix Chippewa Indians of Wisconsin, a federally recognized Indian Tribe organized pursuant to the Act of June 18, 1934 (48 Stat. 984), acting pursuant to Article V of the Constitution of the St. Croix Chippewa Indians of Wisconsin and the Act of August 15, 1953, Public Law 83-277, 18 U.S.C. 1161, hereby establishes and enacts this Ordinance to authorize, license and regulate alcoholic beverages within the Indian country under the jurisdiction of the St. Croix Chippewa Indians of Wisconsin.

### **Section 1. Title.**

This Ordinance shall be known as the St. Croix Chippewa Indians of Wisconsin Alcoholic Beverage Control Ordinance.

### **Section 2. Definitions.**

As used in this Ordinance:

a) "Alcoholic Beverages" shall mean fermented malt beverages and intoxicating liquor.

b) "Fermented Malt Beverages" shall mean any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

c) "License" shall mean any Class A or Class B Beer License, any Class A or Class B Liquor License, and any Beer or Liquor Wholesalers License.

d) "Intoxicating Liquor" shall mean all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "Fermented Malt Beverages."

e) "Minor" shall mean any person under twenty-one (21) years of age.

f) "Tribe" shall mean the St. Croix Chippewa Indians of Wisconsin.

g) "Council" shall mean the duly elected governing body of the St. Croix Chippewa Indians of Wisconsin.

h) "Package" shall mean the original container or receptacle used for holding intoxicating liquor or fermented malt beverages.

i) "Possession" or "Possessing" shall mean control over one's person, vehicle or other property and includes constructive possession through control without regard to ownership.

j) "Premises" shall mean the area described in a License.

k) "Purchase" shall mean exchange, barter, traffic, receipt, with or without consideration in any form.

l) "Sale" shall mean exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying or distribution by any means, by any person to any person.

m) "Transportation" or "Transport" shall mean the introduction of alcoholic beverage onto the Indian country under the jurisdiction of the Tribe by any means of conveyance for the purpose of sale or distribution.

### **Section 3. Conformity with Tribal and State Law Required.**

The introduction, possession, transportation, and sale of alcoholic beverages shall be lawful within the Indian country under the jurisdiction of the Tribe, provided that such introduction, possession, transportation, and sale are in conformity with the provisions of this Ordinance and the laws of the State of Wisconsin pursuant to 18 U.S.C. § 1161.

### **Section 4. Tribal License Required.**

No person or entity shall engage in the sale of any alcoholic beverage within the Indian country under the jurisdiction of the Tribe, unless duly licensed to do so by the State of Wisconsin and the Tribe in accordance with the terms of this Ordinance.

### **Section 5. Retail License Classes.**

The Council may issue licenses to retailers in the following classes.

a) "Class A Beer License," shall authorize the retail sale of fermented malt beverages only for consumption away from the premises where sold and in the original packages, containers or bottles.

b) "Class B Beer License," shall authorize the retail sale of fermented malt beverages either for consumption on or off the premises where sold and in the original packages, containers or bottles if sold for off premises consumption.

c) "Class A Liquor License," shall authorize the retail sale of alcoholic beverages only for consumption away from the premises where sold and in the original packages, containers or bottles.

d) "Class B Liquor License," shall authorize the sale of alcoholic beverages to be consumed by the glass only on the premises where sold and also authorizes the sale of alcoholic beverages in the original package or container, to be consumed off the premises where sold.

e) "Temporary License," shall be a Class B Beer License issued to bonafide clubs, fair associations or agricultural societies, fraternal organizations, or veterans organizations for particular meetings, picnics, or similar gatherings for not more than seven days.

#### **Section 6. Wholesale License Classes.**

The Council may issue licenses to wholesalers in the following classes:

a) "Beer Wholesaler License," shall authorize the sale of fermented malt beverages from premises located within Indian country under the jurisdiction of the Tribe, only in the original package or container, to retailers or wholesalers, not to be consumed in or about the premises where sold.

b) "Liquor Wholesaler License," shall authorize the sale of alcoholic beverages from premises located within Indian country under the jurisdiction of the Tribe, only in the original package or container in quantities of not less than four liters at any one time to retailers or wholesalers, not to be consumed in or about the premises where sold.

## **Section 7. License Fees.**

The Council shall by resolution set the annual fee for each class of license and combination thereof. The fee shall be prorated for the remaining months of the year if the License is obtained after March 1.

## **Section 8. Application for Tribal License; Requirements.**

Application for a License shall be made to the Council by the person or authorized representative of the entity which seeks to sell and serve alcoholic beverages. No Tribal License shall issue under this Ordinance except upon sworn application, containing a full and complete showing of the following:

- (1) the name and address of the person or entity making the application;
- (2) if the applicant is a corporation, partnership, or other non-governmental entity, identification of all persons or entities holding an ownership interest of ten percent (10%) or more in that entity and all persons having authority to control or manage the entity. All such individuals are referred to hereinafter as "owners and managers";
- (3) the description of the premises in which the alcoholic beverages are to be sold and proof that the applicant is the owner of the premises, or the lessee of the premises for the term of the License;
- (4) agreement by the applicant, its owners and managers, to accept and abide by all conditions of the Tribal License, to obey all Tribal ordinances, regulations, and other applicable Tribal law, and to consent to the jurisdiction of the Tribal Court for enforcement of all applicable law;
- (5) satisfactory proof that the applicant, its owners and managers, are of good character and reputation and that the applicant, its owners and managers are financially responsible;
- (6) agreement by the applicant, and all of the applicant's owners and managers, to submit to and satisfactorily pass a criminal history and financial background check. An applicant or any of its owners or managers will be found to have failed a criminal history background check if any of them have been convicted of or pled guilty to any felony at any time, or any misdemeanor within the last five years that involved or related to: liquor, controlled substances, violence, theft, dishonesty, bribery, obstruction of

law enforcement, tampering with witnesses, gambling, exploitation of children or any other crime where a child is the victim, any crime involving loss or destruction of Tribal property, as well as conspiracy or attempt to commit any of the foregoing crimes. An applicant or any of its owners or managers will be found to have failed a financial background check if any of them have declared bankruptcy or insolvency within the past five years, are delinquent on any debt owed to or guaranteed by the Tribe, any agency of the Tribe, or corporation owned or controlled by the Tribe, or any of them have any other delinquent debts or obligations which indicate that the applicant is not financially responsible;

- (7) information stating whether the applicant, its owners and managers, have previously applied for a liquor license from any jurisdiction, the name of the jurisdiction, the date(s) of such application, whether the license was granted, and if granted, the period the license was in effect, and satisfactory proof that the applicant, its owners and managers, have not previously been denied a liquor license, or found to have violated the terms or conditions of any liquor license, or had any liquor license revoked or cancelled;
- (8) evidence that the applicant is or will be duly licensed under the laws of the State of Wisconsin;
- (9) satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least 30 days prior to consideration by the Council and has been published at least twice in such local newspaper serving the community that may be affected by the License as the Tribal Chairman or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Council;
- (10) payment of a non-refundable application fee of \$250, or \$50 for a Temporary License;
- (11) such other information as the Council may require.

## **Section 9. Hearing on Application for a License.**

All applications for a License shall be acted upon by the Council within 45 days from the time a completed application is received by the Council. All applications for a License shall be considered by the Council in open session at which the applicant, and any person(s) supporting or opposing the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Council, by secret ballot, shall determine whether to grant or deny the application, based on whether the Council, in its discretion, determines that granting the License is in the best interests of the Tribe, including the health and safety of the public.

## **Section 10. Conditions of a License.**

Any Tribal License issued under this Ordinance shall be subject to such reasonable conditions as the Council shall fix including, but not limited to, the following:

a) The License (other than a Temporary License) shall be for a term of not more than one year and each License shall expire on January 1. A Temporary License shall be for a specified period of not to exceed seven days.

b) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c) The licensed premises shall be subject to patrol by the Tribal Police Department, and such other law enforcement officials as may be authorized under Tribal, federal or state law, and the licensee shall cooperate with all duly authorized law enforcement officers.

d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

e) Subject to the provisions of Subsection (f) of this section, no alcoholic beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on a licensed premises except in conformity with the hours and days prescribed by the laws of Wisconsin, and in accordance with the hours and days fixed by the Council, provided that the licensed premises shall not open earlier or operate or close later than is permitted by the laws of Wisconsin.

f) No alcoholic beverages shall be sold 1) within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, or 2) on special days of observance as designated by the Council.

g) All acts and transactions under authority of a Tribal License shall be in conformity with the License, this Ordinance, and other applicable Tribal and State law.

h) No person under the age of 21 shall be sold, served, delivered, given or allowed to consume alcoholic beverages in or by a licensee. Where there may be a question of a person's right to purchase an alcoholic beverage by reason of his or her age, such person shall be required to present any one of the following forms of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or tribe or identification card issued by any state or tribal department of motor vehicles; (2) United States active duty military ID; (3) a passport; or (4) a St. Croix Chippewa tribal identification card or other recognized tribal identification card.

i) Licenses, except for Temporary Licenses, shall expire January 1 of each year. Any person or entity seeking a License for a subsequent year shall, by November 15 of the prior year, comply with the procedures and meet all the requirements of Sections 8 and 9 of this Ordinance.

j) Every licensee shall post and keep its License in a conspicuous place on the premises.

## **Section 11. Prohibited Activities.**

It shall be a violation of this Ordinance for any person:

a) to sell or offer for sale or distribute or transport in any manner, any alcoholic beverage or to have alcoholic beverages in his possession with intent to sell or distribute without a License;

b) to buy any alcoholic beverage from any person other than a person or entity holding a License as required by this Ordinance;

c) to sell or provide any alcoholic beverage to any person under the age of 21 years;

d) to permit any person under the age of 21 years to consume any alcoholic beverage on his or her premises or any premises under his or her control;

e) to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain any alcoholic beverage;

f) to attempt to purchase an alcoholic beverage through the use of a false or altered identification;



g) to consume, acquire or have in his or her possession any alcoholic beverage while under 21 years of age.

h) to sell alcoholic beverages during hours not permitted by Tribal law.

i) to sell alcoholic beverages to any person known or believed to be intoxicated.

## **Section 12. Enforcement.**

a) Criminal Penalties. A violation of this Ordinance by any person subject to the criminal jurisdiction of the Tribe is a misdemeanor and may be prosecuted by the Tribe pursuant to Title ----- of the Tribal Code.

b) Civil fines. The Tribe may bring a civil action in the Tribal Court against any person or entity for violation of this Ordinance or the terms of a License issued under this Ordinance, and a person found to have violated this Ordinance or the terms of a License issued under the Ordinance may be subject to a civil fine of not to exceed \$5,000 per violation.

c) Injunctive relief. The Tribe may bring a civil action in the Tribal Court against any person or entity to enjoin a violation of this Ordinance.

d) Contraband. Alcoholic beverages confiscated from any person found in violation of this Ordinance are declared to be contraband. Where a person is found to have violated this Ordinance, all alcoholic beverages in such person's possession shall be contraband. Any tribal agent, employee, or officer who is authorized by the Council to enforce this Ordinance shall have the authority to, and shall, seize all contraband. Any officer seizing contraband shall preserve the contraband in accordance with applicable Tribal and State law. Upon being found in violation of this Ordinance by the Tribal Court, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

e) Notice of violation.

1) The Council may appoint a law enforcement officer or other person as Alcoholic Beverage Control Agent ("Agent") for the purpose of investigating, reporting and seeking corrective action with respect to violations of this Ordinance and Licenses under this Ordinance. Where it appears, based on an investigation done by the Agent, that a violation has occurred, but may be cured by having the licensee take corrective

action, the Agent may issue a written Notice of Violation to the licensee describing the violation and, as appropriate, describing the corrective action to be taken. A copy of the Notice of Violation shall also be provided to the Council.

2) The appropriate corrective action will depend on the specific facts and circumstances of the violation as well as any history of prior violations with regard to the licensee. Corrective action may include, but will not necessarily be limited to, requirements for additional management or employee training, the improvement of internal policies and procedures, and the taking of appropriate personnel action with regard to negligence or misconduct by an employee of the licensee. The Notice of Violation will also require the licensee to submit a written report to the Agent, with a copy to the Council, on the corrective action taken and shall set a deadline by which this is to occur.

3) If the licensee disputes the findings contained in the Notice of Violation or the directive on corrective action, the licensee shall submit to the Agent, within five business days of receipt of the Notice, a written statement of the basis for its disagreement and any evidence in support of its position. A copy shall also be provided to the Council. The Agent will then review the licensee's response, conduct such additional investigation as the Agent deems appropriate, and then submit to the licensee a written notice that either reconfirms, modifies or withdraws the original Notice of Violation.

4) If the licensee continues to dispute the findings contained in the Notice of Violation or the directive for corrective action, the licensee may appeal that Notice by submitting to the Agent and the Council, within 5 business days from receipt of the Agent's final decision, a written request for a hearing before the Council. The Council shall send written notices of the hearing to the licensee and the Agent, on the time and place of the hearing. A decision by the Council on an appeal from a Notice of Violation shall be final.

f) Suspension or revocation of License.

1) Any License issued under this Ordinance may be suspended or revoked by the Council for violation of any of the provisions of this Ordinance, or of the Tribal License. The Council may consider License suspension or revocation based on information provided by the Alcoholic Beverage Control Agent, or a member of the public. A Notice of Violation is not required prior to Council consideration of suspension or revocation of a License.

2) A License shall not be suspended or revoked except following a hearing before the Council after 10 days notice to the licensee. The notice will be delivered in

is invalid in one or more of its applications, that part shall remain in effect in all valid applications that are severable from the invalid applications.

**Section 16. Repealer.**

All prior Tribal ordinances regulating alcoholic beverages within the Indian country under the jurisdiction of the Tribe, including the Ordinance approved by the Council pursuant to Resolution 5-18-92-1, are hereby repealed, upon the effective date of this Ordinance.

**Section 17. Sovereign Immunity.**

Notwithstanding any other provision of law, nothing contained in this Ordinance in any way limits, alters, restricts, or waives the Tribe's sovereign immunity.

**Section 18. Effective Date.**

This Ordinance shall be effective upon its certification by the Secretary of the Interior and its publication in the Federal Register.