

WAGANAKISING ODAWAK STATUTE 2009-019
LIQUOR AND TOBACCO LICENSING BOARD STATUTE

SECTION I. SHORT TITLE

This Statute may be cited as the "Licensing Board."

SECTION II. PURPOSE

The purpose of this Statute is to provide for the establishment of the Liquor and Tobacco Licensing Board that issues, renews and regulates liquor and tobacco licenses and permits in order to protect the rights and interest of Tribal Citizens.

SECTION III. DEFINITIONS

The following definitions apply in this Statute:

A. "Alcoholic Liquor" means the four varieties of liquor (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquor or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

B. "Board" means the Liquor and Tobacco Licensing Board.

C. "Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

- D.** “Licensee” means any person or entity, includes any employee or agent of the Licensee, licensed by the Tribe to sell alcohol or tobacco on Tribal trust lands.
- E.** “LTBB” or “Tribe” means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.
- F.** “Person” or “Entity” means any individual, firm, partnership, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.
- G.** “Tobacco Products” means all forms of tobacco prepared in such a manner at to be suitable for chewing or smoking including cigarettes, cigars, smoking tobacco, snuff, chewing tobacco.
- H.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Tribal Court.

SECTION IV . LIQUOR AND TOBACCO LICENSES

- A.** Any person or entity that shall engage in the sale of alcohol or tobacco within the jurisdiction of the Tribe shall first obtain a license for such sale, provided that any person or entity engaging in such sales prior to the adoption of this Statute shall obtain a license within sixty (60) days for the enactment of this Statute.
- B.** A license shall be valid for a period of one (1) year from the date of its issuance and shall expire automatically without notice on the expiration date stated in the license.
- C.** No license shall be transferable.
- D.** Temporary licenses for a limited time-frame and purpose may also be available.

SECTION V. LIQUOR AND TOBACCO LICENSING BOARD

- A.** The Liquor and Tobacco Licensing Board is (“Board”) is hereby created within the Executive Branch to carry out the purposes stated in this Statute, and each annual budget submitted by the Executive shall include funding for the Board’s operation subject to funding availability.

B. The Board shall adopt policies and regulation to carry out its duties under this Statute, subject to Tribal Council approval. General application of Commission, Board and Committee Statutes shall not apply to this board unless designated otherwise.

C. The Board shall meet once a year in regular meetings and additionally if necessary within 15 days of receiving any request for action by the Board.

D. Appointments, Term, Nepotism and Conflict

1. The Board shall consist of three (3) members nominated by the Executive and confirmed by the Tribal Council. To be eligible for appointment a person must be a Tribal Citizen who is at least eighteen (18) years of age and is familiar with all Tribal liquor and tobacco laws, regulations, policies and procedures. One Board member will have at least 2 years experience in law enforcement, legal or judiciary. The Board members shall serve three year terms with initial appointments being one member for one year, a second member for two years, and a third for three years to provide for staggered terms.
2. Tribal employees may serve on the Board and may be compensated by stipend if the Board is not directly related to their employment, does not interfere with their work, and does not meet during scheduled work hours. If a Board meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize PTO (personal time off), or flextime upon prior approval of the individual's supervisor.
3. Two or more members of the same immediate family as defined in the Constitution shall not serve on the Board at the same time.
4. No Board member may participate in making any decision that involves a personal or financial interest of the Board or a member of his or her immediate family unless such interest is held in common with the Tribe and its Citizens.

E. Open Meetings and Records

1. Board meetings shall be open to LTBB Citizens.
2. Board records shall be open to LTBB Citizens.
3. The Board must provide notice of meetings at least five days in advance of the meeting.

F. Compensation and Stipends

1. Board members who attend any meeting or hearing directly related to their duties or attend any event where their attendance is required may be compensated for attendance so long as there are funds available in the Board's budget.
2. Board members shall receive a stipend for attendance at Board meetings subject to the availability of funds.
3. Any Board member who attends a properly noticed meeting shall be eligible for a stipend, mileage, and expenses, even if no official action can be taken due to lack of a quorum.

SECTION VII. AUTHORITY

- A. The Board shall hear and decide the granting, denial or renewal of licenses and permits.
- B. C. The Board shall hear and decide on the suspension or revocation of a license based on citations of violations.
- D. The Board shall hear and decide appeals on the issuance of citations.
- E.
- F. The Board may hire inspectors or investigators provided funding availability.

SECTION VIII. APPEALS OF CITATIONS TO THE BOARD

- A. Any party who has received an issuance of citations and disagrees with the citation may appeal to the Board.
 - 1. An appeal of a citation must be filed within fourteen (14) days of the issuance of the citation. The party must file a written appeal to the Board including at a minimum:
 - a. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Board; and
 - b. The relief requested from the Board.
- B. The aggrieved party must be given an effective opportunity to defend themselves by confronting any adverse witnesses and by being allowed to present witnesses, evidence and arguments.
- C. The Board shall hear the appeal within 15 calendar days of filing, either during a regular meeting or special meeting called for that purpose, and issue its written ruling within ten (10) days of such hearing.

IX. JUDICIAL REVIEW

- A. Decisions of the Board may be appealed to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Board's ruling. The Court shall uphold the decision of the Board unless the Court determines that the Board's decision is clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations.
- B. The Tribal Council expressly waives the sovereign immunity of the Tribe and its agents for the limited purpose of reviewing the decisions of the Board under the standards set forth in Section VI.A and allowing for the remedies set forth in Section VI.C.
- C. In the event the Court finds the Board's decision to be clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations, it

shall enter an equitable order overturning the Board's action, but shall not award monetary damages.

SECTION X. SOVERIEGN IMMUNITY

The Tribe, and all of its constituent parts, which includes but is not limited to Tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been clearly and expressly waived by Tribe Council.

SECTION VIII. REGULATIONS

The Executive may develop Regulations as it deems necessary for the implementation of the intent of this Statute and shall forward such Regulations to the Tribal Council for approval.

SECTION XI. SAVINGS CLAUSE

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

SECTION XII. EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 26, 2009 at which a quorum was present, by a vote of 7 in favor, 1 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.	X			
Melvin L. Kiogima	X			
Dexter McNamara	X			
Marvin Mulholland	X			
Rita Shananaquet	X			
Alice Yellowbank		X		
Gerald V. Chingwa				X
Regina Gasco Bentley	X			
Beatrice A. Law	X			

Date: 7/26/09

Beatrice A. Law

 Beatrice Law, Legislative Leader

Date: 7-26-09

Regina Gasco Bentley

 Regina Gasco Bentley, Secretary

Received by the Executive Office on 7-27-09 by *[Signature]*

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 8-10-09

Frank Ettawageshik

 Frank Ettawageshik, Tribal Chairperson

