

Proposed Ordinance 2025-03: Licensing and Regulation of Business Enterprises

Tribal Council member Jeremy Hebert introduces the following ordinance

An ordinance of the Keweenaw Bay Indian Community that will be enacted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community to add a new Title to the Tribal Code. This new Title will outline the Tribe's regulation of businesses within the Tribe's jurisdiction. This Ordinance will be codified as Title 71.

TITLE 71 LICENSING AND REGULATION OF BUSINESS ENTERPRISES

Sec. XX-01. Definitions.

- (a) Activities or Activity means a Commercial Enterprise's operations, recordkeeping, administration, real property, personal property, procedures, characteristics, or anything else related to the Commercial Enterprise.
- (b) Commercial Enterprise means any person or entity that is offering goods or services.
- (c) Commonly Applicable Conditions means standards that are (1) established by at least one jurisdiction in the United States; (2) a professional organization recognized regionally or nationally as having cognizance over the applicant's activities; or (3) conditions that are intended to preclude Activities that pose an undue risk of running contrary to the Community's Values.
- (d) The Community's Values mean the ethics, morals, beliefs, and standards of the Community, all of which are reflected in Community records, historical records, or the seven grandfather teachings.
- (e) Complete Application means an application that contains all information specified by the Department, including any follow-on requests for information.
- (f) License means a license issued under this Title.
- (g) Licensee means a person or entity with a License under this Title.
- (h) License Conditions means the Commonly Applicable Conditions the Department requires the Licensee to follow.
- (i) Department means the Licensing Department.
- (j) CEO means the Chief Executive Officer of the Community.

Sec. XX-02. Purpose, Authority, and Interpretation.

The purposes of this Title are as follows:

- (a) to ensure Commercial Enterprises are adhering to minimum standards of safety, minimum standards of professional conduct, and industry best practices;
- (b) to preclude Commercial Enterprise Activities that run contrary to the Community's Values;
- (c) to monitor and regulate businesses under the Community's jurisdiction;
- (d) to ensure land available for commercial use is used to further tribal goals as much as possible;
- (e) to ensure the Activities of Commercial Enterprises are consistent with good stewardship needed to protect the Community's natural resources for the next seven generations; and
- (f) to protect the public's health, safety, and welfare.

All provisions of this Title will be liberally construed to accomplish these purposes. The authority for this Title is in Article VI, Section 1 of the Tribal Constitution.

Sec. XX-03. License Required.

No person may operate a Commercial Enterprise inside the L'Anse Indian Reservation; trust lands; restricted lands; or lands owned by the Community, a governmental arm of the Community, or any entity the Community wholly owns or controls without receiving a License from the Community.

Sec. XX-04. Application for License.

A person must submit an application for a License to the Department using the form the Department identifies. A Complete Application for a License will include the following information:

- (a) Name and address of applicants;
- (b) Business name and type of business;
- (c) When and where the business will be established;
- (d) A description of the business; its Activities; the potential impacts on the Community, its members, the local economy, and the natural environment; and whether the Activities are contrary to the Community's Values;
- (e) An application fee in an amount the Tribal Council establishes in a resolution;
- (f) Any additional fees the Department requires to cover the Community's expenses in regulating the Licensee or reviewing the application, which may include its own studies or services from experts or consultants; and
- (g) Any other information the Community reasonably requires, including environmental studies or other impact studies.

A person may propose the Commonly Applicable Conditions it should follow in its application.

Sec XX-05 Application Processing and Review

- (a) After receipt of a Complete Application that meets all of the requirements in Section XX-04, the Department must review the application and determine (1) what Commonly Applicable Conditions would sufficiently protect people's health, safety, and welfare; (2) whether the applicant meets these conditions; and (3) whether the applicant's Activities run contrary to the Community's Values.
- (b) The Department may issue the License if the Department determines that (1) the applicant meets the conditions that sufficiently protect people's health, safety, and welfare and (2) the applicant's Activities do not run contrary to the Community's Values.
- (c) The Department will deny an application if (1) the Activity poses an undue risk to people's health, safety, and welfare regardless of potential conditions; (2) the applicant does not meet conditions that sufficiently protect the people's health, safety, and welfare; or (3) the applicant's Activities run contrary to the Community's Values.
- (d) After determining the License Conditions, the Department may provide a draft of the License Conditions to the applicant and provide 14 days for the applicant to request revisions. Any request for revisions must include an explanation for how those revisions (1) sufficiently protect people's health, safety, and welfare; (2) are supported by Commonly Applicable Conditions; and (3) would support a conclusion that the applicant's Activities under the requested revisions would not pose an undue risk of running contrary to the Community's Values. The Department may deny a requested revision if the Department determines that the requested revision would insufficiently protect people's health, safety, and welfare or that the applicant's Activity with the requested revision would still pose an undue risk of running contrary to the Community's Values.

Sec XX-06 Appeal Process

- (a) If the Department issued draft License Conditions and received a timely request for revisions, then the applicant may appeal the Department's denial of any requested revisions to the CEO. The applicant may appeal the CEO's decision to the Tribal Court. The Tribal Court will uphold the Community's decision unless the Community's decision is an abuse of discretion.
- (b) If the Department issued a license without seeking revisions as provided in Section XX-05(d), then the applicant may appeal the Department's License Conditions to the CEO. The applicant

may appeal the CEO's decision to the Tribal Court. The Tribal Court will uphold the Community's decision unless the Community's decision is an abuse of discretion.

- (c) If the Department denies an application for a License, then the applicant may appeal the Department's denial to the CEO. The applicant may appeal the CEO's decision to the Tribal Court. The Tribal Court will uphold the Community's decision unless the Community's decision is an abuse of discretion.
- (d) The Court will not have jurisdiction over Department decisions when the applicant has not complied with the procedural requirements specified in this Title.

Sec. XX-07 Duration

Unless revoked elsewhere, all Licenses may remain in effect for one to five years at the Department's discretion, considering the Licensee's Activities or the Licensee's background. To receive a renewal of a License, a Licensee must submit a new application for a License under the same procedures as outlined in this Title.

Sec. XX-08. Regulation.

Licensees must comply with tribal law and any License Conditions. Licensees must cooperate with the Department's efforts to inspect or investigate the Licensee. Cooperation with the Department's inspection and investigation includes, but is not limited to, timely replies to requests for information and allowing access to the Licensee's Activities during reasonable business hours. No one may transfer a License to another person.

Sec. XX-09. Violations, Jurisdiction.

- (a) The Department may issue a cease and desist order or a fine to any person(s) who violates Section XX-03. A failure to comply with the cease and desist order may subject the violator to a \$500 fine for each day of noncompliance.
- (b) A person may appeal the Department's actions under Section XX-09(a) to the CEO. The applicant may also appeal the CEO's decision to the Tribal Court. The Tribal Court will uphold the Department's actions unless the factual basis of the action is clearly erroneous.
- (c) Any person who violates Section XX-03 may be guilty of a misdemeanor. A conviction for a violation of the provisions of this section will constitute a conviction of a Class (B) misdemeanor.
- (d) For a violation of Section XX-08, the Department may issue a cease and desist order, the violation of which is subject to fines of up to \$500 a day for each violation; suspend or revoke the person's License; order the person to pay any damages attributable to the harm caused by the person's noncompliance; fine the person up to \$200 for each violation; or any combination of these. The Department may also order the Licensee to take corrective actions to address violations. The Department may fine a Licensee up to \$500 per day for a failure to fully and timely comply with the order to take corrective actions.
- (e) A Licensee may appeal the Department's actions under Section XX-09(d) to the CEO. The applicant may also appeal the CEO's decision to the Tribal Court. The Tribal Court will uphold the Department's actions unless the Department's actions are an abuse of discretion.

Sec. XX-10 Deposition of Funds.

The Department will place any fees or other penalties it collects under this Title into the general account of the Keweenaw Bay Indian Community.

Sec. XX-11. Exclusion Power.

Nothing in this Title will limit the Tribal Council's authority to exclude a Commercial Enterprise's Activity on trust lands, restricted lands, land the Community owns within the L'Anse Indian Reservation, and all other lands the Community has jurisdiction over.

Sec. XX-12 Report to the Council.

The Department must annually submit a written report to the Council on the number of Licenses and other relevant information.

Sec. XX-13 Right to Amend.

The Community reserves the right to amend or repeal this Title in any manner, including prohibiting or limiting the type or number of Licenses available.

Sec. XX-14 Severability.

If any one or more sections, provisions, phrases, or words of this Title are found invalid by a court of competent jurisdiction, such holding will not affect the validity or the enforceability of the remaining sections, provisions, phrases, or words of this Title.