

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

The Twenty-Nine Palms Band of Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8, and in accordance with the Act of August 15, 1953, 67 Stat 586, 18 U.S.C. 1161. I certify that the Twenty-Nine Palms Band of Mission Indians Liquor Ordinance was duly adopted by the Twenty-Nine Palms Band of Mission Indians on October 6, 1994, and amended twice, by resolution No. 950608 of June 8, 1995, and by resolution No. 950615A of June 15, 1995. The Ordinance provides for the regulation, distribution, possession, sale, and consumption of liquor on lands held in trust belonging to the Twenty-Nine Palms Band of Mission Indians.

DATES: This ordinance is effective as of June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611-MIB, Washington, DC 20240-4001; telephone 202/208-4400.

SUPPLEMENTARY INFORMATION: The Twenty-Nine Palms Band of Mission Indians Liquor Control Ordinance is to read as follows:

Liquor Ordinance of the Twenty-Nine Palms Band of Mission Indians

Chapter I—Introduction

101. *Title.* This ordinance shall be known as the "Liquor ordinance of the Twenty-Nine Palms Band of Mission Indians."
102. *Authority.* This ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161) and Article 6A(5) of the Twenty-Nine Palms Band of Mission Indians Articles of Association.
103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Twenty-Nine Palms Indian Reservation. The enactment of a tribal ordinance governing liquor possession and sale on the reservation will increase the ability of the tribal government to control

reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Chapter II—Definitions

201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.
202. "Alcohol." Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.
203. "Alcoholic Beverage." Is synonymous with the term "Liquor" as defined in Section 208 of this Chapter.
204. "Bar." Means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of beer, as herein defined.
205. "Beer." Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain of cereal in pure water containing not more than four percent of alcohol by volume. For the purposes of this title, any such beverage, including ale, stout, and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."
206. "Committee." Means the Business Committee of the Twenty-nine Palms Band of Mission Indians.
207. "General Council." Means the general council of the Twenty-nine Palms Band of Mission Indians which is composed of the voting membership of the Tribe as a whole.
208. "Liquor." Includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid 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, semisolid, solid, or other substances, which contain more

than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

209. "Liquor Store." Means any store at which liquor is sold and, for the purposes of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.
210. "Malt Liquor." Means beer, strong beer, ale stout, and porter.
211. "Package." Means any container or receptacle used for holding liquor.
212. "Public Place." Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purposes of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.
213. "Reservation." Means land held in trust by the United States Government for the benefit of the Twenty-nine Palms Band of Mission Indians (see also Tribal Land).
214. "Sale" and "Sell." Include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.
215. "Spirits." Means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.
216. "Tribe." Means the Twenty-nine Palms Band of Mission Indians.
217. "Tribal Land." Means any land within the exterior boundaries of the Reservation which is held in trust by the United States for the Tribe as a whole, including and such land leased to other parties.

218. "Wine." Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.
219. "Trust Account." Means the account designated by the tribal treasurer for deposit of proceeds from the tax from the sale of alcoholic beverages.
220. "Trust Agent." Means the tribal Chairperson or a designee of the Chairperson.

Chapter III—Powers of Enforcement

301. *Powers.* The Committee, in furtherance of this ordinance, shall have the following powers and duties:
- To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reservation;
 - To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Committee to perform its functions. Such employees shall be tribal employees;
 - To issue licenses permitting the sale or manufacture or distribution of liquor on the Reservation;
 - To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;
 - To bring suit in the appropriate court to enforce this ordinance as necessary;
 - To determine and seek damages for violation of this ordinance;
 - To make such reports as may be required by the General Council;
 - To collect taxes and fees levied or set by the Committee, and to keep accurate records, books and accounts; and
 - To exercise such other powers as are delegated by the General Council.
302. *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee.

303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this ordinance are being complied with.

Chapter IV—Sales of Liquor

401. *Licenses Required.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the Reservation.
402. *Sales Only on Tribal Land.* All liquor sales within the exterior boundaries of the Reservation shall be on Tribal Land, including leases thereon.
403. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards such as Visa, American Express, etc.
404. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

Chapter V—Licensing

501. *Applicable for Tribal Liquor License Requirements.* No tribal license shall issue under this ordinance except upon a sworn application filed with the Committee containing a full and complete showing of the following:
- Satisfactory proof that the applicant is or will be duly licensed by the State of California.
 - Satisfactory proof that the applicant is of good character and reputation among the people of the Reservation and that the applicant is financially responsible.
 - The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such

- premises, or lessee of such premises, for at least the term of the license.
- Agreement by the applicant to accept and abide by all conditions of the tribal license.
 - Payment of \$250.00 fee as prescribed by the Committee.
 - Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.
 - Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 30 days prior to consideration by the Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license of the Tribal Chairman or Secretary may authorize. The notice shall state the date, time, and place when the application shall be considered by the Committee pursuant to section 502 of this ordinance.

502. *Hearing on Application for Tribal Liquor License.* All applications for a tribal liquor license shall be considered by the Committee in open session at which the applicant, his attorney, and any person protesting 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 Committee, by secret ballot, shall determine whether to grant or deny the application based on:
- Whether the requirements of section 501 have been met; and
 - Whether the Committee, in its discretion, determines that granting the license is in the best interests of the Tribe.

In the event that the applicant is a member of the General Council, or a member of the immediate family of a General Council member, such member shall not vote on the application or participate in the hearings as a Committee member.

503. *Temporary Permits.* The Committee or their designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section 504 of this ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be

- sold. Further, a fee of \$25.00 will be assessed on temporary permits.
504. *Conditions of the Tribal License.* Any tribal license issued under this title shall be subject to such reasonable conditions as the Committee shall fix, including, but not limited to the following:
- a. The license shall be for a term not to exceed 1 year.
 - b. The license shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.
 - c. The State of California shall have jurisdiction over offenses and civil causes of action committed on the licensed premises to the same extent that it has jurisdiction over offenses civil causes of action committed elsewhere within California, and the California criminal laws, and civil laws of general applicability to private persons or private property, shall have the same force and effect on the licensed premises as they have elsewhere in California.
 - d. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under federal, California, or tribal law.
 - e. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours.
 - f. Subject to the provisions of subsection "g" of this section, no intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours fixed by the Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.
 - g. No liquor shall be sold within 200 feet of a polling place on tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Committee.
 - h. All acts and transactions under authority of the tribal liquor license shall be in conformity with the laws of the State of California, and shall be in accordance with this ordinance and any tribal license issued pursuant to this ordinance.
 - i. No person under the age permitted
- under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.
- j. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.
505. *License Not a Property Right.* Notwithstanding any other provision of this ordinance, a tribal liquor license is a mere permit for a fixed duration of time. A tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.
506. *Assignment or Transfer.* No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the Committee expressed by formal resolution.
- Chapter VI—Rules, Regulations, and Enforcement*
601. *Sales or Possession With Intent to Sell Without a Permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this ordinance, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a permit, shall be guilty of a violation of this ordinance.
602. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Reservation who buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.
603. *Sales to Persons Under the Influence of Liquor.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this ordinance.
604. *Consuming Liquor in Public Conveyance.* Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any liquor in any public conveyance shall be guilty of an offense. Any person who shall drink any liquor in a public conveyance shall be guilty of a violation of this ordinance.
605. *Consumption or Possession of Liquor by Persons Under 21 Years of Age.* No person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.
606. *Sales of Liquor to Persons Under 21 Years of Age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.
607. *Transfer of Identification to Minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.
608. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.
609. *Violations of This Ordinance.* Any person guilty of a violation of this ordinance shall be liable to pay the Tribe a penalty not to exceed \$500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance. In addition to any penalties so imposed, any license issued hereunder may be suspended or cancelled by the Committee for the violation of any of the provisions of this ordinance, or of the tribal license, upon hearing before the Committee after 10 days notice to the licensee. The decision of the Committee shall be final.
610. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following issued cards of identification which shows his correct age and bears his signature and photograph:
1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;
 2. United States Active Duty Military;
 3. Passport

611. *Possession of Liquor Contrary to This Ordinance.* Alcoholic beverages which are possessed contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Committee to enforce this section shall have the authority to, and shall seize, all contraband.

612. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of the ordinance by the Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Chapter VII—Taxes

701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the amount actually collected, including payments by major credit cards. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of California.

702. *Payment of Taxes to Tribe.* All taxes from the sale of alcoholic beverages on the Reservation shall be paid over to the trust agent of the Tribe.

703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the

Reservation are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

705. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Committee, such a review or audit is necessary to verify the accuracy of reports.

Chapter VIII—Profits

801. *Disposition of Proceeds.* The gross proceeds collected by the Committee from all licensing provided from the taxation of the sales of alcoholic beverages on the Reservation shall be distributed as follows:

- a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.
- b. The remainder shall be turned over to the Trust Account of the Tribe.

Chapter IX—Severability and Miscellaneous

901. *Severability.* If any provision or application of this ordinance is determined by review to be invalid,

such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

902. *Prior Enactments.* And all prior enactments of the Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

903. *Conformance with California Laws.* All acts and transactions under this ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

904. *Effective Date.* This ordinance shall be effective on June 26, 1995, such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter X—Amendment

1001. This ordinance may only be amended by a majority vote of the General Council.

Chapter XI—Sovereign Immunity

1101. Nothing contained in this ordinance is intended to, nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Dated: June 16, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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