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Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 7, 2002.

Reesa Nichols,
OMB Clearance Liaison.

[FR Doc. 02-11964 Filed 5-13-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance. The Ordinance regulates the control, possession and sale of liquor on the Augustine Band of Cahuilla Mission Indians trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on April 18, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

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 Augustine Band of Cahuilla Mission Indians Liquor Control

Ordinance, Resolution No. 01.03-A, was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001. The Augustine Band of Cahuilla Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Augustine Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 01.03-A, the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,
Assistant Secretary—Indian Affairs.

The Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance, Resolution No. 01.03-A, reads as follows:

Title VIII—The Licensing and Regulation of Liquor

Chapter I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession, and sale of liquor on the lands of the Augustine Band of Cahuilla Mission Indians of the Augustine Indian Reservation is a matter of special concern to the tribal government of the Augustine Band.

Section 2. Federal law (18 U.S.C. §§ 1154, 1161) currently prohibits the introduction of liquor into Indian Country except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), and expressly delegates to each tribe the decision regarding when and to what extent the introduction, possession and sale of liquor shall be permitted.

Section 3. It is in the best interest of the Band to enact a tribal code governing the introduction, possession and sale of liquor on the Augustine Indian Reservation, and which also provides for exclusive purchase, distribution, and sale of liquor on tribal lands within the exterior boundaries of the Reservation. Further, the Band has determined that said purchase,

distribution and sale shall take place only at tribally-owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Band as a whole.

Section 4. The Tribal Council further finds that violations of this Title would damage the Band in an amount of five hundred dollars (\$500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Title the Band will impose a tax on the sale of liquor on the reservation. Based upon the foregoing findings and determinations, the Tribal Council hereby ordains as follows.

Chapter II—Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 1. Alcohol. 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 dilutions and mixtures of this substance.

Section 2. Alcoholic Beverage.

Identical in meaning to the term liquor as defined in Chapter II, subsection 6 of this Ordinance.

Section 3. Bar. Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. Beer. 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 or cereal in pure water containing not more than 4 percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 4 percent of alcohol by weight shall be referred to as "strong beer."

Section 5. Tribal Council. The governing body of the Augustine Band of Cahuilla Mission Indians.

Section 6. Liquor. The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other 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 that contains more than 1 percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 7. Liquor Store. Any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 8. Malt Liquor. All beer, strong beer, ale, stout, and porter.

Section 9. Package. Any container or receptacle used for holding liquor.

Section 10. Public Place. Includes gaming facilities and commercial or community facilities of every nature 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 and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 11. Sale and Sell. Any exchange, barter, and traffic; including the selling of 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 of wine by any person to any person.

Section 12. Spirits. Any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 13. Tribal Land. All land within the exterior boundaries of the Augustine Indian Reservation that is held in trust by the United States for the Augustine Band of Cahuilla Mission Indians and for individual allottees.

Section 14. Tribal Gaming Commission. The gaming regulatory body established under the Gaming Code that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 15. Wine. Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Chapter III—Powers of Enforcement

Section 1. In addition to the powers and duties provided for in other Augustine Codes, the Tribal Council, in furtherance of this Title, shall have the powers and duties to:

(a) Publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, and distribution of alcoholic beverages in public places on the Augustine Indian Reservation;

(b) Employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale, manufacture and/or distribution of liquor in public places on the Augustine Indian Reservation;

(d) Hold hearings on violations of this Title or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Title as necessary;

(f) Determine and seek damages for violation of this Title;

(g) Make such reports as may be required by the Tribal Council;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and keep accurate records, books and accounts; and

(i) Exercise such other powers as may be delegated from time to time by the Tribal Council.

Section 2. Limitation on Powers. In the exercise of its powers and duties under this Title, the Tribal Council and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the sovereign immunity of the Augustine Band of Cahuilla Mission Indians from suit without a majority vote of the Tribal Council.

Section 3. Inspection Rights. The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Chapter IV—Sale of Liquor

Section 1. Licenses Required. No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Augustine Indian Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the reservation.

Section 2. 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 payment for purchases with the use of cashiers or personal checks, payroll checks or debit cards or credit cards issued by any financial institution.

Section 3. Sale for Personal Consumption.

All sales shall be for the personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one. Resale of any alcoholic beverage purchased within the exterior boundaries of the reservation is prohibited. Any person who is not licensed pursuant to this Title who purchases an alcoholic beverage within the boundaries of the reservation and resells it, whether in the original container or not, shall be guilty of a violation of this Title and shall be subjected to exclusion from tribal lands or liability for money damages of up to \$500, as determined by the Tribal Council after notice and an opportunity to be heard.

Chapter V—Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Augustine Indian Reservation must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the reservation for which no money is requested or paid.

Section 2. State Licensing. No person shall be allowed or permitted to sell or provide liquor on the Augustine Indian Reservation if he/she does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

Section 3. Application. Any person applying for a license to sell or provide liquor on the Augustine Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Council and pay such application fee as may be set from time-to-time by the Tribal Council for this purpose. An incomplete application will not be considered.

Section 4. Issuance of License. The Tribal Council may issue a license if it believes that the issuance of such a license would be in the best interest of the Augustine Band, the residents of the Augustine Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision

to issue any license rests in the sole discretion of the Tribal Council.

Section 5. Period of License. Each license may be issued for a period of not to exceed 2 years from the date of issuance.

Section 6. Renewal of License. A licensee may renew its license if it has complied in full with this Title and has maintained its licensure with the State of California; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the citizens of the Augustine Band.

Section 7. Revocation of License. The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 8. Transferability of Licenses. Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Chapter VI—Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the reservation in the amount of 1 percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the reservation and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages on the Augustine Indian Reservation shall be paid over to the General Treasury of the Augustine Band and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Council and administration of this Title.

Section 3. Taxes Due. All taxes upon the sale of alcoholic beverages on the reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 18 percent per annum.

Section 4. 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.

Section 5. 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 periodically by the Tribal Council through its agents or employees whenever in the discretion of the Tribal Council such a review or audit is necessary to verify the accuracy of reports.

Chapter VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Title, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Title subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Title shall apply to the possession or transportation of any quantity of liquor by citizens of the Augustine Band for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Augustine Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Augustine Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Title.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Title.

Section 5. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Title for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Title for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Title shall be liable to pay the Augustine Band up to five hundred dollars (\$500) per violation as civil damages to defray the tribe's cost of enforcement of this Title. The amount of such damages in each case shall be

determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of 27, the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her 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; and

(4) Gaming license or work permit issued by the Tribal Council, if said license or permit contains the bearer's correct age, signature and photograph.

Chapter VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Chairperson of the Tribal Council or, if he/she fails or refuses to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Band to abate and perpetually enjoin any nuisance declared under this Title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than twenty five thousand dollars (\$25,000), payable to the Band and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of

thereof in violation of the provision of this title of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this title or other tribal liquor laws. If any conditions of

the bond are violated, the whole amount may be recovered for the use of the Band.

Section 3. In all cases where any person has been found responsible for a violation of this Title relating to manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Title shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Chapter IX—Profits

Section 1. The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on the Augustine Indian Reservation, and from proceedings involving violations of this Title, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Title; and

(b) Second, the remainder shall be turned over to the General Fund of the Augustine Band and expended by the Tribal Council for governmental services and programs on the Augustine Indian Reservation.

Chapter X—Severability and Effective Date

Section 1. If any provision or application of this Title is determined by judicial 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.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Augustine Band that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. 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. § 1154, but only to the extent required by the laws of the United States.

Chapter XI—Amendment

This Ordinance may only be amended by a majority vote of members of the Tribal Council of the Augustine Band

attending a duly-noticed meeting at which a quorum is present.

Chapter XII—Certification

This Title was passed and amended at duly held and convened meetings of the Tribal Council on March 13, 2001 and April 18, 2001, as attested to and certified by MaryAnn Martin, Chairperson of the Tribal Council of the Augustine Band.

[FR Doc. 02-12012 Filed 5-13-02; 8:45 am]

BILLING CODE 4310-4J-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Santa Rosa Rancheria Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Santa Rosa Rancheria Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Santa Rosa Rancheria trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on July 13, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

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 Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001-32, was duly adopted by the Tribal Council of the Santa Rosa Rancheria on July 13, 2001. The Santa Rosa Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Santa Rosa Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 2001-32, the Santa Rosa Rancheria Liquor Control Ordinance was duly adopted by the Santa Rosa Tribal Council on July 13, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,
Assistant Secretary—Indian Affairs.

The Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001-32, reads as follows:

The Santa Rosa Rancheria Liquor Control Ordinance

Article I—Declaration of Public Policy and Purpose

Section 1.1. The distribution, possession, consumption and sale of liquor on the lands of the Santa Rosa (Tachi) Rancheria is a matter of special concern to the Santa Rosa Indian Community.

Section 1.2. Federal law, as codified at 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State Law and the duly enacted law of the Tribe. By adoption of this Ordinance, it is the intention of the Tribal Council to establish tribal law regulating the sale, distribution and consumption of liquor and to ensure that such activity conforms with all applicable provisions of the laws of the State of California.

Section 1.3. The General Council, as the governing body of the Tribe pursuant to the Constitution, has the authority (i) pursuant to Article VI, Section I.F of the Constitution to administer Community assets and to manage all economic affairs and enterprises of the Community; and (ii) pursuant to Article VI, Section 1.K, to delegate any of its authorities or responsibilities to the Tribal Council; furthermore, the General Council has the inherent right to enact ordinances to safeguard and provide for the health, safety and welfare of the Santa Rosa Rancheria and the Santa Rosa Indian Community. Accordingly, the General Council has determined that it is in the best interest of the Tribe to enact a tribal ordinance governing the distribution, possession, consumption and sale of liquor within the exterior boundaries of the Santa Rosa Rancheria. By General Council Resolution No. 2000-31, the General Council has (i) approved the sale and distribution of liquor on the Santa Rosa Rancheria; and (ii) delegated