

Total Estimated Number of Annual Burden Hours: 2,480.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: One time annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Michael A. Tischler,

Director, National Geospatial Program.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/
A0A501010.999900 253G]

Wilton Rancheria; Liquor Control Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Wilton Rancheria Code, Title 1—Business and Finance Code, Chapter 5—Liquor Control Act. The Liquor Control Act regulates and controls the possession, sale, manufacture, distribution, and consumption of alcohol in conformity with the laws of the State of California.

DATES: This Liquor Control Act shall take effect on August 21, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W-2820, Sacramento, California 95825, telephone: (916) 978-6000, fax: (916) 978-6099.

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 control ordinances for the purpose of regulating liquor transactions in Indian country. The Wilton Rancheria duly adopted the Wilton Rancheria Code, Title 1—Business and Finance Code, Chapter 5—Liquor Control Act on December 20, 2018.

This notice is published in accordance with the authority delegated

by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Wilton Rancheria duly adopted these amendments to the Wilton Rancheria Code, Title 1—Business and Finance Code, Chapter 5—Liquor Control Act, on December 20, 2018.

Dated: June 25, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

The Wilton Rancheria Code, Title 1—Business and Finance Code, Chapter 5—Liquor Control Act, shall read as follows:

**WILTON RANCHERIA CODE
TITLE 1—BUSINESS AND FINANCE
CODE
CHAPTER 5—LIQUOR CONTROL ACT
CITE AS: 1 WRC § 5-101, ET SEQ.
ENACTED: DECEMBER 20, 2018**

**ARTICLE I
GENERAL**

SECTION 5-101 TITLE

This Act shall be known as the Liquor Control Act and shall be codified as Chapter 5 of the Tribe's Business and Finance Code.

SECTION 5-102 AUTHORITY

This Liquor Control Act is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. § 1161) and the following provisions of the Constitution of Wilton Rancheria:

A. Article V, Section 1(a) of the Constitution grants the Chairperson the power to execute, administer, and enforce all the laws of the Tribe.

B. Article V, Section 1(l) of the Constitution grants the Chairperson the power to administer all boards and committees created by Tribal Council.

C. Article VI, Section 2 of the Constitution authorizes the Tribal Council to make the Tribe's laws.

D. Article VI, Section 2(a) of the Constitution grants the Tribal Council the power to make all laws, including resolutions, codes, and statutes.

E. Article VI, Section 2(d) of the Constitution grants the Tribal Council the power to create boards and committees and to set qualifications for participation on those boards and committees.

F. Article VI, Section 2(o) of the Constitution grants the Tribal Council the power to promote public health, education, charity, and other such services as may contribute to the social advancement of the members of Wilton Rancheria.

SECTION 5-103 PURPOSE

The purpose of this Act is to regulate and control the possession, sale,

manufacture, distribution, and consumption of Alcoholic Beverages within Tribal Lands in order to permit Alcoholic Beverage sales by Tribally owned and operated enterprises and private Persons, including at Tribally approved special events. Enactment of this Act will provide a source of revenue for the continued operation of the Tribal government, the delivery of governmental services, and the economic viability of Tribal enterprises.

SECTION 5-104 EFFECTIVE DATE

This Act shall be effective on the date it is certified by the Secretary of the Interior and published in the **Federal Register**.

SECTION 5-105 JURISDICTION

This Act shall apply to all Tribal Lands, including lands now or in the future under the governmental authority of the Tribe, including the Tribe's reservation, trust lands, and Indian country as defined under 18 U.S.C. § 1151.

SECTION 5-106 CONFORMITY WITH APPLICABLE LAW

All acts and transactions under this Act shall be in conformity with the Gaming Compact, where applicable, the laws of the State, to the extent required by 18 U.S.C. § 1161, and applicable federal laws.

SECTION 5-107 SOVEREIGN IMMUNITY

Nothing in this Act shall be construed as a waiver, limitation, alteration, modification or restriction of the sovereign immunity of the Wilton Rancheria or any of its agencies, boards, commissions, authorities, employees, agents or officials, except that an applicant or holder of a Tribal liquor license may appeal an adverse licensing decision or civil violation finding in accordance with Section 5-401(D) and 5-504 of this Act; provided, however, that this limited waiver shall be narrowly construed, applies only to the Board, and excludes monetary damages of any kind.

SECTION 5-108 DEFINITIONS

A. "Alcoholic Beverage" means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes, either alone or when diluted, mixed, or combined with any other substance(s).

B. "Board" means the Liquor Control Board established under Article II of this Act.

C. "Gaming Compact" means the Tribal-State Gaming Compact between the State of California and Wilton Rancheria, as may be amended from time to time.

D. "Legal Age" shall have the meaning set forth in Section 5-113 of this Act.

E. "Manufacture" means the production of Alcoholic Beverages for the purpose of selling to a Person whether licensed or unlicensed.

F. "Person" means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

G. "Sale" or "sell" means the transfer of an Alcoholic Beverage for consideration of any kind, including by exchange or barter, from one Person to another.

H. "State" means the State of California.

I. "Retail sale" means the sale of an Alcoholic Beverage to a consumer for consumption on or off the licensed premises and not for resale.

J. "Tribe" means the Wilton Rancheria.

K. "Tribal Council" has the same meaning as under Article VI of the Constitution.

L. "Wholesale" or "Wholesale sale" means the sale of an Alcoholic Beverage to any licensee for purpose of resale.

M. "Tribal Lands" means all territory set forth in Section 1 of Article II of the Constitution.

SECTION 5-109 POSSESSION OF ALCOHOLIC BEVERAGES

The introduction or possession of Alcoholic Beverages shall be lawful within Tribal Lands as provided in this Act.

SECTION 5-110 RETAIL SALE OF ALCOHOLIC BEVERAGES

The retail sale of Alcoholic Beverages shall be lawful on Tribal Lands provided that such sales are made pursuant to a license issued by the Tribe.

SECTION 5-111 WHOLESALE SALE OF ALCOHOLIC BEVERAGES

The wholesale sale of Alcoholic Beverages shall be lawful on Tribal Lands provided that such sales are made pursuant to a license issued by the Tribe.

SECTION 5-112 MANUFACTURE OF ALCOHOLIC BEVERAGES

The manufacture of Alcoholic Beverages shall be lawful on Tribal Lands provided that such manufacture is pursuant to a license issued by the Tribe.

SECTION 5-113 AGE LIMITS

A. The Legal Age for purchase, possession or consumption of Alcoholic Beverages on Tribal Lands, including in any Gaming Facility as defined by Section 2.13 of the Gaming Compact, shall be the same as that of the State, which is currently 21 years. No person under the Legal Age shall purchase, possess or consume any Alcoholic Beverage.

B. If there is any conflict between State law and the terms of the Gaming Compact (or any other intergovernmental agreement to which Wilton Rancheria is a party) regarding the age limits for Alcoholic Beverage purchase, possession or consumption in any Gaming Facility, to the extent applicable, the more stringent age limit shall govern for purposes of this Act.

C. Persons under the Legal Age are prohibited from being present in any area where Alcoholic Beverages may be consumed, except to the extent that such presence would be permitted under State Law.

ARTICLE II LIQUOR CONTROL BOARD

SECTION 5-201 ESTABLISHMENT

The Tribe hereby establishes the Wilton Rancheria Liquor Control Board as an independent regulatory body of Tribal government. Decisions of the Board shall be made by majority vote.

SECTION 5-202 POWERS AND RESPONSIBILITIES

The Board shall have the following powers and responsibilities:

A. To administer this Act by exercising general control, management, and supervision of all liquor sales, places of sale, and sales outlets as well as exercising all powers necessary and proper to accomplish the purposes of this Act.

B. To develop, enact, promulgate, and enforce regulations as necessary for the enforcement of this Act and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable Tribal, Federal, or State law.

C. To bring suit in Tribal Court to enforce the provisions of this Act, provided that the Board shall not have any power to waive the Tribe's

immunity from suit without express, written and specific consent of the Tribal Council, except as set forth in Section 5-107 of this Act.

D. To issue licenses permitting the retail sale, wholesale, and manufacture of Alcoholic Beverages on Tribal Lands.

E. To investigate violations of this Act, or for the issuance, denial or revocation of licenses.

F. To make such reports as may be requested or required by the Tribal Council.

G. To collect taxes and fees levied or set by the Tribal Council, and to keep accurate records, books, and accounts thereof.

H. To exercise such other powers as may be delegated to the Board by the Chairperson or by an official act of the Tribal Council.

SECTION 5-203 LIQUOR CONTROL BOARD

A. The Board shall consist of at least one (1), but not more than three (3), members, who shall be appointed by the Chairperson. If the Chairperson appoints only one (1) individual to serve on the Board, such Board member may be referred to as the Liquor Control Officer.

B. Members of the Board shall:

1. Be at least twenty-five (25) years of age;
2. Not have been convicted of a felony;
3. Not have any direct or indirect interest, including a familial or business relationship, in or with any licensee or other Person who has a financial interest in the business of a licensee; and
4. Have relevant work experience.

C. Where minimum qualifications are met, the Chairperson shall give preference in employment opportunities in accordance with the preference policy set forth in the Employment Act, codified at Title 7, Chapter 1 of the Wilton Rancheria Code, as may be amended.

D. The Chairperson shall require that applicants for the Board submit a letter of application. Prior to appointing an applicant to the Board, the Chairperson shall make a tentative selection, conduct both a felony background check and a drug test on the applicant to be appointed, and confirm that the applicant satisfies the qualifications to serve as a Board member.

E. Board members shall serve a two (2) year term, and all terms may be renewed for a successive two (2) year term; provided however that prior to renewing any Board member's term, the Chairperson will present a performance

report of such Board member to, and consider comments or recommendations from, the Tribal Council regarding each Board member whose term is proposed to be renewed.

F. The Chairperson shall have the authority to remove any Board member for good cause.

G. The Chairperson shall provide notice to the Tribal Council any time a vacancy occurs on the Board for any reason and shall report to the Tribal Council the reasons for the removal of any Board member by the Chairperson.

H. Board members shall be paid at a rate established by the Tribe's budget.

I. The Chairperson shall have the authority to establish, by written policy and procedures, requirements for Board staffing, quorum, and other organizational matters not otherwise specified herein.

SECTION 5-204 PROHIBITION ON GRATUITIES

Neither the Board nor any of its members shall directly or indirectly accept or agree to accept any gratuity, compensation or other thing of value from any manufacturer, wholesaler, or retailer of Alcoholic Beverages.

SECTION 5-205 INSPECTION RIGHTS

The premises on which any Alcoholic Beverage is manufactured, distributed or sold shall be open for inspection by the Board at all reasonable times for the purposes of ascertaining compliance with this Act, any other law or ordinance governing liquor on Tribal Lands, or any rule or regulation adopted by the Board in furtherance of the purposes of this Act.

SECTION 5-206 REGULATIONS

Before adopting, amending, or repealing regulations, the Board shall give notice of any such proposed action to the Chairperson, Tribal Council, Tribal Gaming Commission, and Tribal Gaming Authority. The notice shall describe the general nature of the proposed action, invite comments, and specify the manner in which comments on the proposed action will be received by the Board. The Board shall provide a copy of each finally adopted or amended regulation, or notice of each finally repealed regulation, to the Chairperson, Tribal Council, Tribal Gaming Commission, and Tribal Gaming Authority promptly upon the effective date of such Board action. The Tribal Council may override the adoption, amendment, or repeal of any regulation by a majority vote of the entire Tribal Council, subject to veto by

the Chairperson in accordance with the laws of the Tribe.

ARTICLE III LICENSING

SECTION 5-301 TYPES OF LICENSES

The Board shall have the authority to issue the following types of liquor licenses on Tribal Lands:

A. "Retail license" means a license authorizing the licensee to sell Alcoholic Beverages to a consumer of Legal Age for consumption on or off the premises as set forth in the applicable Retail license.

B. "Wholesale license" means a license authorizing the licensee to engage in the business of purchasing Alcoholic Beverages for resale to other licensees and/or warehousing or storing Alcoholic Beverages.

C. "Manufacturer license" means a license authorizing the licensee to engage in the business of manufacturing or producing Alcoholic Beverages, including but not limited to manufacturing, producing, distilling, rectifying, blending, bottling, or converting wine, beer and/or spirits as set forth in the applicable Manufacturer license.

D. "Special events license" means a license authorizing the licensee to sell Alcoholic Beverages to a consumer of Legal Age at special events and/or at an unlicensed location.

E. Notwithstanding the above-listed types of liquor licenses, the Board shall have authority to issue any other type of liquor license to the extent such license is recognized by State law.

SECTION 5-302 LICENSING PROCEDURES; STANDARDS

A. The Board shall establish and publish procedures and standards for issuing, renewing, transferring, fining, suspending and revoking licenses to engage in Alcoholic Beverage sales on Tribal Lands; provided that no Tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State, and, if applicable, the United States Alcohol Tobacco Tax and Trade Bureau or any successor agency.

B. The fact that an applicant for a Tribal license possesses a license issued by the State or the United States shall not alone entitle the applicant to a Tribal license.

C. A Gaming Board licensing determination in favor of a liquor license applicant shall create a rebuttable presumption in favor of the issuance of a liquor license.

D. The Board may, in its discretion, set standards that are more, but in no

case less, stringent than those of the State.

SECTION 5-303 LICENSING FEES

The Board will have the power to set a reasonable licensing fee schedule.

ARTICLE IV ENFORCEMENT

SECTION 5-401 BOARD AUTHORITY

A. The Board shall have the power to enforce this Act and its accompanying regulations.

B. Regulations enacted pursuant to this Act may include provisions for transfer, suspension or revocation of Tribal Alcoholic Beverage licenses, reasonable search and seizure provisions, and civil penalties for violation of this Act to the full extent permitted by State and Federal law and consistent with due process.

C. Tribal law enforcement personnel and security personnel, acting at the request of, and authorized by, the Board, shall have the authority to enforce this Act by confiscating any Alcoholic Beverage sold, possessed, distributed, manufactured, or introduced within Tribal Lands in violation of this Act or of any duly adopted regulations.

D. The Board shall have jurisdiction to investigate violations of this Act, to make a written determination on such investigation, and to assess penalties pursuant to Section 5-403. Such determination and penalties shall be deemed a final action, subject to appeal pursuant to Section 5-504.

SECTION 5-402 VIOLATIONS

A. Prohibition of Unlicensed Sale of Alcoholic Beverages. No Person shall import for sale, manufacture, distribute, or sell any Alcoholic Beverage on Tribal Lands without a liquor license from the Liquor Control Board issued in accordance with the provisions of this Act. Any Person who manufactures, sells or offers for sale or distributes or transports in any manner, any Alcoholic Beverage in violation of this Act, or who possesses any Alcoholic Beverage with the intent to sell or distribute without a liquor license, shall be guilty of a violation of this Act.

B. Sale to Intoxicated Persons. Any Person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any Alcoholic Beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a violation of this Act; provided, that no Person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any Alcoholic Beverage pursuant to this subsection shall be civilly liable to any injured Person or the estate of

such Person for injuries inflicted as a result of intoxication by the consumer of such Alcoholic Beverage.

C. Sale to Minors. Any Person who sells, furnishes, gives, or causes to be sold, furnished, or given away any Alcoholic Beverage to any Person under the Legal Age is guilty of a violation of this Act.

D. Violation of Liquor License Terms and Conditions. Any Person who violates the terms and conditions of a liquor license shall be guilty of a violation of this Act.

SECTION 5-403 PENALTIES

A. The Board is authorized to make written determinations and enforce civil penalties or damages for violations of this Act.

B. Penalties may include, but are not limited to, revocation or suspension of liquor license, forfeiture or confiscation of Alcoholic Beverages, fines, monetary damages, and injunctive relief.

C. Civil penalties/fines may not exceed \$5,000.

D. The Board may bring an action in Tribal Court to enforce any duly assessed civil penalties determined in accordance with this Article.

ARTICLE V

MISCELLANEOUS PROVISIONS

SECTION 5-501 AMENDMENT

This Act may only be amended pursuant to a duly enacted amendment by Tribal Council and, to the extent required by Federal law, certification by the Secretary of the Interior and publication in the **Federal Register**.

SECTION 5-502 SEVERABILITY

If any part or provision of this Act is held by any agency or court of competent jurisdiction to be invalid, void or unenforceable, such adjudication shall render such provisions inapplicable to other Persons or circumstances. The remaining provisions shall be unaffected and shall remain in full force and effect.

SECTION 5-503 PRIOR INCONSISTENT ENACTMENTS

Any prior Tribal laws, resolutions or ordinances, to the extent they are inconsistent with this Act, are hereby repealed.

SECTION 5-504 TRIBAL COURT JURISDICTION

The Tribal Court shall have jurisdiction to hear appeals arising under Articles III and IV of this Act. The Tribal Court shall also have jurisdiction to hear any claim, cause of action, or enforcement action brought by the Liquor Control Board for violation of this Act.

Legislative History:

- 10/26/2018 Thirty (30) day public review phase begins.
 11/15/2018 Public hearing held at Tribal Office.
 11/25/2018 Thirty (30) day public review phase ends.
 11/29/2018 Seven (7) day final review phase begins.
 12/20/2018 Tribal Council passes Act by Resolution No. 2018-69 by vote of 6 for, 0 against, 1 abstaining.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/
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HEARTH Act Approval of Jamul Indian Village of California Business Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 14, 2019, the Bureau of Indian Affairs (BIA) approved the Jamul Indian Village of California (Tribe) Business Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS 4624-MIB, Washington, DC; telephone: (505) 563-3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review

process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Jamul Indian Village of California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." See *Seminole Tribe of Florida v. Stranburg*, No. 14-14524, *13-*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker*