

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and all prior enactments of the Augustine Band that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.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

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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

to the Tribal Council the authority to enact an ordinance providing for Tribal regulation of such sale and distribution of liquor.

Section 1.4. Through its delegated authority, the Tribal Council has determined that the purchase, distribution and sale of Liquor shall take place only at duly licensed (i) tribally owned enterprises; (ii) tribally-licensed establishments; and (iii) tribally-sanctioned Special Events, all as operating on Tribal Lands.

Section 1.5. The Tribal Council has determined that any sale or other commercial distribution of Liquor on the Santa Rosa Rancheria, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Tribe and is therefore prohibited.

Section 1.6. Based upon the foregoing findings and determinations, the Tribal Council hereby enacts this Santa Rosa Rancheria Liquor Control Ordinance (this Ordinance) as follows.

Article II—Definitions

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

Section 2.1. 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 2.2. Alcoholic Beverage. Identical in meaning to the term liquor as defined herein.

Section 2.3. 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 2.4. 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 four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

Section 2.5. Gaming Compact. The federally approved Tribal-State Compact, dated September 10, 1999, between the State of California and the Tribe.

Section 2.6. 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 one percent (1 %) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.7. Liquor Store. Any store at which liquor is sold and, for the purposes of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.8. Licensed Wholesaler. A wholesale seller of liquor that is duly licensed by the Tribe and the State.

Section 2.9. Malt Liquor. Beer, strong beer, ale, stout and porter.

Section 2.10. Package. Any container or receptacle used for holding liquor.

Section 2.11. 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 2.12. Sale and Sell. Any exchange, barter, and traffic; and also includes 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 2.13. Special Event. Any social, charitable or for-profit discreet activity or event conducted by the Tribal Council and any tribal enterprise on tribal lands at which liquor is sold or proposed to be sold.

Section 2.14. Spirits. Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.15. State law. The duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the compact.

Section 2.16. Tribal Council. The Business Committee of the Tribe as elected by the General Council in accordance with the Articles of Community Organization of the Santa Rosa Indian Community, Santa Rosa Rancheria (the Constitution).

Section 2.17. Tribe. The Santa Rosa Indian Community Santa Rosa (Tachi) Rancheria, located in Kings County, California.

Section 2.18. Tribal Enterprise. Any business entity, operation or enterprise owned, in whole or in part, by the Tribe.

Section 2.19. Tribal Land. All land within the exterior boundaries of the Santa Rosa Rancheria that is held in trust by the United States for the benefit of the Tribe.

Section 2.20. Wine. Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III—Enforcement

Section 3.1. Tribal Council Powers. The Tribal Council, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the purchase, sale, consumption and distribution of alcoholic beverages in public places on the Santa Rosa Rancheria as the Tribal Council deems necessary.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to exercise its authority as set forth in this Ordinance.

(c) Issues licenses permitting the sale and/or distribution of liquor on the Santa Rosa Rancheria.

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

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

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

(g) Publish notices and make such reports to the General Council as may be appropriate;

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

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

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

Section 3.2. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members, employees and agents shall not:

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

(b) Waive the immunity of the Tribe from suit except by express resolution of the Tribal Council, such waiver being subject to the following limitations: The waiver must be transaction specific, limited as to duration and beneficiary, include a provision that limits recourse only to specified assets or revenues of the Tribe or a Tribal entity, and specifies the process and venue for dispute resolution, including applicable law.

Section 3.3. Inspection Rights. The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designees at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

Article IV—Liquor Sales

Section 4.1. License Required. No distribution or sales of Liquor shall be made on or within public places within the exterior boundaries of the Santa Rosa Rancheria, except at a duly licensed and authorized special event, tribal enterprise, bar, liquor store located on tribal lands.

Section 4.2. 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, debit credit cards or credit cards issued by any financial institution.

Section 4.3. Sale for Personal Consumption. Except for sales by licensed wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). 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 re-sells it whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to five hundred dollars (\$500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Section 4.4. Compliance Required. All distribution, sale and consumption of liquor on tribal lands shall be in compliance with this Ordinance including all applicable provisions of State Law.

Article V—Licensing

Section 5.1. Licensing Procedures. 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, whether wholesale or retail, within the exterior boundaries of the Santa Rosa Rancheria 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 5.2. State Licensing. In the event dual Tribal and State licenses are required by State Law, no person shall be allowed or permitted to sell or provide liquor on the Santa Rosa Rancheria unless such person is also licensed by the State of California, as required, to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable Tribal license shall automatically be revoked or suspended.

Section 5.3. Application. Any person applying for a license to sell or provide liquor on the Santa Rosa Rancheria 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. The Tribal Council shall establish licensing procedures and application forms for wholesalers, retailers and special events.

Section 5.4. Issuance of License. The Tribal Council may issue a license if it believes that such issuance is in the best interest of the Tribe, the residents of the Santa Rosa Rancheria 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 5.5. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6. Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; 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 members of the Tribe and the other residents of the Santa Rosa Rancheria.

Section 5.7. 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 5.8. 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.

Article VI—Taxes

Section 6.1. Sales Tax. The Tribal Council shall have the authority to impose a sales tax on all wholesale and retail liquor sales that take place on Tribal Lands. Such tax may be implemented by duly enacted resolution of the Tribal Council, as supplemented by regulations adopted pursuant to this Ordinance. Any tax imposed by authority of this Section shall apply to all retail and wholesale sales of liquor on Tribal Lands, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2. Payment of Taxes to the Tribe. All taxes imposed pursuant to this Article VI shall be paid over to the General Treasury of the Tribe and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

Article VII—Rules, Regulations and Enforcement

Section 7.1. Evidence. 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 Ordinance.

Section 7.2. Civil Violations. 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 have liquor in his/her possession for distribution or resale without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe or other persons located on Tribal lands for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Santa Rosa Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. Illegal Purchases. Any person within the boundaries of the Santa Rosa Rancheria 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 Ordinance.

Section 7.4. Sale to Intoxicated Person. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5. Providing Liquor to Underage Person. No person under the age of twenty-one (21) years shall serve, 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 Ordinance for each and every drink so consumed.

Section 7.6. Selling Liquor to Underage Person. Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7.7. Civil Penalty. Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe the amount of two hundred fifty dollars (\$250) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The payment 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, hearing and an opportunity to respond to such allegations.

Section 7.8. Identification Requirement. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (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) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;
- (2) United States Uniformed Services identification documents;
- (3) Passport; or
- (4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 8.1. Public Nuisance Established. 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 8.2. Abatement of Nuisance. The Tribal Chairperson, upon authorization by a majority of the Tribal Council or, if he/she fails 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 Tribe 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 (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars (\$5,000) payable to the Tribe 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 or of any other applicable tribal law, and that s/he 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 should be violated, the whole amount may be recovered for the use of the Tribe.

Section 8.3. Evidence. In all cases where any person has been found responsible for a violation of this Ordinance 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 Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

Article IX—Use of Proceeds

Section 9.1. Application of Proceeds. The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on Tribal Lands and from fines imposed as a result of violations of this Ordinance, shall be applied as follows:

- (a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and
- (b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the Tribal Council for governmental services and programs on tribal lands.

Article X—Miscellaneous Provisions

Section 10.1. Severability and Savings Clause. If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 10.2. Effective Date. This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. Repeal of Prior Acts. Any and all prior resolutions, laws, regulations or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

Section 10.4. Conformance with State Law. All acts and transactions under this Ordinance shall be in conformity with the Compact and the laws of the State of California as that term is used in 18 U.S.C. Sec. 1154, but only to the extent required by the laws of the United States.

Article XI—Amendments

This Ordinance may be amended only pursuant to a duly enacted Resolution of the Tribal Council, with certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

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