

Dated: April 20, 2004.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 04-9469 Filed 4-26-04; 8:45 am]

BILLING CODE 4210-29-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Middletown Rancheria Tribe Sale and Consumption of Alcoholic Beverages

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Middletown Rancheria Tribal Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor on the Middletown Rancheria. The land is located on trust land and this ordinance allows for the possession and sale of alcoholic beverages on the Middletown Rancheria and will increase the ability of the tribal government to control Rancheria 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 services.

**DATES:** *Effective Date:* This code is effective on April 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Iris Drew, Southwest Regional Office, Branch of Tribal Government, P.O. Box 26567, Albuquerque, New Mexico 87125-6567; Telephone (505) 346-7592 or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., MS-320-SIB, Washington, DC 20245; telephone (202) 513-7629.

**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 Middletown Rancheria Tribe adopted Tribal Ordinance No. 03-03-01 on March 1, 2003. The purpose of this ordinance is to govern the sale, possession and distribution of alcohol on the Middletown 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 Liquor Ordinance No. 03-03-01 was duly adopted by the Middletown Rancheria Tribal Council on March 1, 2003.

Dated: April 15, 2004.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

The Middletown Rancheria Tribal Liquor Control Ordinance #03-03-01 reads as follows:

#### Middletown Rancheria Band of Pomo Indians Liquor Ordinance #03-03-01

##### Chapter I—Introduction

Section 101. *Title.* This ordinance shall be known as the "MIDDLETOWN RANCHERIA BAND OF POMO INDIANS LIQUOR ORDINANCE #03-03-01."

Section 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 the Interim Governing Procedures (Approved 1994) of the Middletown Rancheria.

Section 103. *Purpose.* The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Middletown Rancheria. The enactment of a tribal ordinance governing liquor possession and sale on the Rancheria will increase the ability of the tribal government to control Rancheria 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.

Section 104. Community opinion within the Tribe supports the enactment of this ordinance.

Section 105. This ordinance shall apply to the Middletown Rancheria, including all lands within the exterior boundaries of the Rancheria.

Section 106. This ordinance conforms to, and is not inconsistent with, tribal, State and Federal law.

##### Chapter II—Definitions

Section 201. As used in this ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 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.

Section 203. *Alcoholic Beverage.* Is synonymous with the term "Liquor" as defined in Section 207 of this Chapter.

Section 204. *Bar.* Means any establishment with special space and accommodations for sale by the glass, can or bottle and for consumption on the premises of liquor, as herein defined.

Section 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 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."

Section 206. *General Membership.* Means as prescribed and defined by the Interim Governing Procedures of the Middletown Rancheria.

Section 207. *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 liquor 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.

Section 208. *Liquor Store.* Means any store at which liquor is sold and, for the purposes of this ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

Section 209. *Malt Liquor.* Means beer, strong beer, ale, stout, and porter.

Section 210. *Package.* Means any container or receptacle used for holding liquor.

Section 211. *Rancheria.* Means land held in trust by the United States Government for the benefit of the Middletown Rancheria Tribe (see also Section 216, Tribal Land).

Section 212. *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.

Section 213. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 214. *Tribal Council.* Means the Tribal Council of the Middletown Rancheria Band of Pomo Indians.

Section 215. *Tribal Land.* Means any land within the exterior boundaries of the Rancheria, which is held in trust by the United States for the Tribe as a whole, including such land leased to other parties.

Section 216. *Tribe.* Means the Middletown Rancheria Band of Pomo Indians.

Section 217. *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 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.

Section 218. *Trust Account.* Means the account designated by the General Council for deposit of proceeds from the tax from the sale of alcoholic beverages.

Section 219. *Trust Agent.* Means the Tribal Chairperson or other designee of the General Council.

### Chapter III—Powers of Enforcement

Section 301. *Powers.* The General Council, in furtherance of this ordinance, shall have the following powers and duties:

(a) To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Rancheria;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the General Council to perform its functions;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on the Rancheria;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violation of this ordinance;

(g) To make such reports as may be required by the General Membership;

(h) To collect taxes and fees levied or set by the General Council and to keep accurate records, books, and accounts; and

(i) To exercise such powers as are delegated by the General Council.

Section 302. *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the General Council 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.

Section 303. *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the General Council or its designee 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

Section 401. *Licenses Required.* No sales of alcoholic beverages shall be made within the exterior boundaries of the Rancheria, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Rancheria.

Section 402. *Sales Only on Tribal Land.* All liquor sales within the exterior boundaries of the Rancheria shall be on tribal land, including leases thereon.

Section 403. *Sales for Cash.* All liquor sales within the Rancheria 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.

Section 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 Rancheria is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Rancheria 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

Section 501. *Application for Tribal Liquor License Requirements.* No tribal license shall be issued under this ordinance except upon a sworn application filed with the General Council containing a full and complete showing of the following:

(a) Satisfactory proof that the applicant is or will be duly licensed by the State of California.

(b) Satisfactory proof that the applicant is of good character and reputation among the people of the Rancheria and that the applicant is financially responsible.

(c) 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 lessees of such premises, for at least the term of the license.

(d) Agreement by the applicant to accept and abide by all conditions of the tribal license.

(e) Payment of \$250 fee as prescribed by the General Council.

(f) Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

(g) 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 General Council and has been published at least twice in such local newspaper serving the community that may be affected by the license the General Council may authorize. The notice shall state the date, time and place when the application shall be considered by the General Council pursuant to Section 502 of this ordinance.

Section 502. *Hearing on Application for Tribal Liquor Licenses.* All applications for a tribal liquor license shall be considered by the General Council 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 General Council shall determine whether to grant or deny the application based on:

(1) Whether the requirements of Section 501 have been met; and

(2) Whether the General Council, 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 members shall not vote on the application or participate in the hearings as a General Council member.

Section 503. *Temporary Permits.* The General Council or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed 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 permitted. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of \$25 will be assessed on temporary permits.

Section 504. *Conditions of the Tribal License.* Any tribal license issued under this

title shall be subject to such reasonable conditions, as the General Council 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 licensed premises shall be subject to patrol by the tribal enforcement department, and such other law enforcement officials as may be authorized under Tribal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) Subject to the provisions of subsection "f" of this section, no intoxicating beverages shall be sold, served, disposed of, delivered 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 General Council, provided that the licensed premise shall not operate or open earlier or operate or close later than is permitted by the laws of the State of California.

(f) 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 General Council.

(g) 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.

(h) 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.

Section 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.

Section 506. *Assignment or Transfer.* No tribal license issued under this ordinance shall be assigned or transferred without the written approval of the General Council expressed by formal resolution.

### Chapter VI—Rules, Regulations, and Enforcement

Section 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.

Section 602. *Purchases From Other Than Licensed Facilities.* Any person within the boundaries of the Rancheria who buys liquor

from any person other than at a properly licensed facility shall be guilty of a violation of this ordinance.

Section 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.

Section 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.

Section 605. *Consumption or Possession of Liquor by Person 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 separate violations of this ordinance for each and every drink so consumed.

Section 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.

Section 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.

Section 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 21 years, shall be guilty of violating the ordinance.

Section 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 crimes 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 canceled by the General Council after 10 days notice to the licensee. The decision of the General Council shall be final.

Section 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 Military Duty; or
- (3) Passport.

Section 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 General Council to enforce this section shall have the authority to, and shall seize, all contraband.

Section 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 Tribal Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

#### Chapter VII—Taxes

Section 701. *Sales Tax.* There is hereby levied and shall be collected a tax on each sale of alcoholic beverages on the Rancheria in the amount of 1 percent 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 Rancheria and shall preempt any tax imposed on such liquor sales by the State of California.

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

Section 703. *Taxes Due.* All taxes for the sale of alcoholic beverages on the Rancheria are due within 30 days at the end of the calendar quarter.

Section 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.

Section 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 Rancheria. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the General Council, such a review or audit is necessary to verify the accuracy of reports.

#### Chapter VIII—Profits

Section 801. *Disposition of Proceeds.* The gross proceeds collected by the General Council from all licensing provided from the taxation of the sale of alcoholic beverages on the Rancheria 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

Section 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 person or circumstances.

Section 902. *Prior Enactments.* All prior enactments of the General Council, which are inconsistent with the provisions of this ordinance, are hereby rescinded.

Section 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.

Section 904. *Effective Date.* 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**.

#### Chapter X—Amendment

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

#### Chapter XI—Sovereign Immunity

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

#### Certification

We the undersigned, as duly elected officers of the Middletown Rancheria Band of California Pomo Indians, do hereby certify that Liquor Ordinance #03-03-01 was duly enacted by the General Council of the Middletown Rancheria, at a duly called, noticed and convened General Council Meeting on Saturday, March 1, 2003, where the General Council Membership was present by a vote of 12 For, and 1 Against, with 0 Abstaining and that this Ordinance shall become effective on the date of approval by the Secretary of the Interior or his authorized representative.

March 1, 2003.

Jose Simon, II,  
Tribal Chairman.

March 1, 2003.

Attested by:  
Pamela Reyes-Gutierrez,  
Tribal Secretary.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK940-1310EI-241A]

#### National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2004

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of National Petroleum Reserve—Alaska Oil and Gas Lease Sale 2004.

**SUMMARY:** National Petroleum Reserve—Alaska (NPR-A); Notice of Sale and Notice of Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2004 in the NPR-A.

The Bureau of Land Management, Alaska State Office will be holding an oil and gas lease sale bid opening for the Northwest Study Area and a small,