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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cedarville Rancheria – Liquor Licensing Ordinance of the Cedarville Rancheria,

Ordinance No. 2012-05

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 2012-05. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Cedarville Rancheria. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Cedarville Rancheria. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, strengthen the tribal government and improve the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916) 978-6067; Fax: (916) 916-6099; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

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 Cedarville Rancheria Community Council adopted this Ordinance by Cedarville Rancheria Resolution #12-04 on April 14, 2012.

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 Cedarville Rancheria Community Council duly adopted the Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 2012-05 by Cedarville Rancheria Resolution #12-04 on April 14, 2012.

Dated: March 5, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs.

The Liquor Licensing Ordinance of the Cedarville Rancheria, Ordinance No. 12-05, shall read as follows:

Chapter 01. – Introduction

Section 01.010--Title. This Ordinance shall be known as the Liquor Control Ordinance of the Cedarville Rancheria.

Section 01.020--Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161), and Article VIII, Section 2 of the Constitution and Bylaws of the Cedarville Rancheria, Modoc County, Cedarville, California.

Section 01.030--Purpose. The purpose of this ordinance is to regulate and control the

possession and sale of liquor on the Cedarville Rancheria, Modoc County, California. The enactment of a Tribal ordinance governing liquor possession and sale on the Reservation will increase the ability of the Tribal government to control Reservation liquor distribution and possession, and, at the same time, will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 01.040--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 02 – General Provisions

02.010--Short title. This ordinance shall be known and cited as the Cedarville Rancheria Liquor Licensing Ordinance.

02.020--Purpose. The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Cedarville Rancheria except pursuant to a license issued by the Executive Committee under the provisions of this ordinance.

02.030--Sovereign immunity preserved. Nothing in this ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Cedarville Rancheria. No officer or employee of the Cedarville Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has an express and explicit written authorization from the Cedarville Rancheria Community Council pursuant to Article VIII, Section 1(f) the Constitution and Bylaws of the Cedarville Rancheria, Modoc County, Cedarville, California.

02.040--Applicability within the Reservation. This ordinance shall apply to all persons within the exterior boundaries of the Cedarville Rancheria consistent with the applicable federal Indian

liquor laws.

02.050--Possession of alcoholic beverages. Nothing in this Ordinance shall be interpreted as prohibiting the possession, transportation or consumption of alcoholic beverages within the boundaries of the Cedarville Rancheria. Possession, transportation and/or consumption of alcoholic beverages within the exterior boundaries of the Reservation in conformity with the provisions of Federal law and in conformity with the laws of the State of California relating to the possession, transportation, or consumption of alcoholic beverages is expressly permitted under this Ordinance.

02.060--Interpretation and findings. The Executive Committee in the first instance may interpret any ambiguities contained in this ordinance.

02.070--Conflicting provisions. Whenever any conflict occurs between the provisions of this ordinance or the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

02.080--Application of 18 U.S.C. 1161. The consumption, importation, manufacture, distribution and sale of alcoholic beverages on the Cedarville Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Chapter 03 – Definitions

03.010--Interpretation. In construing the provisions of this ordinance the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

03.020--Alcohol. Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, in

any form, and regardless of source or the process used for its production.

03.030--Alcoholic beverage. Alcoholic beverage includes 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 other substances. It shall be interchangeable in this ordinance with the term liquor.

03.040--Beer. Beer means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

03.050--Distilled spirits. Distilled spirits means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

03.060--Importer. Importer means any person who introduces alcohol or alcoholic beverages into the Cedarville Rancheria from outside the exterior boundaries of the Reservation for the purpose of sale or distribution within the Reservation, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

03.070--Liquor license. Liquor license means a license issued by the Cedarville Rancheria Executive Committee under the provisions of this ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Reservation consistent with federal law.

03.080--Manufacturer. Manufacturer means any person engaged in the manufacture of alcohol or alcoholic beverages.

03.090--Person. Person means any individual, whether Indian or non- Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, 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, whether recognized by the United States Government or otherwise. The term shall also include the businesses of the Tribe. It shall be interchangeable in this ordinance with the term ``seller" or ``licensee."

03.100--Reservation. Reservation means all lands within the exterior boundaries of the Cedarville Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

03.110--Sale. Sale means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, or soliciting or receiving such beverages.

03.120--Seller. Seller means any person who, while within the exterior boundaries of the Reservation, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

03.130--Executive Committee. Executive Committee means the Cedarville Rancheria Executive Committee.

03.140--Tribe. Tribe means the Cedarville Rancheria.

03.150--Wine. Wine means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 04 – Prohibition of the Unlicensed Sale of Liquor

04.010--Prohibition of the unlicensed sale of liquor. No person shall import for sale, manufacture, distribute or sell any alcoholic beverages within the Reservation without first applying for and obtaining a written license from the Executive Committee issued in accordance with the provisions of this ordinance.

04.020--Authorization to sell liquor. Any person applying for and obtaining a liquor license under the provisions of this ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

04.030--Types of licenses. The Executive Committee shall have the authority to issue the following types of liquor licenses within the reservation:

A. Retail on-sale general license: means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. Retail on-sale beer and wine license means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. Retail off-sale general license means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. Retail off-sale beer and wine license means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. Manufacturer's license means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the reservation.

Chapter 05 – Application for License

05.010--Application form and content. An application for a license shall be made to the Executive Committee and shall contain the following information:

A. The name, address and phone number of the applicant. In the case of a corporation the application form will include the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the application form will include the name and address of each partner.

B. The specific area, location and/on premises for which the license is applied for.

C. The type of liquor transaction applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the

provisions of this ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner will be submitted. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation will be included.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this ordinance.

05.020--Fee accompanying application. The Executive Committee shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

- A. Retail on-sale general license;
- B. Retail on-sale beer and wine license;
- C. Retail off-sale general license:
- D. Retail off-sale beer and wine liquor; and
- E. Manufacturer's license.

05.030--Investigation; denial of application. Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Executive Committee shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The Executive Committee shall deny an application for issuance, renewal or transfer of a license if either the applicant on the premises for which a license is applied for does not qualify for a license under this ordinance or if the applicant has

misrepresented any facts in the application or given any false information to the Executive Committee in order to obtain a license.

The Executive Committee further may deny any application for issuance, renewal or transfer of a license if the Executive Committee cannot make the findings required by Section 06.20 of this Ordinance or the Executive Committee finds that the issuance of such a license would tend to create a law enforcement problem, or if issuance of said license would be a detriment to the health, safety and welfare of the Tribe or its members.

Chapter 06 – Issuance, Renewal and Transfer of Licenses

06.010--Public hearing. Upon receipt of an application for issuance, renewal or transfer of a license, and the payment of all fees required under this ordinance, the Secretary of the Executive Committee shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten (10) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Executive Committee shall hear from any person who wishes to speak for or against the application. The Executive Committee shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

06.020--Executive Committee action on application. Within thirty (30) days of the conclusion of the public hearing, the Executive Committee shall act on the matter. The Executive Committee shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Executive Committee shall find: (1) That the site for the

proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses, and (2) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Data.

Upon approval of an application, the Executive Committee shall issue a license to the applicant in a Form to be approved from time to time by the Executive Committee by resolution. All businesses shall post their Tribal liquor licenses issued under this ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

06.030--Multiple locations. Each license shall be issued to a specific person. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

06.040--Term of license /Temporary licenses. All licenses issued by the Executive Committee shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Executive Committee may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion at a fee to be established by the Executive Committee by resolution.

06.050--Transfer of licenses. Each license issued or renewed under this ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Executive Committee. The Executive Committee shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 05.010 of this ordinance. In the case of a transfer to a new location, the application shall contain all exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 07 – Revocation of Licenses

07.010--Revocation of licenses. The Executive Committee shall revoke a license upon any of the following grounds

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Executive Committee on the issuance, transfer or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal ordinance.

E. The failure to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any immediately adjacent area leased, assigned or rented by the licensee within a reasonable time after receipt of a notice to make such corrections has been received from the Executive Committee or its authorized representative.

07.020--Accusations. The Executive Committee, on its own motion through the adoption of an appropriate resolution meeting the requirements of this section, or any person may initiate revocation proceedings by filing an accusation with the Secretary of the Executive Committee. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this ordinance which would authorize the Executive Committee to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation, the Secretary of the Executive Committee shall cause the matter to be set for a hearing before the Executive Committee. Thirty (30) days prior to the date set for the

hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Executive Committee. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

07.030--Hearing. Any hearing held on any accusation shall be held before a majority of the Executive Committee under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Executive Committee. The Executive Committee shall render its decision within sixty (60) days after the date of the hearing. The decision of the Executive Committee shall be final and non-appealable.

Chapter 08 – Enforcement

08.010--Right to inspect. Any premises within the area under the jurisdiction of this Ordinance on which liquor is sold or distributed shall be open for inspection by representatives of the Executive Committee at all reasonable times during business hours for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

08.020--General penalties. Any person adjudged to be in violation of this ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation. The Executive Committee may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) limitation set forth above.

The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with federal law by separate Chapter or provision of this Ordinance or by a separate ordinance of the Cedarville Rancheria Tribal Code.

08.020--Initiation of action. Any violation of this ordinance shall constitute a public nuisance. The Executive Committee may initiate and maintain an action in tribal court, or, if the tribal court does not have jurisdiction over the action, the United States District Court for the Eastern District of California shall have jurisdiction to abate and permanently enjoin any nuisance declared under this ordinance. Any action taken under this section shall be in addition to any other penalties provided for this ordinance.

Section 08--Severability. If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and affect. To this end the provisions of this ordinance are severable.

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