



**4337-15-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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**Pueblo of Santa Clara Liquor Ordinance; Amendments**

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

**ACTION:** Notice.

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**SUMMARY:** This notice publishes amendments to the Santa Clara Pueblo Liquor Code (Code).

The Code regulates the control, possession, and sale of liquor on the Santa Clara Pueblo trust lands, in conformity with the laws of the State of New Mexico, where applicable and necessary.

**DATES:** The amended Code becomes applicable [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia L. Mattingly, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 1001 Indian School Road, NW, Albuquerque, New Mexico, 87104, Phone: (505) 563-3446; Fax: (602) 563-3101.

**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 Clara Pueblo Liquor Code, Resolution No. 2016-113, was duly

adopted by the Tribal Council on September 12, 2016. The Santa Clara Pueblo, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use of revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the reservation of Santa Clara Pueblo.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs (Department of Interior–Departmental Manual, 209 DM 8). I certify that Resolution No. 2016-113, the Santa Clara Pueblo Liquor Code, was duly adopted by the Tribal Council on September 12, 2016. This Code amends the previous liquor code as published in the *Federal Register* on June 27, 2001 (66 FR 34233).

Dated: July 13, 2017.

**Michael S. Black,**

*Acting Assistant Secretary – Indian Affairs.*

The Santa Clara Pueblo Liquor Code is amended to read as follows:

## **CHAPTER 108 - LIQUOR CODE**

### **Subchapter 1: General Provisions.**

#### **Sec. 108.1 Findings**

The Tribal Council finds as follows:

A. The introduction, possession and sale of alcoholic beverages into Santa Clara Indian Lands has long been regarded as a matter of special concern to the Pueblo, that bears directly on the health, welfare and security of the Pueblo and its members; and

B. Under federal law and New Mexico state law, and as a matter of inherent Tribal sovereignty, the question of to what extent and under what circumstances alcoholic beverages may be introduced into and sold or consumed within Santa Clara Indian Lands is to be decided by the governing body of the Tribe; and

C. It is desirable that the Tribal Council legislate comprehensively on the subject of the sale and possession of alcoholic beverages within Santa Clara Indian Lands, both to establish a consistent and reasonable Tribal policy on this important subject, as well as to facilitate economic development projects within Santa Clara Indian Lands that may involve outlets for the sale and consumption of alcoholic beverages; and

D. It is the policy of the Tribal Council that the introduction, sale and consumption of alcoholic beverages within Santa Clara Indian Lands be carefully regulated so as to protect the public health, safety and welfare, and that licensees be made fully accountable for violations of conditions of their licenses and the consequences thereof.

**Sec. 108.2 Definitions**

As used in this chapter, the following words shall have the following meanings:

- A. “Pueblo” or “Tribe” means the Pueblo of Santa Clara.
- B. “Tribal Council” or “Council” means the Tribal Council of the Pueblo of Santa Clara.
- C. “Governor” means the Governor of the Pueblo of Santa Clara.
- D. “Administrator” means the Tax Administrator of the Pueblo of Santa Clara.

E. “Person” means any natural person, partnership, corporation, joint venture, association, or other legal entity.

F. “Sale” or “sell” means any exchange, barter, or other transfer of goods from one person to another for commercial purposes, whether with or without consideration.

G. “Liquor” or “Alcoholic Beverage” includes the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented, spirituous, vinous or malt liquors or combinations thereof, mixed liquor, any part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

H. “Licensee” means a person who has been issued a license to sell alcoholic beverages on the licensed premises under the provisions of this Liquor Code.

I. “Licensed Premises” means the location within Santa Clara Indian Lands at which a licensee is permitted to sell and allow the consumption of alcoholic beverages, and may, if requested by the applicant and approved by the Tribal Council, include any related or associated areas or facilities under the control of the licensee, or within which the licensee is otherwise authorized to conduct business (but subject to any conditions or limitations as to sales within such area that may be imposed by the Governor in issuance of the license).

J. “Santa Clara Indian Lands” means all lands within the exterior boundaries of the Santa Clara Indian Reservation, all lands within the exterior boundaries of the Santa Clara Pueblo

Grant, and all other lands owned by the Pueblo subject to federal law restrictions on alienation or held by the United States for the use and benefit of the Pueblo.

K. “Special Event” means a bona fide special occasion such as a fair, fiesta, show, tournament, contest, meeting, picnic or similar event held on Santa Clara Indian Lands that is sponsored by an established business or non-governmental organization, lasting no more than three days. A special event may be open to the public or to a designated group, and it may be a one-time event or periodic, provided, however, that such events held more than four times a year by the same business or organization shall not be deemed special events for purposes of this Liquor Code.

L. “Server” means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, and including persons who manage, direct or control the sale or service of such beverages.

M. “Liquor Code” means the Santa Clara Pueblo Liquor Code, this chapter.

**Sec. 108.3 Sovereign Immunity**

Nothing in the Liquor Code shall be construed as a waiver or limitation of the sovereign immunity of the Pueblo.

**Sec. 108.4 Initial Compliance**

No person shall be disqualified from being issued a license under the provisions of this Liquor Code, or shall be found to have violated any provision of this Liquor Code, solely because such person, having been duly authorized to engage in the sale of alcoholic beverages within Santa

Clara Indian Lands under the law as it existed prior to enactment of this Liquor Code, continues to engage in such business without a license issued under the provisions of this Liquor Code after the effective date hereof, so long as such person complies with the provisions of this Section. Within 90 days after the effective date of this Liquor Code (or within 30 days after receiving written notice from the Pueblo of the enactment of the Liquor Code, whichever is later) any person who is licensed to sell alcoholic beverages within Santa Clara Pueblo Indian Lands under the law as it existed prior to the enactment of this Liquor Code shall submit an application for a license under the provisions of this Liquor Code. Upon the issuance of a license under the provisions of this Liquor Code to such person , or upon the rejection of an application for such license by such person, no license issued by the State of New Mexico or issued under the provisions of any prior law of the Pueblo that is held by such person, or that purports to authorize the possession, sale or consumption of alcoholic beverages on premises covered by a license issued (or a license application rejected) under the provisions of this Liquor Code, shall have any further validity or effect within Santa Clara Indian Lands.

**Sec. 108.5     Severability**

In the event any provision of this Liquor Code is held invalid or unenforceable by any court of competent jurisdiction, the remainder of the Code shall continue in full force and effect, notwithstanding the invalidity or unenforceability of such provision, to the fullest extent practicable.

**Sec. 108.6     Issuance of Regulations**

The Administrator shall have the authority to issue such regulations, consistent with the provisions of this Liquor Code, as may be helpful to the effective administration of the Liquor Code, provided

that such regulations shall be provided to the Tribal Council no less than 90 days prior to their effective date. If the Council votes to reject the regulations, or any particular provisions thereof, within such 90-day time period, the regulations, or such provisions as were rejected, shall not take effect.

## **Subchapter 2: Sale, Possession and Consumption of Alcoholic Beverages.**

### **Sec. 108.7     Prohibition**

The sale, introduction for sale, purchase, or other commercial dealing in alcoholic beverages, except as is specifically authorized by the Liquor Code, is prohibited within Santa Clara Indian Lands.

### **Sec. 108.8     Possession for Personal Use**

Possession of alcoholic beverages for personal use shall be lawful within Santa Clara Indian Lands only if such alcoholic beverages were lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off Santa Clara Indian Lands, and are possessed by a person or persons 21 years of age or older. Such possession is otherwise prohibited.

### **Sec. 108.9     Transportation Through Reservation Not Affected**

Nothing herein shall pertain to the otherwise lawful transportation of alcoholic beverages through Santa Clara Indian Lands by persons remaining upon public highways (or other paved public facilities for motor vehicles) and where such beverages are not delivered, sold or offered for sale to anyone within Santa Clara Indian Lands.

### **Sec. 108.10    Requirement of Public License**

No person shall sell any alcoholic beverage within Santa Clara Indian Lands, or offer any such beverage for sale, unless such person holds a license issued by the Pueblo under the provisions of this chapter that is in effect, or unless such person holds a license authorizing such sales issued by the State of New Mexico that is in effect.

**Sec. 108.11 All Sales for Personal Use**

No person licensed to sell alcoholic beverages within Santa Clara Indian Lands shall sell any such beverage for resale, but all such sales shall be for the personal use of the purchaser. Nothing herein shall prohibit a duly licensed wholesale dealer in alcoholic beverages from selling and delivering such beverages to properly licensed retailers within Santa Clara Indian Lands, so long as such sales and deliveries are otherwise in conformity with the laws of the State of New Mexico and this Liquor Code, and so long as such wholesale dealer registers with the Administrator and pays any taxes due on such sales.

**Sec. 108.12 Package Sales and Sales of Liquor by the Drink Permitted**

Sales of alcoholic beverages on Santa Clara Indian Lands may be in package form or for consumption on the premises, or both, so long as the seller is properly licensed by the Pueblo to make sales of that type. No seller of alcoholic beverages shall permit any person to consume, on premises where liquor by the drink is authorized to be sold, any alcoholic beverages purchased elsewhere by the consumer, except that a restaurant holding a premises license may allow a customer who is ordering a meal, and who is legally entitled to consume alcoholic beverages, to bring onto the premises one or more bottles of wine that were legally acquired elsewhere and came from a New Mexico licensed wholesaler (but not to exceed one bottle per person at the table), for consumption

with such customer's meal, provided that any such bottle is opened by an employee of the restaurant who is legally entitled to serve alcoholic beverages, and the restaurant may charge a corkage fee for each such bottle opened.

**Sec. 108.13 No Sales to Minors**

No alcoholic beverages may be sold within Santa Clara Indian Lands to any person under the age of 21 years.

**Sec. 108.14 Hours and Days of Sale**

Alcoholic beverages may be sold, offered for sale, delivered or consumed on licensed premises within Santa Clara Indian Lands every day during the following hours:

- A. From 8:00 a.m. until 12:00 midnight; and
- B. From 12:00 midnight of the previous day until 2:00 a.m.;

provided, however, that any such sales made between 12:00 midnight and 2:00 a.m. shall only be for consumption on the premises, and may only be made by a licensee holding a premises license.

**Sec. 108.15 Sales on Election Day**

[Repealed.]

**Sec. 108.16 Other Prohibitions on Sales**

The Tribal Council may, by duly enacted resolution, establish other days on which or times at which sales or consumption of alcoholic beverages are not permitted within Santa Clara Indian Lands, or specified portions thereof. The Council shall give notice of any such enactment promptly to all licensees within Santa Clara Indian Lands. In addition, the Governor of the Pueblo may, in the event

of a bona fide emergency, and by written order, prohibit the sale of any alcoholic beverages within Santa Clara Indian Lands, or any specified portions thereof, for a period of time not to exceed 48 hours. The Governor shall give prompt notice of such emergency order to all licensees within Santa Clara Indian Lands. No such emergency order may extend beyond 48 hours, unless during that time the Tribal Council meets and determines by resolution that the emergency requires a further extension of such order.

**Sec. 108.17 Location of Sales, Consumption**

No person licensed to sell alcoholic beverages within Santa Clara Indian Lands shall make such sales except at the licensed premises specifically designated in such license. No person holding only a premises license shall permit alcoholic beverages purchased from such licensee for consumption on the premises to be consumed off of the licensed premises; except that nothing herein shall prohibit a premises licensee that is a restaurant from permitting a customer who has purchased a bottle of wine with a meal, but only partially consumed the contents of such bottle, from taking the partially consumed bottle off of the premises, after such bottle has been recorked by the licensee and placed in a sealed bag, to which a receipt for the purchase of the bottle has been affixed.

**Sec. 108.18 Sales to be Made by Adults**

No person shall take any order, make any delivery, or accept payment for any sale of alcoholic beverages within Santa Clara Indian Lands, or otherwise have any direct involvement in any such sale, who is less than 21 years of age.

**Sec. 108.19 All Sales Cash**

No licensee shall make any sale of any alcoholic beverages within Santa Clara Indian Lands without receiving payment therefor by cash, check, credit card or cash equivalent, such as, in the case of a licensee that is a gaming establishment, chips, or player's club points in accordance with policies of the licensee applicable to the redemption of such points, at or about the time the sale is made; provided, that nothing herein shall preclude a licensee from receiving a delivery of alcoholic beverages from a duly authorized wholesaler where arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude a licensee from allowing a customer to purchase more than one alcoholic beverage in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the licensed premises; and provided further that nothing herein shall prevent a licensee from distributing alcoholic beverages to customers without charge, so long as such distribution is not otherwise in violation of any provision of this Liquor Code.

**Sec. 108.20 Nuisances Prohibited**

No licensee shall knowingly conduct its business in such a location, or in such a manner, or at such times of day or night, as to amount to a nuisance, in that such activity is injurious to public health, safety or morals, or interferes with the exercise and enjoyment of public rights, including the right to use public property.

**Subchapter 3: Licensing and Regulation**

**Sec. 108.21 Requirement of License**

[Repealed.]

**Sec. 108.22 Classes of Licenses**

The following types or classes of licenses for the sale or distribution of alcoholic beverages within Santa Clara Indian Lands shall be permitted:

A. Package license, which shall authorize the licensee to store, possess, sell and offer for sale alcoholic beverages in sealed containers, for consumption only off of the licensed premises.

B. Premises license, which shall authorize the licensee to store, possess and sell alcoholic beverages in open containers, for consumption on the licensed premises only, and to permit such consumption on the licensed premises only.

C. Special event license, which shall authorize the licensee to possess, distribute, sell and offer for sale alcoholic beverages for consumption only on the licensed premises, and to permit such consumption on the licensed premises only, but only for a bona fide special event, and only during the period or periods specified in such license, which period or periods shall be limited to the periods during which the special event is occurring and from beginning to end shall not exceed 72 hours.

**Sec. 108.23 Prohibited Zone**

Notwithstanding any other provision of this chapter, no license shall be issued under the provisions of this Liquor Code for any location as the proposed licensed premises that is within the geographical area encompassed by Sections 9, 10, 15 and 16, Township 20 North, Range 8 East, New Mexico Principal Meridian, and the area located south of said Sections 15 and 16, bounded on the east by the Rio Grande and on the west by the right-of-way line for NM Rte. 30, to the south boundary of the Santa Clara Pueblo Grant. The area described herein from which licenses are excluded is hereinafter referred to as the “Prohibited Zone.”

**Sec. 108.24 Qualifications for License**

A. No person shall be entitled to be issued a license under the provisions of this Liquor Code who has previously been the subject of any proceeding resulting in the revocation of any license for the sale of alcoholic beverages issued by the Pueblo or by any state or other jurisdiction, or who has been convicted of any felony in any jurisdiction involving theft, dishonesty, corruption, embezzlement or violation of laws regulating the sale, possession and use of alcoholic beverages, or who (if a natural person) has not at the time the application for license is submitted attained the age of 25 years, or who is otherwise determined by the Pueblo to be unfit to be licensed to sell alcoholic beverages, or (if a natural person) whose spouse is a person not qualified to hold a license under the provisions of this section.

B. No partnership, corporation or other legal entity shall be entitled to be issued a license under the provisions of this Liquor Code if any individual occupying any management or supervisory position within such entity, or who sits on the management committee or board of directors or trustees thereof, or who holds or controls a financial interest of ten percent or more in such entity, is a person who would not be entitled to be issued a license under the provisions of this section.

C. No person shall be entitled to be issued a package or premises license hereunder unless such person owns, or has an approved lease or other valid interest in, land within Santa Clara Indian Lands, is lawfully entitled to engage in a business on such land with which such license would be compatible, and can demonstrate that such person is otherwise capable of complying with all of the requirements imposed on licensees by this Liquor Code.

D. An applicant for a package or premises license hereunder, including, if the applicant is not a natural person, each principal in the applicant entity who will have any direct involvement in the proposed business, must have successfully completed within the three years preceding the date of the application an alcohol server education program and examination that is approved by the director of the New Mexico Alcohol and Gaming Division.

E. Notwithstanding anything in this section to the contrary, the Pueblo and its wholly owned commercial entities shall be entitled to be issued licenses hereunder upon application therefor to the Administrator, provided that all other provisions of this Liquor Code are complied with.

**Sec. 108.25 Package and Premises License Application; Procedure; Fees**

A. Every person seeking a package or premises license under the provisions of this Liquor Code (other than the Pueblo or any of its wholly owned commercial entities) shall submit to the Administrator a written application, under oath, in the form prescribed by and containing the information required by this section.

B. If the applicant is a natural person, the application shall contain, at a minimum, all of the following information:

1. The full legal name of the applicant, plus any other names under which the applicant has been known or done business during the previous 20 years, and the applicant's date and place of birth, as shown by a certified copy of the applicant's birth certificate.

2. The applicant's current legal residence address and business address, if any, and every residence address that the applicant has maintained during the previous ten years, with the dates during which each such address was current.

3. The trade name, business address and description of every business in which the applicant has engaged or had any interest (other than stock ownership or partnership interest amounting to less than five percent of total capital) during the previous ten years, and the dates during which the applicant engaged in or held an interest in any such business.
4. A listing of every other jurisdiction in which the applicant has ever applied for a license to sell or distribute alcoholic beverages, the date on which each such application was filed, the name of the regulatory agency with which the application was filed, the action taken on each such application, and if any such license was issued, the dates during which it remained in effect, and as to each such license a statement whether any action was ever taken by the regulatory body to suspend or revoke such license, with full dates and details of any such incident.
5. A listing of every crime with which the applicant has ever been charged, other than routine traffic offenses (but including any charge of driving while intoxicated or the like), giving as to each the date on which the charge was made, the location, the jurisdiction, the court in which the matter was heard, and the outcome or ultimate disposition thereof.
6. The name and address of every person or entity holding any security interest in any of the assets of the business to be conducted by the applicant, or in any of the proceeds of such business.
7. A detailed plat of the applicant's business premises within Santa Clara Indian Lands including the floor plans of any structure and the details of any exterior areas intended to be part of the licensed premises, together with evidence of the applicant's right to conduct business on such premises.
8. A detailed description of the business conducted or intended to be conducted on the licensed premises, and including (but not limited to) hours of operation and number of employees.

9. The type(s) of license(s) requested.

C. If the applicant is a corporation, the corporation, each officer of the corporation and every person holding 10% or more of the outstanding stock in the corporation shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall also submit the following:

1. A certified copy of its Articles of Incorporation and Bylaws.

2. The names and addresses of all officers and directors and those stockholders owning 5% or more of the voting stock of the corporation, and the amount of stock held by each such stockholder.

3. The name of the resident agent of the corporation who would be authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted on the licensed premises.

4. Such additional information regarding the corporation as the Administrator may require to assure a full disclosure of the corporation's structure and financial responsibility.

D. If the applicant is a partnership, or a limited liability corporation ("LLC"), the partnership or LLC, the managing partner or manager and every person or entity having an interest amounting to 10% or more of the total equity interest in the partnership or LLC shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall submit the following:

1. A certified copy of the Partnership Agreement or, in the case of an LLC, the Articles of Organization and Operating Agreement.

2. The names and addresses of all general partners and of all limited partners contributing 10% or more of the total value of contributions made to the limited partnership or who are entitled to 10%

or more of any distributions of the limited partnership; and in the case of an LLC, the names and addresses of every person or entity holding an ownership interest of 10% or more.

3. The name and address of the partner, manager or other agent of the partnership or LLC who or which is authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted in the licensed premises.

4. Such additional information regarding the partnership or LLC as the Administrator may require to assure a full disclosure of the partnership's or LLC's structure and financial responsibility.

E. Every applicant who is a natural person, and every person required by paragraphs C or D of this section to comply with the provisions of paragraph B, shall also submit with the application a complete set of fingerprints, taken under the supervision of and certified to by an officer of an authorized law enforcement agency located within the State of New Mexico.

F. The applicant shall also submit proof that applicant, if a natural person, and every person who will be directly involved in the sale or service of alcoholic beverages as part of the applicant's business, has successfully completed, within the three years next preceding the date of the application, an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division.

G. Every applicant for either a package license or a premises license shall submit with the completed license application a non-refundable license processing fee, in the amount set forth below:

Package license	\$5,000.00
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Premises license

\$1,000.00

In addition, each such applicant shall pay a fee to cover the cost of a background investigation, in an amount to be set by the Administrator from time to time, but which shall not exceed the sum of \$1000.00.

H. Upon receiving a completed license application together with the required fees, the Administrator shall cause a background investigation to be performed of the applicant, to determine whether the applicant is qualified to be licensed under the provisions of this Liquor Code. Upon the written recommendation of the Administrator (if requested by the applicant), the Tribal Council may, in its discretion, approve the issuance of a preliminary license to the applicant effective for a period of no more than 90 days, but which shall be renewable for one additional period of 90 days in the event the background investigation cannot be completed within the first 90-day period; provided, however, that in no event shall the issuance of a preliminary license, or the renewal of such license for an additional 90-day period, entitle the applicant to favorable consideration with respect to the application for a package or premises license.

I. The Pueblo or any of its wholly owned commercial entities may apply for a package or premises license by submitting an application to the Administrator identifying the applicant, describing in detail the purpose of the license, including a detailed description of the proposed licensed premises, and including the appropriate fee as set forth in Paragraph G of this section.

**Sec. 108.26 Action on Application**

A. Upon making a determination that an applicant for a package or premises license satisfies the requirements of this chapter, the Administrator shall prepare a written recommendation for the

issuance of such license, setting forth sufficient information about the applicant, the proposed business, and any other matters deemed relevant by the Administrator, to enable the Tribal Council to evaluate the merits of the license, together with any and all supporting data deemed suitable by the Administrator. The recommendation shall include a detailed description of the proposed leased premises, and any limitations or conditions the Administrator recommends be included in the license. The Administrator shall deliver the recommendation to the Governor, who shall place the matter on the agenda for the Tribal Council's next regular meeting that is at least fifteen days after the recommendation was received by the Governor, and shall give written notice thereof to the Administrator and the applicant, and to the public. The Governor shall provide a complete copy of the Administrator's recommendation, with all supporting documentation, to each member of the Tribal Council, by no later than ten days before the meeting at which the matter is to be heard.

B. The Tribal Council shall take up the Administrator's recommendation at its next regular meeting. The Administrator shall explain the application and the basis for his or her recommendation, and the applicant shall be permitted to speak in favor of the application. Any interested member of the public may also be heard on the matter. The Tribal Council shall vote either to approve or deny the application, and if it votes to approve the license, it shall specify whether the Administrator's recommendations as to the description of the licensed premises and any limitations or conditions on the license are accepted, rejected, or modified, and may add any additional limitations or conditions it deems appropriate.

C. If the Administrator concludes that the applicant is not qualified for a license under the provisions of Section 108.24 of this chapter, or that the application is otherwise not allowable under

the provisions of this chapter, he or she shall give written notice to the applicant that the license is rejected, by certified mail, return receipt requested. The applicant may appeal that decision to the Tribal Council, by delivering written notice of such appeal to the office of the Governor, with a copy to the Administrator, within thirty days of the date the notice of rejection was received. Upon receipt of the notice of appeal, the Governor shall set the matter for hearing before the Tribal Council at a regular meeting that is no less than thirty days, but no more than forty-five days, from the date of receipt of the notice. The Governor shall send written notice to the applicant and the Administrator of the date and time the appeal is to be heard, and shall give such notice to the public.

D. By no less than fifteen days before the hearing, the Administrator shall prepare and submit to the Governor a report explaining in detail the basis for his or her decision to reject the application, to which shall be attached the complete application submitted by the applicant and any additional information concerning the application obtained by the Administrator. By the same deadline, the applicant may submit to the Governor its argument in support of the application, together with such documents as the applicant deems relevant. The Governor shall provide each member of the Council with complete copies of both submissions by no less than ten days before the date of the hearing.

E. At the hearing on the applicant's appeal, the applicant or its representative shall present argument in favor of the application, and the Administrator or his or her representative shall present argument in favor of the Administrator's decision. The Council may permit members of the public to speak. The Council shall vote either to uphold or reverse the Administrator's decision on the application. If the Council votes to reverse the decision, and to approve the application, it shall further determine whether any limitations or conditions should be attached to the license.

F. In the event the Council approves the issuance of a license, the Administrator shall issue the license forthwith, incorporating therein any limitations or conditions thereon approved by the Tribal Council.

**Sec. 108.27 Term; Renewal; Fee**

A. Each package or premises license issued hereunder shall have a term of one (1) year from the date of issuance, provided that such license shall be renewable for additional periods of one year each by any licensee who has complied fully with the terms and provisions of the license and of this Liquor Code during the term of the license, and who remains fully qualified to be licensed under the provisions of Section 108.24 of this Chapter. A licensee who is eligible for renewal of his or her license shall submit to the Administrator an application for renewal on a form specified by the Administrator, together with proof that the licensee and each person employed by the licensee as a server has successfully completed, within the past five years, an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division, and a license renewal fee in the amount of \$500.00, no less than thirty (30) days prior to the expiration date of the license.

B. The failure to submit a timely renewal application, with the required fee, may subject the licensee to a late charge of \$500.00. If the renewal application is not submitted prior to expiration of the license, the Administrator may treat the license as having expired, and may require the licensee to file a new application in compliance with Section 108.25 of this chapter.

C. The Administrator may, in his or her discretion, conduct an update on the applicant's background investigation prior to acting on any renewal application, and the Administrator shall update such investigation prior to issuing a third renewal of a license since the last such investigation was performed, or if the Administrator has acquired information indicating that the applicant is not qualified for a license under the provisions of Section 108.24 of this chapter. Whenever any such investigation is performed, the Administrator shall require the applicant to pay an additional fee to cover the costs of such investigation, in an amount to be determined by the Administrator but in no event in excess of the sum of \$1000.00.

D. The Administrator may refuse to approve a renewal of a license in the event a background investigation reveals facts that would disqualify the applicant from being licensed under this Liquor Code, or if the Administrator determines that the licensee has operated in a manner violative of the provisions of this chapter. In that event, the applicant shall have the right to appeal the Administrator's decision to the Tribal Council, which appeal shall be governed by and conducted in accordance with the same requirements and procedures that apply an appeal of a denial of an original application, as set forth in Section 108.26 (C), (D), and (E) of this chapter.

**Sec. 108.28 Conditions of License**

No licensee shall have any property interest in any license issued under the provisions of this Liquor Code, and every such license shall be deemed to confer a non-transferable privilege, revocable by the Pueblo in accordance with the provisions of this Chapter. The continued validity of every package and premises license issued hereunder shall be dependent upon the following conditions:

- A. Every representation made by the licensee and any of its officers, directors, shareholders, partners or other persons required to submit information in support of the application, shall have been true at the time such information was submitted, and shall continue to be true, except to the extent the licensee advises the Administrator in writing of any change in any such information, and notwithstanding any such change, the licensee shall continue to be qualified to be licensed under the provisions of this Liquor Code.
- B. The licensee shall at all times conduct its business on Santa Clara Indian Lands in full compliance with the provisions of this Liquor Code and with the other laws of the Pueblo.
- C. The licensee shall maintain in force, public liability insurance covering the licensed premises, insuring the licensee and the Pueblo against any claims, losses or liability whatsoever for any acts or omissions of the licensee or of any business invitee on the licensed premises resulting in injury, loss or damage to any other party, with coverage limits of at least \$1 million per injured person, and the Administrator shall at all times have written evidence of the continued existence of such policy of insurance.
- D. The licensee shall be lawfully entitled to engage in business within Santa Clara Indian Lands, and shall have paid all required rentals, assessments, taxes, or other payments due the Pueblo.
- E. The business conducted on the licensed premises shall be conducted by the licensee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee, nor shall any license issued hereunder or any interest therein be sold, assigned, leased or otherwise transferred to any other person.

- F. All alcoholic beverages sold on the licensed premises shall have been obtained from a New Mexico licensed wholesaler.
- G. No person shall be employed by the licensee as a server who has not, within the past five years, successfully completed an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division.
- H. No licensee shall sell, serve or deliver any alcoholic beverage to a customer through a drive-up window, or otherwise to a customer who at the time of the transaction is in a motor vehicle.
- I. By having applied for and obtained a license hereunder, the licensee shall be deemed to have submitted to the jurisdiction of the Tribal Court of the Pueblo with respect to any action brought by the Pueblo or any of its agencies or offices to enforce the provisions of this Liquor Code or any other provision of tribal law, or by any person claiming to have suffered loss or damage due to any act or omission of the licensee in the course of the conduct of its business on Santa Clara Indian Lands.

**Sec. 108.29 Sanctions for Violation of License**

- A. Upon determining that any person licensed by the Pueblo to sell alcoholic beverages under the provisions of the Liquor Code is for any reason no longer qualified to hold such license under the provisions of Section 108.24 of the Liquor Code, or has violated any of the conditions set forth in Section 108.28, the Administrator shall immediately serve written notice upon such licensee directing that he show cause within ten calendar days why his license should not be suspended or revoked, or a fine imposed, or both. The notice shall specify the precise grounds relied upon and the action proposed.

B. If the licensee fails to respond to such notice within ten calendar days of service of such notice, the Administrator shall issue an order suspending the license for such period as the Administrator deems appropriate, or revoking the license, effective immediately, or imposing a fine, in such amount as the Administrator deems reasonable. The licensee may request a hearing on such notice, by filing a written response and a request for hearing, within the ten-day period, with the Administrator and with the Clerk of the Santa Clara Tribal Court. The hearing shall be held before the Tribal Court, no later than 30 calendar days after receipt of such request, unless the Court for good cause extends such time period.

C. At the hearing, the Administrator shall have the burden to prove facts supporting the contentions set forth in the notice, and justifying the sanctions proposed in the notice. The licensee shall have the right to present its evidence in response.

D. The Court after considering all of the evidence and arguments shall issue a written decision, within fifteen days after the hearing concludes, either upholding the proposed action of the Administrator, modifying such action by imposing some lesser penalty, or ruling in favor of the licensee, and such decision shall be final and conclusive.

**Sec. 108.30 Special Event License**

A. Any established business or any non-governmental organization that includes any member of the Pueblo, that has authority to conduct any activities within Santa Clara Indian Lands and that is not a licensee hereunder, may apply to the Administrator for a special event license, which shall entitle the applicant to distribute alcoholic beverages, whether or not for consideration, in connection with a bona fide special event to be held by the applicant within Santa Clara Indian Lands. Any such

application must be filed in writing, in a form prescribed by the Administrator, no later than 45 calendar days prior to the event, must be accompanied by a fee in the amount of \$50.00, and must contain at least the following information:

1. The nature and purpose of the event, the identity of the applicant and its relationship to the event, and a description of the persons who are invited to participate in the event, including their ages;
  2. The precise location within Santa Clara Indian Lands where the event will occur, and where alcoholic beverages will be distributed, no part of which shall be within the Prohibited Zone;
  3. The exact days and times during which the event will occur (provided, that in no event shall any license be in effect for a period exceeding 72 hours, from the beginning of the first day of the event until the end of the last day);
  4. The nature of any food and beverages to be distributed, and the manner in which such distribution shall occur;
  5. Details of all provisions made by the applicant for sanitation, security and other measures to protect the health and welfare of participants at the event;
  6. Certification that the event will be covered by a policy of public liability insurance as described in Section 108.28 (C) of this Liquor Code, that includes the Pueblo as a co-insured.
  7. Any other information required by the Administrator relative to the event.
- B. The Administrator shall review the application, and shall prepare a written recommendation as to whether the application should be approved or denied, and whether it should be conditioned or limited in any respect, by no later than ten days following receipt of the complete application, which

recommendation, together with any supporting documents, shall be delivered to the office of the Governor.

C. The Governor shall place the application on the agenda of the next regular Tribal Council meeting that is at least fifteen days after the Administrator's recommendation is received, and shall give written notice of the date and time of such meeting to the applicant and the Administrator. The Governor shall provide complete copies of the Administrator's recommendation to each member of the Council by no later than ten days before the meeting. The Tribal Council shall hear presentations from the applicant and the administrator on the application, and shall vote to approve or reject the application. If the Council votes to approve the application, it shall also decide whether the license should be conditioned or limited in any fashion. If the application is approved, the Administrator shall issue the license, including any conditions or limitations approved by the Council, and specifying the hours during which and the premises within which sales, distribution and consumption of alcoholic beverages may occur.

D. Alcoholic beverages may be sold or distributed pursuant to a special event license only at the location and during the hours specified in such license, in connection with the special event, only to participants in such special event, and only for consumption on the premises described in the license. Such sales or distribution must comply with any conditions imposed by the license, and with all other applicable provisions of this Liquor Code. All such alcoholic beverages must have been obtained from a New Mexico licensed wholesaler or retailer.

**Sec. 108.31 Display of License**

Every person licensed by the Pueblo to sell alcoholic beverages within Santa Clara Indian Lands shall prominently display the license on the licensed premises during hours of operation.

**Sec. 108.32 Alcoholism Treatment Tax**

There is hereby imposed a tax, that is in addition to any other applicable tax, in the amount of two percent of the gross receipts of each licensee from sales of alcoholic beverages, which shall be paid monthly by each licensee to the Administrator. The proceeds of this tax shall be maintained by the Administrator in a special fund, which shall be utilized solely to fund programs for the prevention and treatment of alcoholism and related problems, as determined from time to time by the Tribal Council. The Administrator may, by the issuance of appropriate regulations, establish procedures for the enforcement of this Section.

**Subchapter 4: Offenses**

**Sec. 108.33 Purchase From or Sale to Unauthorized Persons**

Within Santa Clara Indian Lands, no person shall purchase any alcoholic beverage at retail except from a person licensed by the Pueblo under the provisions of this title; no person except a person licensed by the Pueblo under the provisions of this title shall sell any alcoholic beverage at retail; nor shall any person sell any alcoholic beverage for resale within Santa Clara Indian Lands to any person other than a person properly licensed by the Pueblo under the provisions of this chapter.

**Sec. 108.34 Sale to Minors**

A. No person shall sell or provide any alcoholic beverage to any person under the age of 21 years.

B. It shall be a defense to an alleged violation of this Section that the purchaser presented to the seller an apparently valid identification document showing the purchaser's age to be 21 years or older, and that the seller had no actual or constructive knowledge of the falsity of the identification document and relied in good faith on its apparent validity.

**Sec. 108.35 Purchase by Minor**

No person under the age of 21 years shall purchase, attempt to purchase or possess any alcoholic beverage.

**Sec. 108.36 Sale to Person Under the Influence of Alcohol**

No person shall sell any alcoholic beverage to a person who the seller has reason to believe is under the influence of alcohol or who the seller has reason to believe intends to provide such alcoholic beverage to a person under the influence of alcohol.

**Sec. 108.37 Purchase by Person Under the Influence of Alcohol**

No person under the influence of alcohol shall purchase any alcoholic beverage.

**Sec. 108.38 Bringing Liquor Onto Licensed Premises.**

No person shall bring any alcoholic beverage for personal consumption onto any premises within Santa Clara Indian Lands where liquor is authorized to be sold by the drink, unless such beverage was purchased on such premises, or unless the possession or distribution of such beverages on such premises is otherwise licensed under the provisions of this Liquor Code.

**Sec. 108.39 Use of False or Altered Identification**

No person shall purchase or attempt to purchase any alcoholic beverage by the use of any false or altered identification document that falsely purports to show the individual to be 21 years of age or older.

**Sec. 108.40 Penalties**

A. Any person convicted of committing any violation of this Chapter shall be subject to punishment of up to one (1) year imprisonment or a fine not to exceed Five Thousand Dollars (\$5,000.00), or to both such imprisonment and fine.

B. Any person not a member of a federally recognized Indian tribe, upon committing any violation of any provision of this Chapter, may be subject to a civil action for trespass, and upon having been determined by the court to have committed the alleged violation, shall be found to have trespassed upon the Lands of the Pueblo, and shall be assessed such damages as the court deems appropriate in the circumstances.

C. Any person suspected of having violated any provision of this Chapter shall, in addition to any other penalty imposed hereunder, be required to surrender any alcoholic beverages in such person's possession to the officer making the arrest or issuing the complaint.

**Sec. 108.41 Jurisdiction**

Any and all actions, whether civil or criminal, pertaining to alleged violations of this title, or seeking any relief against the Pueblo or any officer or employee of the Pueblo with respect to any matter addressed by this Liquor Code, shall be brought in the Tribal Court of the Pueblo, which court shall have exclusive jurisdiction thereof.

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