

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Chemehuevi Indian Tribe Liquor Licensing Ordinance**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. CHEM. R. 94-10-F, a resolution to repeal Tribal Ordinance No. 4, 7, 14, and 18, rescind Tribal Resolution 94-06-G, and adopt a new ordinance entitled "Liquor License Ordinance," was duly adopted by the Chemehuevi Tribal Council of the Chemehuevi Indian Tribe of the Chemehuevi Reservation, California, on October 29, 1994. The Ordinance provides for the regulation of the sale, possession, consumption, distribution and manufacture of liquor in the area of Indian Country under the jurisdiction of the Chemehuevi Indian Tribe of California.

DATES: This ordinance is effective as of July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services, Division of Tribal Government Services, 1849 C St., NW., Mail-Stop 2611-MIB, Washington, DC 20240-4001; Telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: The Chemehuevi Indian Tribe Liquor Licensing Ordinance reads as follows:

Chemehuevi Liquor Licensing Ordinance*Section 1. Declaration of Findings.*

The Council hereby finds as follows:

1. Under the Constitution of the Tribe, the Council is charged with the duty of protecting the health, education, and general welfare of the Chemehuevi Indian Tribe.
2. The introduction, possession and sale of alcoholic beverages on the Chemehuevi Indian Reservation is a matter of special concern to the Tribe.
3. Federal law leaves to tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.
4. Present day circumstances make a complete ban on alcoholic beverages within the Chemehuevi Indian Reservation ineffective and unrealistic. At the same time, a need still exists for

strict tribal regulation and control over alcoholic beverage distribution.

5. The enactment of a tribal ordinance governing alcoholic beverage sales on the Chemehuevi Indian Reservation and providing for the purchase and sale of alcoholic beverages through tribally licensed outlets will increase the ability of the tribal government of control the distribution, sale and possession of liquor on the Chemehuevi Indian Reservation, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the tribal government and delivery of tribal governmental services.

Section 2. Declaration of Policy. The Council hereby declares that the policy of the Tribe is to eliminate the evils of unlicensed and unlawful manufacture, distribution, and sale of alcoholic beverages on the Chemehuevi Indian Reservation and to promote temperance in the use and consumption of alcoholic beverages increasing tribal control over the possession and distribution of alcoholic beverages on the Reservation.

Section 3. Repeal of Ordinance Number 18 and Adoption of Liquor Licensing Ordinance. To the extent not previously repealed either expressly or by implication, Ordinances Nos. 4, 7, 14, and 18 are hereby expressly repealed.

Liquor Licensing Ordinance*Chapters:*

- 02 General Provisions
- 04 Definitions
- 06 Prohibition of the Unlicensed Sale of Liquor on the Reservation
- 08 Application for License
- 10 Issuance, Renewal, and Transfer of Licenses
- 12 Revocation of Licenses
- 14 Enforcement

Chapter 02

General Provisions

Sections:

- 02.010 Short title.
- 02.020 Purpose.
- 02.030 Sovereign immunity preserved.
- 02.040 Applicability within the reservation.
- 02.050 Interpretation and findings.
- 02.060 Conflicting provisions.
- 02.070 Application of 18 U.S.C. 1161.
- 02.010 *Short Title.* This ordinance shall be known and cited as the "Chemehuevi 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 Chemehuevi

Indian Reservation except pursuant to a license issued by the Chemehuevi Tribal Council under the provisions of this ordinance.

02.030 Sovereign immunity preserved. Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Chemehuevi Indian Tribe. No officer or employee of the Chemehuevi Indian Tribe 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 expressed and explicit written authorization from the Chemehuevi Tribal Council.

02.040 Applicability within the reservation. This ordinance shall apply to all persons within the exterior boundaries of the Chemehuevi Indian Reservation consistent with the applicable federal Indian liquor laws.

02.050 Interpretation and findings. The Chemehuevi Tribal Council in the first instance may interpret any ambiguities contained in this ordinance.

02.060 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.

02.070 Application of 18 U.S.C. 1161. The importation, manufacture, distribution and sale of alcoholic beverages on the Chemehuevi Indian Reservation 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 04

Definitions

Sections:

- 04.010 Interpretation.
- 04.020 Alcohol.
- 04.030 Alcoholic beverages.
- 04.040 Beer.
- 04.050 Distilled spirits.
- 04.060 Importer.
- 04.070 Liquor license.
- 04.080 Manufacturers.
- 04.090 Person.
- 04.100 Reservation.
- 04.110 Sale.
- 04.120 Seller.
- 04.130 Tribal Council.
- 04.140 Wine.

04.010 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.

04.020 Alcohol. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl,

or spirits of wine, from whatever source or by whatever process produced.

04.030 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".

04.040 Beer. "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction or 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.

04.050 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.

04.060 Importer. "Importer" means any person who introduces alcohol or alcoholic beverages into the Chemehuevi Indian Reservation 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.

04.070 Liquor License. "Liquor license" means a license issued by the Chemehuevi Tribal Council under the provisions of this ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Reservation consistent with federal law.

04.080 Manufacturer.

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

04.090 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".

04.100 Reservation. "Reservation" means all lands within the exterior boundaries of the Chemehuevi Indian Reservation 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.

04.110 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.

04.120 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.

04.130 Tribal Council. "Tribal Council", or "Council" means the Chemehuevi Tribal Council.

04.140 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 06

Prohibition of the Unlicensed Sale of Liquor

Sections:

06.010 Prohibition of the unlicensed sale of liquor.

06.020 Authorization to sell liquor.

06.030 Types of licenses.

06.010 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 Council issued in accordance with the provisions of this ordinance.

06.020 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.

06.030 Types of licenses. The Council 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. "Manufacturers license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the reservation.

Chapter 08

Applications for Licenses

Sections:

08.010 Application form and content.

08.020 Fee accompanying application.

08.030 Investigation; denial of application.

08.010 Application form and content. An application for a license shall be made to the Council and shall contain the following information:

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

B. The specific area, location and/or 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. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation.

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

08.020 Fee accompanying application. The Council 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 license; and
- E. Manufacturers license.

08.030 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 Council 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 Council shall deny an application for issuance, renewal or transfer of a license if either the applicant or the premises for which a license is applied for does not qualify for a license under this ordinance.

The Council further may deny any application for issuance, renewal or transfer of a license if the Council cannot make the findings required by Section 10.20 of this Ordinance or the Council finds that the issuance of such a license would tend to create a law enforcement problem, or if the applicant has misrepresented any facts in the application or given any false information to the Council in order to obtain a license.

Chapter 10

Issuance, Renewal and Transfer of Licenses

Sections:

- 10.010 Public hearing.
- 10.020 Council action on the application.
- 10.030 Multiple locations.
- 10.040 Calendar year time limit.
- 10.050 Transfer of licenses.
- 10.010 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 Council 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 Council shall hear from any person who wishes to speak for or against the application. The Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

10.020 Council action on the application. Within thirty (30) days of the conclusion of the public hearing, the Council shall act on the matter. The Council shall have the authority to deny, approve or approve with conditions the application. Before approving the application, the Council 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 Ordinance.

Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by the Council 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.

10.030 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. In the case of the sale of

alcoholic beverages on boats a separate license shall be issued for each boat regardless of the fact that the boats are moored at one location or owned by one person.

10.040 Term of license. Temporary licenses. All licenses issued by the Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Council 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 Council by resolution.

10.050 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 Council. The Council 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 08.010 of this ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 12

Revocation of Licenses

Sections:

- 12.010 Revocation of license.
- 12.020 Accusations.
- 12.030 Hearing.

12.010 Revocation of license. The Council 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 Council 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 on the licensed premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of

a notice to make such corrections has been received from the Council or its authorized representative.

12.020 Accusations. The Council 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 Council. 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 Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation, the Secretary of the Council shall cause the matter to be set for a hearing before the Council. 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 Council. 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.

12.030 Hearing. Any hearing held on any accusation shall be held before a majority of the Council 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 Council. The Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Council shall be final and non-appealable.

Chapter 14

Enforcement

Sections:

14.010 General penalties.

14.020 Initiation of action.

14.010 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 Council 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 under a separate ordinance adopted by the Council.

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 Chemehuevi Tribal Code.

14.020 Initiation of action. Any violation of this ordinance shall constitute a public nuisance. The Council may initiate and maintain an action in tribal court or any court of competent 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 4. 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 effect. To this end the provisions of this ordinance are severable.

Section 5. 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**.

Dated: July 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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