

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**Soboba** Band of Mission Indians Liquor Control Ordinance

Tuesday, April 10, 2001

**\*18648** AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the **Soboba** Band of Mission Indians Liquor Control Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the **Soboba** Band trust lands, and is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on February 12, 2000, it does not become **\*18649** effective until published in the Federal Register because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, [18 U.S.C. 1161](#), as interpreted by the Supreme Court in [Rice v. Rehner](#), [463 U.S. 713 \(1983\)](#), the Secretary of the Interior shall certify and publish in the Federal Register notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The **Soboba** Band of Mission Indians Liquor Control Ordinance, Resolution No. 2, was duly adopted by the **Soboba** Tribal Council on February 12, 2000. The **Soboba** Band of Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the **Soboba** Band Reservation.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary--Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 2, the **Soboba** Band of Mission Indians Liquor Control Ordinance was duly adopted by the **Soboba** Band Tribal Council on February

12, 2000.

Dated: March 28, 2001.

James H. Mc Divitt,

Deputy Assistant Secretary--Indian Affairs (Management).

The **Soboba** Band of Mission Indians Liquor Control Ordinance

The **Soboba** Band of Mission Indians Liquor Control Ordinance, Resolution No. 2, reads as follows:

*Article I--Declaration of Public Policy and Purpose*

Section 1. The introduction, possession and sale of liquor on the lands of the **Soboba** Indian Reservation is a matter of special concern to the **Soboba** Band of Mission Indians.

Section 2. Federal law, [18 U.S.C. 1154, 1161](#), currently prohibits the introduction of liquor into Indian country, except as provided therein and in accordance with State law as interpreted by the Supreme Court in [Rice v. Rehner, 463 U.S. 713 \(1983\)](#), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted.

Section 3. The General Council of the **Soboba** Band of Mission Indians has the inherent right to enact ordinances to safeguard and provide for the health, safety and welfare of the **Soboba** Indian Reservation and the **Soboba** General Council has determined that it is in the best interest of the **Soboba** Band of Mission Indians to enact a tribal ordinance governing the introduction, possession and sale of liquor on the **Soboba** Indian Reservation and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Reservation. Further, the **Soboba** Band of Mission Indians has determined that said purchase, distribution and sale shall take place only at tribally owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the **Soboba** Band of Mission Indians as a whole.

[Section 4](#). The **Soboba** General Council finds that the sale or other commercial distribution of liquor on allotted land is not in the best interest of the **Soboba** Band of Mission Indians and is therefore prohibited.

Section 5. The **Soboba** General Council finds that violations of this Ordinance would damage the **Soboba** Band of Mission Indians in an amount of five hundred dollars (\$500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the **Soboba** Band of Mission Indians will impose a tax on the sale of liquor on the reservation. Based upon the foregoing findings and determinations, the **Soboba** Band of Mission Indians General Council hereby ordains as

follows:

*Article II--Definitions*

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

Section 1. Alcohol means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. Alcoholic Beverage has the same meaning as the term liquor as defined in Article II, Section 5 of this Ordinance.

Section 3. Bar means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

**Section 4.** Beer means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

Section 5. Liquor means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

**Section 6.** Liquor Store means any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 7. Malt liquor means beer, strong beer, ale, stout and porter.

**Section 8.** Package means any container or receptacle used for holding liquor.

**Section 9.** Public Place includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar

nature to which the general public has unrestricted access, and which generally are used by the public.

Section 10. Sale and Sell mean any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

Section 11. Spirits means any beverage, which contains alcohol obtained by distillation, including \*18650 wines exceeding seventeen percent (17%) of alcohol by weight.

Section 12. Tribal Council means the **Soboba** Tribal Council as defined in the Constitution of the **Soboba** Band of Mission Indians.

Section 13. Tribal Gaming Commission means the gaming regulatory body established under the Gaming Ordinance of the **Soboba** Band of Mission Indians that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 14. Tribal Land means any land within the exterior boundaries of the **Soboba** Indian Reservation that is held in trust by the United States for the **Soboba** Band of Mission Indians.

Section 15. Wine means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

#### *Article III--Powers of Enforcement*

Section 1. The **Soboba** Gaming Commission, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the sale, manufacture and distribution of alcoholic beverages in public places on the **Soboba** Indian Reservation as the **Soboba** Gaming Commission may deem necessary, subject to approval by the **Soboba** Tribal Council;

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Gaming Commission to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale, manufacture and/or distribution of liquor on the **Soboba** Indian Reservation;

(d) Hold hearings on violations of this Ordinance or for the issuance or revoca-

tion of licenses hereunder;

- (e) Bring suit in the appropriate court to enforce this Ordinance as necessary;
- (f) Determine and seek damages for violation of this Ordinance;
- (g) Make such reports as may be required by the Tribal Council;
- (h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts; and
- (i) Exercise such other powers as may be delegated from time to time by the Tribal Council.

Section 2. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members and staff shall not:

- (a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or
- (b) Waive the immunity of the **Soboba** Band of Mission Indians from suit without the express consent of the **Soboba** General Council.

Section 3. Inspection Rights. The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

#### *Article IV--Sale of Liquor*

Section 1. License Required. No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the **Soboba** Indian Reservation, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Reservation.

Section 2. Sales for Cash. All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

Section 3. Sale for Personal Consumption. Except for sales by businesses owned by the **Soboba** Band of Mission Indians, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any

person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from Tribal lands or liability for money damages of up to five hundred dollars (\$500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

*Article V--Licensing*

Section 1. Procedure. In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the **Soboba** Indian Reservation must apply to the Tribal Gaming Commission for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

Section 2. State Licensing. No person shall be allowed or permitted to sell or provide liquor on the **Soboba** Indian Reservation if s/he does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the Tribal license shall automatically be revoked or suspended as well.

Section 3. Application. Any person applying for a license to sell or provide liquor on the **Soboba** Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Gaming Commission and pay such application fee as may be set from time-to-time by the Tribal Gaming Commission for this purpose. An incomplete application will not be considered.

**Section 4.** Issuance of License. The Tribal Gaming Commission may issue a license if it believes that such issuance is in the best interest of the **Soboba** Band of Mission Indians, the residents of the **Soboba** Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Gaming Commission.

Section 5. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

**Section 6.** Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the **Soboba** Band of Mission Indians.

Section 7. Revocation of License. The Tribal Gaming Commission may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to **\*18651** demon-

strate why the license should not be suspended or revoked.

**Section 8.** Transferability of Licenses. Licenses issued by the Tribal Gaming Commission shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

*Article VI--Taxes*

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages to the **Soboba** Indian Reservation shall be paid over to the General Treasury of the **Soboba** Band of Mission Indians and be subject to the distribution by the **Soboba** General Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Gaming Commission and administration of this Ordinance.

Section 3. Taxes Due. All taxes upon the sale of alcoholic beverages on the Reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at eighteen percent (18%) per annum.

**Section 4.** Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the Tribal Gaming Commission through its agents or employees whenever in the discretion of the Tribal Gaming Commission such a review is necessary to verify the accuracy of reports.

*Article VII--Rules, Regulations and Enforcement*

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a vi-

olation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Gaming Commission. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the **Soboba** Band of Mission Indians for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the **Soboba** Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the **Soboba** Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

**Section 4.** Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 5. No person under the age of twenty-one (21) years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

**Section 6.** Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Ordinance shall be liable to pay the **Soboba** Band of Mission Indians the amount of five hundred dollars (\$500) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the Tribal Gaming Commission based upon a preponderance of the evidence available to the Tribal Gaming Commission after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

**Section 8.** Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;

(2) United States Active Duty Military identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.



*Article VIII--Abatement*

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Tribal Chairperson, upon authorization by a majority of the Tribal Council or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the **Soboba** Band of Mission Indians to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than twenty-five thousand dollars (\$25,000) payable to the **Soboba** Band of Mission Indians and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other Tribal liquor laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the **Soboba** Band of Mission Indians.

Section 3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other **\*18652** property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

*Article IX--Profits*

Section 1. The gross proceeds collected by the Tribal Gaming Commission from all licensing of the sale of alcoholic beverages on the **Soboba** Indian Reservation, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the **Soboba** Band of Mission Indians and expended by the Tribal Council for governmental ser-

vices and programs on the **Soboba** Indian Reservation.

*Article X--Severability and Effective Date*

Section 1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the Federal Register.

Section 3. Any and all-prior enactments of the **Soboba** Band of Mission Indians that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

**Section 4.** All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in [18 U.S.C. § 1154](#), but only to the extent required by the laws of the United States.

*Article XI--Amendment*

This Ordinance may only be amended by majority vote of the **Soboba** General Council attending a duly noticed meeting at which a quorum is present.

[FR Doc. 01-8749 Filed 4-9-01; 8:45 am]

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