

PUEBLO OF LAGUNA

ORDINANCE OF THE TRIBAL COUNCIL

ORDINANCE No. 300-86

LIQUOR CONTROL ORDINANCE

WHEREAS, the Pueblo Council of the Pueblo of Laguna is the duly constituted body of the Pueblo of Laguna by the authority of the Constitution of the Pueblo of Laguna adopted by the qualified voters of the Pueblo on February 15, 1984 and approved on June 6, 1984 by the Acting Assistant Secretary-Indian Affairs, Department of the Interior; and

WHEREAS, pursuant to Article IV, Sec. 2(g), the Pueblo Council is vested with the specific power to regulate trade . . . among members and other persons or entities residing or engaging in activity on the lands of the Pueblo subject to Article IX of the Constitution and pursuant to Sec. 2(f), the Pueblo Council is vested with the specific power to levy and collect taxes . . . from any member or person or entity residing or engaging in an activity on the lands of the Pueblo, and to raise revenue for the needs of the Pueblo; and

— WHEREAS, the introduction, possession and sale of liquor on the Laguna Reservation since time immemorial have been clearly recognized as matters of special concern to the Pueblo of Laguna and its members and to the United States; and

WHEREAS, federal law currently permits the introduction of liquor into Indian country (18 U.S.C. § 1154) leaving Indian tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. § 1161); and

WHEREAS, to date the Pueblo Council of the Pueblo of Laguna has not authorized the introduction, possession or sale of liquor within the reservation boundaries; however, current circumstances make a complete ban on liquor within the Laguna Reservation ineffective and unrealistic, thereby necessitating strict tribal regulations and control over liquor distribution; and

WHEREAS, the enactment of an ordinance governing liquor sales on the reservation providing for exclusive wholesale purchase and retail sale by the Pueblo will increase the ability of the Pueblo government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation of the Pueblo government and delivery of government services.

NOW, THEREFORE, BE IT ORDAINED by the Pueblo Council of the Pueblo of Laguna that in order to provide for increased Pueblo control over liquor distribution and possession within the boundaries of the Laguna Reservation and to provide for additional revenue, this liquor control ordinance is hereby adopted.

Sec. 1. Definitions.

As used in this ordinance the following definitions shall apply unless the context clearly indicates otherwise;

A. "BIA" means the Bureau of Indian Affairs, Department of the Interior.

B. "Council" means the Pueblo of Laguna Council.

C. "Governor" means the Governor of the Pueblo of Laguna in accordance with Sec. 1 of Article VI of the Constitution of the Pueblo of Laguna.

D. "Liquor" includes the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented, spiritous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous or malt liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer.

E. "Minor" means any person under the age of twenty-one (21) years of age.

F. "Package" means any container or receptacle used for holding liquor.

G. "Person" means an individual, whether a member or non-member of the Pueblo, corporation, firm, partnership, co-partnership, association, enterprise or other legal entity.

H. "Public place" includes streets and plazas of Pueblo villages; state, county, tribal or federal highways or roads; stores and shopping centers and grounds thereof; government buildings; public buildings; schools; churches; public meeting halls, lobbies and halls of offices, restaurants, theaters, stores, garages, and service stations which are open to and generally used by the public, and grounds thereof; open spaces of the reservation except for private land, yards, allotments, and land assignments; buses, including school buses, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith; publicly or school-owned parks and/or playgrounds, and all other places of the like or similar nature which are generally used by the public or public schools.

I. "Pueblo" means the Pueblo of Laguna.

J. "Purchase" includes the exchange, barter, traffic, receipt with or without consideration by any means whatsoever, of liquor as defined herein, by any person.

K. "Reservation" means all lands within the exterior boundaries of the Laguna Reservation, including rights-of-way, lands owned in fee, allotted lands, tribally purchased lands, and land that may be leased by the Pueblo of Laguna.

L. "Sale" includes the exchange, barter, traffic, donation with or without consideration, in addition to the selling, supplying or distributing, by any means whatsoever, of liquor, as defined herein, by any person to any person.

M. "Tribal Court" means the Pueblo of Laguna Court.

Sec. 2. Relation to Other Pueblo Laws.

All prior ordinances and resolutions of the Pueblo of Laguna regulating, authorizing, prohibiting or in any way dealing with the sale of liquor are hereby repealed and of no further force and effect. No Pueblo business licensing law or other Pueblo law shall be applied in a manner inconsistent with the provisions of this ordinance.

Sec. 3. Prohibition.

The introduction, wholesale purchase, sale and dealing in liquor, other than by the Pueblo of Laguna or an enterprise of the Pueblo or corporation the majority stock ownership of which is held by the Pueblo which is properly authorized by the Pueblo to deal in liquor sales is prohibited within the Laguna Indian Reservation. Possession of liquor by any person now prohibited by federal law shall be lawful so long as possession is in conformity with this ordinance. Federal Indian liquor laws (18 U.S.C. § 1161 and § 1154) shall remain applicable to any act or transaction which is not authorized by this ordinance and violators of this ordinance shall be subject to federal prosecution as well as to legal action in accordance with Pueblo law.

Sec. 4. Conformity with State Law.

Pueblo standards for liquor transactions shall meet or exceed those required by the State of New Mexico.

Sec. 5. Sales.

A. Sales Only by the Pueblo. No introduction, wholesale purchase or sale of liquor shall be made within the exterior boundaries of the Laguna Reservation except by the Pueblo, or by an enterprise of the Pueblo or by a corporation the majority stock of which is held by the Pueblo, authorized to make such wholesale purchase or sale of liquor. Authorization to engage in the wholesale purchase, sale or distribution of liquor shall be made to a qualified entity by resolution of the Pueblo Council.

B. All Sales for Personal Use. All sales shall be for the personal use of the purchaser and resale for profit of any liquor whether in the original container or not shall be a violation of this ordinance and the violator shall be subject to the penalties described herein. Provided, however, that a Pueblo enterprise authorized to purchase and sell liquor may sell or make arrangements to sell liquor at special events so long as such sale is authorized by the Pueblo Council separately for each event.

C. Package Sale Only. All sales of liquor shall be in package form only and not for consumption on the premises or in any public place, except that the Council may, in its sole discretion, authorize the sale of liquor by the drink for special events.

D. No Sale to Minors. No sale of any liquor shall be made to any person under the age of twenty-one (21) years of age.

E. Limited Sunday and Election Day Sales Allowed. No sale of liquor shall be allowed on Sunday. Sale of liquor shall be allowed on any tribal, state or federal election day starting one (1) hour after polls are closed. No sale shall be allowed on any day or at any time determined by the Pueblo Council that liquor sales shall be prohibited.

F. Prohibition of Sales During Emergency. The Governor of the Pueblo of Laguna may, on an emergency basis and for a period of time not to exceed five (5) business days, by written order, prohibit the sale of liquor until such emergency order can be considered by the Pueblo Council which may, in its discretion, extend such emergency order for any length of time it determines necessary, or may issue emergency rules, regulations, directions or orders concerning such introduction, possession, sale or purchase of liquor within the reservation boundaries.

G. Hours of Sale. No sale of liquor shall be made except during the hours allowed by state law.

H. Location of Sales. An entity authorized to sell liquor shall do so only at those locations authorized by the Pueblo Council.

I. Sales to be Made by Adults. All handling, stocking, possession or sale of liquor pursuant to this ordinance shall be made by persons twenty-one (21) years of age or older.

J. Evidence of Age and Identity. Evidence of age and identity of the purchaser must be shown by a current and valid state driver's license which contains the signature, birth date and picture of the holder of the license.

K. Demand for Identification. Any person, business, organization, or other legal entity authorized to sell liquor within the Laguna Reservation by resolution of the Pueblo Council shall have the authority to demand of any person the production of proper evidence of age and identity before making any sales of liquor to such person, if there exists some doubt as to the age of the person.

L. Right to Refuse Sale. Any person, business, organization, or other legal entity authorized to sell liquor within the Laguna Reservation shall have the authority to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by Section 5(J) of this ordinance, as evidence that such person is twenty-one (21) years of age or older; and shall have the authority to refuse to sell liquor to any person who the seller believes is under the influence of alcohol.

Sec. 6. Pueblo Property.

The entire stock of liquor referred to under this ordinance shall remain the property of the Pueblo or authorized entity until sold.

Sec. 7. All Sales Cash.

Sales by a Pueblo enterprise as defined herein shall be by cash, check or credit card only and no credit otherwise shall be extended to any person, organization or entity.

Sec. 8. Illegal Activities.

A. Purchase from or Sale to Unauthorized Person. It shall be a violation of this ordinance for any person within the boundaries of the Laguna Reservation to buy liquor from or sell liquor for resale to any person other than a properly authorized Pueblo business enterprise.

B. Sale to Minors. Any person who shall sell, serve or provide any liquor to any minor person shall be in violation of this ordinance.

C. Purchase by Minor. Any minor person who shall purchase, attempt to purchase or possess any liquor shall be in violation of this ordinance.

D. Sale to Person Apparently Intoxicated. Any person who knowingly sells liquor to a person who the seller has reason to believe is under the influence of alcohol or any person under the influence of alcohol who shall purchase liquor shall be in violation of this ordinance.

E. Drinking in Public Places. Any person who shall drink any liquor in a public place shall be in violation of this ordinance unless the Council has authorized consumption of liquor at such location.

F. Open Containers Prohibited. Any person who shall have an open container of liquor in a public place except for public places where liquor consumption has been authorized by the Council; or who has possession of an open container of liquor in or on a vehicle or who as a driver knowingly permits an open container of liquor in or on a vehicle, unless said vehicle is not in a public place or location where liquor consumption has been authorized by the Council, shall be in violation of this ordinance.

G. Proof of Unlawful Sale. In proceeding under this ordinance, proof of one unlawful sale of liquor shall suffice to establish *prima facie* the intent or purpose of unlawfully keeping liquor for sale or selling for resale in violation of this ordinance.

H. Use of False or Altered Identification. Any person who attempts to purchase liquor through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) shall be in violation of this ordinance.

I. Defense to Action for Sale to Minors. It shall be a defense to an alleged violation of this ordinance for selling liquor to a minor person if such purchaser has presented identification in accordance with this ordinance showing the purchaser's age to be over twenty-one (21) years. In addition to the presentation of identification by the purchaser in accordance with this ordinance, such as a driver's license, the person selling, if still in question of the purchaser's age, may require the purchaser to print his or her name on a file card, sign and date the card. Such card shall be filed alphabetically in a file box and be subject to examination by the members of the Board of the enterprise

authorized to sell liquor or their delegates, or by any BIA or Pueblo law enforcement officer, any designated employee of the Pueblo, employees of the Pueblo enterprise authorized to sell liquor, and by the Governor of the Pueblo or his delegate. Such card in the possession of the Pueblo business enterprise authorized to sell liquor may be offered as a defense in any hearing held by the Pueblo Court for sale to the person who signed the card and may be considered by the Court as evidence that the Pueblo business enterprise and its employees acted in good faith.

Sec. 9. Excise Tax Levy.

A. Excise Tax Levied. There is hereby levied and shall be collected an excise tax upon each sale of liquor in whatever package or container, in the amount of five percent (5%) of the selling price. Said excise tax shall be added to the sales price of the liquor sold and shall be paid by the buyer to the business enterprise selling liquor which shall collect the same and hold such amounts for the Pueblo until deposited as provided for in this ordinance.

B. Deposits. The taxes collected shall be submitted at least monthly to the Treasurer of the Pueblo who shall upon receipt deposit the same to a special account or fund of the Pueblo. The Treasurer shall report said tax collections, expenditures and the status of such special account or fund to the Governor and Pueblo Council at least quarterly.

C. Use of Revenues. Tax revenues shall be used for the benefit of the reservation and Pueblo community. In appropriating these tax revenues, the Council shall give priority to:

1. Strengthening Pueblo government, which shall include but not be limited to, strengthening the Pueblo justice system enforcing this ordinance.
2. Health, education, and other social services programs.
3. Alcohol and drug abuse prevention activities and community services which relate specifically to the needs of the Pueblo of Laguna.

The Pueblo Council shall in its discretion determine which of the above priorities shall receive an appropriation and the amount of such appropriation.

D. Modification of Tax. The amount and type of taxes levied by this section may be modified from time to time by resolution of the Pueblo Council with or without notice or public hearing.

Sec. 10. Sovereign Immunity Preserved.

Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Pueblo of Laguna. No officer, manager or employee of an enterprise of the Pueblo shall be authorized nor shall he attempt to waive the sovereign immunity of the Pueblo.

Sec. 11. Penalty.

Any person, or entity purchasing, possessing, selling, bartering, or manufacturing liquor products in violation of any part of this ordinance, rule or regulation adopted pursuant to this ordinance shall be subject to a civil fine of not more than Five Hundred Dollars (\$500) for each violation. In addition, persons or entities subject to criminal prosecution by the Pueblo who purchase, possess, sell, barter, or manufacture liquor products in violation of any part of this ordinance, or any rule and regulation adopted thereunder, shall be subject to punishment not to exceed six (6) months imprisonment or to a fine not to exceed Five Hundred Dollars (\$500) or to both such imprisonment and fine or as otherwise provided in the Pueblo of Laguna Law and Order Code. All contraband merchandise shall be confiscated by the Pueblo of Laguna and disposed of as directed by the Pueblo Court.

Sec. 12. Severability.

If any clause, part, or section of this ordinance shall be adjudged invalid such judgment shall not affect or invalidate the remainder of the ordinance, but shall be confined in its operation to the clause, part, or section directly involved in controversy in which such judgment was rendered.

Sec. 13. Disclaimer.

Nothing in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

Sec. 14. Regulations.

The Council shall have the authority to adopt and enforce rules and regulations to implement this ordinance and to further the purposes thereof.

Sec. 15. Effective Date.

This ordinance shall be effective upon the date that the Secretary of the Interior certifies this ordinance and publishes it in the *Federal Register*.

Sec. 16. Amendment.

This ordinance may be amended by majority vote of the Pueblo Council subject to approval by the Secretary of Interior except for the modifications allowed by resolution in Section 9(D) which shall not be subject to Secretarial approval.

Certification

The foregoing ordinance was enacted by the Pueblo Council of the Pueblo of Laguna on the 26th day of August, 1986, by a vote of 18 for, 1 against, and 1 abstaining, at a duly called meeting at which a quorum of the Pueblo Council members was present.

Christa A. Saunders
Governor

Harvey Garcia
Council Member

Roy Garcia
Council Member

Attest:
Ronald Pedro
Secretary