



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120 A2100DD / AAKC001030 / A0A501010.999900]

Shoshone-Bannock Tribes of the Fort Hall Reservation Alcohol Beverage Control

Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Shoshone-Bannock Tribes of the Fort Hall Reservation Alcohol Beverage Control Ordinance. The Ordinance certifies the Shoshone-Bannock Tribes of the Fort Hall Reservation's liquor licensing laws to regulate and control the possession, sale and consumption of liquor within the jurisdiction of the Shoshone-Bannock Tribes of the Fort Hall Reservation. The Ordinance repeals and replaces the previous alcohol beverage control ordinance.

DATES: The Ordinance takes effect **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, telephone: (503) 231-6702; fax: (503) 231-2201.

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.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Shoshone-Bannock Tribes of the Fort Hall Reservation adopted Ordinance LWOR-2019-S4 (Alcohol Beverage Control Ordinance) on October 8, 2019. The statute repeals and replaces the previous alcohol beverage control ordinance published in the *Federal Register* on April 10, 1984 (49 FR 14198).

Dated: December 23, 2019.

Tara Sweeney,

Assistant Secretary–Indian Affairs.

[Ordinance LWOR-2019-S4]

WHEREAS, the Shoshone-Bannock Tribes (Tribes) through the Fort Hall Business Council (Council) is authorized to enact laws and ordinances for the benefit of the Tribes, and

WHEREAS, the Council wishes to update and amend the Shoshone-Bannock Tribes Alcohol Beverage Control Ordinance; now

THEREFORE, BE IT ENACTED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES; the attached Shoshone-Bannock Tribes' Alcohol Beverage Control Ordinance is hereby adopted and made effective as set forth in the Ordinance.

BE IT FURTHER ENACTED, Ordinances Nos. LWOR-84-S1 dated January 6, 1984, LWOR-2013-S3 dated February 7, 2013, LWOR-2013-S6 dated May 7, 2013, and LWOR-2019-S1 are hereby rescinded in their entirety upon this Ordinance becoming effective.

BE IT FURTHER ENACTED, this Ordinance is to be certified and published in Federal Register by the Bureau of Indian Affairs as provided in 18 USC 1161.

BE IT FURTHER ENACTED, Council requests the Bureau of Indian Affairs take any and all action required by law to make this Ordinance effective as soon as possible.

Authority for the foregoing Ordinance includes but is not limited the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article VI, Section I of the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Reservation.

Dated this 08th day of October, 2019

Ladd R. Edmo,

Chairman, Fort Hall Business Council

Certification

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 3 in favor, 1 opposed (KC), 2 absent (NS, LJT), and 1 not voting (LRE) on the date this bears.

Donna K. Thompson,

Secretary, Fort Hall Business Council

**SHOSHONE-BANNOCK TRIBES ALCOHOL BEVERAGE CONTROL
ORDINANCE**

SECTION 1. GENERAL PROVISIONS AND PURPOSES

A. Title. This Ordinance shall be known as the “Shoshone-Bannock Tribal Alcohol Beverage Control Ordinance.”

B. Effective Date. This Ordinance shall be effective thirty (30) days after publication in the Federal Register and certification by the Secretary of the Interior.

C. Declaration of Public Policy and Purpose. The introduction, distribution, sale, possession, and consumption of alcohol beverages within “Indian Country” have historically been a matter of special concern to Indian tribes and the United States of America. The Shoshone-Bannock have deep-rooted feelings against liberal sale and consumption of alcohol beverages within the Fort Hall Reservation. The Tribes’ concern is due to the detrimental impact which alcohol misuse and abuse has caused to vital Tribal interests. Despite these strong feelings, the Fort Hall Business Council of the

Shoshone-Bannock Tribes realizes that a total ban on alcohol beverages within the Reservation is ineffective and unrealistic in view of changing times and circumstances. Nevertheless, the Business Council recognizes a need for strict regulation and control over all transactions involving alcohol beverages within the Reservation because of many potential problems associated with unregulated and inadequately regulated distribution, sale, possession, and consumption of alcohol beverages. The Business Council believes that Tribal control is necessary to protect the health, safety, and welfare of Tribal members and other persons residing on the Reservation, and to address specific Tribal concerns relating to alcohol use on the Reservation. The Business Council also believes that enactment of a Tribal ordinance governing alcohol beverages on the Reservation will help provide revenue for the continued operation of Tribal government and the delivery of vital Tribal social services. Therefore, this Ordinance is enacted for the protection of the health, safety, welfare, morals, and peace of the people residing on the Fort Hall Reservation, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is hereby declared to be the public policy that all trafficking of alcohol beverages is prohibited, except as expressly authorized in this Ordinance.

D. Jurisdictional Statement. To the extent required by federal law, all persons, businesses, lands, transactions, and activities occurring within the exterior boundaries of the Fort Hall Reservation shall be subject to the provisions of this Ordinance and shall, as required by 18 U.S.C. 1161 comply with the alcohol, beer, and wine licensing laws of the State of Idaho.

E. Rescission of Prior Inconsistent Enactments. All prior enactments of the Fort Hall Business Council of the Shoshone-Bannock Tribes that are inconsistent with or

contrary to provisions of this Ordinance are hereby rescinded, and in case of any conflict, then the provisions of this Ordinance will control.

SECTION 2. DEFINITIONS

A. Terms Defined. As used in this Ordinance the following words shall have the following meanings unless the context clearly indicates otherwise:

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 all dilutions and mixtures of such substances.

2) "Alcohol Beverage" as used in this ordinance, includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 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.

3) "Application" shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

4) "Beer" means any beverage obtained by the alcohol fermentation of an infusion or decoction of barley, malt, hops, and/or other ingredients in drinking water, containing not more than nine percent (9.0%) of alcohol by volume.

5) "Commission" means the "Shoshone-Bannock Tribal Alcohol Beverage Control Commission" as constituted in this Ordinance.

6) "Council" or "Business Council" means the Fort Hall Business Council of the Shoshone-Bannock Tribes.

- 7) "Election Days" means the general, primary, and special elections as defined in the Tribal Election Code.
- 8) "Indian" means a person who is either enrolled in a federally recognized Indian tribe, or who possesses one-fourth (1/4) or more degree of Indian blood in a federally recognized tribe(s) and is identified in the community as being Indian.
- 9) "Person" means natural person and any entity including, but not limited to, a partnership, association, enterprise, company or corporation, or other association of natural persons.
- 10) "Premises" shall mean the area from which the licensee or permittee is authorized to sell, dispense, or serve alcohol beverages under provisions of the license or special permit.
- 11) "Reservation" means within the exterior boundaries of the Fort Hall Reservation.
- 12) "Sale" or "Sell" including exchange, barter, and traffic; and also include the selling, supplying or distributing, by any means whatsoever of spirits or alcohol beverage.
- 13) "Special Event(s)" as determined by the Shoshone-Bannock Tribal Alcohol Beverage Control Commission.
- 14) "Spirits" means any beverage that contains alcohol obtained by distillation mixed with drinking water and other substances in solution including, among other things, brandy, rum, whiskey, and gin.
- 15) "Substantial Evidence" shall mean evidence that a reasonable mind might accept as adequate to support a conclusion.

- 16) "Tribal Court" means the Shoshone-Bannock Tribal Court.
- 17) "Tribes" means the Shoshone-Bannock Tribes.
- 18) "Wine" means any beverage which contains alcohol obtained by fermentation of the natural sugar content of fruits or other agricultural products containing sugar, and which contains not more than fourteen percent (14%) of alcohol by volume.

B. Other Words. All other words and phrases used in this Ordinance, the definition of which is not herein given, shall be given the ordinary and commonly understood and accepted meaning.

SECTION 3. Tribal Alcohol Beverage Control Commission

A. Creation of Alcohol Beverage Control Commission. There is hereby established a Shoshone-Bannock Tribal Alcohol Beverage Control Commission. The Commission shall be composed of three-members who shall perform the duties specified in this Ordinance.

B. Appointment. Members of the Commission shall be appointed by the Business Council.

C. Term of Office. Members of the Commission shall initially hold office for periods of one, two and three years, respectively. After the original terms of office have expired, each member shall hold office for three years. The Council may reappoint any member to an additional term or terms of office.

D. Removal from Office. A commissioner may only be removed prior to the normal expiration of his or her term by the Business Council for good cause shown after notice and hearing by the Council. The Council's decision to remove a member of the Commission shall be final.

E. Vacancy and Interim appointment. If a member of the Commission shall die, resign, be incapacitated, permanently leave the Reservation, or be removed from office, a vacancy on the Commission shall be automatically created and the unexpired term shall be filled via appointment by the Business Council.

F. Chair. A Chair of the Commission shall be elected by the Commission on an annual basis. The Chair shall preside at all formal and informal meetings of the Commission. The Chair shall exercise only such powers as are delegated to him/her by the Commission, and such powers as are expressly set forth in this Ordinance.

G. Powers and Duties. In addition to all specific powers and duties conferred upon it by other sections of this Ordinance, the Commission, and its duly authorized representatives, shall have the following powers and duties:

- 1) To administer this Ordinance by exercising general control, management, and supervision of all alcohol beverage sales, places of sale, and sales outlets.
- 2) To establish administrative procedures as are necessary to govern the operation of the Tribal Alcohol Beverage Control Commission.
- 3) To make, promulgate and publish such rules and regulations as the Commission may deem necessary for carrying out the provisions of this Ordinance and for the orderly and efficient administration hereof.
- 4) To permit, license, inspect, and regulate the sale, transportation, delivery, storage, importation, and manufacture of alcohol beverages within the exterior boundaries of the Fort Hall Reservation.
- 5) To prescribe specific conditions and qualifications, consistent with the general requirements set forth in this Ordinance, necessary for obtaining licenses and permits,

and the conditions of use of privileges under them, provide for the inspection of the records, and monitor the conduct of licensees and permittees.

6) To regulate the issuance, suspension, and revocation of licenses and permits to sell, manufacture, handle, or traffic of alcohol beverages in accordance with specific provisions of this Ordinance.

7) To prescribe the kind, quality, and character of alcohol beverages that may be sold under all licenses and permits, including the quantity that may be sold at any one time or within a specified period of time.

8) To collect licenses fees, taxes, fines, and penalties that may be assessed by authority of the Commission or the Tribes relating to alcohol beverage sales.

9) To make at any time an examination of the premises of any licensee or special permit holder to determine whether the provisions of this Ordinance, and any rules and regulations promulgated hereunder, are being complied with. This right of inspection shall include all financial records relating to purchase or sale of alcohol beverages.

10) To enforce rules and regulations adopted in furtherance of the purposes of this Ordinance and the performance of its administrative functions.

11) To sue in an appropriate court to enforce the provisions of this Ordinance with the consent of the Business Council. The Commission shall not, without the express written consent of the Business Council, waive the Commission's or the Tribes' immunity from suit, and any such unconsented waiver will be null and void and otherwise without any legal effect.

12) To exercise all other powers which are necessary and reasonable in order to accomplish the purposes of this Ordinance.

H. Meetings. The Commission shall meet on the first Tuesday of January, April, July and October of each year and at such other times as the Chair and/or Commission may prescribe. The Commission will have quorum and able to conduct its business if at least two members are present.

I. Method of Decision Making. The Commission shall attempt whenever possible to administer this Ordinance and execute its powers hereunder by consensus approach. If a consensus cannot be achieved, the affirmative vote of at least two members of the Commission shall control the decision or action of the Commission. The Chair shall be entitled to vote on any decision or action.

J. Compensation of Commission Members. The Business Council shall, by resolution, set the compensation for members of the Commission.

K. Prohibited Conduct of Commission Members. Members of the Commission may not accept any gratuity related to their authorizing alcohol beverage sales, and may not have a personal business interest in such sales on the Reservation.

L. Liability of Commission Members. Commission members, and employees or agents of the Commission, shall not be liable for damages sustained by any person because of any act or inaction done in the performance of their respective duties under this Ordinance.

M. Reporting Requirement. The Commission shall submit an annual written report and accounting to the Business Council regarding sales of alcohol beverages on the Reservation and the activities of the Commission and its financial status. The annual report shall be submitted to the Business Council by April 1 of each year and shall

address activities of concern in the preceding calendar year. The Business Council may require the Commission to report more frequently if it deems necessary.

SECTION 4. RETAIL ALCOHOL SALES LICENSES AND SPECIAL EVENTS PERMITS

A. License Requirement. All sales and dispensing of alcohol beverages within the Reservation must be made pursuant to express authorization of the Tribes given in the form of a retail alcohol sales license or special events permit issued by the Commission.

B. Commission Empowered to Issue Licenses and Permits. The Commission is authorized to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized to sell and dispense alcohol beverages on a retail basis for on-premises consumption only, in accordance with rules and regulations promulgated by the Commission and the provisions of this Ordinance.

C. Nature of License. A license shall be considered a personal privilege extended by the Tribal government, subject to denial, revocation, or suspension for abuse. It shall not constitute property; nor shall it be subject to attachment or execution; nor shall it be alienable or assignable. Every license shall be issued in the name of the applicant and no person holding such license shall allow any other person to use the same. A "Beer License" will allow the licensee to sell beer for on-premises consumption. A "Wine License" will allow a licensee to sell wine for on-premises consumption. A "Spirits License" will allow a licensee to sell spirits for on-premises consumption.

D. License Fees for Retail Sales and Fees for Special Event Permits.

1) Each person or business licensed for regular retail sales under the provisions of this section shall pay an annual license fee of \$1,500 to the Commission, plus the license amount specified below for each type of license:

a. Beer License: \$ 1,500 per annum

b. Wine License: \$1,500 per annum

c. Spirits License: \$2,000 per annum

d. The fees set forth in a, b, and c of subsection D.1) above will be exclusive of each other and will be paid separately.

2) Special Event Permit \$200 per event (includes beer, wine, and spirits for each event, if such alcohol is permitted by the Commission).

E. License Fees in Addition to Other Tribal License Fees, Assessments, or Taxes.

License fees provided for in this and other sections of this Ordinance are exclusive and in addition to any other fee, assessment, or tax charged by the Tribes.

F. Restrictions on Retail Alcohol Licenses and Special Event Permittees:

1. Licenses shall only be issued to the operators of the Shoshone-Bannock Hotel and Events Center and the Shoshone-Bannock Gaming Operations for use in conjunction with the Shoshone-Bannock Hotel restaurants, bars, Event Center, Spa business and Gaming Operations for its legitimate business purposes.

2. Special Event Permits may only be issued by the Alcohol Beverage Commission for private individuals and groups.

G. Bond Requirement. The Commission is empowered to require retail alcohol license applicants (but not special event permit applicants) to post a reasonable cash bond

or other appropriate security such as liability insurance to assure compliance with Tribal laws, rules and regulations. Such bond or security shall not be less than \$1,000,000.

Such bonds or other security shall be required at the discretion of the Commission.

H. Expiration of License. Every regular license issued by the Commission shall expire on December 31st of the year in which issued, unless an earlier expiration date is established by the Commission.

I. Unauthorized Sale Prohibited. It shall be unlawful for any licensee or permittee under this section to sell, keep for sale, dispense, give away, or otherwise dispose of any alcohol beverage other than for on-premises consumption. Each license or permit shall be at a specific location and may not be transferred or used for any location other than that identified on the face of the license or permit.

SECTION 5. APPLICATION PROCEDURES FOR RETAIL ALCOHOL LICENSES AND SPECIAL EVENTS PERMITS.

A. Applicant Eligibility. No license or special permit shall be issued to:

1) An individual who is not a citizen of the United States; or to a partnership unless all members thereof are citizens of the United States; or to a corporation or association unless the same is organized under the laws of the Tribes, laws of any state, or the United States and unless the principal officers and the members of the governing board are citizens of the United States.

2) Any person, or any one (1) of the members, officers, governing board of business, corporation, or association, who has, within five (5) years prior to the date of making application, been convicted of any violation of the laws of the United States, or any Indian Tribal government or any state of the United States, or the resolution or

ordinances of any county or city of a state, relating to the importation, transportation, manufacture or sale of alcohol beverages; or who was convicted or, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment or completed any sentence of confinement for any felony within ten (10) years prior to the date of making application for any license or permit.

3) A person who has been convicted of any felony at any time.

4) A person whose license or permit issued under this Ordinance has been revoked, or who was associated in any manner whatsoever with the business affairs of a partnership, association or corporation whose license or permit has been revoked.

B. Filing of Application. Prior to the issuance of any license or permit provided for herein, the applicant shall file with the Commission a sworn application upon forms to be furnished by the commission, in writing, signed by the applicant under oath, and attested to by a person authorized to administer oaths, verifying the truth of the information and statements contained in the application. The full amount of the license fee, in the form of a money order or cashier's check, must accompany the application at the time of filing.

C. Application Contents. In addition to setting forth the qualifications required by other provisions of this Ordinance, the application must show:

1) A detailed description of the premises for which a license or permit is sought and its location.

2) A detailed statement of the assets and liabilities of the applicant.

3) The names and addresses of all persons who will have any financial interest in any business to be carried on in or upon the licensed or permitted premises, whether such

interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

4) If the premises to be licensed or permitted are not owned by the applicant, a certified copy of the lease by which the applicant will occupy the premises showing that the owner consents to the sale of alcohol beverages on such premises.

5) The name and address of the applicant, which shall include all members of a partnership or other business association, and the officers, boards of directors or principal stockholders of a corporation.

6) A copy of the articles of incorporation and bylaws of any corporation, the articles of association and by laws of any association, or the partnership agreement of any partnership.

7) If during the period of any license or permit issued hereunder any change shall occur in any of the requirements of paragraphs 1 through 6 of this section, the licensee or permittee shall forthwith make a verified report of such change to the Commission.

D. False Statements. If any false statement is made in any part of an application for a license or special permit, or in any report required to be filed, the applicant, or applicants, shall be deemed to have violated this Ordinance and shall be subject to the penalties and sanctions set forth in this ordinance.

E. Investigation and Fact Finding. Upon receipt of an application for license or special permit under this Ordinance, accompanied by the necessary fee, the Commission, within sixty (60) days thereafter, shall cause to be made a thorough investigation. The Commission may require the applicant to provide relevant books and records relating to

the business affairs of the applicant to be submitted to the Commission for examination as a condition precedent to issuing any license or permit. If the Commission shall determine that the contents of the application are true, that such applicant is qualified under provisions of this Ordinance to receive a license or permit, that the subject premises are suitable for carrying on the business, and that all requirements of this Ordinance and the rules and regulations promulgated by the Commission are met and complied with, including an optional public hearing process, a license or permit shall be issued; otherwise the application shall be denied and the fee, less the costs and expenses of investigation, shall be returned to the applicant.

F. Public Hearing Procedures. The Commission at its discretion conduct public hearings for purposes of ascertaining the views of the general public as to whether applications for a regular license or special permits shall be issued. Comments from the general public may be received either in the form of in-person testimony or by written statement. The Commission shall give notice of such public hearings at least 10 days in advance by publishing a notice in the Sho-Ban News or other local newspaper. The Commission shall give due consideration to the comments submitted at a public hearing, but shall be free to exercise its independent judgment as to whether a license or permit shall be issued.

G. Rendering of Decision. Within ninety (90) days after the date of filing an application the Commission shall render a decision as to whether a license or permit shall be issued. The decision shall be set forth in writing and shall contain the factual findings upon which it is based. A copy of Commission's decision shall be immediately sent by certified mail to the applicant.

H. Appeal Procedure.

1) An applicant may appeal a decision of the Commission by filing a Notice of Appeal with the Commission within ten (10) days after receipt of notice of the Commission's decision. Upon receiving a Notice of Appeal the Commission shall transfer a complete record of its administrative proceedings relating to the application to the Chairman of the Business Council. Within twenty (20) days after receiving the record from the Commission the Business Council shall fully consider the record, grant the applicant an opportunity to present oral and written arguments in support of his or her position, and issue a decision. However, the Business Council shall consider only factual information contained in the record developed in the proceedings before the Commission. In reviewing the decision of the Commission the Business Council shall, after reviewing all the evidence presented before the Commission, uphold the Commission's decision if it finds that the decision was supported by substantial evidence. If substantial evidence does not support the decision of the Commission, then the Business Council shall overrule the Commission and remand the matter to the Commission for appropriate action. A copy of Business Council's decision shall be immediately sent by certified mail to the applicant and the Commission.

2) In the event that either the applicant or the Commission is dissatisfied with the appeal decision of the Business Council, then the matter may be further appealed to the Appellate Division of the Shoshone-Bannock Tribal Court within twenty (20) days after receipt of notice of the Business Council's decision. However, the jurisdiction of the Tribal Court shall be limited to questions of jurisdiction, interpretation of the Ordinance provisions, fair procedure and substantial evidence as contrasted to de novo consideration

of all the facts and the substitution of its judgment for that of the Commission. In all other respects, the rules of appellate procedure of the Tribal court shall govern.

I. Upon approval of the permit the commission shall record it and issue a permit to the licensee.

J. Permit to be displayed in plain view. Every licensee or permittee shall cause his permit or duplicate to be displayed in plain view in a conspicuous place where the sales so permitted are to be carried on.

SECTION 6. REVOCATION AND SUSPENSION OF LICENSES AND PERMITS

A. Complaints and Investigations. The Commission may upon its own motion, and shall upon a written verified complaint of any other person, investigate the action and operation of any licensee or permittee hereunder to determine whether there is compliance with the provisions of this Ordinance.

B. Grounds for Revocation and Suspension. If the Commission shall have reasonable cause to believe that any licensee or permittee has violated any of the provisions of this Ordinance, or any of the rules or regulations of the Commission promulgated hereunder, any violation of the laws of the United States, or of any State relating to the sale, transport, distribution of alcohol beverages, it may, at its discretion, and in addition to other penalties and sanctions herein prescribed, revoke the license or permit of any such licensee or permittee or it may suspend the same for a period not to exceed six (6) months.

C. Notice and Hearing Requirement. Prior to issuing any order of revocation or suspension of a license or permit the Commission shall give reasonable written notice to the licensee or permittee via certified mail that such action is being considered by the

Commission. A licensee or permittee will then have 15 days from receipt of such notice to submit a written request to the Commission for a fair hearing before the Commission as to whether a revocation or suspension is justified under the circumstances. If such a hearing is requested, then the Commission must give at least 10 days' written notice of such hearing to the licensee or permittee. If a license or permit under this ordinance has been obtained by fraud or misrepresentation, the Commission, upon proof that such license or permit was so obtained, revoke the license or permit, and all monies paid shall be forfeited.

D. Rendering of Decision. The Commission shall render a decision based upon a "preponderance of the evidence" as the standard of proof. Only that evidence that is adduced at the hearing or which is incorporated in the official administrative record, shall be considered in rendering a decision. If the commission decides to revoke or suspend any license or permit previously granted, it shall give such licensee or permittee, as the case may be, fifteen (15) day notice of its intended action in writing by certified mail addressed to the licensee or permittee at the address listed in the application on file with the Commission, stating generally the basis for its intended action.

E. Tribal Court Review.

1) Within fifteen (15) days of receiving a notice of revocation or suspension, a licensee or permittee may institute a proceeding for injunctive relief in the Shoshone-Bannock Tribal Court to have the intended action of the Commission reviewed.

2) If the Tribal Court in such proceedings determines that the licensee or permittee has violated the provisions of this Ordinance, said proceedings shall be dismissed.

3) Pending a determination of said cause on the merits the Tribal Court may, based upon a showing of undue hardship to the licensee or permittee and upon posting a proper bond, stay the effective date of the intended action of the Commission for such time as the Tribal Court may deem proper. If no stay is issued, or has expired, the Commission shall issue its order of revocation or suspension.

4) If the Tribal Court shall determine that cause did not exist for the intended action of the Commission it shall issue a decree accordingly and the Commission shall comply therewith.

5) Under this section, the Tribal Court's review shall be limited to consideration of jurisdiction, ordinance interpretation, fair procedure and evidence and the Court shall not conduct a trial de novo. The Court shall instead serve to function of determining whether the Commission abused the discretion delegated to it. In this regard, the standard of review shall be whether the decision of the Commission is supported by substantial evidence.

6) In all judicial proceedings under this section, the Tribal Rules of Civil Procedure and General Rules of Court shall apply unless otherwise specified in this Ordinance.

F. Restrictions after Revocation. The Commission shall notify all licensees and permittees of revocations and suspensions. Whenever a license or permit shall have been revoked or suspended the holder thereof shall forthwith deliver the same to the Commission. No license or permit shall be issued to a person whose license or permit has been revoked within a period of six (6) months from the date of revocation of his former license or permit.

G. Bond Option. In response to a violation of this Ordinance, the Commission or Tribal Court may, as a condition precedent to a continuance of his license or permit, as a condition precedent to a continuance of his license or permit, in any case where the licensee or permittee has not theretofore given bond, exact from him a bond, written by surety company authorized to do business in Idaho, in the sum of \$1,000.00 conditioned on the observance of the provisions of this Ordinance and any regulations of the Commission promulgated thereunder. For the violation of the conditions thereof, said bond shall be forfeited to the Tribes, and any recovery thereon shall be distributed in accordance with Section 15 herein.

H. Automatic Revocation. Whenever a licensee or permittee has been found guilty of any crime in any jurisdiction in which the illegal handling of alcohol beverages was involved, such conviction shall automatically operate to revoke the license or permit of such person and any and all privileges thereunder.

SECTION 7. TRIBAL COURT JURISDICTION AND ENFORCEMENT PROCEDURE

Proceedings to enforce provisions of this Ordinance, whether they be criminal or civil, shall be initiated by the filing an appropriate complaint in the Shoshone-Bannock Tribal Court. The interest of the Commission shall be represented by the Tribal Prosecutor. Rules of the Tribal Court relating to criminal and civil proceedings shall govern the manner in which the judicial proceedings are conducted. However, judicial review of decisions of the Commission concerning issuance, revocation and suspension of licenses and permits shall be conducted strictly in accordance with the provisions of Sections 6 and 7 herein.

SECTION 8. CRIMINAL PENALTIES.

A. Application only to Indians. Indians, be they members or non-members of the Shoshone-Bannock Tribes, who commit a violation of any provisions of this Ordinance shall be subject to criminal prosecution and penalties set forth hereunder. However, nothing in this Ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians.

B. Maximum Criminal Penalty. Anyone adjudged to be in violation of any provision of this Ordinance shall be subject to a criminal penalty not to exceed (1) year in jail, a fine not to exceed five thousand (\$5,000) dollars fine, or both, for each separate violation.

SECTION 9. CIVIL FINES.

Any person, adjudged to be in violation of this Ordinance shall be subject to a civil fine of not more than five thousand dollars (\$5,000.00) for each such violation. Imposition of all such civil fines shall be under the jurisdiction of the Shoshone-Bannock Tribal Court. The Tribal Court may impose a civil fine only upon a petition filed by the Commission, represented by the Tribal Prosecutor, setting forth specific allegations amounting to a violation of the Ordinance. Notice and hearing on such petition shall be provided in accordance with the rules of civil procedure generally applicable in Tribal Court. The Tribal Court shall exercise discretion as to the appropriate fine amount, taking into account its seriousness and the threat it may pose to the general health and welfare of the residents of the Reservation. A decision of the Tribal Court may be appealed in accordance with Rules of Appellate Procedure applicable in Tribal Court.

SECTION 10. ABATEMENT OF NUISANCE

A. Declaration of Nuisance. Any room, house, building, boat, vessel, vehicle, structure, or other place where an alcohol beverage is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other Tribal law relating to the manufacture, transportation, possession, distribution, and sale of alcohol beverage, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

B. Institution of Action. The Commission, represented by the Tribal Prosecutor, shall institute and maintain an action in the Tribal Court in the name of the Tribes to abate and perpetually enjoin any nuisance declared under this section. The plaintiff shall not be required to give bond in the action, but restraining orders, temporary injunctions, and permanent injunctions may be granted the same as in other injunction proceedings, and upon final judgment against the defendant, the Court may also order the room, house, building, boat vessel, vehicle, 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 surety to be approved by the Court in the sum of not less than One-Thousand Dollars (\$1,000.00), payable to the Tribes and conditioned that alcohol beverages will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this Ordinance or of any other applicable Tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Ordinance. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the Tribes. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

C. Abatement. In all cases where any person has been adjudged to be in violation of this Ordinance or other Tribal laws relating to the manufacture, importation, transportation, possession, distribution or sale of an alcohol beverage, an action may be brought in Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

SECTION 11. CONTRABAND-SEIZURE AND FORFEITURE

A. Contraband Defined. All alcohol beverages within the Reservation held, owned, or possessed by any person or business outlet operating in violation of this Ordinance are hereby declared to be contraband and subject to forfeiture to the Tribes.

B. Application of Seizure. Upon proper application by official representatives of the Tribes and/or the Commission, a tribal judge shall issue an order directing tribal law enforcement officers to seize contraband alcohol beverages within the Reservation and to deliver them to or hold them on behalf of the Commission.

C. Temporary Storage of Contraband. Any Tribal law enforcement officer seizing the contraband shall preserve the contraband by placing it in a secured area provided for storage of impounding property and shall promptly prepare and file an inventory list with the Tribal Court.

D. Tribal Court Hearing. Within two weeks following the seizure of the contraband, a hearing shall be held in Tribal Court, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her

activities. The interest of the Tribes shall be represented at such hearing by the Tribal Prosecutor on behalf of the Commission.

E. Forfeiture. If upon hearing the evidence warrants, or if no person appears as claimant, the Tribal Court shall thereupon enter judgment of forfeiture and the person adjudged be in violation of this Ordinance shall forfeit all right, title, and interest in the items seized. The forfeited items shall be sold for the Benefit of the Tribes and proceeds distributed in accordance with Section 15 herein; provided that the forfeited items shall not be sold to any person not entitled to possess them under applicable law.

SECTION 12. EXCLUSION FROM RESERVATION

In addition to other sanctions contained in this Ordinance, Tribal law enforcement officers shall be authorized to exclude violators of this Ordinance from the Fort Hall Reservation under procedures set forth in the Tribes' Law and Order Code, following hearing before Business Council.

SECTION 13. PROHIBITIONS AND LIMITATIONS CONCERNING SALE AND DISTRIBUTION OF ALCOHOL BEVERAGES

A. Manufacture, Sale, Possession, Consumption, and Transport. It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess, consume, or transport any intoxicating liquor or alcohol beverage within the exterior boundaries of the Reservation except on the terms, conditions, limitations, and restrictions specified in this Ordinance.

B. Unauthorized Purchase. It shall be a violation of this Ordinance for any person to purchase any alcohol beverage from any person or business within the boundaries of the Reservation other than at business, outlet, or location that has been properly authorized by the Commission.

C. Illegal Dispensing of Licensees and Permittees. It shall be unlawful for any licensee or permittee to sell, give away, dispense, vend, or deliver any alcohol beverage in any manner or by any means, except upon licensed premises or within a permit area.

D. Serving Persons under Age or Serving Intoxicated Persons. No licensee or permittee or his or its employed agents, servants, or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, any alcohol beverage to any person under the age of twenty one (21), intoxicated person, or to any habitual drunkard, except as provided in subsections E, F, G, and H, herein.

E. Identification. Any one of the following that shows the person's current age and bears his signature and photograph shall be suitable for identification purposes, if valid:

- 1) Liquor Control Authority Card of any state;
- 2) Driver's license of any state or "Identification Card" issued by any state department of motor vehicles;
- 3) United States active duty military identification;
- 4) Passport; work visa or
- 5) Tribal Identification or enrollment card.

F. Misrepresentation of Age. Any person under the age of twenty one (21) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcohol beverage from a licensee or permittee shall be in violation of this Ordinance.

G. Transfer of Identification. It shall be a violation of this Ordinance for any person to transfer in any manner an identification of age to a person under the age of twenty one (21) years for the purpose of permitting such minor to obtain an alcohol beverage.

H. Refusal to Present Identification. It shall be a violation of this Ordinance for any person to refuse to present identification indicating age, when requested by a Gaming/Hotel Security Officer, tribal law enforcement officer or any other authorized person when: (a) he or she shall possess, purchase, attempt to purchase or consume an alcohol beverage; or (b) he or she is on a premise licensed to sell alcohol beverages for consumption on the premises.

I. Illegal Employment of Under Age Persons. It shall be a violation of this Ordinance for any licensee or permittee or their agent(s) to employ a person under the age of nineteen (19) years to serve, sell, dispense, or dispose alcohol beverages.

J. Designation on Diagram for each type of License. As part of the application, the licensee will designate on a diagram of the licensed premises the specific areas in which each of the following will be sold and permitted to be consumed, to the extent the licensee is granted a license for each: beer, wine, and spirits. Thereafter, beer may only be sold to, consumed by, and possessed by patrons in the area designated for beer on the floor plans. Wine may only be sold to, consumed by, and possessed by patrons in the area designated for wine on the floor plans. With respect to the areas designated for beer and wine on the floor plans, persons of all ages will be permitted to enter and/or remain. Spirits may only be sold to, consumed by, and possessed by patrons in the area designated for spirits on the floor plans. Only those persons 21 years of age and older are permitted to enter and/or remain in the area designated for spirits on the floor plan, except for those employees nineteen (19) years of age and older while working in their employment capacity, and musicians and singers eighteen (18) years of age and older while performing as employed musicians and singers, and/or employees of the Event

Center. A licensee may amend this diagram of the licensed premises after the issuance of the license without further approval by the Commission, but such amended diagram will only become effective once received by the Commission.

K. Intoxication and Drunkenness. Section 116 of the Shoshone Bannock Criminal Code's prohibition on Intoxicated Persons will apply to all areas of a licensed premise and as otherwise set forth in the Criminal Code.

L. Selling or Dispensing Alcohol to Intoxicated Persons. Any person who sells, gives, or dispenses any alcohol beverage to another person who is an "Intoxicated Person" as that term is defined in Title 8 of the Law and Order Code shall be in violation of this Ordinance.

M. Refusal to Sell. All vendors of alcohol beverages within the Reservation shall refuse to sell alcohol to persons under the following circumstances:

- 1) When that person does not provide satisfactory proof that he is at least twenty one (21) years of age;
- 2) When that person is apparently intoxicated.

N. Holidays and Hours of Sale. No alcohol beverage shall be sold, offered for sale, or given away upon any licensed premises during the following hours:

- 1) Between the hours of 2 o'clock a.m. and 10 o'clock a.m. and
- 2) On any election day until after the time when the polls are closed.

Provided, however, any patron present on the licensed premises after the sale of alcohol beverages has stopped in accordance with the provisions above shall have a reasonable time to consume any beverage already served.

O. Bringing alcohol beverages onto Premises. No licensee or permittee shall allow any person to bring any alcohol beverages for personal consumption into any location.

P. Open Containers Prohibited. No person shall have an open container of any alcohol beverages in any automobile, whether moving or standing still, or in a public place, other than premises designated in a license.

SECTION 14. DISTRIBUTION OF REVIEW

All fees collected from assessments made by the Commission for licenses, permits and penalties shall be transferred to the Financial Management Division of the Tribes and shall be placed in a special account designated as the Liquor Fund.

SECTION 15. APPLICATION OF FEDERAL LAWS

Federal law currently prohibits the introduction of alcohol beverages into Indian country (18 U.S.C. 1154), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. 1161). Persons involved in acts and transactions not authorized by this Ordinance shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

SECTION 16. APPLICABILITY OF OTHER TRIBAL LAWS

Nothing contained in this Ordinance shall be interpreted to limit the application of other Tribal laws or Ordinances.

SECTION 17. POWERS RESERVED BY BUSINESS COUNCIL

All powers relating to regulation and control over alcohol beverages which are not expressly delegated to the Commission by this Ordinance shall be retained by the Business Council. In addition, the Business Council expressly reserves authority to set

the fiscal year budget of the Commission. The Commission shall also be subject to other general Tribal administrative laws, procedures, and practices adopted by the Business Council unless expressly exempted.

SECTION 18. SOVEREIGN IMMUNITY

A. Immunity Preserved. Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Shoshone-Bannock Tribes, except for the limited Tribal Court review provisions of Sections 6 and 7 of this Ordinance.

B. Method of Waiver. No commissioner or employee of the Commission shall be authorized to waive the sovereign immunity of the Tribes. Waiver of sovereign immunity shall only be authorized by specific written resolution of the Fort Hall Business Council.

SECTION 19. SEVERABILITY

Should any section, clause, sentence, or provision of this Ordinance, be held invalid for any reason, such holding or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Business Council would have adopted the remainder of this Ordinance, notwithstanding the invalidity of any such section, clause, sentence, or provision.

SECTION 20. AMENDMENT

Amendments to this Ordinance may be made only by the Fort Hall Business Council.

[FR Doc. 2020-01709 Filed: 2/3/2020 8:45 am; Publication Date: 2/4/2020]