

Liquor Control Ordinance Check List

Statutory Authority. Application of Indian Liquor Laws, 18 U.S.C. 1161. See also: Rice v. Rehner, 436 U.S. 713 (1983), and the various Federal laws which may apply to activities in Indian Country.

For Your Consideration.

- The name of the Tribe as it appears in the Tribe's constitution must be used in the ordinance
- The ordinance should reference specific constitutional provisions which grant the governing body the authority to enact the ordinance
- If the governing document of the Tribe does not address the Tribe's authority to enact an ordinance or community opinion regarding the ordinance is split, the Tribe must determine whether a referendum should be held and certify the results
- The ordinance must conform to the tribal constitution and/or by-laws
- The ordinance must be accompanied by a tribal resolution requesting the Secretary to publish the ordinance
- The ordinance must conform to Federal law
- The jurisdictional statement should confirm that the ordinance is in conformity with the laws of the State as required by 18 U.S.C. § 1161. Although it is not a requirement, the Tribe may reference its compliance with State licensing requirements
- The ordinance should clearly identify the territory over which the Tribe is asserting jurisdiction, e.g., Indian country, all lands within the exterior boundaries of the reservation, dependent Indian communities, Indian allotments. The Department of the Interior considers the existence of an exemption to 18 U.S.C. 1154(c) a factual matter to be determined by the courts
- The ordinance should reference any other ordinance or provision of the tribal code that is repealed by the new ordinance
- We recommend the ordinance address:
 - consent or sovereign immunity
 - saving or severability clause
 - which court has jurisdiction over disputes and violations of the ordinance
 - whether this jurisdiction is exclusive
 - criminal (crimes) and/or civil (violations) penalties
 - procedures for suspension or revocation of liquor licenses, including due process, reasonable searches and seizures

Question

What other issues have tribes addressed when drafting a liquor ordinance?

Answer

- Whether the tribe intends to waive sovereign immunity.
- Inclusion of a saving or severability clause to prevent invalidation of one section of the ordinance from invalidating all other sections.
- What court has jurisdiction over disputes and violations of the ordinance; is this jurisdiction exclusive.
- Will criminal (crimes) or civil (violations) sanctions be imposed when provisions of the ordinance are violated; do criminal penalties conform with the ICRA.
- If civil sanctions include suspension or revocation of liquor licenses, what is the procedure and is due process provided the licensee; is inspection of the premises confined to business hours to avoid unreasonable searches and seizures.

Question

What liquor control ordinance provisions have proven to be a problem in the past?

Answer

- The name of the Tribe as it appears in the tribe's constitution must also be used in the ordinance.
- The ordinance should reference specific constitutional provisions which grant the governing body the authority to enact the ordinance.
- If the tribal constitution does not include such a provision or if community opinion regarding the ordinance is split, the tribe must determine whether a referendum should be held and/or certify the results of the referendum.
- The ordinance must conform to the tribal constitution and/or by-laws, as well as federal law.
- The jurisdictional statement must assure the ordinance is in conformity with the laws of the State as required by 18 U.S.C. § 1161. Although it is not a requirement, the tribe may reference State licensing requirements.
- The lands to which the ordinance will apply -- Indian country, all lands within the exterior boundaries of the reservation, dependent Indian communities, Indian allotments.
- Lands which fall within the 1154(c) exemption--the Department of the Interior considers the existence of an exemption to be a factual matter to be determined by the courts.
- Is any other ordinance or provision of the tribal code repealed by this ordinance?

Question

What must the tribe submit to the Bureau of Indian Affairs for liquor control ordinances?

Answer

- An original resolution (signed & certified) enacting the liquor control ordinance.

- An original ordinance and an electronic copy transmitted via e-mail or on a 3½ inch diskette in the attached format.
- A photocopy of all former liquor control provision(s) or ordinance(s).

Question

To what office are liquor control ordinances submitted for approval and publication?

Answer

- Original documents must be submitted through the Tribe's BIA Agency to the appropriate Area Office.
- Area Office staff will review the ordinance and consult with the Regional Solicitor if clarification or interpretation is required.
- Area Office staff will then forward all original documents to the Branch of Judicial Services. We prefer e-mail transfer of the document rather than a disk (we have acquired too many viruses from the disks).

Question

What is the liquor control ordinance procedure? Is due process provided the licensee? Is inspection of the premises confined to business hours to avoid unreasonable searches and seizures?

Answer

The exercise of jurisdiction, particularly criminal jurisdiction, by criminal jurisdiction by the Tribe must be consistent with Federal law. NO portion of the ordinance shall be construed as contrary to Federal law.