

TITLE 26
SOUTHERN UTE INDIAN TRIBAL CODE
LIQUOR CODE
TABLE OF CONTENTS

PART I – GENERAL PROVISIONS

ARTICLE 1. GENERAL PROVISIONS AND PURPOSE	1
26-1-101. PURPOSE	1
26-1-102. JURISDICTION.....	1
26-1-103. DEFINITIONS	1

PART II - LIQUOR LICENSING

ARTICLE 2. LICENSING.....	5
26-2-101. AUTHORITY OF THE TRIBAL LICENSING AUTHORITY	5
26-2-102. RECORDS – INSPECTION	7
26-2-103. DUTIES OF PEACE OFFICERS	7
ARTICLE 3. CLASSES OF LICENSE	7
26-3-101. CLASSES OF LICENSE	7
26-3-102. LICENSE FEES	8
26-3-103. RETAIL LIQUOR STORE LICENSE.....	8
26-3-104. LICENSES FOR ON-PREMISES CONSUMPTION	9
26-3-105. OPTIONAL PREMISES LICENSE	12
26-3-106. SPECIAL EVENTS LICENSE	13
ARTICLE 4. LICENSING PROCESS	15
26-4-101. APPLICATION FOR LICENSE.....	15
26-4-102. PUBLIC NOTICE – POSTING AND PUBLICATION	16
26-4-103. RESULTS OF INVESTIGATION – FACTORS IN DECISION	17
26-4-104. HEARING.....	20
26-4-105. LICENSING DECISIONS	20
26-4-106. LICENSE ISSUANCE, USE, AND DISPLAY	21
26-4-107. LICENSE RENEWAL	22
26-4-108. SUSPENSION AND REVOCATION	22
26-4-109. ADMINISTRATIVE REVIEW	23
26-4-110. TRANSFER OF OWNERSHIP	24
26-4-111. CHANGES IN LOCATION	24

PART III - PROHIBITED ACTS - LICENSEES AND ANY OTHER PERSON

ARTICLE 5. LIQUOR CODE VIOLATIONS	24
--	-----------

26-5-101.	REQUIREMENTS AND PROHIBITED ACTS BY A LICENSEE.....	24
26-5-102.	UNLAWFUL FINANCIAL ASSISTANCE	28
26-5-103.	VIOLATIONS BY ANY PERSON.....	29

PART IV - ENFORCEMENT AND EXEMPTIONS

ARTICLE 6. ENFORCEMENT	31
26-6-101. CIVIL AND CRIMINAL ENFORCEMENT FOR LIQUOR CODE VIOLATIONS	31
26-6-102. PROHIBITED TESTING FOR INTOXICATION BY LAW ENFORCEMENT OFFICERS	32
ARTICLE 7. EXEMPTIONS	32
26-7-101. EXEMPTIONS.....	32
ARTICLE 8. CIVIL LIABILITY	33
26-8-101. INTERPRETATION	33

TITLE 26

SOUTHERN UTE INDIAN TRIBAL CODE

LIQUOR CODE

PART I – GENERAL PROVISIONS

Article 1. GENERAL PROVISIONS AND PURPOSE

- 26-1-101. Purpose.** The purpose of this Code is to regulate and to control the sale, purchase, possession, and serving of liquor on the Southern Ute Indian Reservation in compliance with federal law. Only people issued a license under this Code may sell alcoholic beverages within the exterior boundaries of the Southern Ute Indian Reservation. This Code is an exercise of the regulatory powers of the Southern Ute Indian Tribal Council for the protection of the peace, safety, property, health, and general welfare of the Southern Ute Indian Tribe.
- 26-1-102. Jurisdiction.** This Code applies to, and the Southern Ute Indian Tribe has jurisdiction over, any relevant act or transaction within the exterior boundaries of the Southern Ute Indian Reservation except to the extent that the exercise of that jurisdiction is prohibited by federal law. This Code does not address state jurisdiction, nor does it confer jurisdiction to the State of Colorado.
- 26-1-103. Definitions.** As used in this Code, unless the context otherwise requires:
- (1) “Alcoholic beverages” means fermented malt beverages or malt, wine, or spirits.
 - (2) “Code” means the Southern Ute Indian Tribal Liquor Code.
 - (3) “Days” means calendar days. In computing any period of time prescribed by the Code, the date of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and federal and tribal holidays shall be counted as a calendar day.
 - (4) “Fairgrounds” means any premises owned by the Southern Ute Indian Tribe or other governmental entity with indoor and outdoor event space where events such as fairs, powwows, flea markets, rodeo, amusements, and carnivals are held.
 - (5) “Ferment” or “fermentation” means the chemical process by which sugar is converted into alcohol.

- (6) “Fermented malt beverage” means beer, malt liquor, and any other beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water, containing not less than one-half percent by volume.
- (7) “Gaming Tavern” means a facility that permits or conducts gaming on the premises pursuant to a valid gaming license issued by the Southern Ute Gaming Commission.
- (8) “Hotel” means any establishment with sleeping rooms and restaurant facilities for guests.
- (9) “License” means a permit issued to a licensee to sell alcoholic beverages as provided by this Code.
- (10) “Licensed premises” means the premises specified in an application for a license under this Code, which are owned or controlled by the licensee and within which the licensee is authorized to sell, dispense, or serve alcoholic beverages.
- (11) “Location” means a particular parcel of land that may be identified by an address or by other descriptive means.
- (12) “Meal” means a quantity of food that is consumed at regular intervals for the purpose of sustenance.
- (13) “Optional premises” means the premises specified in an application for a hotel and restaurant license with related outdoor sports or recreational facilities for its guests or the general public, located on or adjacent to the hotel or restaurant premises, within which such licensee is authorized to sell or serve alcoholic beverages in accordance with the provisions of this Code and at the discretion of the Tribal Licensing Authority; or the premises specified in an application for an optional premises license located on an applicant’s outdoor sports or recreational facility.
- (14) "Part" – Part numbers and titles are for code organization purposes only and do not need to be included in citations of the Code.
- (15) “Person” means a natural person, partnership, association, company, corporation, or organization or a manager, agent, officer, or employee of any of them.
- (16) “Premises” means a distinct and defined location, which may include a building, a part of a building, or a room, or any other definite contiguous area.

- (17) “Racetrack” means premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the applicable law.
- (18) “Restaurant” means:
- (a) an establishment that has a sanitary kitchen, dining room, and persons to prepare, cook, and serve meals; and
 - (b) where, in exchange for payment, meals, drinks, tobaccos, and candies are furnished to guests and in which nothing is sold except for food, drinks, tobaccos, candies, and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area.
 - (c) The term "restaurant" shall not include any establishment where business is conducted, except for:
 - (i) a hotel business;
 - (ii) tribal gaming; or
 - (iii) the sale of food, drinks, tobaccos, candies, or such items of souvenir merchandise.
 - (d) Nothing in this subsection shall be construed to prohibit live music or entertainment, juke boxes, amusement devices, such as video games, that do not and cannot pay anything of value, or other forms of entertainment commonly provided in restaurants.
- (19) “Retail liquor store” means an establishment engaged only in the sale of alcoholic beverages, soft drinks, and mixers, all in sealed containers for consumption off the premises; tobaccos, tobacco products, smokers’ supplies, and nonfood items related to the consumption of such beverages; and liquor-filled candy and food items approved by the Tribal Licensing Authority, which are prepackaged, labeled, and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen ounces. A retail liquor store shall not sell food items that constitute a snack, a meal, or portion of a meal.
- (20) “Sandwiches and Light Snacks” means single serving items such as hamburgers, hot dogs, frozen pizzas, burritos, chicken wings, popcorn, pretzels, nuts, chips, or items of a similar nature.
- (21) “Sealed container” means any container or receptacle used for holding an alcoholic beverage, which is corked or sealed with a stub, stopper, or cap.

- (22) “Sell” or “sale” means any of the following:
- (a) to exchange, barter, or traffic in;
 - (b) to solicit or receive an order for liquor except through a licensee licensed under this Code;
 - (c) to keep or expose for sale;
 - (d) to serve liquor with meals;
 - (e) to deliver for value or in any way other than gratuitously;
 - (f) to offer or to possess with intent to sell;
 - (g) to traffic in for any consideration promised or obtained, directly or indirectly.
- (23) “Spirits” means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, including but not limited to brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in subsection (29) of this section, shall not be construed to be fermented malt or malt or wine but shall be construed to be spirits.
- (24) “Tavern” means an establishment in which the principal business is the sale of alcoholic beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.
- (25) “Tribal Licensing Authority” (or "TLA") means the regulatory entity designated by the Tribal Council to be responsible for administering and enforcing the Liquor Code.
- (26) “Tribe” means the Southern Ute Indian Tribe.
- (27) “Wholesale” means the sale of alcoholic beverages to licensees for resale.
- (28) “Wholesaler” means those entities authorized to sell alcoholic beverages at wholesale to licensees.
- (29) “Wine” means an alcoholic beverage that contains not less than one-half of one percent and not more than 21% alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of

the natural sugar contents of fruits or other agricultural products containing sugar. “Wine” includes fortified wine.

PART II – LIQUOR LICENSING

Article 2. LICENSING

26-2-101. Authority of the Tribal Licensing Authority.

- (1) The term “Tribal Licensing Authority”, as used throughout this Code, shall refer to the Tribal Council or to the entity that the Tribal Council designates for the administration and enforcement of this Code. The Southern Ute Indian Tribal Council may delegate some or all of its authority by resolution to another entity to act as the Tribal Licensing Authority for all purposes, including but not limited to the following:
 - (a) Approve or deny licenses for the sale of alcoholic beverages, as provided by this Code, and suspend or revoke such licenses upon a violation of this Code or any regulation adopted pursuant to this Code.
 - (b) Adopt, amend, repeal, and publish regulations, special rulings, and findings for the regulation and control of the distribution and sale of alcoholic beverages and the enforcement of this Code.
 - (c) Conduct public hearings, administer oaths, and issue subpoenas to require the presence of persons and production of papers, books, and records relevant to the hearing subject matter.
 - (d) Maintain complete records of all acts and transactions of the Tribal Licensing Authority regarding alcoholic beverage licensees, which records, except confidential reports obtained from the licensee showing the sales volume or quantity of liquor sold or customers served, shall be open for public inspection.
 - (e) Suspend or revoke any license upon any violation by the licensee, including by any agent or employee of such licensee, of any provision of this Code, of any regulation of the Tribal Licensing Authority, or of any term, condition, or provision of the license, upon its own motion or upon complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard.
- (2) Regulations made pursuant to subsection (1)(b) of this section may cover, but shall not be limited to, the following subjects:

- (a) compliance with and enforcement of any provision of this Code, or any regulation issued pursuant to the Code;
- (b) specification of duties of Tribal Licensing Authority officers and employees;
- (c) instructions for local law enforcement officers;
- (d) all forms necessary or convenient in the administration of this Code;
- (e) inspections, investigations, searches, seizures, and other activities required for administration and enforcement of the Code;
- (f) establishing penalties, which shall include aggravating and mitigating factors to be considered;
- (g) limitation of number of licensees as to any area or vicinity;
- (h) misrepresentation, unfair practices, and unfair competition;
- (i) control of signs and other displays on licensed premises;
- (j) use of screens;
- (k) identification of licensees and their employees;
- (l) storage and transportation;
- (m) health and sanitary requirements;
- (n) standards of purity and labeling;
- (o) licensee recordkeeping and reporting requirements;
- (p) practices designed to increase the consumption of alcoholic beverages;
- (q) testing of the alcohol content of alcoholic beverages sold by licensees;
- (r) sales rooms; or

(s) other matters necessary for the fair and comprehensive administration of this Code.

- (3) Nothing in this Code shall be construed as delegating to the Tribal Licensing Authority the power to fix prices. The Tribal Licensing Authority shall make no regulation that would abridge the right of any licensee to advertise the place of business or the commodities sold by such licensee fairly, honestly, and lawfully.

26-2-102. Records – Inspection. Until the Tribal Licensing Authority adopts regulations pertaining to recordkeeping, each licensee shall:

- (1) maintain complete financial accounting records, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the alcoholic beverage transactions of such licensee, all of which shall be made available to the Tribal Licensing Authority during business hours for inspection and examination; and
- (2) furnish any information the Tribal Licensing Authority considers necessary for the proper administration of this Code.
- (3) The Tribal Licensing Authority may require a Licensee, at their own expense, to obtain an audit of the required records. The Tribal Licensing Authority shall select the auditor, who shall have access to all relevant books and records of such licensee.

26-2-103. Duties of Peace Officers. Tribal peace officers shall have the authority to enforce the provisions of this Code and regulations issued by the Tribal Licensing Authority.

Article 3. CLASSES OF LICENSE

26-3-101. Classes of License. The licenses to be issued by the Tribal Licensing Authority pursuant to this Code shall be as follows:

- (1) Retail Liquor Store License
- (2) Beer License
- (3) Beer and Wine License
- (4) Hotel and Restaurant License
- (5) Tavern License
- (6) Gaming Tavern License

- (7) Lodging and Entertainment license
- (8) Racetrack & Fairgrounds License
- (9) Optional Premises License
- (10) Special Events License.

26-3-102. License Fees. Applicants and licensees shall pay fees to the Tribal Licensing Authority in accordance with the Fee Schedule approved by Tribal Council. Such fees may include, but not be limited to, application fees, annual license fees, manager registration fees, and background check fees.

26-3-103. Retail Liquor Store License.

- (1) A retail liquor store license shall be issued to persons selling alcoholic beverages only in sealed containers not to be consumed at the place where sold. Alcoholic beverages in sealed containers shall not be sold at retail other than in retail liquor stores.
- (2) A retail liquor store shall not sell food items that could constitute a snack, a meal, or portion of a meal.
- (3) A retail liquor store shall purchase alcoholic beverages only from a licensed wholesaler.
- (4) A retail liquor store may:
 - (a) sell any non-alcohol products, but only if the annual gross revenues from the sale of non-alcohol products do not exceed 20% of the retail liquor store's total annual gross sales revenues. For purposes of calculating the annual gross revenues from the sale of non-alcohol products, sales revenues from the following products are excluded: lottery products; cigarettes, tobacco products, and nicotine products; ice, soft drinks, and mixers; non-food items related to the consumption of alcoholic beverages.
 - (b) sell nonfood items related to the consumption of alcoholic beverages; liquor filled candy; and food items related to the consumption of alcoholic beverages and sold solely for the purpose of cocktail garnish.
 - (c) display promotional material furnished by a manufacturer or wholesaler, which material permits a customer to purchase other items from a third person if the retail liquor store licensee does not receive payment from the third person and if the ordering of the

additional merchandise is done by the customer directly from the third person.

26-3-104. Licenses for On-Premises Consumption.

- (1) **Generally.** The following provisions apply to all On-Premises Consumption License types.
 - (a) Persons licensed pursuant to §26-3-104 shall purchase alcoholic beverages only from a properly licensed wholesaler, except as provided in subparagraph (b).
 - (b) Persons licensed pursuant to §26-3-104 may purchase not more than two thousand dollars' worth of alcoholic beverages during a calendar year from a retail liquor store. Licensees shall maintain records, including receipts, of each purchase of alcoholic beverages at a retail liquor store. Receipts shall contain the name of the retail liquor store, the date of purchase, a description of the alcoholic beverages purchased, and the price paid for such purchase. Such receipt shall be retained and shall be available to the Tribal Licensing Authority at all times during business hours.
 - (c) Each license shall be granted for specific premises, including optional premises approved by the Tribal Licensing Authority for Hotel and Restaurant licenses, and issued in the name of the owner or lessee of the business, or, in the case of a tribal entity, the business name.
- (2) **Registered Manager Required for Hotel and Restaurant, Tavern, Lodging and Entertainment, and Racetrack and Fairgrounds Licenses.** Hotel and restaurant, tavern, lodging and entertainment, and racetrack and fairgrounds licensees are required to comply with the provisions in this subsection (2) in addition to their respective license-specific requirements detailed below in subsections (3), (4), (6), and (7).
 - (a) Each licensee holding a tavern license, racetrack and fairgrounds license, hotel and restaurant, or lodging and entertainment license shall manage the licensed premises or employ a separate and distinct manager on the premises and shall report the name of the manager to the Tribal Licensing Authority.
 - (b) The registered manager for each licensee shall purchase alcoholic beverages for one licensed premises only, and such purchases shall be separate and distinct from purchases for any other license in a particular class.

- (c) When a person ceases to be a registered manager of a licensee, the licensee shall notify the licensing authority within 5 days and shall designate a new registered manager within 30 days. It is unlawful for the licensee to fail to report the name of or any change in managers, and failure to report shall be grounds for suspension of the license.
- (d) The Tribal Licensing Authority may refuse to accept any person as a registered manager unless the person is satisfactory as to character, record, and reputation. In determining a registered manager's character, record, and reputation, the Tribal Licensing Authority may request, and the proposed manager shall provide or consent to, access to credit history, employment history, and criminal history information furnished by a criminal justice agency subject to any restrictions imposed by such agency.

(3) **Hotel and Restaurant License.**

- (a) Except as otherwise provided, the Tribal Licensing Authority may issue a hotel and restaurant license to persons selling alcoholic beverages in the place where such liquors are to be consumed, subject to the following restrictions:
 - (i) Restaurants shall sell alcoholic beverages only to customers of the restaurant, and only if meals are actually and regularly served and provide not less than 25% of the gross income from sales of food and drink of the business of the licensed premises over a time period of at least a year;
 - (ii) Notwithstanding any provision of this Code to the contrary, a restaurant may permit the licensee to reseal and the customer to remove from the licensed premises one opened container of partially consumed wine purchased on the premises, so long as the originally sealed container did not contain more than 750 milliliters of wine;
 - (iii) Hotels shall sell alcoholic beverages as provided in this section only to customers of the hotel and, except in hotel rooms, only on the licensed premises where meals are actually and regularly served and provide not less than 25% of the gross income from sales of food and drink of the business of the licensed premises; and
 - (iv) Hotel and restaurant licensees who are open for business and selling alcoholic beverages by the drink shall serve meals

between the hours of 8 a.m. and 8 p.m. and meals or light snacks and sandwiches after 8 p.m.

- (b) Notwithstanding any provision of this Code to the contrary, a hotel licensed pursuant to this Code, may:
 - (i) Furnish and deliver complimentary alcoholic beverages in sealed containers for the convenience of its guests; and
 - (ii) Sell alcoholic beverages provided by the hotel in sealed containers, at any time, by means of a mini-bar located in hotel guest rooms, to registered guests 21 years of age or older of the hotel for consumption in such guest rooms if the price of the alcoholic beverages is clearly posted. For purposes of this section, “mini-bar” means a closed container, either non-refrigerated or refrigerated in whole or in part, access to the interior of which is restricted by means of a locking device that requires the use of a key, magnetic card, or similar device or which is controlled at all times by the hotel. Individual containers of alcoholic beverages in a mini-bar shall not have a volume of more than 500 milliliters.
- (c) Hotel and restaurant licensees shall maintain a bona fide restaurant business and not a mere pretext of such for obtaining a hotel and restaurant license.
- (4) **Tavern License.** The Tribal Licensing Authority may issue a tavern license to persons selling alcoholic beverages by the drink to customers only for consumption on the premises. The licensee shall have available for consumption on the premises during business hours sandwiches and light snacks but need not offer full meals.
- (5) **Gaming Tavern License.**
 - (a) The Tribal Licensing Authority may issue a gaming tavern license to persons who sell alcoholic beverages by the drink only for consumption on the premises, and who sell sandwiches and light snacks or who contract with an establishment that provides such food services within the same building as the licensed premises.
 - (b) Nothing in this Article shall permit more than one gaming tavern license per building where the licensed premises are located.
- (6) **Lodging and Entertainment License.**

- (a) The Tribal Licensing Authority may issue a lodging and entertainment license to a lodging or entertainment facility selling alcoholic beverages by the drink to customers only for consumption on the premises. A lodging and entertainment facility licensee shall have sandwiches and light snacks available for consumption on the premises during business hours but need not offer full meals.
- (b) “Lodging and entertainment facility” means an establishment that is either:
 - (i) a lodging facility, the primary business of which is to provide the public with sleeping rooms and meeting facilities; or
 - (ii) an entertainment facility, the primary business of which is to provide the public with sports or entertainment activities within its licensed premises; and incidental to its primary business, sells and serves alcoholic beverages at retail for consumption on the premises and has sandwiches and light snacks available for consumption on the premises.

(7) **Racetrack and Fairgrounds License.**

- (a) A racetrack and fairgrounds licensee may sell alcoholic beverages by the drink for consumption on the premises only to customers and shall have sandwiches and light snacks available for consumption on the premises during business hours.
- (b) A racetrack license is only required for premises where live horse racing occurs.

(8) **Beer License.** The Tribal Licensing Authority may issue a Beer License to persons selling fermented malt beverages only by the drink for consumption on the premises. Beer licensees shall have available for consumption on the premises during business hours sandwiches and light snacks, but need not have full meals available.

(9) **Beer and Wine License.** The Tribal Licensing Authority may issue a Beer and Wine License to persons selling fermented malt beverages or wine only by the drink for consumption on the premises. Beer and Wine licensees shall have sandwiches and light snacks available for consumption on the premises during business hours but need not have full meals available.

26-3-105. Optional Premises License. The Tribal Licensing Authority may grant an optional premises license, as defined in §26-1-103(13), to persons selling alcoholic beverages by the drink only to customers for consumption on the optional premises

and for storing alcoholic beverages in a secure area on or off the optional premises for future use on the optional premises.

26-3-106. Special Events License.

(1) **Qualifications of Organizations for Special Events Licenses.** The Tribal Licensing Authority may issue a special event license to qualified organizations and political candidates under this provision for the sale of alcoholic beverages by the drink only. Exemption: organizations listed in this subsection (1) do not need to apply for a special event license if they are not charging for alcoholic beverages other than a charge for admission or participation that is uniform to all attendees regardless of whether the participant consumes alcoholic beverages at the event.

(a) Entities eligible for special events licenses are the following:

- (i) an organization that has been incorporated under the laws of the Southern Ute Indian Tribe or the State of Colorado for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain;
- (ii) municipalities, counties, or special districts;
- (iii) a non-profit organization that is a regularly chartered branch, lodge, or chapter of a national organization or society organized for social, fraternal, patriotic, political, educational, or athletic purposes;
- (iv) an organization that is an established religious or philanthropic institution;
- (v) a political candidate who has filed the necessary reports and statements with the Southern Ute Indian Tribe or the Secretary of State of Colorado;
- (vi) a division, entity, or department of the Southern Ute Indian Tribe; or
- (vii) a facility owned by the Tribe at which productions or performances of an artistic nature are presented or to recreation facilities owned by the Tribe; and
- (viii) an organization or person that the Tribal Licensing Authority determines meets the general guidelines described above.

- (b) A special event license may be issued under this section notwithstanding the fact that the special event is to be held on premises already licensed under this Code.
- (c) The holder of a special event license shall be responsible for any violation of this Code that occurs at the special event.
- (d) Notwithstanding other provisions in this Code, applicants for a Special Event license shall submit applications for Special Events no later than 60 days prior to the scheduled event.

(2) **Restrictions Related to Special Event Licenses.**

- (a) Special event licensees shall sell licensed beverages by the drink only for consumption on the licensed premises.
- (b) Each special event license shall be issued for a specific location and is not valid for any other location.
- (c) A special event license authorizes the licensee to sell or offer only the alcoholic beverages specified in the license.
- (d) A special events licensee shall serve alcoholic beverages only between the hours of 7 a.m. of the day specified in the special event license and 2 a.m. of the day immediately following.
- (e) All persons selling or serving alcohol at a special event must have a valid, current alcohol server and seller certification that meets the requirements of §26-5-101(7).
- (f) A special event license may not be issued to any organization for more than 15 days in one calendar year.
- (g) No issuance of a special event license shall have the effect of requiring the Tribal Licensing Authority to issue another license upon any subsequent application by an organization.
- (h) Sandwiches or light snacks shall be available during all hours of service of alcoholic beverages, but full meals need not be available.
- (i) The Tribal Licensing Authority may require any applicant to post a performance bond to assure compliance with the provisions of this Code.
- (g) Nothing in this article shall be construed to prohibit the sale or dispensing of alcoholic beverages on any closed street, highway, or public byway for which a special event license has been issued.

(3) **Public Notice and Hearing.**

- (a) Public notice of the proposed special event license and the procedure for protesting issuance of the license shall be conspicuously posted, with the date of the posting, at the proposed location for at least 10 days before approval of the license by the Tribal Licensing Authority and at public or governmental buildings in the area, such as the post office, library, and tribal and town administration buildings.
- (b) The Tribal Licensing Authority shall schedule a hearing if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a special event license. Any protest shall be filed by affected persons within 10 days after the initial posting of the public notice. Any hearing required by this subsection or any hearing held at the discretion of the Tribal Licensing Authority shall be held no sooner than the expiration of the initial posting of the public notice, and notice shall be provided to the applicant and any person who has filed a protest.

(4) **Grounds for Denial.** The Tribal Licensing Authority may deny the issuance of a special event license upon:

- (a) a determination that the organization or person requesting the license does not meet the eligibility qualifications;
- (b) cultural grounds;
- (c) grounds that such issuance would be injurious to the public welfare;
- (d) its location within the Reservation; or
- (e) the failure of the applicant in a past special event to comply with applicable laws and regulations.

Article 4. LICENSING PROCESS

26-4-101. Application for License.

- (1) Applications for licenses shall be submitted to the Tribal Licensing Authority on forms prepared and provided by the Tribal Licensing Authority and shall contain sufficient information to enable the Tribal Licensing Authority to determine whether a license should be granted. The form shall include:
 - (a) the name and address of the applicant:

- (i) if a government, the name of the highest government official or names of the people who serve on the governing body;
 - (ii) if a partnership, the names and addresses of all the partners; or
 - (iii) if a corporation, association, or other organization, the names and addresses of the president, vice president, secretary, and managing officer,
 - (b) along with all other information deemed necessary by the Tribal Licensing Authority.
- (2) Each application shall be verified by the oath or affirmation of the applicant or appropriate representative of the applicant as authorized by the Tribal Licensing Authority.
 - (3) At the time of application, the applicant shall file plans and specifications for the interior of the building if the building to be occupied already exists. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch of the interior and, where available, shall submit an architect's drawing of the building to be constructed. The Tribal Licensing Authority may impose additional requirements necessary for the approval of the application.
 - (4) An applicant for a license shall submit fingerprints. The Tribal Licensing Authority shall conduct, or use a State or Federal agency to conduct, a fingerprints-based criminal history record check. Because tribal employees undergo a criminal history record check prior to becoming employed, this requirement does not apply if the applicant is the Tribe, a tribal department or entity, or a business wholly owned by the Tribe.
 - (5) The Tribal Licensing Authority shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant and gaming tavern license under this Code. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license or gaming tavern license shall be grounds for suspension or revocation of such license by the Tribal Licensing Authority. This requirement does not apply if the applicant is the Tribe, a tribal department or entity, or a business wholly owned by the Tribe.

26-4-102. Public Notice – Posting and Publication.

- (1) Upon receipt of an application, except an application for renewal or for transfer of ownership, the Tribal Licensing Authority shall schedule a public hearing not less than 30 days from the date of the application and

shall post and publish the public notice not less than 10 days prior to the hearing.

- (2) Public notice shall consist of:
 - (a) posting a sign in a conspicuous place on the premises described in the application;
 - (b) publication in a newspaper of general circulation on the Reservation; and
 - (c) at public or governmental buildings in the area, such as the post office, library, and tribal and town administration buildings.
- (3) Notice given by posting shall include a sign of suitable material, not less than 22 inches wide and 26 inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice president, secretary, and manager or other managing officers. If the applicant is the Tribe, a tribal department or entity, or a business wholly owned by the Tribe, the sign need only contain the names and business addresses of the relevant officials or managing officers.
- (4) Notice given by publication shall contain the same information as that required for signs.
- (5) If the building in which alcoholic beverages are to be sold is in existence at the time of the application, any sign posted as required by this section shall be placed where it is conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the notice on the premises where the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

26-4-103. Results of Investigation – Factors in Decision.

- (1) Not less than 5 days prior to the hearing date, the Tribal Licensing Authority shall provide its written findings based on its investigation to the applicant and other interested parties.
- (2) Before entering any decision approving or denying the application, the Tribal Licensing Authority shall consider, except where this Code specifically provides otherwise:

- (a) the facts and evidence collected as a result of the Tribal Licensing Authority's investigation, as well as any other facts;
 - (b) any license conditions to accommodate the reasonable requirements of the neighborhood where the premises are or will be located;
 - (c) the desires of the community members as evidenced by petitions, protest, or otherwise;
 - (d) the number, type, and availability of alcoholic beverage outlets located in or near the neighborhood under consideration;
 - (e) any other relevant matters affecting the qualifications of the applicant to conduct the type of business proposed; and
 - (f) any cultural or traditional considerations that may affect the granting of any license.
- (3) Before granting any license, the Tribal Licensing Authority may:
- (a) visit and inspect the property where the applicant proposes to conduct business; and
 - (b) investigate the fitness to conduct such business of any person or the officers and directors of any corporation applying for a license.
- (4) In investigating the applicant's or a licensee's qualifications, the Tribal Licensing Authority may have access to criminal history record information furnished by a criminal justice agency, subject to any restrictions imposed by such agency.
- (a) If the Tribal Licensing Authority takes into consideration information concerning the applicant's criminal history record, the Tribal Licensing Authority shall also consider any information provided by the applicant regarding their criminal history, including but not limited to, evidence of rehabilitation, character references, and educational achievements, particularly those items pertaining to the period of time between the applicant's last criminal conviction and submission of the application for a license.
 - (b) The Tribal Licensing Authority shall consider any relevant circumstances related a criminal conviction or other moral turpitude offense to determine whether the applicant is a person of good moral character at the time of the license application.
- (5) The Tribal Licensing Authority may deny the issuance of any new tavern or retail liquor store license whenever such authority determines that the issuance of the license would result in, or add to an undue concentration of,

the same class of license or require the use of additional law enforcement resources.

- (6) With respect to a second or additional license, the Tribal Licensing Authority shall consider the effect on competition in granting or disapproving additional licenses to the licensee. The Tribal Licensing Authority shall not approve an application for a second or additional hotel and restaurant license that would have the effect of restraining competition.
- (7) No license provided by this Code shall be issued to or held by:
 - (a) any person until the annual fee has been paid;
 - (b) any person who is not of good moral character;
 - (c) any corporation, any of whose officers, directors, or stockholders holding 10% or more of the outstanding and issued capital stock thereof, or any partnership, association, or company, any of whose officers, or any of whose members holding 10% or more interest therein, are not of good moral character;
 - (d) any person employed by, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the Tribal Licensing Authority;
 - (e) any peace officer, tribal attorney, Tribal Council member, or Tribal Licensing Authority employee;
 - (f) any person unless such person's character, record, and reputation are satisfactory to the Tribal Licensing Authority; or
 - (g) any natural person under 21 years of age.
- (8) The Tribal Licensing Authority shall not process or issue a new license to any person whose business location is within one thousand feet of an academic institution.
- (9) The Tribal Licensing Authority shall refuse an alcoholic beverage license if;
 - (a) the premises on which the applicant proposes to conduct business do not meet the requirements of this Code;
 - (b) if the character of the applicant or its officers or directors is such that violations of this Code would be likely to result if a license were granted; or

- (c) if, in the Tribal Licensing Authority's opinion, licenses already granted for the particular location are adequate for the reasonable needs of the community.

26-4-104. Hearing.

- (1) At the public hearing held pursuant to this section, any party of interest shall be allowed to present evidence and to cross-examine witnesses.
- (2) “Party in interest” means any of the following:
 - (a) The applicant;
 - (b) A Southern Ute Tribal member;
 - (c) A resident of the neighborhood where the licensed premises are or will be located;
 - (d) Neighborhood business owners or managers where the licensed premises are or will be located; or
 - (e) The principal or representative of any academic institution located within one thousand feet of the premises for which the license is under consideration.
- (3) The Tribal Licensing Authority, in its discretion, may limit the presentation of evidence and cross-examination to prevent repetitive and irrelevant evidence or examination.
- (4) In any hearing held by the Tribal Licensing Authority, if requested by the Tribal Licensing Authority, no person may refuse to testify or provide other information on the ground of self-incrimination.
- (5) No testimony or other information produced in a licensing hearing or any information directly or indirectly derived from such testimony may be used against a person in any criminal prosecution based on a violation of this Code, except a prosecution for perjury committed when testifying in a licensing hearing. Continued refusal to testify or provide other information shall constitute grounds for refusal, suspension, or revocation of any license granted pursuant this Code.
- (6) The Tribal Licensing Authority shall record the hearing proceedings.

26-4-105. Licensing Decisions.

- (1) The Tribal Licensing Authority has the authority to deny a license application for good cause. Denials are subject to judicial review by the Administrative Appeals and Hearings Office.

- (2) “Good cause”, for the purpose of refusing or denying a license renewal or initial license issuance, means:
 - (a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this Code or any regulations promulgated pursuant to this Code;
 - (b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings;
 - (c) Issuance of the license is inconsistent with the reasonable requirements of the neighborhood or the desires of the neighborhood;
 - (d) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct; or
 - (e) Cultural grounds.
- (3) Within 30 days after the date of the public hearing, the Tribal Licensing Authority shall issue a written decision approving or denying an application and stating the reasons for the decision. The Tribal Licensing Authority shall deliver a copy of its decision to the applicant by hand or by certified first class mail to the address shown in the application.
- (4) No license shall be denied arbitrarily or without good cause.

26-4-106. License Issuance, Use, and Display.

- (1) All licenses granted and issued pursuant to this Code shall specify the date of issuance, the type of license, the date of its expiration, the name of the licensee, and the physical location where the license is to be used.
- (2) All licenses granted pursuant to this Code shall be valid for one year from the date of issuance unless revoked or suspended pursuant this Code.
- (3) A separate license shall be issued for each specific business or business entity and each physical location, and the particular alcoholic beverages the applicant is authorized to sell shall be described in the license.
- (4) Each license issued is separate and distinct, and it is unlawful for any person to exercise any of the privileges granted under any license other than that

which he holds or for any licensee to allow another person to exercise such privileges granted under this license.

- (5) No license shall be issued by the Tribal Licensing Authority after approval of an application until the building where the business is located is ready for occupancy with furniture, fixtures, and equipment in place in compliance with this Code and the license conditions, and then only after the Tribal Licensing Authority inspects the premises to determine that they are constructed or organized consistent with the floor plan submitted with the application.
- (6) For purposes of this section, a hotel and restaurant license with optional premises, and an optional premise license located in an outdoor sports or recreational facility, shall be considered a single business and location.
- (7) At all times a licensee shall possess and maintain possession of the premises for which the license is issued through ownership, lease, rental, or other arrangement for possession. Failure to maintain possession will result in suspension or revocation.
- (8) Licensees shall ensure that a license granted and issued pursuant to this Code is always conspicuously displayed in the premises for which the license is issued.

26-4-107. License Renewal.

- (1) 90 days prior to the expiration date of an existing license, the Tribal Licensing Authority shall notify the licensee of the expiration date by certified first class mail at the address on file with the Tribal Licensing Authority. Licensees shall apply for renewal of an existing license no less than 45 days prior to the date of expiration.
- (2) The Tribal Licensing Authority may hold a hearing on the renewal application if the circumstances found §26-4-103(7) indicate a need for reconsideration of licensure. The Tribal Licensing Authority shall not hold a renewal hearing until a notice of hearing has been provided to the applicant and conspicuously posted on the licensed premises for a period of at least 10 days prior to the hearing.
- (3) The Tribal Licensing Authority may refuse to renew any license for good cause, subject to judicial review by the Administrative Appeals and Hearings Office.
- (4) The Tribal Licensing Authority may, for good cause, waive the time requirements set forth in this section.

26-4-108. Suspension and Revocation.

- (1) In addition to other penalties prescribed by this Code, the Tribal Licensing Authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license for any violation of this Code, its implementing regulations, or the license terms, conditions, or provisions by the licensee or by any of its agents, servants, or employees. A violation of this Code, any implementing regulations, or of license requirements or conditions shall be grounds for a suspension or revocation.
- (2) In addition, the Tribal Licensing Authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed location has been inactive, without good cause, for at least one year.
- (3) The Tribal Licensing Authority shall provide notice of suspension or revocation, as well as any required notice of a hearing, in writing by hand delivery or certified first class mail to the licensee at the address on file. Any license may be temporarily suspended by the Tribal Licensing Authority without notice pending any prosecution, investigation, or public hearing.
- (4) Nothing in this Code shall prevent temporary or immediate suspension of a license for a period not exceeding 15 days. No suspension under this section shall be for a period longer than 6 months.
- (5) Whenever any license is suspended or revoked, the Tribal Licensing Authority shall not return or refund any part of a licensing fee to the licensee and the licensee is prohibited from serving or selling alcohol until the license is reinstated or the Tribal Licensing Authority grants a new license.

26-4-109. Administrative Review. Any person requesting a review of a Tribal Licensing Authority final decision to refuse, deny, suspend, deny a transfer, or revoke a license shall apply for review to the Administrative Appeals and Hearings Office (“AAHO”) within 30 days after the date of the Tribal Licensing Authority’s final decision.

- (1) The AAHO shall determine by clear and convincing evidence whether the final decision was arbitrary and without good cause, and if so finding, the AAHO shall order the Tribal Licensing Authority to issue the license.
- (2) The decision of the AAHO may be appealed to the Southern Ute Indian Tribal Court in accordance with Title 1, Article 5 of the Southern Ute Indian Tribe Law and Order Code. The person requesting review shall be required to pay the cost of preparing a transcript of proceedings before the Tribal Licensing Authority when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the Tribal Licensing Authority pursuant to AAHO or Tribal Court order.

26-4-110. Transfer of Ownership.

- (1) No license granted under the provisions of this Code shall be transferable except as provided in this subsection, but this shall not prevent a change of location as otherwise authorized pursuant to this Code.
- (2) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to the survivor(s) for the remainder of the license period.
- (3) For any other transfer of ownership, the person receiving ownership shall submit an application to the Tribal Licensing Authority on forms furnished by the Tribal Licensing Authority. In determining whether to permit a transfer of ownership, the Tribal Licensing Authority shall consider the requirements of § 26-4-103 and may hold a hearing pursuant to §26-4-104 on the application for transfer of ownership. The Tribal Licensing Authority shall not hold a transfer of ownership hearing until a notice of hearing has been provided to the applicant and conspicuously posted on the licensed premises for a period of at least 10 days prior to the hearing. The new owner shall not serve or sell alcohol until the license is granted.
- (4) It is unlawful for the licensee to fail to report a transfer and failure to report a transfer shall be grounds for license suspension or revocation.

26-4-111. Changes in Location. A licensee may move his or her permanent location to any other place within the boundaries of the Southern Ute Indian Reservation by submitting a change of location application to the Tribal Licensing Authority, but it shall be unlawful to sell any alcoholic beverage at any such place until permission to do so is granted by the Tribal Licensing Authority. In permitting a change of location, the Tribal Licensing Authority shall consider the reasonable requirements of the neighborhood to which the applicant seeks to change his or her location and the desires of the neighborhood as evidenced by petitions, protests, or otherwise. In addition, the Tribal Licensing Authority may consider any cultural or traditional matter that may affect the granting of any change of location.

PART III – PROHIBITED ACTS – LICENSEES AND ANY OTHER PERSON

Article 5. LIQUOR CODE VIOLATIONS

26-5-101. Requirements and Prohibited Acts by a Licensee. It is a violation of this Code for any person licensed pursuant to this Code:

- (1) To sell alcoholic beverages to a visibly intoxicated person.
- (2) To sell alcoholic beverages to any person under the age of 21 years.

- (a) If a person who is not 21 years of age exhibits a fraudulent or misappropriated identification or proof of age, any action by a licensee reasonably relying on such identification or proof of age shall not constitute grounds for the revocation or suspension of any license issued under this Code.
 - (b) If a licensee or a licensee's employee has reasonable cause to believe that a person is under 21 years of age and is exhibiting a misappropriated identification or fraudulent proof of age in an attempt to obtain an alcoholic beverage:
 - (i) the licensee or employee is authorized to confiscate the identification or proof of age and shall, within 72 hours after the confiscation, turn it over to the tribal law enforcement agency. The failure to confiscate the identification or proof of age or to turn it over to the tribal law enforcement agency within 72 hours after the confiscation shall not constitute a criminal offense, notwithstanding § 26-6-101. Any licensee or his employee acting in good faith in accordance with the provisions of this subsection shall be immune from any liability, civil or criminal.
 - (ii) the licensee or licensee's employee or any peace officer, acting in good faith and upon probable cause, may detain and question such person in a reasonable manner to ascertain whether the person is guilty of any unlawful act under this article. Such questioning of a person by a licensee, licensee's employee, or a peace officer does not render the licensee, the licensee's employee, or a peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.
 - (c) Each licensee shall display a printed card that contains a notice of the provisions of subsection § 26-5-101(11).
- (3) To sell to a consumer for consumption on or off the licensed premises unless the licensee verifies that the consumer is at least 21 years of age by requiring the consumer to present a valid identification. The licensee or employee shall make a determination from the information presented whether the purchaser is at least 21 years of age. However, if a consumer is or reasonably appears to be over fifty years of age and fails to present an acceptable form of identification, such sale is not unlawful.

- (4) To permit a person under eighteen years of age to sell, dispense, serve, or participate in the sale, dispensing, or serving of any alcoholic beverage.
- (5) To employ a person to sell, dispense, or serve alcoholic beverages if that person does not meet the following minimum age requirements:
 - (a) at a retail liquor store, a person younger than 21 years old shall not handle, sell, or engage in any activity involving alcoholic beverages.
 - (b) at a tavern or lodging and entertainment facility that does not regularly serve meals, a person younger than 21 years old shall not handle, sell, or engage in any activity involving alcoholic beverages.
 - (c) at any other premises licensed for on-premises consumption, a person under 21 years of age may not sell, dispense, or serve alcoholic beverages unless he or she is supervised by another person who is on premises and who is at least 21 years old.
- (6) To serve, sell, or distribute during prohibited hours of service. Prohibited hours of service are the following:
 - (a) For consumption on the premises, 2:00 a.m. to 7:00 a.m..
 - (b) In sealed containers, 12:00 midnight to 8 a.m..
 - (c) These days and hours may be limited by resolution of the Tribal Council in recognition of a tribal holiday and may be expanded by resolution of the Tribal Council if the State of Colorado's statutes or rules change to expand the hours of lawful alcohol sales or service.
- (7) To sell or serve alcohol without a certification of training obtained in accordance with the following requirements:
 - (a) the training shall be obtained from a vendor on the Colorado Approved Vendor List for Responsible Alcohol Beverage Vendors within the first 30 days of employment as a seller or server of alcohol;
 - (b) the seller or server shall obtain a certification of attendance and a passing score on any required exam and shall submit the certification to the Tribal Licensing Authority;
 - (c) the seller or server shall obtain recertification every 3 years or within 30 days of certification expiration.

- (8) To offer for sale or solicit any order for alcoholic beverages at retail except within a licensed premises.
- (9) To have any alcoholic beverages not permitted by the license in the licensed premises.
- (10) To buy any alcoholic beverages from any person not licensed to sell at wholesale except as otherwise provided in this Code.
- (11) To sell at retail alcoholic beverages except in the permanent location specifically designated in the license for such sale, as authorized in this Code.
- (12) To fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of 14 inches and a width of 11 inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL TO SELL ALCOHOLIC BEVERAGES TO ANY PERSON UNDER 21 YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER 21 YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME.

IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY.

IT IS ILLEGAL IF YOU ARE 21 YEARS OF AGE OR OLDER FOR YOU TO PURCHASE AN ALCOHOLIC BEVERAGE FOR A PERSON UNDER 21 YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED FOR VIOLATION OF THESE PROVISIONS.

- (13) To sell alcoholic beverages for consumption on the premises unless licensed to sell alcohol for consumption on the premises.
- (14) To display or cause to be displayed, on the licensed premises, any exterior sign advertising any particular brand of malt liquors that is not sold or dispensed on the licensed premises.

- (15) To employ or permit, if such person is licensed to sell alcoholic beverages for on-premises consumption or is the agent or manager of the licensee, any employee, server, entertainer, host, hostess, or agent of the licensee to solicit from patrons in any manner, for himself or herself or for any other employee, the purchase of any drink or beverage.
- (16) To have on the licensed premises, if licensed as a retail liquor store, any container that shows evidence of having been opened or that contains a volume of alcoholic beverage less than that specified on the label of the container. This provision does not apply to duly authorized tastings nor to damaged or defective products that have been marked as such and stored outside the sales area.
- (17) Unless otherwise provided in this Code, it is unlawful for a person who is licensed to sell alcoholic beverages for consumption on the licensed premises to knowingly permit the removal of an alcoholic beverage from the licensed premises.
 - (a) A licensee shall not be charged with permitting the removal of an alcoholic beverage from the licensed premises when the licensee has posted a sign at least ten inches wide and six inches high by each exit used by the public that contains the following notice in type that is at least one-half inch in height:

“WARNING”

**DO NOT LEAVE THE PREMISES OF THIS ESTABLISHMENT
WITH AN ALCOHOLIC BEVERAGE.**

**IT IS ILLEGAL TO CONSUME AN ALCOHOLIC BEVERAGE IN
A PUBLIC PLACE.**

**A FINE MAY BE IMPOSED FOR A VIOLATION OF THIS
PROVISION.**

Such signs posted by a Gaming Tavern must be at least twelve inches wide and eighteen inches high.

26-5-102. Unlawful Financial Assistance.

- (1) It is unlawful for any licensee pursuant to this Code to receive and obtain, directly or indirectly, from any manufacturer, limited winery, wholesaler, or importer of alcoholic beverages, or any entity with a financial interest in any of these businesses:

- (a) any financial assistance;
 - (b) any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcoholic beverages within the premises; or
 - (c) any assistance in making any structural alterations or improvements in or on the building where the licensed premises are located.
 - (d) This subsection does not apply to signs or displays within licensed premises or to advertising materials that are intended primarily to advertise the product of the wholesaler or manufacturer and that have only negligible value in themselves or to the inspection and servicing of alcohol dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.
- (2) It is unlawful for any owner, part owner, shareholder, stockholder, or any person with an interest in any retail business or establishment of a licensee to enter into any agreement with any person or party or to receive, possess, or accept any money, fixtures, supplies, or thing of value from any person or party, whereby a licensee may be influenced or caused, directly or indirectly, to buy, sell dispense, or handle the product of any manufacturer of alcoholic beverages. This subsection shall not apply to displays within such premises.
 - (3) Any transaction, agreement, or arrangement prohibited by the provisions of this section is unlawful, illegal, and void, and any obligation or liability arising out of such transaction, agreement or arrangement is unenforceable by or against any such persons and parties entering into a prohibited transaction, agreement, or arrangement.

26-5-103. Violations by Any Person. It is a violation of this Code for any person:

- (1) To sell, serve, give away, dispose of, exchange, deliver, or procure for, or to permit the sale, serving, giving, disposing of, exchanging, delivering to, or procuring of any alcoholic beverage for a visibly intoxicated person.
- (2) To sell, serve, give away, dispose of, exchange, deliver, or procure for, or to permit the sale, serving, giving, disposing of, exchanging, delivering to, or procuring of any alcoholic beverage for any person under the age of 21 years.
 - (a) If a person is found to have violated this Code by selling, serving, giving away, disposing of, exchanging, delivering, procuring for or

permitting the selling, serving, giving away, disposing of, exchanging, delivering to, or procuring of any alcoholic beverage for a person under the age of 21 years, the Tribal Court shall consider the following:

- (i) As a result of consuming the alcohol, the underage person needed medical assistance; and
 - (ii) Within six hours after the underage person consumed the alcohol, the defendant contacted the police or emergency medical personnel to report that the underage person needed medical assistance as a result of consuming alcohol.
- (3) To obtain or attempt to obtain any alcoholic beverage by misrepresentation of age or by any other method in any place where alcoholic beverages are sold if such person is under 21 years of age.
- (4) To, while in any public place, possess or have in one's control an open container that holds any amount of an alcoholic beverage.
- (5) To possess or consume alcoholic beverages if such person is under 21 years of age.
- (6) To knowingly, or under conditions which a parent or guardian should have knowledge of, permit any person under 21 years of age, of whom he may be a parent or guardian, to violate the provisions of subparagraphs (4) or (5) of this section.
- (7) To buy or receive any alcoholic beverage from any person not licensed to sell at retail as provided by this Code except as otherwise provided in this Code.
- (8) To sell at retail any alcoholic beverages in sealed containers without holding a retail liquor store license.
- (9) To manufacture, sell, or possess for sale any alcoholic beverage unless such person is licensed to do so with a valid license; except that when permitted by federal law, a person 21 years of age or older may manufacture, without a license, the amount permitted by federal law for personal or family use.
- (10) It is unlawful for any person to drink or consume alcoholic beverages or for any person who is the owner, operator, or proprietor to sell, serve, furnish, or permit the drinking of alcoholic beverages in any public place or in any facility, except in or on premises holding a liquor license issued pursuant to this Code and only during the hours allowed by the Code.

- (11) To allow use of premises or provide mixers for alcoholic beverages without a license or outside of allowed hours.
- (12) To knowingly allow and fail to prevent the use of any identification, including a driver's license, by a person who is under 21 years of age for the unlawful purchase of any alcoholic beverage.
- (13) To remove an alcoholic beverage from a licensed premises where the liquor license for such facility allows only on-premises consumption of alcoholic beverages.

PART IV – ENFORCEMENT AND EXEMPTIONS

Article 6. ENFORCEMENT

26-6-101. Civil and Criminal Enforcement for Liquor Code Violations.

- (1) Civil Enforcement.
 - (a) Except as otherwise provided in this section, any person violating any provision of this Code or any regulation authorized and adopted pursuant to this Code as amended, currently or in the future, has committed a Liquor Code violation.
 - (b) Upon entry of a judgment:
 - (i) the violator shall be liable for civil penalties of not more than \$5,000 for each offense;
 - (ii) the Court may revoke any license granted and issued pursuant to the provisions of this Code to the violator; and
 - (iii) the court may decree that no license for the sale of alcoholic beverages shall be issued to the violator in the future.
 - (c) The penalties provided in this Title shall not be affected by the penalties provided in any other section of this Code but shall be construed to be in addition to or an alternative to any other penalties.
- (2) Criminal Violations of the Liquor Code may result in criminal prosecution where the Tribal Court has criminal jurisdiction over the person committing the violation and the violation constitutes a crime under the Southern Ute Indian Tribal Code.

26-6-102. Prohibited Testing for Intoxication by Law Enforcement Officers. No person who is patronizing a licensed premise shall be required or solicited by any law enforcement officer to submit to any mechanical test for the purpose of determining the alcohol content of such person's blood or breath while such person is upon such licensed premise except to determine if there is a violation of the Tribe's laws against driving under the influence or driving while ability impaired, by a driver of a motor vehicle unless the law enforcement officer is acting pursuant to a court order. No such test may be performed upon any licensed premises to obtain evidence of alleged intoxication, except pursuant to a court order or in case of a medical emergency, regardless of whether such alleged intoxication is a violation of any provision of this Code.

Article 7. EXEMPTIONS

26-7-101. Exemptions.

- (1) The provisions of this Code shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.
- (2) Notwithstanding any provision of this Code to the contrary, when permitted by federal law and rules and regulations promulgated pursuant to federal law, a person 21 years of age or older may produce for personal use and not for sale an amount of fermented malt beverage or malt or wine liquor equal to the amount that is exempt from the federal excise tax on such alcoholic beverage when produced by a person 21 years of age or older for personal use and not for sale.
 - (a) The production of fermented malt beverages or malt or wine liquors under the circumstances set forth in this subsection (2) shall be in strict conformity with federal law.
 - (b) Fermented malt beverages or malt or wine liquors produced pursuant to the provisions of this subsection (2) shall be exempt from any tax imposed by this Code, and the producer shall not be required to obtain any license provided by this Code.
 - (c) Malt liquors produced pursuant to this subsection (2) may be transported and delivered by the producer to any licensed premise where consumption of malt liquors by persons 21 years of age or older is authorized for use at organized affairs, exhibitions, or competitions, such as home brew contests, tasting, or judging. Consumption shall be limited solely to the participants in and judges of such events. Malt liquors used for the purposes described in this paragraph (c) shall be served in portions not exceeding 6 ounces and

shall not be sold, offered for sale, or made available for consumption by the general public.

Article 8. CIVIL LIABILITY

26-8-101. Interpretation.

- (1) The Tribal Council hereby finds, determines, and declares that this section shall be interpreted so that any common law cause of action against a vendor of alcoholic beverages is abolished and that, in certain cases, the consumption of alcoholic beverages, rather than the sale, service, or provision thereof, is the proximate cause of injuries or damages inflicted upon another by an intoxicated person except as otherwise provided in this section.

(2) Civil Liability for Licensees.

- (a) No licensee is civilly liable to any injured individual or his or her estate for any injury to such individual or damage to any property due to the sale or service of any alcoholic beverage to any person, except when:
 - (i) it is proven that the licensee willfully and knowingly sold or served any alcoholic beverage to such person who was under the age of 21 years or who was visibly intoxicated; and
 - (ii) the civil action is commenced within one year after such sale or service.
- (b) No civil action may be brought pursuant to this subsection by the person to whom the alcoholic beverage was sold or served or by his or her estate, legal guardian, or dependent.
- (c) As used in this section, "licensee" means a person licensed under the provisions of this Code and the agents and employees of that person.

(3) Civil Liability for Private Social Events.

- (a) No person who furnishes any alcoholic beverage at a private social event shall be civilly liable to any injured individual or his or her estate for any injury to such individual or damage to any property suffered, including any action for wrongful death, because of the intoxication of any person due to the consumption of such alcoholic beverages, except when:

- (i) it is proven that the person who furnished an alcoholic beverage at a private social event willfully and knowingly sold or served any alcoholic beverage to such person who was under the age of 21 years or who was visibly intoxicated; and
 - (ii) the civil action is commenced within one year after such service.
- (b) No civil action may be brought pursuant to this subsection by the person to whom the alcoholic beverage was served or by his or her estate, legal guardian, or dependent.

TITLE 26

LIQUOR CODE

History and Amendments ¹

The Southern Ute Indian Tribe Liquor Code adopted by Tribal Resolution No. 88-103 on July 27, 1988, approved by the Bureau of Indian Affairs and effective on July 9, 1992.

Revisions to various Codes adopted, including Title 16, to incorporate the Administrative Appeals and Hearings Office process by Resolution No. 2014-215 on November 4, 2014.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.