

## **Subpart U     General Welfare**

### **U-1            Drug and Alcohol Testing Policy for Persons Requesting or Receiving Assistance**

(a) The Governor may order a drug or alcohol test of any applicant or recipient of financial assistance or social services.

(b) If the first drug/alcohol test is positive, the applicant/ recipient may request a second test, at their own expense, to ensure the validity and reliability of the first test. The second drug/ alcohol test must be requested and taken within an hour of receiving the result of the first drug/alcohol test.

(c) If the applicant/recipient tests positive for drug/alcohol use, they shall be subject to First Offense Penalties.

(d) First Offense Penalties are mandatory. First Offense Penalties include: At a minimum, the applicant/recipient shall be given one week leave without pay. After the one week, the applicant/recipient may again receive benefits, but for the three months from the time of the negative result, they are subject to random drug testing at the discretion of any Tribal Official. The applicant/recipient employee shall be responsible for the costs of all drug testing within the probationary period.

(e) Second Offense Penalties are mandatory. After a second offense, the applicant/recipient employment shall be terminated from receiving any benefits for one year. The applicant/recipient must submit to a test for illegal drugs or alcohol and test negative prior to regaining eligibility for financial assistance or social service programs.

(f) DUI convictions: At the discretion of a Tribal Official, any applicant/recipient convicted in any Court of the violation of Driving under the Influence may be subject to the First and Second Offense Penalties.

(g) Any applicant/recipient who is subject to the first or second offense penalties remains eligible for social service programs regarding rehabilitation and counseling for the substance abuse problem.

(h) Any person who is receiving financial assistance for educational purposes and who tests positive for drugs or alcohol shall:

1. Repay the Pueblo one-half of the last stipend payment that the recipient received (e.g., if the recipient receives a monthly stipend of \$1,000, the recipient shall repay \$500 to the Pueblo).
2. Take another drug/alcohol test prior to receiving any further education financial assistance. If the test is negative, they shall be eligible to receive educational financial assistance. However, if the test is positive, the recipient shall repay the Pueblo the total amount of educational financial assistance that the recipient received for the current semester in which the recipient tests positive and they shall be

ineligible to receive any educational financial assistance for one year from the date of the negative test result.

**U-2        Liquor Control Act**

(a) Definitions.

1. “Alcoholic beverages” means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters of any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:
  - A. “Spirituous liquors” means alcoholic beverages except fermented beverages such as wine, beer and ale;
  - B. “Beer” means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;
  - C. “Fortified wine” means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:
    - i. Wine that is sealed or capped by cork closure aged two years or more;
    - ii. Wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; or
    - iii. Vermouth and sherry.
  - D. “Wine” includes the words “fruit juices” and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products with or without the addition of sugar or other products that do not contain less than one half of one percent nor more than twenty-one percent alcohol by volume.
2. “Club” means any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of the Pueblo of Pojoaque with a membership of not less than twenty members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the Commission finds is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes.
3. “Commission” means the Pueblo of Pojoaque Alcoholic Beverage Commission.

4. “Dispenser” means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises.
5. “Micro brewer” means any person who produces less than five thousand (5,000) barrels of beer in a year.
6. “Minor” means any person under twenty-one (21) years of age.
7. “Person” means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, Pueblo-chartered corporation, or any other legal entity.
8. “Restaurant” means any establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen, and the employees necessary for preparing, cooking and serving meals; provided that “restaurant” does not include establishments serving only hamburgers, sandwiches, salads and other fast foods.
9. “Wholesaler” means any person holding a license issued under the Liquor Control Act who sells, offers for sale or possesses for the purposes of sale any alcoholic beverages for resale by the purchaser.

(b) Pueblo of Pojoaque Alcoholic Beverage Commission.

1. The Commission is composed of up to five voting members. All members shall be named by the Tribal Council to serve for terms to be decided by the Tribal Council. The Commission shall determine its officers and chairperson.
2. Commission members shall meet at the call of the chairperson. Members of the Commission shall be reimbursed for per diem and mileage and shall receive a monthly stipend in accordance with Pueblo of Pojoaque Tribal guidelines.
3. The Commission will be responsible for issuing licenses and determining the outcome of all matters relating to the use and sales of alcoholic beverages within land owned by the Pueblo of Pojoaque within the exterior boundaries of the Pueblo of Pojoaque. These decisions will be made in accordance with applicable federal and New Mexico laws.
4. It shall be the policy of the Commission that the sale, service and public consumption of alcoholic beverages within the exterior boundaries of the Pueblo of Pojoaque shall be licensed, regulated and controlled so as to protect the public health, safety and morals. Therefore, the Commission shall investigate the qualifications of the applicants for licenses and shall investigate the premises for which any license is sought before the license is issued.

5. Any person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act.

6. All managers are responsible for acts relating to alcohol service within the scope of their employment or while performing alcohol-related duties in the conduct of business.

7. All fees collected by the Commission shall be placed in the General Operating Fund of the Pueblo of Pojoaque under the designation "Pueblo of Pojoaque Alcoholic Beverage Commission" or under such designation as the Pueblo of Pojoaque Financial Officer shall recommend.

8. The final decisions of the Commission may be appealed only to the Tribal Council.

9. The Commission is authorized to license any person within the boundaries of lands over which the Pueblo of Pojoaque has jurisdiction if the alcoholic beverages are purchased from New Mexico wholesalers.

(c) Regulations Concerning Alcoholic Beverages.

1. Compliance with Liquor Control Act.

A. The sale or the possession for the purpose of sale or offering for sale, manufacture or transportation of alcoholic beverages is hereby prohibited within the exterior boundaries of the Pueblo of Pojoaque except on the terms and conditions specified in the Liquor Control Act.

B. It is unlawful for any person to deliver any alcoholic beverages for resale within the exterior boundaries of the Pueblo of Pojoaque unless such person has complied with the laws of the Pueblo of Pojoaque and applicable laws of the State of New Mexico.

2. Alcoholic Beverages in Unlicensed Public Places. It is unlawful for any person to drink or consume alcoholic beverages or for any person who is the owner, proprietor, operator or agent of the owner, proprietor or operator to sell, serve, furnish or permit the drinking or consumption of alcoholic beverages in any public place or any public club, whether operated for profit or not, except in those establishments having a license to dispense alcoholic beverages.

(d) Regulations Concerning Minors.

1. Employment of Minors. It is unlawful for any licensee knowingly to employ any person under twenty-one (21) years of age in the sale and service of alcoholic beverages.

2. Selling or Giving Alcoholic Beverages to Minors.

A. It is unlawful for any club, retailer, dispenser or any other person to do any of the following:

- i. Sell, serve or give any alcoholic beverages to a minor, or to permit a minor to consume alcoholic beverages on the licensed premises;
- ii. Buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;
- iii. Deliver alcoholic beverages to a minor; or
- iv. Aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is unlawful for any minor to consume, buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverage in a licensed premise.

C. If any person not a minor deceives another person to believe that a minor is legally entitled to be sold, served or delivered alcoholic beverages, he and not the person deceived shall have committed an unlawful act.

D. It is unlawful for any person to give, loan, sell or deliver an identity card to a minor with the knowledge that the minor intends to use the identity for the purpose of procuring or attempting to procure any alcoholic beverages.

E. It is unlawful for minor employees to ring up and/or accept payment in liquor in licensed premises. All alcohol servers must wear a color-coded tag verifying LCC certification on their badge during business hours. Updated lists of certified alcohol servers shall be submitted to the Commission annually, with license renewal applications. Upon completion of alcohol server's training, certifications shall be forwarded to the Commission.

(e) Licenses and License Tax.

1. Licenses; Required Sales and Shipment. It is unlawful for any person, on his own behalf or as agent for another person, except a duly licensed wholesaler, directly or indirectly to sell or offer for sale or ship or transport into the exterior boundaries of the Pueblo of Pojoaque for resale any alcoholic beverages, except to a duly licensed retailer, dispenser, club, micro brewer, restaurant, canopy operator or special dispenser.

2. Application for Pueblo of Pojoaque License. Applications for a Pueblo of Pojoaque license under this Section shall be made to the Commission and shall contain such information as the Commission shall prescribe.

3. License Tax.

A. Annual license taxes on the privileges of persons holding liquor licenses issued by the Commission are imposed as follows:

- i. Dispenser: an annual fee of one thousand two hundred and fifty dollars (\$1,250);
- ii. Retailer: an annual fee of one thousand two hundred and fifty dollars (\$1,250);
- iii. Club: an annual fee of one thousand two hundred and fifty dollars (\$1,250);
- iv. Micro brewer: an annual fee of one thousand two hundred and fifty dollars (\$1,250);
- v. Restaurant: an annual fee of one thousand dollars (\$1,000); and
- vi. Canopy: an annual fee of one thousand two hundred and fifty dollars (\$1,250).

B. The licenses specified in Paragraph (A) of this Section shall be reissued annually on or about July 1 upon the payment of the annual license fee. Renewal applications and fees shall be submitted no later than May 1 for the proper review and evaluation. Application fees and/or licensing fees shall not be prorated. Any late renewal applications shall be subject to a late fee assessment of not more than ten percent (10%) of the liquor application fee.

4. Special Dispensers' Permits. Any person granted a special dispenser's permit for use within the exterior boundaries of the Pueblo of Pojoaque shall pay in advance a fee of fifty dollars (\$50.00) per day for each day or fraction thereof that the permittee is to dispense alcoholic beverages. Any other fees will be determined by the Commission at the time of licensing. The Commission shall consider the proposed use, location and extent of the permit before determining the fees. Special dispenser's permits may only be issued in connection with a public celebration upon written approval from the Commission.

(f) Penalty. As provided in the Liquor Control Act, the failure to pay the license or permit fees imposed by this Act, in addition to any penalty imposed by the Pueblo of Pojoaque Tribal Court, shall be grounds for closing forthwith the place of business of any defaulting licensee.