

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL—FIRST YEAR, 2015

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL;
RECOMMENDING CHANGES IN THE ARIZONA LIQUOR LAW STATUTES TO THE
ARIZONA STATE LEGISLATURE

WHEREAS:

Section One. Findings

- A. The Navajo Nation Council Speaker shall assign "[a] proposed resolution that requires final action by the Navajo Nation Council to...the Naabik'íyáti' Committee"; this resolution proposes a statement of policy and requires the Navajo Nation Council's approval. 2 N.N.C. § 164 (A)(9) and 2 N.N.C. § 164 (A); *see also* CO-45-12.
- B. On January 8, 2015, the Arizona Department of Liquor Licenses and Control voted to deny the transfer of two liquor licenses held by Gary MacDonald to George Ryan located in Sanders, Arizona.
- C. The Navajo Nation, in part through the efforts of the Human Rights Commission and Arizona State Senator Carlyle Begay, have reached out to the Navajo Nation residents affected by the sale of liquor in Sanders, Arizona, and heard their concerns, and as a result have advocated strongly for stricter standards for the liquor license granting, transfer and renewal process in Arizona. See Resolution of the Navajo Nation Human Rights Commission attached as Exhibit A.
- D. Navajos who live in the surrounding areas of these border towns, and who make up a large percentage of the customers frequenting Arizona-licensed liquor establishments, have vocalized their concerns regarding the effect that the sale of liquor is having on their community, which include the effects on families from alcohol abuse, including deaths, the trash that is accumulating as a result of the sales, and the violence that erupts as a result of liquor establishments selling to already inebriated customers.

- E. Given these concerns raised by the residents of the Navajo Nation who come from all areas of the reservation to transact business in border towns like Sanders, Arizona, it is in the best interest of the Navajo Nation to recommend the following changes to Title 4 of the Arizona statutes to the Arizona State Legislature.

Section Two. The Navajo Nation Council recommends to the Arizona State Legislature the following changes to the Arizona law

- A. Arizona Revised Statutes (herein A.R.S.) address liquor licenses in Title 4. The following changes are recommended to A.R.S. § 4-201(B) and A.R.S. § 4-201(E):

Currently, when a person desiring a license to manufacture, sell or deal in spirituous liquors applies for a new license, the only individuals allowed to register as protestors as to the location of the liquor establishment must live within a one-mile radius of the liquor establishment. The Navajo Nation recommends that the one-mile radius requirement for protestors be expanded to address the pervasiveness of the issue, especially as it affects Indian Country. This will permit those who will be affected by the issuance of a new license to voice their concerns whether or not they live within the one-mile radius of the liquor establishment.

- B. The following changes are recommended to A.R.S. § 4-201(J):

J. If the governing body of a city or town recommends disapproval by a two-thirds vote or more of the members present and voting on an application for the issuance or transfer of a spirituous liquor license for any reason ~~that, if approved, would result in a license being issued at a location either having no license or having a license of a different series,~~ the application shall not be approved unless the board decides to approve the application by a two-thirds vote of the members present and voting.

- C. The following changes are recommended to A.R.S. § 4-203(A):

A spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of wholesaler, producer, government or club licensees, that the public convenience requires and that the best interest of the community will be substantially served by the issuance. If an application is filed for the issuance of a transferable or nontransferable license, other than for a craft distiller license, a microbrewery license or a farm winery license, for a location that on the date the application is filed has a valid license of the same series, or in the case of a restaurant license application filed for a location with a valid hotel-motel license, issued at that location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. If an application is filed to transfer ownership of a transferable license with no change of location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. The presumption may be rebutted by competent contrary evidence. The presumption shall not apply once the licensed location has not been in use for more than one hundred eighty days and the presumption shall not extend to the personal qualifications of the applicant.

- D. The following changes are recommended to A.R.S. § 4-203(F):

F. If a person other than those persons originally licensed acquires control over a license or licensee, the person shall file notice of the acquisition with the director within thirty business days after the acquisition of control and a list of officers, directors or other controlling persons on a form prescribed by the director. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed by this title. On request, the director shall conduct a preinvestigation before the assignment, sale or transfer of control of a license or licensee, the reasonable costs of

which, not to exceed one thousand dollars, shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this title are met. On receipt of notice of an acquisition of control or request of a preinvestigation, the director shall forward the notice within fifteen days to the local governing body of the city or town, if the licensed premises is in an incorporated area, or the county, if the licensed premises is in an unincorporated area. The local governing body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. If the director does not receive any protests, the director may protest the acquisition of control or approve the acquisition of control based on the capability, reliability and qualification of the person acquiring control. Within 20 days of the Director's Decision to protest an application to transfer a license on the reliability or qualifications of the person acquiring control, any person may protest the capability, reliability and qualification of the person seeking to acquire control of a liquor license including on grounds not included in the protest filed by the Director. Any protest shall be set for a hearing before the board. Any transfer shall be approved or disapproved within one hundred five days of the filing of the notice of acquisition of control. The person who has acquired control of a license or licensee has the burden of an original application at the hearing, and the board shall make its determination pursuant to section 4-202 and this section with respect to capability, reliability and qualification. No transfer, sale or acquisition of a license is effective unless approved by the Board as provided in this section and until approved, the persons originally licensed remain the holders of the license.

E. The following changes are recommended to A.R.S. § 4-111(B):

B. From and after January 31, 2003, the board consists of seven ~~eight~~ members to be appointed by the governor pursuant to section 38-211. Five of the members of the board shall not be financially interested directly or indirectly in business licensed to deal with spirituous

liquors. Two members shall currently be engaged in business in the spirituous liquor industry or have been engaged in the past in business in the spirituous liquor industry, at least one of whom shall currently be a retail licensee or employee of a retail licensee. One member shall be a member of a neighborhood association recognized by a county, city or town. One member shall be an enrolled member of a Federally Recognized Indian Tribe with an enrolled membership of more than 40,000 members. The term of members is three years. Members' terms expire on the third Monday in January of the appropriate year. The governor may remove any member of the board for cause. No member may represent a licensee before the board or the department for a period of one year after the conclusion of the member's service on the board.

- F. General recommendation as pertains to Arizona liquor licenses being granted, transferred and renewed and its effect on Indian Country:

Border towns such as Sanders, Arizona, are surrounded by the Navajo Nation. The Navajo Nation does not permit the consumption, buying or selling of liquor. Given Sanders and towns like it are surrounded by reservations, the concerns of the community regarding granting, transfer and renewal of liquor licenses should be taken into account on a regular basis and not simply when a license is first granted as it currently stands. A more comprehensive look at Arizona statutes regarding the ability of community members, especially those affected by it in surrounding areas, to protest the location of a licensed liquor business is highly recommended and encouraged.

BE IT THEREFORE RESOLVED:

A. The Navajo Nation respectfully requests the Arizona State Legislature take into consideration the above recommendations to changes in Title 4 of Arizona statutes.

B. The Navajo Nation hereby authorizes the Navajo Nation President, the Navajo Nation Speaker, and their designees, to advocate on their behalf.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 17 in favor and 0 opposed, this 26th day of January 2015.



LoRenzo Bates, Speaker
Navajo Nation Council

1-29-15

Date

Motion: Honorable Dwight Witherspoon
Second: Honorable Lee Jack

EXHIBIT
“A”

**PROPOSED RESOLUTION
OF THE
NAVAJO NATION HUMAN RIGHTS COMMISSION**

Opposing the Renewal, Transfer, Suspension and/or the Sale of Liquor Licenses #09010015 (High Country Liquor), #06010019 (High Country Tavern), #09010003 (Red Barn Trading Post) and #09010016 (Lee's Liquor) owned by Gary Allen McDonald and DRG Assets, LLC of Sanders and Chambers, Arizona and Urging the Arizona Liquor Board Uphold the Request Set Forth by Navajos Residing in the Communities as this Action is in their Best Interest

WHEREAS:

1. Pursuant to 2 N.N.C. §920, the Navajo Nation Human Rights Commission (“Commission”) is established in the Legislative Branch as an entity of the Navajo Nation government; and
2. On March 20, 2014, the Navajo Nation Naabik'itait'i' Committee passed resolution NABIMA-19-14 rejecting the renewal of the license to the Ole Red Barn and directed the Commission to assist the grassroots committee called, “*The Renewal of Hope Task Force*” to address the public nuisances and alleged criminal activity on and near the premises of the three liquor establishments located in Sanders, Arizona; and
3. On April 4, 2014, the Commission adopted a strategy plan to address concerns expressed by the residents residing in the area. The strategy plan included a legislative review of the Arizona Liquor laws and policies, an assessment of the activities the task force had under taken, a review of Navajo Nation laws, and the hiring of an attorney, Greg Harris, to develop the legal strategy for advancing the peoples’ concerns; and
4. The Commission attended several meetings with Navajos and non-Navajos from the communities of Nahata Dziil, Sanders, Chambers and St. John’s, Arizona to inform and collect protest statements, to solicit support for the multi-approach plan to address and prepare for an administrative hearing for presenting the peoples’ concerns to the Arizona Liquor Board; and
5. Through the Commission’s review of the circumstances involving the owner of the licenses, Mr. Gary Allen McDonald, it has been learned that Mr. McDonald violated a number of liquor regulations cited in the Arizona Revised Statutes Title VI Section 210. These violations constitute serious charges for failing to comply with business regulatory requirements for operating a liquor establishment. The findings include two consecutive search warrants of Mr. McDonald’s liquor establishments, where on both occasions the manufacturing and sale of illegal drugs were being produced, packaged and prepared for distribution, the serving of intoxicated individuals, the sale of alcohol to underage persons, failing to identify a corporate agent as required for Arizona Corporation Commission, the non-payment of property taxes for two consecutive years and numerous criminal allegations that substantiate a lack of moral responsibility to his businesses, the community and the people that reside within a one mile radius of the liquor establishments; and

6. After reviewing the Apache County Sherriff and Navajo Nation police reports, the mortality rates specific to this area, testimony from family members of loved ones found died on and near the premises of Ole Red Barn and the investigation of past court records of persons involved in criminal activity on or near these premises, it is apparent that many prior liquor violations were not reported or litigated to the fullest extent of the Arizona law. The Commission finds that a pattern of irresponsibility, unethical and lack of moral fortitude exhibited by Mr. McDonald demonstrates that the current reporting system for liquor violations in Apache County is not working properly; and
7. The Commission implores the Arizona Liquor Board to further review licenses #09010015, #06010019, #09010016 and #09010003 through the United Nations, *Guiding Principles on Business and Human Rights; Implementing the United Nations, Protect, Respect and Remedy' Framework*. The principles set standards for businesses operating on and near lands occupied by Indigenous peoples. These guiding principles are grounded in the recognition of (a) A States existing obligations to respect, protect and fulfill human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, require to comply with all applicable laws and to respect human rights; and (c) the need for rights and obligations to be matched to appropriate and effective remedies when breached; and
8. The Commission recognizes Navajo values, cultural and traditions as the foundation of the Navajo Life Way. The Navajo principles of Si'ah Naghái Bik'eh Hózhóó, Hashkééj, Hózhóój and K'é endow a tremendous amount of responsibility on Navajos. The public nuisances of inebriants within the community is not a value of Navajo teachings. The Nataha Dziil residents want to restore a significant level of harmony in the community by restoring the principles of K'é. Community members desire to develop an economy based on the concept of good will and without the dependency of taxes from the sale of liquor or alcohol; and
9. The Commission further insists that the continued disregard for the life of indigent Navajos who relocated into the Nataha Dziil area by virtue of P.L. 93-531, the Navajo-Hopi Land Settlement Act of 1974, remain victims of a displaced Navajo Life Way that is compounded by the sale, use and abuse of illegal drugs, liquor and alcohol, which add to the despair and economically depressed community; and
10. On May 27, 2011, Leonard Gorman, Executive Director for the Office of Navajo Nation Human Rights Commission served on the Ad Hoc Committee on the Intergovernmental Coordination of Costs/Services Related to Alcohol Addiction in the Northern Arizona Region. The Ad Hoc Committee was established by Arizona State Senator's Sylvia Allen and Jack Jackson, Jr. to address concerns raised in several border towns concerning *trash* that is generated by inebriants. The *trash* created by Navajos was allegedly to occur when Navajos purchased and consume alcohol in the respective border towns. The Ad Hoc Committee recommended to the Arizona Legislature the introduction of Senate Bill 1082. The intent of SB1082 was to amend Title VI § 224 and allow cities and municipalities to regulate the sale of alcohol in their respective communities. However, SB1082 was defeated in the Arizona

legislature due to an increase and formidable lobbying effort by the Arizona liquor industry;
and

11. Based on the numerous public complaints and lack of inadequate and inconsistent monitoring of these establishments, the Commission strongly recommends the Arizona Liquor Board take actions that are favorable to the people's wishes.

NOW THEREFORE BE IT RESOLVED:

1. The Navajo Nation Human Rights Commission hereby recommends that the Arizona Liquor Board oppose the renewal, transfer, sale and/or suspend the liquor sale licenses #09010015 (High Country Liquor), #06010019 (High Country Tavern), #09010003 (Red Barn Trading Post) and #09010016 (Lee's Liquor) owned by Gary Allen McDonald and DRG Assets, LLC of Sanders and Chambers, Arizona.
2. The Navajo Nation Human Rights Commission further urges the Arizona Liquor Board uphold the request set forth by Navajos and non-Navajos residing in these communities as this action is in the best interest of the community.
3. The Commission recommends that the Arizona Liquor board take immediate action to ensure the peoples' interests to the community are restored.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission at a duly called meeting in St. Michaels, Navajo Nation (Arizona) at which a quorum was present at that same was passed by a vote of 4 in favor and 0 opposed, this 2nd day of May, 2014.



Steven A. Darden, *Chairperson*
Navajo Nation Human Rights Commission