
Wednesday
October 31, 1990

**1990
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28**

Part III

**Department of the
Interior**

Bureau of Indian Affairs

**Liquor and Tobacco Sale of Distribution
Ordinance: Apache Tribe of Oklahoma;
Notice**

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor and Tobacco; Sale or Distribution Ordinance; Apache Tribe of Oklahoma

October 15, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Apache Tribe of Oklahoma Liquor Ordinance adopted on December 28, 1989, Relating to the Use and Distribution of Liquor was duly adopted by the Apache Tribe of Oklahoma by Resolution 89-3-HUD and amended by Resolution 90-22-HUD. The Ordinance provides for the regulation of possession, consumption and importation of alcohol into the area of the Apache Tribe of Oklahoma and the surrounding Indian Country under the jurisdiction of the Apache Tribe of Oklahoma.

DATES: This Ordinance is effective as of October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Maria Mendoza, Management Analyst, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., Washington, DC 20240; telephone (202) 208-4400, (FTS) 268-4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Apache Tribe of Oklahoma, acting in accordance with the customary law and practice of the Apache Tribal Community hereby adopts the following ordinance governing the possession, consumption and importation of alcohol into the Apache Tribal Community.

Section 1-01 Title and Purpose

1-01.01—This document shall be known as the Apache Tribe of Oklahoma Liquor Ordinance. These regulations are enacted to regulate the sale and distribution of liquor and beer products on Tribal Trust Lands of the Apache Tribe of Oklahoma and to generate revenue to fund needed tribal programs and services.

Section 1-02 Definitions

1-02-01—Unless otherwise required by the context the following words and phrases shall have the designated meanings:

(1). *Tribe* shall mean the Apache Tribe of Oklahoma, P.O. Box 1220, Anadarko, Oklahoma 73005.

(2). *Business Committee* shall mean the Apache Tribe of Oklahoma Business Committee as constituted by Article V of the Constitution and By-Laws of the Apache Tribe of Oklahoma.

(3). *Tribal Trust Lands* shall mean any lands and waters held in trust by the Federal Government within the jurisdiction of the Apache Tribe of Oklahoma. This is to mean Indian Country as defined by 18 U.S.C. 1151.

(4). *Member* shall mean any person whose name appears on the official roll of the Apache Tribe of Oklahoma.

(5). *Commercial Sale* shall mean the transfer, exchange or barter, in any or by any means whatsoever, for a consideration by any person, association, partnership, or corporation, or liquor and beer products.

(6). *Wholesale Price* shall mean the established price for which liquor and beer products are sold to the Apache Tribe of Oklahoma or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(7). *Alcohol* is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(8). *Beer* means any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 6 percent of alcohol by weight.

(9). *Liquor* shall mean an alcohol beverage made by distillation rather than by fermentation. A liquid substance such as broth or juice, produced by cooking.

(10). *Liquor Outlet* shall mean tribally licensed retail sale business selling liquor or beer on Tribal Trust Lands.

(11). *Operator* shall mean all enrolled members of twenty-one (21) years of age and over, of the Tribe or enrolled members of twenty-one (21) years of age and over, of another federally recognized tribe of American Indians, or other person twenty-one (21) years of age or older, properly licensed by the Tribe to operate a liquor and beer outlet.

Section 1.3 Licensing of Liquor and Beer Outlets

1-3.01. Licensing. The Apache Tribe of Oklahoma Business Committee shall be the Liquor and Beer Control Commission. The Commission is empowered to:

(1). Administer these regulations by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of these regulations.

(2). Adopt and enforce rules and regulations in furtherance of the purpose of these regulations and in the performance of its administrative functions.

Section 1-4 Nature of Outlet

1-4.01 Nature of Outlet. Each liquor and beer outlet, license granted by the Commission, hereunder, shall be managed pursuant to section 1-7 of this Ordinance.

Section 1-5 Application for Liquor and Beer Outlet License

1-5.01 Application. Any enrolled member, twenty-one (21) years of age and older, of the Tribe or an enrolled member, twenty-one (21) years of age and older, of a federally recognized tribe or other person twenty-one (21) years of age or older, may apply to the Commission for a liquor and beer outlet license.

1-5.02 Licensing Requirements—The person applying for such permit must make a showing once a year, and must satisfy the Commission that he is a person of good moral character; that he has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the state, or any other state of the United States, within three (3) years immediately preceding the date of his petition, or any of the laws commonly called "prohibition laws", or had any permit or license to sell nonintoxicating liquors revoked in any county of this state within twelve (12) months; and that, at the time of his petition for a license, he is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor. Any license to wholesaler or retail dealer may be refused or removed by the Commission upon ten (10) days notice in writing to such wholesaler or retail dealer, and an opportunity to be heard shall be afforded, after which order of revocation may be issued by the Commission, and the same shall thereupon become final.

1-5.03 Processing of Application—The Tribal Secretary-Treasurer shall receive and process applications and be the official representative of the Tribe and Commission in matters relating to liquor and beer excise tax collections.

and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a respectable person, the Commission or its authorized representative may issue a license for the sale of liquor and beer products.

1-5.04 Application Fee—Each application shall be accompanied by an application charge or a fee of twenty-five dollars (\$25.00).

Section 1-6 Liquor and Beer Licenses

1-6.01 Upon approval of an application, the Commission shall issue the applicant a liquor and beer outlet license, for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type outlet being permitted. This license shall not be transferable. The licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission by submission of the licensee of subsequent application form and payment of application fee as provided in Section 1-5.

Section 1-7 Regarding Sales by Liquor Wholesalers and Transport of Liquors Upon Trust Lands

1-7.01 Right of commission to Scrutinize Suppliers—The operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor stocks to the outlet(s). The commission may, at its discretion, limit or prohibit the purchase of said stock from a supplier or wholesaler for the following reasons: Non-payment of Tribal taxes; bad business practices; or sale of unhealthy supplies. A ten day notice of stopping purchases will be given by the Commissioner whenever purchases from a supplier are to be discontinued unless there is a health emergency.

1-7.02 Freedom of Information From Suppliers—Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the operators. All records shall be kept according to Section 1-8.08 of this Ordinance.

Section 1-8 Sales by Retail Operators

1-8.01 Commission Regulations—The Commission shall adopt procedures which shall supplement these regulations and facilitate their enforcement. These procedures shall include limitations on sales to minors, where liquor may be consumed, persons not allowed to purchase alcoholic beverages, hours, and days when outlets may be open for business, and other appropriate matters and controls.

1-8.02 Sales to Minors—No Tribal operator shall give, sell, or otherwise supply liquor to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

1-8.03 Consumption of Liquor Upon Licensed Premises—No Tribal operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control: The Commission will allow the consumption of liquor and shall identify where liquor may be consumed on Tribal Trust lands.

1-8.04 Conduct on Licensed Premises.

(1) No Tribal operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the State of Oklahoma.

1-8.05 Employment of Minors—No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees eighteen (18) years or older may sell or handle beer or wine provided that there is direct supervision by an adult twenty-one (21) years of age or older.

1-8.06 Operator's Premises open to Commission Inspection—the premises of all operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Commission or its designated representative.

1-8.07 Operator's Record—The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by operators

shall be kept in file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All cancelled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

1-8.08 Records Confidential—All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representative. The Tribe has adopted a Privacy Act where all records and information are kept confidential.

1-8.09 Conformity with State Law—Operators shall comply with State of Oklahoma Liquor and Beer Control standards to the extent required by 18 U.S.C. 1161. However, the Tribe shall have concurrent jurisdiction, as applicable, with the Federal Government over the sale of liquor and beer products within the boundaries of Tribal Trust Lands.

Section 1-9 Tribal Excise Tax Imposed Upon Distribution of Liquor

1-9.01 Tribal Excise Taxes. The Commission shall have authority, as provided by Tribal law, to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. Such tax shall be in amounts equal to at least 5 percent of all retail sales prices, but the Commission may establish tax rates in excess of that 5 percent for any given class of merchandise.

1-9.02 Added to Retail Price. The excise tax levied hereunder shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer.

Section 1-10 Liability for Bills

1-10.01 Liability for bills—The Tribe shall have no legal responsibility for any unpaid bills owed by a liquor and beer outlet to a wholesale supplier or any other person. The Tribe does not waive any immunity it possesses.

Section 1-11 Other Business by Operator

1-11.01 Other Business by Operator—An operator may conduct another business simultaneously with

managing a liquor and beer outlet. PROVIDED, such other business must be approved prior to initiation by majority vote of the Commission. Said other business may be conducted on the same premises as a liquor and beer outlet, but the operator shall be required to maintain separate books of account for the other business.

Section 1-12 Tribal Liability and Credit

1-12.01 Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Tribe harmless from all claims and liability of whatever nature. The Commission shall revoke operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

1-12.02 Insurance—The operator shall maintain at his or her expense adequate insurance covering liability,

fire, theft, vandalism, and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverages deemed advisable.

Section 1-13 Audit and Inspection

1-13.01 All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative for any reasonable time.

1-13.02 Bond for Excise Tax—The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the tribal office monthly unless otherwise specified in writing by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Section 1-14 Revocation of Operator's License

1-14.01 Revocation of Operator's License—Failure of an operator to abide by the requirements of these regulations and any additional regulations or requirements imposed by the Commission will constitute grounds for

revocation of the operator's license as well as enforcement of the penalties provided in 1-15.

Section 1-15 Violation—Penalties

1-15.01 Any person violating these regulations shall be guilty of an offense and subject to a fine of not less than fifty dollars (\$50.00) and not to exceed a maximum of two hundred-fifty dollars (\$250.00). The Bureau of Indian Affairs Court of Indian Offenses, Anadarko Agency, will have jurisdiction over the proceedings.

1-15.02 Any operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Tribe shall be empowered to seize forfeited products.

Section 1-16 Separability

1-16.01 If any provision of the regulation in its application to any person or circumstance is held invalid, the remainder of the regulation and their application to other persons or circumstances is not affected.

Linda L. Richardson,

Acting Assistant Secretary, Indian Affairs.

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