

**ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see DATES*) or comments delivered to an address other than those listed above (*see ADDRESSES*).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

## III. Permit Applications

### Endangered Species

**Applicant: Denver Zoological Gardens, Denver, CO; PRT-213136**

The applicant requests a permit to import eight captive born northern bald ibis (*Geronticus eremita*) from Zoologisch-Botanischer Garten

Wilhelma in Stuttgart, Germany, for the purpose of enhancement of the species through captive breeding and conservation education.

**Applicant: Wildlife Discovery Center – City of Lake Forest, Lake Forest, IL; PRT-02010A**

The applicant requests a permit to import a male American Crocodile (*Crocodylus acutus*) from Cherot-Rose American Crocodile Education Sanctuary, Toledo, Belize that was rescued from the wild for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

**Applicant: Los Angeles Zoo, Los Angeles, CA; PRT-08939A**

The applicant requests a permit to export one male yellow-footed rock wallaby (*Petrogale xanthopus*) born in captivity to Tierpark Berlin, Berlin, Germany for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

**Applicant: Tarzan Zerbini Circus, Webb City, MO; PRT #065145, 065146, 065149**

The applicant request permits to re-issue for re-export and re-import Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are 065145, Marie; 065146, Roxy; and 065149, Schell. This notification covers activities to be conducted by the applicant over a 3-year period and the import of any potential progeny born while overseas.

**Applicant: Steve Martin's Working Wildlife, Frazier Park, CA; PRT #069429 and 069443**

The applicant request permits to re-issue for re-export and re-import African leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are 069429, Ivory and 069443, Crystal. This notification covers activities to be conducted by the applicant over a 3-year period and the import of any potential progeny born while overseas.

### Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under

the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Applicant: James Selman, Gonzales, TX; PRT-03116A**

**Applicant: Gerhard Meier, Highland Park, IL; PRT-03158A**

Dated: April 23, 2010

**Brenda Tapia**

*Program Analyst, Branch of Permits, Division of Management Authority*

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**BILLING CODE 4310-55-S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Choctaw Nation of Oklahoma Alcohol Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Choctaw Nation of Oklahoma's Alcohol Control Ordinance, which was adopted by the Tribal Council of the Choctaw Nation of Oklahoma under Council Bill CB-64-2010 enacted on March 13, 2010. The Alcohol Control Ordinance regulates and controls the manufacture, distribution, possession, and sale of alcohol on Tribal lands of the Choctaw Nation of Oklahoma. The Tribal lands are located in Indian country and this enactment will increase the ability of the Tribal government to control alcohol-related activities within the Tribe's jurisdiction and at the same time will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal services.

**DATES:** *Effective Date:* This Ordinance is effective on May 3, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Diane Buck, Tribal Government Services Officer, Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402-8002, Telephone: (918) 781-4685, Fax (918) 781-4649; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7641.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor

ordinances for the purpose of regulating liquor transactions in Indian country. The governing body of the Choctaw Nation of Oklahoma enacted the legislation on March 13, 2010. The purpose of this Ordinance is to generate revenue to fund needed Tribal programs and services, to promote public safety, and to control all alcohol-related activities within the jurisdiction of the Choctaw Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Alcohol Control Ordinance of the Choctaw Nation of Oklahoma was accepted by the Tribal Council of the Choctaw Nation of Oklahoma on March 13, 2010, through Council Bill CB-64-2010.

Dated: April 22, 2010.

**Paul Tsosie,**

*Chief of Staff—Indian Affairs.*

The Alcohol Control Ordinance of the Choctaw Nation of Oklahoma reads as follows:

**CHOCTAW NATION OF OKLAHOMA  
ALCOHOL CONTROL ORDINANCE  
ARTICLE I. INTRODUCTION.**

**Section 1.1. Title.**

This Ordinance shall be known as the “Choctaw Nation of Oklahoma Alcohol Control Ordinance.”

**Section 1.2. Authority.**

This Ordinance is enacted pursuant to the Act of August 15, 1953, Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. § 1161, and Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma.

**Section 1.3. Purpose.**

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol on Tribal lands of the Choctaw Nation of Oklahoma. The enactment of this Ordinance will enhance the ability of the Choctaw Nation of Oklahoma to control all such alcohol-related activities within the jurisdiction of the Tribe and will provide an important source of revenue for the continued operation and strengthening of the Choctaw Nation of Oklahoma and the delivery of important governmental services.

**Section 1.4. Application of Federal Law.**

Federal law forbids the introduction, possession, and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when in conformity both with the laws of the State and the

Tribe (18 U.S.C. § 1161). As such, compliance with this Ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

**Section 1.5. Administration of Ordinance.**

The Tribal Council, through its powers vested under the Constitution of the Choctaw Nation of Oklahoma and this Ordinance, delegates to the Alcohol Regulatory Authority the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include, but are not limited to, the following actions:

A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees, fines and other penalties;

B. Execute all necessary documents; and

C. Perform all matters and actions incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

**Section 1.6. Sovereign Immunity Preserved.**

A. The Tribe is immune from suit in any jurisdiction except to the extent that the Tribal Council of the Choctaw Nation of Oklahoma or the United States Congress expressly and unequivocally waives such immunity by approval of written tribal resolution or Federal statute.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Choctaw Nation of Oklahoma or the Alcohol Regulatory Authority as an agency of the Choctaw Nation of Oklahoma.

**Section 1.7. Applicability.**

This Ordinance shall apply to all commercial enterprises located within the Tribal lands of the Choctaw Nation of Oklahoma consistent with applicable Federal Liquor Laws.

**Section 1.8. Computation of Time.**

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term “legal holiday” shall mean all legal holidays under Tribal or Federal law. All documents mailed shall be deemed served at the time of mailing.

**Section 1.9. Liberal Construction.**

The provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

**Section 1.10. Collection of Applicable Fees, Taxes, or Fines.**

The Alcohol Regulatory Authority shall have the authority to collect all applicable and lawful fees, taxes, and or fines from any person or Licensee as imposed by this Ordinance. The failure of any Licensee to deliver applicable taxes collected on the sale of Alcoholic Beverages shall subject the Licensee to penalties, including, but not limited to the revocation of said License.

**ARTICLE II. DECLARATION OF PUBLIC POLICY**

**Section 2.1. Matter of Special Interest.**

The manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the jurisdiction of the Choctaw Nation of Oklahoma are matters of significant concern and special interest to the Tribe. The Tribal Council hereby declares that the policy of the Choctaw Nation of Oklahoma is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, possession, and sale of Alcoholic Beverages for commercial purposes and to promote temperance in the use and consumption of Alcoholic Beverages by increasing the Tribe’s control over such activities on Tribal lands.

**Section 2.2. Federal Law.**

The introduction of Alcohol within the jurisdiction of the Tribe is currently prohibited by federal law (18 U.S.C. § 1154), except as provided for therein, and the Tribe is expressly delegated the right to determine when and under what conditions Alcohol, including Alcoholic Beverages, shall be permitted therein (18 U.S.C. § 1161).

**Section 2.3. Need for Regulation.**

The Tribe finds that the Federal Liquor Laws prohibiting the introduction, manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the Tribal lands has proven ineffective and that the problems associated with same should be addressed by the laws of the Tribe, with all such business activities related thereto subject to the taxing and regulatory authority of the Alcohol Regulatory Authority.

#### Section 2.4. Geographic Locations.

The Tribe finds that the introduction, manufacture, distribution, possession, sale, and consumption of Alcohol, including Alcoholic Beverages, shall be regulated under this Ordinance only where such activity will be conducted within or upon Tribal lands.

#### Section 2.5. Definitions.

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

A. "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, including, but not limited to Alcoholic Beverages as defined herein, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for purposes of consumption by humans.

B. "Alcohol Regulatory Authority" means the Members of the Choctaw Nation Business Committee.

C. "Alcoholic Beverage(s)" when used in this Ordinance means, and shall include any liquor, beer, spirits, or wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the State of Oklahoma. Alcoholic Beverages include all forms of "low-point beer" as defined under the laws of the State of Oklahoma.

D. "Applicant" means any person who submits an application to the Alcohol Regulatory Authority for an Alcoholic Beverage License and who has not yet received such a License.

E. "Constitution" means the Constitution of the Choctaw Nation of Oklahoma.

F. "Tribal Council" means the duly elected legislative body of the Choctaw Nation of Oklahoma authorized to act in and on all matters and subjects upon which the Tribe is empowered to act, now or in the future.

G. "Federal Liquor Laws" means all laws of the United States of America that apply to or regulate in any way the introduction, manufacture, distribution, possession, or sale of any form of Alcohol, including, but not limited to 18 U.S.C. §§ 1154 & 1161.

H. "Legal Age" means twenty-one (21) years of age.

I. "License" or "Alcoholic Beverage License" means a license issued by the Alcohol Regulatory Authority authorizing the introduction,

manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes under the provisions of this Ordinance.

J. "Licensee" means a commercial enterprise that holds an Alcoholic Beverage License issued by the Alcohol Regulatory Authority and includes any employee or agent of the Licensee.

K. "Liquor store" means any business, store, or commercial establishment at which Alcohol is sold and shall include any and all businesses engaged in the sale of Alcoholic Beverages, whether sold as packaged or by the drink.

L. "Manufacturer" means any person engaged in the manufacture of Alcohol, including, but not limited to the manufacture of Alcoholic Beverages.

M. "Oklahoma Liquor License" means any license or permit issued by the State of Oklahoma, including any agency, subdivision, or county thereof, regulating any form of Alcohol, including, but not limited to any form of Alcoholic Beverage. Any license or permit issued for the sale or distribution of "low-point beer", as defined under Oklahoma law, shall be considered an "Oklahoma Liquor License" under this Ordinance.

N. "Ordinance" means this Choctaw Nation of Oklahoma Alcohol Control Ordinance, as hereafter amended.

O. The words "package" or "packaged" means the sale of any Alcoholic Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or location designated on the seller's License.

P. "Public place" means and shall include any tribal, county, state, or federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, "public place" shall also include any privately owned business property or establishment that is designed for or may be regularly used by more persons other than the owner of the same, but shall not include the private, family residence of any person.

Q. The words "sale(s)", "sell", or "sold" means the exchange, barter, traffic, furnishing, or giving away for commercial purpose of any Alcoholic Beverage by any and all means, by whatever name commonly used to

describe the same, by any commercial enterprise or person to another person.

R. "Tribal Court" means the Court of General Jurisdiction of the Choctaw Nation.

S. "Tribal land(s)" shall mean and reference the geographic area that includes all land included within the definition of "Indian country" as established and described by federal law and that is under the jurisdiction of the Choctaw Nation of Oklahoma, including, but not limited to all lands held in trust by the federal government, located within the same, as are now in existence or may hereafter be added to.

T. "Tribal law" means the Constitution of the Choctaw Nation of Oklahoma and all laws, ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

U. "Tribe" shall mean the Choctaw Nation of Oklahoma.

### ARTICLE III. SALES OF ALCOHOLIC BEVERAGES.

#### Section 3.1. Prohibition of the Unlicensed Sale of Alcoholic Beverages.

This Ordinance prohibits the introduction, manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes, other than where conducted by a Licensee in possession of a lawfully issued License in accordance with this Ordinance. The Federal Liquor Laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to all penalties and provisions of any and all applicable Federal, Tribal and or State laws.

#### Section 3.2. License Required.

A. Any and all sales of Alcoholic Beverages conducted upon Tribal lands shall be permitted only where the seller: (i) Holds a current Alcoholic Beverage License, duly issued by the Alcohol Regulatory Authority; and (ii) prominently and conspicuously displays the License on the premises or location designated on the license.

B. A Licensee has the right to engage only in those activities involving Alcoholic Beverages expressly authorized by such License in accordance with this Ordinance.

#### Section 3.3. Sales for Cash.

All sales of Alcoholic Beverages conducted by any person or commercial enterprise upon Tribal lands shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity, except that this provision does not prohibit the payment of same by use of

credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

#### **Section 3.4. Personal Consumption.**

All sales of Alcoholic Beverages shall be for the personal use and consumption of the purchaser and or his/her guest(s) of Legal Age. The re-sale of any Alcoholic Beverage purchased within or upon Tribal lands by any person or commercial enterprise not licensed as required by this Ordinance is prohibited.

#### **Section 3.5. Tribal Enterprises.**

No employee or operator of a commercial enterprise owned by the Tribe shall sell or permit any person to open or consume any Alcoholic Beverage on any premises or location, or any premises adjacent thereto, under his or her control, unless such activity is properly licensed as provided in this Ordinance.

### **ARTICLE IV. LICENSING.**

#### **Section 4.1. Eligibility.**

Only Applicants operating upon Tribal lands shall be eligible to receive a License for the sale of any Alcoholic Beverage under this Ordinance.

#### **Section 4.2. Application Process.**

A. The Alcohol Regulatory Authority may cause a License to be issued to any Applicant as is it may deem appropriate, but not contrary to the best interests of the Tribe and its Tribal members. Any Applicant that desires to receive any Alcoholic Beverage License, and that meets the eligibility requirements pursuant to this Ordinance, must apply to the Alcohol Regulatory Authority for the desired class of License. Any such person as may be empowered to make such application, shall: (i) Fully and accurately complete the application provided by the Alcohol Regulatory Authority; (ii) pay the Alcohol Regulatory Authority such application fee as may be required; and (iii) submit such application to the Alcohol Regulatory Authority for consideration.

B. All application fees paid to the Alcohol Regulatory Authority are nonrefundable upon submission of any such application. Each application shall require the payment of a separate application fee. The Alcohol Regulatory Authority may waive fees at its discretion.

#### **Section 4.3. Term and Renewal of Licenses.**

A. The term of all Licenses issued under this Ordinance shall be for a period not to exceed two (2) years from

the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and or regulations hereafter adopted by the Alcohol Regulatory Authority.

B. Each License may be considered for renewal by the Alcohol Regulatory Authority annually upon the Licensee's submission of a new application and payment of all required fees. Such renewal application shall be submitted to the Alcohol Regulatory Authority at least sixty (60) days and no more than ninety (90) days prior to the expiration of an existing License. If a License is not renewed prior to its expiration, the Licensee shall cease and desist all activity as permitted under the License, including the sale of any Alcoholic Beverages, until the renewal of such License is properly approved by the Alcohol Regulatory Authority.

#### **Section 4.4. Classes of Licenses.**

The Alcohol Regulatory Authority shall have the authority to issue the following classes of Alcoholic Beverage License:

A. "Retail On-Site General License" authorizing the Licensee to sell Alcoholic Beverages at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where Alcoholic Beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. "Retail On-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

C. "Retail Off-Site General License" authorizing the Licensee to sell Alcoholic Beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

D. "Retail Off-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

E. "Manufacturer's License" authorizing the Applicant to manufacture Alcoholic Beverages for the purpose of wholesale to retailers on or off Tribal lands, but not authorizing the sale of Alcoholic Beverages at retail.

F. "Temporary License" authorizing the sale of Alcoholic Beverages on a

temporary basis for premises or at a location temporarily occupied by the Licensee for a picnic, social gathering, or similar occasion. A Temporary Licenses may not be renewed upon expiration. A new application must be submitted for each such License.

#### **Section 4.5. Application Form and Content.**

An application for any License shall be made to the Alcohol Regulatory Authority and shall contain at least the following information:

A. The name and address of the Applicant, including the names and addresses of all of the principal officers, directors, managers, and other employees with primary management responsibility related to the sale of Alcoholic Beverages;

B. The specific area, location, and or premise(s) for which the License is applied;

C. The hours that the Applicant will sell the Alcoholic Beverages;

D. For Temporary Licenses, the dates for which the License is sought to be in effect;

E. The class of Alcoholic Beverage License applied for, as set forth in Section 4.4 herein;

F. Whether the Applicant has an Oklahoma Liquor License; a copy of such License, and any other applicable license, shall be submitted to and retained by the Alcohol Regulatory Authority;

G. A sworn statement by the Applicant to the effect that none of the Applicant's officers, directors, managers, and or employees with primary management responsibility related to the sale of Alcoholic Beverages, have ever been convicted of a felony under the law of any jurisdiction, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

H. The application shall be signed and verified by the Applicant under oath and notarized by a duly authorized representative.

#### **Section 4.6 Action on the Application.**

The Alcohol Regulatory Authority shall have the authority to deny or approve the application, consistent with this Ordinance and the laws of the Tribe. Upon approval of an application, the Alcohol Regulatory Authority shall issue a License to the Applicant in a form to be approved from time to time by the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall have the authority to issue a temporary or provisional license pending the foregoing approval process.

#### **Section 4.7 Denial of License or Renewal.**

An application for a new License or License renewal may be denied for one or more of the following reasons:

- A. The Applicant materially misrepresented facts contained in the application;
- B. The Applicant is currently not in compliance with this Ordinance or any other Tribal or Federal laws;
- C. Granting of the License, or renewal thereof, would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

D. The Applicant has failed to complete the application properly or has failed to tender the appropriate fee.

E. A verdict or judgment has been entered against or a plea of nolo contendere has been entered by an Applicants' officer, director, manager, or any other employee with primary management responsibility related to the sale of Alcoholic Beverages, to any offense under Tribal, Federal, or State laws prohibiting or regulating the sale, use, possession, or giving away of Alcoholic Beverages. No person who has been convicted of a felony shall be eligible to hold a license.

#### **Section 4.8. Temporary Denial.**

If the application is denied solely on the basis of Section 4.7(D), the Alcohol Regulatory Authority shall, within fourteen (14) days of such action, deliver in person or by mail a written notice of temporary denial to the Applicant. Such notice of temporary denial shall: (i) Set forth the reason(s) for denial; and (ii) state that the temporary denial will become a permanent denial if the reason(s) for denial are not corrected within fifteen (15) days following the mailing or personal delivery of such notice.

#### **Section 4.9. Cure.**

If an Applicant is denied a License, the Applicant may cure the deficiency and resubmit the application for consideration. Each re-submission will be treated as a new application for License or renewal of a License, and the appropriate fee shall be due upon re-submission.

#### **Section 4.10. Investigation.**

Upon receipt of an application for the issuance, transfer, or renewal of a License, the Alcohol Regulatory Authority shall make a thorough investigation to determine whether the Applicant and the premises or location for which a License is applied for qualifies for a License, and whether the provisions of this Ordinance have been complied with. The Alcohol Regulatory

Authority shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

#### **Section 4.11. Procedures for Appealing a Denial or Condition of Application.**

Any Applicant for a License or Licensee who believes the denial of their License or request for renewal of their License was wrongfully determined may appeal the decision of the Alcohol Regulatory Authority in accordance with the Alcohol Regulatory Authority Rules and Regulations.

#### **Section 4.12. Revocation of License.**

The Alcohol Regulatory Authority may initiate action to revoke a License whenever it is brought to the attention of the Alcohol Regulatory Authority that a Licensee:

- A. Has materially misrepresented facts contained in any License application;
- B. Is not in compliance with this Ordinance or any other Tribal, State, or Federal laws material to the issue of Alcohol licensing;
- C. Failed to comply with any condition of a License, including failure to pay taxes on the sale of Alcoholic Beverages or failure to pay any fee required under this Ordinance;
- D. Has had a verdict, or judgment entered against, or has had a plea of nolo contendere entered by any of its officers, directors, managers or any employees with primary responsibility over the sale of Alcoholic Beverages, as to any offense under Tribal, Federal or State laws prohibiting or regulating the sale, use, or possession, of Alcoholic Beverages or a felony of any kind.

E. Failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the premises or location designated in the License, or any adjacent area under their control, within a reasonable time after receipt of a notice to make such corrections has been mailed or personally delivered by the Alcohol Regulatory Authority; or

F. Has had their Oklahoma Liquor License suspended or revoked.

#### **Section 4.13. Initiation of Revocation Proceedings.**

Revocation proceedings may be initiated by either: (i) the Alcohol Regulatory Authority, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (ii) by any person who files a complaint with the Alcohol Regulatory Authority. The complaint shall be in writing and signed by the maker. Both the complaint and resolution shall state facts showing that there are specific grounds under this

Ordinance, which would authorize the Alcohol Regulatory Authority to revoke the License(s).

#### **Section 4.14. Revocation Hearing.**

Any hearing held on any complaint shall be held under such rules and regulations as the Alcohol Regulatory Authority may prescribe. Both the Licensee and the person filing the complaint shall have the right to present witnesses to testify and to present written documents in support of their positions to the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall render its decision within sixty (60) days after the date of the hearing. The decision of the Alcohol Regulatory Authority shall be final.

#### **Section 4.15. Delivery of License.**

Upon revocation of a License, the Licensee shall forthwith deliver their License to the Alcohol Regulatory Authority.

#### **Section 4.16. Transferability of Licenses.**

Alcoholic Beverage Licenses shall be issued to a specific Licensee for use at a single premises or location (business enterprise) and shall not be transferable for use by any other premises or location. Separate Licenses shall be required for each of the premises of any Licensee having more than one premises or location where the sale, distribution, or manufacture of Alcoholic Beverages may occur.

#### **Section 4.17. Posting of License.**

Every Licensee shall post and keep posted its License(s) in a prominent and conspicuous place(s) on the premises or location designated in the License. Any License posted on a premises or location not designated in such License shall not be considered valid and shall constitute a separate violation of this Ordinance.

### **ARTICLE V. POWERS OF ENFORCEMENT.**

#### **Section 5.1. Alcohol Regulatory Authority.**

In furtherance of this Ordinance, the Alcohol Regulatory Authority shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

- A. To adopt and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands of the Choctaw Nation of Oklahoma;
- B. To employ such persons as may be reasonably necessary to perform all administrative and regulatory

responsibilities of the Alcohol Regulatory Authority hereunder. All such employees shall be employees of the Tribe;

C. To issue Licenses permitting the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands;

D. To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of Licenses hereunder;

E. To deny applications and renewals for Licenses and revoke issued Licenses as provided in this Ordinance;

F. To bring such other actions as may be required to enforce this Ordinance;

G. To prepare and deliver such reports as may be required by law or regulation; and

H. To collect taxes, fees, and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of the same.

### **Section 5.2. Right of Inspection.**

Any premises or location of any commercial enterprise licensed to manufacture, distribute, or sell Alcoholic Beverages pursuant to this Ordinance shall be open for inspection by the Alcohol Regulatory Authority for the purpose of insuring the compliance or noncompliance of the Licensee with all provisions of this Ordinance and any applicable Tribal laws or regulations.

### **Section 5.3. Limitation of Powers.**

In the exercise of its powers and duties under this Ordinance, agents, employees, or any other affiliated persons of the Alcohol Regulatory Authority shall not, whether individually or as a whole accept any gratuity, compensation, or other thing of value from any Alcoholic Beverage wholesale, retailer, or distributor, or from any Applicant or Licensee.

## **ARTICLE VI. RULES, REGULATIONS, AND ENFORCEMENT.**

### **Section 6.1. Manufacture, Sale, or Distribution Without License.**

Any person who manufactures, distributes, sells, or offers for sale or distribution, any Alcoholic Beverage in violation of this Ordinance, or who operates any commercial enterprise on Tribal lands that has Alcoholic Beverages for sale or in their possession without a proper License properly posted, as required in Section 4.17, shall be in violation of this Ordinance.

### **Section 6.2. Unlawful Purchase.**

Any person who purchases any Alcoholic Beverage on Tribal lands from

a person or commercial enterprise that does not have a License to manufacture, distribute, or sell Alcoholic Beverages properly posted shall be in violation of this Ordinance.

### **Section 6.3. Intent to Sell.**

Any person who keeps, or possesses, or causes another to keep or possess, upon his person or any premises within his control, any Alcoholic Beverage, with the intent to sell or to distribute the same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

### **Section 6.4. Sale to Intoxicated Person.**

Any person who knowingly sells or serves an Alcoholic Beverage to a person who is visibly intoxicated shall be in violation of this Ordinance.

### **Section 6.5. Public Conveyance.**

Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to consume any Alcoholic Beverage in any such public conveyance shall be in violation of this Ordinance.

### **Section 6.6. Age of Consumption.**

No person under the age of twenty-one (21) years may possess or consume any Alcoholic Beverage on Tribal lands, and any such possession or consumption shall be in violation of this Ordinance.

### **Section 6.7. Serving Underage Person.**

No person shall sell or serve any Alcoholic Beverage to a person under the age of twenty-one (21) or permit any such person to possess or consume any Alcoholic Beverages on the premises or on any premises under their control. Any Licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every Alcoholic Beverage sold or served and or consumed by such an underage person.

### **Section 6.8. False Identification.**

Any person who purchases or who attempts to purchase any Alcoholic Beverage through the use of false, or altered identification that falsely purports to show such person to be over the age of twenty-one (21) years shall be in violation of this Ordinance.

### **Section 6.9. Documentation of Age.**

Any seller or server of any Alcoholic Beverage shall be required to request proper and satisfactory documentation of age of any person who appears to be thirty-five (35) years of age or younger. When requested by a seller or server of Alcoholic Beverages, every person shall

be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph prior to the purchase or delivery of any Alcoholic Beverage. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

A. Drivers License or personal identification card issued by any state department of motor vehicles or tribal or federal government agency;

B. United States active duty military credentials;

C. Passport.

Any seller, server, or person attempting to purchase an Alcoholic Beverage, who does not comply with the requirements of this section shall be in violation of this Ordinance and subject to civil penalties, as determined by the Alcohol Regulatory Authority.

### **Section 6.10. General Penalties.**

A. Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation, except as provided herein. The Alcohol Regulatory Authority may adopt by resolution a separate written schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general public health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars (\$500.00) per violation limitation set forth above. The civil penalties provided for herein shall be in addition to any criminal penalties that may be imposed under any other Tribal, Federal, or State laws.

B. Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, may be subject to ejection or exclusion from any Gaming Establishment/Facility pursuant to Chapter IV Sections 4.02–4.03 of the Choctaw Nation of Oklahoma Revised Gaming Ordinance and any policies, procedures and guidelines related thereto.

### **Section 6.11. Initiation of Action.**

Any violation of this Ordinance shall constitute a public nuisance. The Alcohol Regulatory Authority may initiate and maintain an action in Tribal Court or any court of competent

jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance. The Alcohol Regulatory Authority shall not be required to post any form of bond in such action.

**Section 6.12. Contraband; Seizure; Forfeiture.**

All Alcoholic Beverages held, owned, or possessed within Tribal lands by any person, commercial enterprise, or Licensee operating in violation of this Ordinance are hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

A. Seizure of contraband as defined in this Ordinance shall be done by the Alcohol Regulatory Authority, with the assistance of law enforcement upon request, and all such contraband seized shall be inventoried and maintained by the Alcohol Regulatory Authority pending a final order of the Alcohol Regulatory Authority. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received there from be maintained by law enforcement pending a final order of the Alcohol Regulatory Authority. The proceeds from such a sale are subject to forfeiture in lieu of the seized contraband.

B. Within ten (10) days following the seizure of such contraband, a hearing shall be held by the Alcohol Regulatory Authority, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

C. Notice of the hearing of at least ten (10) days shall be given to the person from whom the property was seized and the owner, if known. If the owner is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on Tribal lands. The notice shall describe the property seized, and the time, place, and cause of seizure, and list the name and place of residence, if known, of the person from whom the property was seized. If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Alcohol Regulatory Authority shall thereupon enter a judgment of forfeiture, and all such contraband shall become the property of the Choctaw Nation of Oklahoma. If upon the hearing the evidence does not warrant forfeiture, the seized property shall be immediately returned to the owner.

**ARTICLE VII. NUISANCE AND ABATEMENT.**

**Section 7.1. Nuisance.**

Any room, house, building, vehicle, structure, premises, or other location where Alcoholic Beverages are sold, manufactured, distributed, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal, Federal, or State laws related to the transportation, possession, distribution or sale of Alcoholic Beverages, and including all property kept therein, or thereon, and used in, or in connection with such violation is hereby declared to be a nuisance upon any second or subsequent violation of the same.

**Section 7.2. Action to Abate Nuisance.**

Upon a determination by the Alcohol Regulatory Authority that any such place or activity is a nuisance under any provision of this Ordinance, the Tribe or the Alcohol Regulatory Authority may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the such injunctive relief, or until the owner, lessee, or tenant shall: (i) give bond of no less than Twenty-Five Thousand dollars (\$25,000) to be held by the Alcohol Regulatory Authority and be conditioned that any further violation of this Ordinance or other Tribal laws will result in the forfeiture of such bond; and (ii) pay of all fines, costs and assessments against him/her/it. If any condition of the bond is violated, the bond shall be forfeit and the proceeds recoverable by the Alcohol Regulatory Authority through an order of the Tribal Court. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance.

**ARTICLE VIII. REVENUE AND REPORTING.**

**Section 8.1. Use and Appropriation of Revenue Received.**

All fees, taxes, payments, fines, costs, assessments, and any other revenues collected by the Alcohol Regulatory Authority under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance. Any excess funds shall be subject to and available for appropriation by the Alcohol Regulatory Authority to the Tribe for essential governmental and social services related to drug and

alcohol education, counseling, treatment, and law enforcement.

**Section 8.2. Audit.**

The Alcohol Regulatory Authority and its handling of all funds collected under this Ordinance is subject to review and audit by the Tribe as part of the annual financial audit of the Alcohol Regulatory Authority.

**Section 8.3. Reports.**

The Alcohol Regulatory Authority shall submit to the Tribal Council a quarterly report and accounting of all fees, taxes, payments, fines, costs, assessments, and all other revenues collected and expended pursuant to this Ordinance.

**ARTICLE IX. MISCELLANEOUS.**

**Section 9.1. Severability.**

If any provision or application of this Ordinance is found invalid and or unenforceable by a court of competent jurisdiction, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances.

**Section 9.2. Construction.**

Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Choctaw Nation of Oklahoma.

**Section 9.3. Effective Date.**

This Ordinance shall be effective upon certification by the Secretary of the Interior, publication in the **Federal Register** and recorded in the office of the Clerk of the Tribal Court.

**Section 9.4. Prior Law Repealed.**

Any and all prior enactments of the Choctaw Nation of Oklahoma that are inconsistent with the provisions of this Ordinance are hereby rescinded.

**Section 9.5. Amendment.**

This Ordinance may only be amended by written resolution approved by the Tribal Council.

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