



(4337-15-P)

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**[178A2100DD/AAAA003010/A0T602020.999900]**

**Three Affiliated Tribes; Amendments to Alcoholic Beverages Control Law**

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

**ACTION:** Notice.

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**SUMMARY:** This notice publishes an amendment to the Three Affiliated Tribes' Alcoholic Beverages Control Law (Law). The amended Law supersedes the existing Three Affiliated Tribes Alcoholic Beverages Control Law, first enacted by the Three Affiliated Tribes in 1986, with an amendment last published in the Federal Register on March 12, 2007 (72 FR 11049).

**DATES:** This Law shall become effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd Gravelle, Supervisory Tribal Operations Specialist, Great Plains Regional Office, Bureau of Indian Affairs, 115 Fourth Avenue South East, Suite 400, Aberdeen, South Dakota 57401 Telephone: (605) 226-7376, Fax: (605) 226-7379.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Pub. L. 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 control laws for the purpose of regulating liquor transactions in Indian country. The Three Affiliated Tribes' Business Council first

adopted the Alcoholic Beverages Control Law, published in the *Federal Register*, on February 6, 1987, (52 FR 3869-02). The Three Affiliated Tribes' Business Council duly adopted an amendment to Chapter II, Section 5 of the Law that was published in the *Federal Register* on March 12, 2007 (72 FR 11049). This *Federal Register* Notice comprehensively amends and supersedes the existing Alcoholic Beverages Control Law, enacted by the Three Affiliated Tribes' Business Council on November 22, 2016. By the delegated authority contained in 3 IAM 4.4, the Great Plains Regional Director, Bureau of Indian Affairs, approved the amendment to the Alcoholic Beverage Control Ordinance on January 4, 2017. 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 the Three Affiliated Tribes' Business Council, duly adopted these amendments to the Alcoholic Beverages Control Law on November 22, 2016.

Dated: February 10, 2017

Michael S. Black,  
*Acting Assistant Secretary–Indian Affairs.*

The Three Affiliated Tribes' Alcoholic Beverages Control Law, as amended, shall read as follows:

## **THREE AFFILIATED TRIBES ALCOHOLIC BEVERAGES CONTROL LAW**

### **Chapter I. General Provisions**

#### ***Section 1. Definitions***

In this Ordinance, (1) “Alcohol” shall mean neutral spirits distilled at or above 190° proof, whether or not such product is subsequently reduced, for nonindustrial use.

(2) “Alcoholic beverages” shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

(3) “Beer” shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.

(4) “Distilled spirits” shall mean any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

(5) “Licensed premises” means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and shall be delineated by diagram or blueprint which shall be included with the license application or the license renewal application.

(6) “Liquor” shall mean any alcoholic beverage except beer.

(7) “On-Sale” shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold.

(8) “Off-Sale” shall mean the sale of any alcoholic beverage for consumption off the premises where sold.

(9) “Sale” shall mean the transfer of bottled or canned alcoholic beverage for currency exchange of title to such alcoholic beverages.

(10) “Sparkling wine” shall mean wine made effervescent with carbon dioxide.

(11) “Transport” shall mean the introduction of alcoholic beverages onto the Fort Berthold Reservation by any means of conveyance for the purpose of sale, or distribution, to any licensed retailer.

(12) “Tribal Council” shall mean the governing body of the Three Affiliated Tribes.

(13) “Wine” shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

(14) The terms, “the provisions of this Ordinance” as provided in this Ordinance, or similar terms, shall include all rules and regulations established by the Tribal Legal Department, and approved by Council, to aid in the administration or enforcement of this Ordinance.

## ***Section 2. Public Policy Declared***

This Ordinance shall be cited as the “Three Affiliated Tribes Alcoholic Beverages Control Law” and, pursuant to the constitutional and inherent sovereignty of the Three Affiliated Tribes, along with the authority delegated to the Tribe by the Congress of the United States to regulate the manufacture, distribution, sale, possession and consumption of alcoholic beverages within the territory of the Tribe, shall be exercised for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Fort Berthold Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above declared purpose. It is the Three Affiliated Tribes' declared intent in enacting this Ordinance to prohibit all traffic in alcoholic beverages on the Fort Berthold Indian Reservation except to the extent allowed and permitted under the express terms of this Ordinance.

### ***Section 3. Exceptions***

Nothing contained in this title shall be construed to apply to the following articles, when they are unfit for beverages purposes:

- (1) Denatured alcohol produced and used pursuant to acts of Congress, and the regulations thereunder;
- (2) Patent, propriety, medical, pharmaceutical, antiseptic, and toilet preparations;
- (3) Flavoring extracts, syrups, and food products; nor to the manufacture or sale of said articles containing alcohol. This title shall not apply to wines delivered to priests, rabbis, and ministers for sacramental use.

### ***Section 4. General Prohibition***

It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, or transport alcoholic beverages on the Fort Berthold Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

## **Chapter II. Retail Licensing**

### ***Section 1. Tribal Retail License Required***

No person shall engage in the sale of alcoholic beverages at retail without first securing an appropriate license from the Three Affiliated Tribes as provided herein.

### ***Section 2. Qualifications for Retail License***

No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

- (1) The applicant, other than corporate, must be a legal resident of the United States and a resident of the Fort Berthold Indian Reservation and be a person of good moral character.
- (2) If the applicant is a corporation then the manager of the licensed premises and its officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be properly registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.
- (3) The applicant or manager must not have been convicted of an offense determined by the Three Affiliated Tribes to have a direct bearing upon an applicant's or manager's ability to serve the reservation public as a licensed alcoholic beverage retailer.
- (4) The Three Affiliated Tribes may also require the applicant to set forth such other information in this application as is necessary to enable them to determine if a license should be granted.

### ***Section 3. License Fees***

The fee for an annual on and off sale liquor license shall be set by tribal resolution at not less than two hundred dollars nor more than two thousand and one hundred dollars. The fee for an annual on and off sale beer license shall be set by tribal resolution at not less than fifty dollars nor more than six hundred dollars.

### ***Section 4. Special Permit Authorized***

The Three Affiliated Tribes may by special permit authorize an on sale, off sale, or on or off sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events on licensed premises as may be designated by the permit. A fee for the special permit may be set by tribal resolution at not more than twenty-five dollars. The permit shall not be valid for a period greater than three consecutive days.

### ***Section 5: Dispensing Prohibited on Certain Days***

A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between the hours of two a.m. and twelve noon on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition a person may not provide off-sale after one a.m. on Thanksgiving Day.

### ***Section 6. Prohibitions as to Persons Under Twenty-One Years of Age***

No licensee shall dispense alcoholic beverages to a person under twenty-one years of age or permit such person to remain on the licensed premises while alcoholic beverages are being sold or displayed. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed, if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area or if (1) employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or (2) if the person is a law enforcement officer entering the premises in the performance of official duty. Any premises where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age.

### **Chapter III. Wholesale Licensing**

#### ***Section 1. Tribal Wholesale License***

No person shall engage in the sale of alcoholic beverages at wholesale without first securing an appropriate license from the Three Affiliated Tribes as provided herein. Such a license shall allow sale only to licensed retailers.

#### ***Section 2. Qualifications for Wholesale License***

No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

(1) Applicant other than corporate must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a citizen of the United States and a person of good moral character, and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.

(2) The Tribal Business Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

#### ***Section 3. License Fees***

The fee for an annual wholesale license shall be set by tribal resolution at not less than two hundred dollars nor more than one thousand and one hundred dollars.

## **Chapter IV. Transport Licensing**

### ***Section 1. Tribal Transport License Required***

No person shall engage in the transport for sale, or distribution of alcoholic beverages on the Fort Berthold Reservation without first securing an appropriate license from the Three Affiliated Tribes as provided herein. Such a license shall allow the delivery, or distribution, of alcoholic beverages only to licensed retailers.

### ***Section 2. Qualifications for License***

No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee showing the following qualifications:

(1) An Applicant other than corporate must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a citizen of the United States and a person of good moral character, and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.

(2) The Tribal Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

### ***Section 3. License Fees***

The fee for an annual transport license shall be set by tribal resolution at not less than two hundred dollars and no more than one thousand and one hundred dollars.

## **Chapter V. Taxation**

### ***Section 1. Tax on retail sales of alcoholic beverages.***

(1) There is hereby imposed a tax of seven percent (7%) on the gross receipts of all sales at retail of alcoholic beverages within the exterior boundaries of the Fort Berthold Reservation.

(2) Licensed alcoholic beverage retailers shall be liable for the collection and remittance of the tax on the retail sale price of alcoholic beverages. Licensed alcoholic beverage retailers shall keep accurate records of all sales of alcoholic beverages and shall file monthly returns with the Three Affiliated Tribes' Tax Commission, on such forms as the Tax Commission may require, showing the quantity and the price of alcoholic beverages sold at retail, along with the amount of the tax due and other information which the

department may reasonably require. Said monthly return shall be transmitted to the Tax Commission no later than 30 days after the month covered by the return. The tax due for that month shall be remitted together with the monthly return.

(3) Licensed alcoholic beverage retailers shall keep, in current and available form on the licensed premises, records of all purchases, sales, and quantities on hand and such other information as the Tax Commission may reasonably require. The Tax Commission may require from any licensee any reports he shall prescribe, and he may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by any such licensee in connection with his business, which in the judgment of the Tax Commission may be necessary to administer and discharge his duties, to secure the maximum of revenue to be paid, and to carry out the provisions of law. If default is made, or if any such licensee fails or refuses to furnish any other reports or information referred to upon request therefore, the Tax Commission may enter the premises of such licensee where the records are kept and make such examination as is necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

### ***Section 2. Reports Required on Shipments of Beverages into Reservation***

Any person who transports, sells or ships alcoholic beverages for sale or distribution within this Reservation shall forward to the Tax Commission such a report as the Tax Commission shall require, giving the name and address of the licensee or person making the purchase, the quantity and kind of alcoholic beverages sold, the manner of delivery and such other information as the Tax Commission requires.

### ***Section 3. Administration and Enforcement***

The provisions of the Tribal Tax Code of the Three Affiliated Tribes pertaining to all aspects of the administration and enforcement of Tribal taxes shall govern the administration and enforcement of the tax on retail sales of alcoholic beverages imposed herein.

## **Chapter VI. Penalties Imposed for Violations of Ordinance**

### ***Section 1. General Penalties.***

Anyone violating this ordinance shall be subject to civil penalties and/or suspension or revocation of their tribal license according to a schedule of penalties established by the Tribal Legal Department and approved for publication by the Tribal Business Council.

### ***Section 2. Hearing on Alleged Violations***

Anyone having information that a person has violated any provisions of this ordinance may file with the Tribal Legal Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Legal Department shall set the matter for hearing not later than the next regular meeting of the Tribal Council. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him as well to present evidence and witnesses in his own defense.

### ***Section 3. Suspension or Revocation of License***

If after such hearing the Tribal Council finds the violation set forth in the affidavit has been proved by the evidence, an order shall be served on the licensee revoking or suspending his license for a period of time and imposing such other civil penalties as are consistent with a policy established by the Tribal Legal Department and approved by the Tribal Business Council. Such action may be appealed to the Tribal Court which shall have jurisdiction to either vacate, remand or modify the Tribal Council's action, except that the order revoking or suspending the license, or imposing other penalties shall be effective while the appeal is pending.

### ***Section 4. Other Penalties***

The Tribal Business Council may impose such other civil penalties, according to a policy established by the Tribal Legal Department and approved by the Tribal Business Council, for any violation of this Ordinance including the failure to apply for or to possess the appropriate tribal license. Such tribal action imposing such penalties on any person may be appealed to Tribal Court, which shall have jurisdiction to either vacate, remand or modify the Tribal Council's action except that the imposition of the penalties shall be effective while the appeal is pending.

### ***Section 5. Powers of Tribal Chairman***

The Tribal Chairman, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and subpoena and examine witnesses.

### ***Section 6. Effect of Findings on Tribal Court***

The Tribal Court, in any matter heard on appeal under this ordinance, shall give substantial weight to the findings of fact made by the Tribal Business Council.

### ***Section 6. Sovereign Immunity***

The jurisdiction of the Tribal Council and Tribal Court under this Chapter shall be exclusive. Except as authorized in this Chapter with respect to the Tribal Court's jurisdiction to hear appeals under sections 3 and 4, nothing in this Ordinance shall be construed to waive the Tribe's sovereign immunity from suit.

## **Chapter VII. Miscellaneous Provisions**

### ***Section 1. Agreement by Licensee to Grant Access for Inspection Purposes***

Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Tribal Tax Commission. These inspections shall be conducted by a duly appointed designee of the Tribal Tax Commission, or tribal or federal police. All books and records dealing with the sale or ownership of alcoholic beverages shall be open for inspection purposes by the duly authorized tribal authorities.

### ***Section 2. Recovery of Damages Resulting From Intoxication***

Every spouse, child, parent, guardian, employer, or other person who is injured by any intoxicated person, or in consequence of intoxication, shall have a right of action in Tribal Court against any person who caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages for all damages sustained and in the event death ensues the survivors of the decedent may prosecute such an action in their own name.

### ***Section 3. Surety Bond Required***

(1) Every application for a license under this Ordinance, unless exempted by the Tribal Business Council, must be accompanied by a bond, which shall become operative and effective upon the issuance of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of \$10,000.00 and must be in a form approved by the Tribal Business Council and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this Ordinance and all existing laws relating to the conduct of its business and will promptly pay to the Three Affiliated Tribes when due all license fees payable by him under the provisions of this Ordinance and also any costs and penalties assessed against him in any determination that he violated the terms of this Ordinance.

(2) All bonds required by this Ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account with a bank.

***Section 4. Severability***

If any section of this Ordinance, or any part thereof, is held to be invalid or inapplicable for any cause whatsoever, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared invalid.

***Section 5. Compliance with 18 U.S.C. 1161***

The Tribal Business Council finds that this Ordinance complies with the requirements of 18 U.S.C. section 1161.

***Section 6. All Prior Ordinances And Resolutions Repealed***

All prior ordinances and resolutions or provisions thereof that are inconsistent with any provisions of this ordinance are hereby repealed.

[FR Doc. 2017-03839 Filed: 2/27/2017 8:45 am; Publication Date: 2/28/2017]