

There is hereby appropriated to the uses and purposes of said Commission from the tribal funds the sum of \$15,000.

#### Section 8. Powers of the Commission

The Commission hereby empowered to establish and operate a Tulalip Liquor Store within the exterior boundaries of the Tulalip Indian Reservation upon tribal property, not otherwise, and to operate the same and sell liquor thereat for such price as it shall from time to time fix and determine.

#### Section 9. Excise Tax Levy

There is hereby levied and shall be collected an excise tax upon each sale of liquor, except beer and wine, in whatever package or container, or whether at wholesale or retail, of three (3) cents per fluid ounce or fraction thereof contained in such package container.

#### Section 10. Tax on Retail Sale

There is hereby levied and shall be collected a tax upon each retail sale of wine and beer in the original package at a rate equal to five percent (5%) of the selling price, which tax shall be paid by the buyer to the seller who shall collect the same and hold it in trust for payment to the Tulalip Liquor Commission in the same manner and at the same time the seller would be required to pay Washington State Retail Sales Tax pursuant to RECW 82.08.150 to the State of Washington if such tax were applicable, but regardless of whether or not such State tax is applicable. All records and tax returns required to be kept by seller by the State of Washington as if such State tax were applicable, shall be kept by the seller and made available for inspection. Such shall be prima facie proof of the amount of tax due and collectable; that the provisions of this paragraph requiring records, tax returns and payment of tax to the Commission shall not be applicable to sales made by the Commission.

#### Section 11. Tax Remit

The Commission shall remit to the Treasurer of the Tulalip Tribe on the twenty-fifth (25) day of every month to be deposited in the tribal treasury all moneys collected by it in the preceding month by reason of the levy of excise tax. Said tax shall be added to the sale price of liquor sold and be collected from the purchaser thereof the Commission shall also regularly remit for similar deposit to said Treasurer all retail sales taxes collected by it upon sales of beer and wine.

#### Section 12. Conformity With the State Law

Nothing herein contained shall be construed to supersede the substantive laws of the State of Washington effective within the exterior boundaries of the Tulalip Indian Reservation and, where not inconsistent herewith, the substantive standards of the criminal laws of the State of Washington regarding sale, consumption and use of liquor shall apply.

#### Section 13. Severability and Construction

If any clause, part, or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the operation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the State of Washington it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of the act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections.

#### Section 14. Effective Date

This Ordinance shall be and become effective after thirty (30) days of publication by the United States Department of the Interior's certification in the **Federal Register**.

#### Section 15. Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver or limitation of the sovereign immunity of the Tulalip Tribes, except as its sovereign immunity has been waived by the Tulalip Tribes' Tort Claims Ordinance #122.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Fort Sill Apache Tribe Alcohol Control Ordinance

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

**ACTION:** Notice.

**SUMMARY:** This notice publishes Fort Sill Apache Tribe Alcohol Control

Ordinance. The Ordinance regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, 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 March 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Chaney, Tribal Government Services Officer, Southern Plains Regional Office, WCD Office Complex, PO Box 368, Anadarko, OK 73005, Telephone: (405) 247-1537, Fax (405) 247-9240; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street NW., Mail Stop 4513-MIB, Washington, DC 20240, Telephone: (202) 513-7627.

**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 Fort Sill Apache Tribe of Oklahoma Tribal Business Committee adopted its Alcohol Control Ordinance by Resolution No. FSABC-2008-2-A on August 21, 2007. This liquor control ordinance amends the first alcohol control ordinance published in the **Federal Register** for the Tribe. The purpose of this Ordinance is to govern the sale, possession, and distribution of alcohol within tribal lands of the Tribe.

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 Fort Sill Apache Tribe of Oklahoma was duly adopted by the Business Committee on August 21, 2007.

Dated: March 17, 2009.

**George Skibine,**

*Deputy Assistant Secretary, for Policy and Economic Development.*

The Fort Sill Apache Tribe Alcohol Control Ordinance reads as follows:

**Article I—Introduction***Section 3–8–010. Title*

This Ordinance shall be known as the “Fort Sill Apache Tribe Alcohol Control Ordinance.”

*Section 3–8–120. 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 IV, § 2, of the Constitution and By-Laws of the Fort Sill Apache Tribe of Oklahoma.

*Section 3–8–130. Purpose*

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol on Tribal lands of the Fort Sill Apache Tribe of Oklahoma. The enactment of this Ordinance will enhance the ability of the Tribal government 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 Tribal government and the delivery of Tribal government services.

*Section 3–8–140. 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 States of Oklahoma, Arizona, or New Mexico.

*Section 3–8–150. Administration of Ordinance*

The General Council, under its powers vested under the Constitution and Bylaws and this Ordinance, delegates to the Fort Sill Apache Tribe Tax Commission the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include the following actions:

- A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees;
- B. Execute all necessary documents; and
- C. Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

*Section 3–8–160. Sovereign Immunity Preserved*

A. The Tribe is immune from suit in any jurisdiction except to the extent that

the General Council of the Fort Sill Apache Tribe expressly and unequivocally waives such immunity in writing.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Tribe.

*Section 3–8–170. Applicability*

This Ordinance shall apply to all Tribal enterprises located within Tribal lands consistent with applicable federal Indian liquor laws.

*Section 3–8–180. Computation of Time*

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period 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 papers mailed shall be deemed served at the time of mailing.

*Section 3–8–190. Liberal Construction*

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 3–8–200. Applicable Taxes*

The Tax Commission shall enforce all applicable and lawful taxes imposed on the sale of Alcohol Beverages. The failure of any licensee to pay applicable taxes on the sale of alcohol may subject the licensee to, among other things, the revocation of said license.

**Article II—Declaration of Public Policy***Section 3–8–210. Matter of Special Interest*

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

*Section 3–8–220. 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 Beverages shall be permitted thereon (18 U.S.C. 1161).

*Section 3–8–230. Need for Regulation*

The Tribe finds that the Federal prohibition upon manufacture, distribution, possession, sale, and consumption of Alcohol Beverages 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 Fort Sill Apache Tribe Tax Commission.

*Section 3–8–240. Locations*

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

*Section 3–8–250. 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, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

B. “*Alcohol Beverage*” when used in this Ordinance means, and shall include liquor, beer, or spirits of 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 where the beverage is sold.

C. “*Applicant*” means any person who submits an application to the Tax Commission for an Alcohol Beverage license and who has not yet received such a license.

D. “*Business Committee*” means the duly elected Business Committee of the Fort Sill Apache Tribe of Oklahoma.

E. “*Constitution*” means the Constitution and By-Laws of the Fort Sill Apache Tribe of Oklahoma.

F. “*General Council*” means the General council of the Fort Sill Apache Tribe, which is the supreme governing

body of the Fort Sill Apache Tribe, which is composed of the voting membership of the Tribe.

G. “*License*” means an Alcohol Beverage license issued by the Fort Sill Apache Tribe Tax Commission authorizing the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes under the provisions of this Ordinance.

H. “*Licensee*” means a Tribal enterprise that holds an Alcohol Beverage license issued by the Tax Commission and includes any employee or agent of the Licensee.

I. “*Liquor store*” means any store or establishment at which liquor is sold and shall include any and all businesses engaged in the sale of Alcohol Beverages, whether sold as packaged or by the drink.

J. “*Manufacturer*” means any person engaged in the manufacture of Alcohol Beverage.

K. “*Ordinance*” means the Fort Sill Apache Tribe of Oklahoma Alcohol Beverage Control Ordinance, as hereafter amended.

L. “*Package*” means the sale of an Alcohol Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or the location designated on the license.

M. “*Public place*” means and shall include 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.

N. “*Sale*” and “*Sell*” mean the exchange, barter, traffic, furnishing, or giving away for commercial purpose an Alcohol Beverage by any and all means, by whatever name commonly used to describe the same, by any person to another.

O. “*Tax Commission*” means the Fort Sill Apache Tribe Tax Commission.

P. “*Tribal Court*” means the Federal Court of Indian Offenses or Tribal Courts if established by the Tribe.

Q. “*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 Fort Sill Apache Tribe of Oklahoma, including all tribally owned trust lands located within same as are now in existence or may hereafter be added to.

R. “*Tribal law*” means the Tribal Constitution and all laws, Ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

S. “*Tribe*” shall mean the Fort Sill Apache Tribe of Oklahoma.

### **Article III—Sales of Alcoholic Beverages**

#### *Section 3–8–260. Prohibition of the Unlicensed Sale of Alcohol Beverages*

This Ordinance prohibits the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes, other than where conducted by 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 Federal law and/or Tribal law.

#### *Section 3–8–280. License Required*

Any and all sales of Alcohol Beverages conducted upon Tribal land shall be permitted only where the seller holds a current Alcohol Beverage license duly issued by the Fort Sill Apache Tribe Tax Commission. A licensee has the right to engage only in those Alcohol Beverage transactions expressly authorized by such license in accordance with this Ordinance.

#### *Section 3–8–290. Sales for Cash*

All sales of Alcohol Beverages conducted 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). Provided however that a Licensee shall have the right to provide complimentary alcoholic beverages to patrons of its gaming facilities.

#### *Section 3–8–300. Personal Consumption*

All sales shall be for the personal use and consumption of the purchaser or his/her guest(s). The resale of any Alcohol Beverage purchased within or upon Tribal lands by an unlicensed seller is prohibited.

#### *Section 3–8–310. Consumption of Liquor*

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.

### **Article IV—Licensing**

#### *Section 3–8–320. Eligibility*

Only applicants operating upon Tribal lands shall be eligible to receive a license for the sale of any Alcohol Beverage under this ordinance.

#### *Section 3–8–330. Application Process*

The Tax Commission may cause a license to be issued to any applicant as is deemed appropriate and not contrary to the best interests of the Tribe and its Tribal members. Any applicant that desires to be licensed to sell Alcohol Beverages and that meets the eligibility requirements pursuant to this ordinance must apply to the Tax Commission of the Fort Sill Apache Tribe for a license to sell or to serve Alcohol Beverages. Any such person as may be empowered to make such application shall fully and accurately complete an application provided by the Tax Commission, and shall pay such application fee as may be required by the Tax Commission.

#### *Section 3–8–340. Classes of Licenses*

The Tax Commission shall have the authority to issue the following classes of Alcohol Beverage licenses:

A. “*Retail on-sale general license*” means a license authorizing the licensee to sell Alcohol Beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, but is not limited to, hotels where alcohol beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. “*Retail on-sale beer and wine license*” means a license authorizing the licensee to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class 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-sale general license*” means a license authorizing the licensee to sell Alcohol 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-sale beer and wine license*” means a license authorizing the

licensee to sell 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. "Manufacturers license" means a license authorizing the applicant to manufacture Alcohol Beverages for the purpose of sale on or off Tribal land.

F. "Temporary license" means a license authorizing the sale of Alcohol Beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. Temporary licenses may not be renewed upon expiration. A new application must be submitted for each such license.

#### *Section 3-8-350. Application Form and Content*

An application for a license shall be made to the Tax Commission 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 and directors, and other employees with primary management responsibility related to the sale of Alcohol 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 Alcohol Beverages;

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

E. The class of Alcohol Beverage license applied for as set forth in Section 3-8-340;

F. Whether the applicant has a state liquor license;

G. A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of Alcohol Beverage, were ever convicted of a felony under any law, 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 verified under oath and notarized by a duly authorized representative.

#### *Section 3-8-360. Public Hearing*

Upon receipt of an application for issuance or renewal of a license, and the payment of any fees required by the Tax Commission, the Tax Commission shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed

in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Tribal lands. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance or renewal, the class of license applied for, and a general description of the area where the alcohol will be or has been sold. At the hearing, the Tax Commission shall hear from any person who wishes to speak for or against the application. The Tax Commission shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

#### *Section 3-8-370. Action on the Application*

The Tax Commission shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tax Commission shall have the authority to deny, approve, or approve with conditions the application, consistent with the laws of the Tribe. Upon approval of an application, the Tax Commission shall issue a license to the applicant in a form to be approved from time to time by the Tax Commission. If the Tax Commission does not act within thirty (30) days the applicant may request a hearing before the business committee.

#### *Section 3-8-380. 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 has materially misrepresented facts contained in the application;

B. The applicant is presently not in compliance with this ordinance or 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 of guilty has been entered against or a plea of nolo contendere has been entered by an applicant's officer or director, or an employee with primary management responsibility related to the sale of Alcohol Beverages, to any offense under Federal or State law prohibiting or regulating the sale, use, possession or giving away of Alcohol Beverages.

#### *Section 3-8-390. Temporary Denial*

If the application is denied solely on the basis of Section 3-8-380(D) the Tax Commission shall, within fourteen (14)

days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

#### *Section 3-8-400. 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.

#### *Section 3-8-410. Investigation*

Upon receipt of an application for the issuance, transfer, or renewal of a license, the Tax Commission shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

#### *Section 3-8-420. Term and Renewal of License*

Each license shall be issued 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 Tribe. The applicant shall renew a license by, not less than 90 days prior to the license's expiration date, submitting a written renewal application to the Tax Commission on the provided form.

#### *Section 3-8-430. Procedures for Appealing a Denial or Condition of Application*

Any applicant for a license or licensee who believes the denial of their license, request for renewal, or condition imposed on their license was wrongfully determined may appeal the decision of the Tax Commission in accordance with the Tax Commission Rules and Regulations. For purposes of appeal, an applicant or licensee shall stand in the place of a "taxpayer" as that term is used in the Tax Commission Rules and Regulations appeal procedure. For purposes of appeal, the action being complained of shall stand in the place of the term the "tax," where appropriate, as that term is used in the Tax Commission Rules and Regulations appeal procedure.

*Section 3–8–440. Revocation of License*

The Tax Commission may initiate action to revoke a license whenever it is brought to the attention of the Commission that a licensee:

- A. Has materially misrepresented facts contained in any license application;
- B. Is not in compliance with Tribal or federal laws material to the issue of licensing;
- C. Failed to comply with any condition of a license, including failure to pay taxes on the sale of Alcohol Beverages or failure to pay a required fee;
- D. Has had a verdict, or judgment of guilty entered against, or has had a plea of nolo contendere entered by one of its officers or directors, or managers with primary responsibility over the sale of Alcohol Beverages, as to any offense under Federal or State law prohibiting or regulating the sale, use, or possession, of Alcohol Beverages;
- E. Failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tax Commission; or
- F. Has had their Oklahoma, Arizona, or New Mexico liquor license suspended or revoked.

*Section 3–8–450. Initiation of Revocation Proceedings*

Revocation proceedings are initiated either: (1) By the Tax Commission, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (2) by any person who files a complaint with the Tax Commission. 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 Tax Commission to revoke the license(s). The Tax Commission shall cause the matter to be set for a hearing before the Tax Commission on a date no later than 30 days from the Commission's receipt of a complaint or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given to the licensee and the public in the same manner as set forth in section 3–8–360. The notice shall state that the licensee has the right to file a written response to the complaint or resolution, verified under oath and signed by the licensee, no later than ten (10) days prior to the hearing date.

*Section 3–8–460. Hearing*

Any hearing held on any complaint shall be held under such rules and regulations as the Tax Commission 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 Tax Commission. The Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Commission shall be final. Except that any person so aggrieved may file a written appeal to the Business Committee clearly stating the reason for appeal within ten (10) days after the decision of the commission is received.

*Section 3–8–470. Delivery of License*

Upon revocation of a license, the enterprise shall forthwith deliver up the license to the Tax Commission.

*Section 3–8–480. Transferability of Licenses*

Alcohol Beverage licenses shall be issued to a specific licensee for use at a single business location (business enterprise) and shall not be transferable for use by any business or location. Separate licenses shall be issued for each of the premises of any business establishment having more than one address.

*Section 3–8–490. Posting of License*

Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

**Article V—Powers of Enforcement***Section 3–8–500. Tax Commission Authority*

In furtherance of this Ordinance, the Tax Commission shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder;

- A. To publish and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcohol Beverages within the Tribal lands of the Fort Sill Apache Tribe of Oklahoma;
- B. To employ such persons as may be reasonably necessary to perform all administrative and regulatory responsibilities of the Tax Commission hereunder. All such employees shall be Tribal employees;
- C. To issue licenses permitting the sale, manufacture, distribution, and possession of Alcohol 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 bring such other actions as may be required to enforce this Ordinance;
- F. To prepare and deliver such reports as may be required by law or regulation; and
- G. 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 3–8–510. Right of Inspection*

Any business premises licensed to manufacture, distribute, or sell alcohol pursuant to this Ordinance shall be open for inspection by the Tax Commission for the purpose of insuring the compliance or noncompliance of the licensee with all provisions of this Ordinance and any applicable Tribal law or regulation.

*Section 3–8–520. Limitation on Powers*

In the exercise of its powers and duties under this Ordinance, members of the Tax Commission shall not, whether individually or as a whole,

- A. Accept any gratuity, compensation or other thing of value from any Alcohol Beverage wholesaler, retailer, or distributor, or from any applicant or licensee of the Tribe;
- B. Waive the sovereign immunity of the Fort Sill Apache Tribe, or of any agency, commission, or entity thereof without the express written consent of the General Council of the Fort Sill Apache Tribe.

**Article VI—Taxes***Section 3–8–530. Excise Tax*

There is hereby levied and shall be collected a tax on each retail and wholesale sale of Alcohol Beverages on Tribal land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of such Alcohol Beverages shall be paid into a separate account under exclusive authority of the Tax Commission. This tax may be adjusted as requested by the Tax Commission and approved by the Business Committee.

*Section 3–8–540. Taxes Due*

All taxes for the sale of Alcohol Beverages under this Ordinance are due on the 15th day of the month following the end of the calendar quarter for which taxes are due.

*Section 3–8–550. Delinquent Taxes*

Past due taxes shall accrue interest at the rate of two percent (2%) per month until paid.

*Section 3–8–560. Reports*

Along with the payment of taxes imposed hereby, the licensee shall submit a quarterly report and accounting of all income from the sale or distribution of Alcohol Beverages, and for the taxes collected.

*Section 3–8–570. Audit*

All licensees are subject to the review or audit of its books and records relating to the sale of Alcohol Beverages hereunder by the Tax Commission. Such review or audit may be performed periodically by Tax Commission's agents or employees at such times as in the opinion of the Tax Commission such review or audit is appropriate to the proper enforcement of this Ordinance.

**Article VII—Rules, Regulations, and Enforcement***Section 3–8–580. Sale or Distribution Without License*

Any person who sells or offers for sale or distribution any Alcohol Beverage in violation of this Ordinance, or who operates a business on Tribal land and has Alcohol Beverage(s) for sale in his possession without a license shall be in violation of this Ordinance.

*Section 3–8–590. Unlawful Purchase*

Any person who purchases any Alcohol Beverage on Tribal lands from a person or business that is not licensed by the Tax Commission to sell Alcohol Beverages shall be in violation of this Ordinance.

*Section 3–8–600. 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, an Alcohol 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 3–8–610. Sale to Intoxicated Person*

Any person who knowingly sells an Alcohol Beverage to a person who is intoxicated shall be in violation of this Ordinance.

*Section 3–8–620. 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 drink an Alcohol Beverage in any such public conveyance shall be in violation of this Ordinance.

*Section 3–8–630. Age of Consumption*

No person under the age to twenty-one (21) years shall possess or consume any Alcohol Beverage on Tribal lands.

*Section 3–8–640. Serving Underage Person*

No person shall serve an Alcohol Beverage to a person under the age of 21 or permit any such person to consume alcohol on the premises or on any premises under his control. Any licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every drink served and/or consumed.

*Section 3–8–650. False Identification*

Any person who purchases or who attempts to purchase an Alcohol Beverage through the use of false, or altered identification that falsely purports to show the person to be over the age of 21 years shall be in violation of this Ordinance.

*Section 3–8–660. Documentation of Age*

When requested by a seller of Alcohol Beverages, any person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph. 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.

*Section 3–8–670. General Penalties*

Any person adjudged to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty not more than Five Hundred Dollars (\$500.00) for each such violation. The Tax Commission may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general 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) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties that may be imposed under a separate Ordinance, adopted by the Tribe.

*Section 3–8–680. Initiation of Action*

Any violation of this Ordinance shall constitute a public nuisance. The Tax

Commission 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 penalties provided for in this Ordinance. The plaintiff shall not be required to give bond in this action.

*Section 3–8–690. Contraband; Seizure; Forfeiture*

A. All Alcohol Beverages within tribal lands held, owned, or possessed by any person or licensee operating in violation of this Ordinance is hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

B. Seizure of contraband as defined in this Ordinance shall be done by law enforcement and all such contraband seized shall be inventoried and maintained by law enforcement pending final order of the Tax Commission and any appeals there from as may be filed with the Business Committee. 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 final order of the Tax Commission and any appeals there from. The proceeds are subject to forfeiture in lieu of the seized contraband.

C. Within ten days following the seizure of the contraband, a hearing shall be held by the Tax Commission, 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.

D. Notice of the hearing of at least 10 days shall be given to the person from whom the property was seized, if known. If the person 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 give 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 Tax Commission shall thereupon enter a judgment of forfeiture, and all such property shall be the property of the Fort Sill Apache Tribe. If upon the hearing the evidence does not warrant forfeiture, the seized contraband shall be immediately returned to the owner.

**Article VIII—Nuisance and Abatement.***Section 3–8–700. Nuisance*

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

*Section 3–8–710. Action To Abate Nuisance*

Upon a finding that any such place or activity is a nuisance under the provision of this Ordinance, the Tribe or the Tax Commission 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 order, or until the owner, lessee or tenant shall give bond of no less than Twenty-Five Thousand dollars (\$25,000) payable to the Tribe and conditioned that no further violation of this Ordinance or other Tribal Alcohol Beverage law and by payment of all fines, costs and assessments against him/her. If any condition of the bond is violated, the bond may be recovered and proceeds delivered to the Tax Commission for the use of the Tribe. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

**Article IX—Revenue and Reporting***Section 3–8–720. Use and Appropriation of Revenue Received*

All revenue received by the Tax Commission 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 to appropriation by the Tribe for essential governmental, and social services, related to drug and alcohol education, counseling and treatment.

*Section 3–8–730. Audit*

Tax Commission handling of revenue received under this ordinance is subject to review and audit as a part of the annual financial audit of the Tax Commission.

*Section 3–8–740. Reports*

The Tax Commission shall submit to the Business Committee a quarterly report and an accounting of all revenue received and expended pursuant to this Ordinance.

**Article X—Miscellaneous***Section 3–8–750. Severability*

If any provision or application of this Ordinance is found invalid and or unenforceable, 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 3–8–760. Construction*

Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Fort Sill Apache Tribe.

*Section 3–8–770. 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 3–8–780. Prior Law Repealed*

Any and all prior enactments of the Fort Sill Apache Tribe that are inconsistent with the provisions of this Ordinance are hereby rescinded.

*Section 3–8–770. Amendment*

The Fort Sill Apache Tribe through its General Council, pursuant to its Constitution delegates to the Fort Sill Apache Tribe Business Committee the authority to amend the provisions of the foregoing Alcohol Control Ordinance.

Approved by the Business Committee of the Fort Sill Apache Tribe of Oklahoma this 21st day of August 2007, by a vote of 4 For 0 Against 0 Abstained.

Chairman \_\_\_\_\_

Secretary Treasurer \_\_\_\_\_

[FR Doc. E9–6853 Filed 3–26–09; 8:45 am]

**BILLING CODE 4310–4J–P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

**[LLNV010000.L1990000.EX0000; 09–08807; TAS: 14X1109]**

**Notice of Availability of Final Supplemental Environmental Impact Statement for the Betze Pit Expansion Project, Eureka and Elko Counties, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.* and 43 CFR 3809), the Bureau of Land Management (BLM), Elko District Office has prepared a Final Supplemental Environmental Impact Statement (SEIS) for Barrick Goldstrike Mine's proposed Betze Pit Expansion Project.

**DATES:** The BLM will issue a Record of Decision (ROD) on the proposed project after a minimum of 30 days following the Environmental Protection Agency's publication of a Notice of Availability of this Final SEIS in the **Federal Register**.

**ADDRESSES:** Copies of the SEIS (compact disk or hard copy) are available at the BLM Elko District Office, 3900 E. Idaho, Elko, Nevada during regular business hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. The SEIS is also available on-line at [http://www.blm.gov/nv/st/en/fo/elko\\_field\\_office.html](http://www.blm.gov/nv/st/en/fo/elko_field_office.html), Elko District Office.

**FOR FURTHER INFORMATION CONTACT:** Kirk Laird, (775) 753–0200.

**SUPPLEMENTARY INFORMATION:** The Betze Pit Expansion Project is an amendment to the mine plan for the Betze Project, an ongoing open pit gold mine on the Carlin Trend in Eureka and Elko counties. The proposed mine plan amendment includes expanding the existing open pit and constructing a new waste rock facility and a new tailings facility. Current mining operations at the Betze Project are expected to end in 2011, with processing operations ending in 2020. The proposed Betze Pit Expansion Project would extend mining for 4 years and processing for an additional 5 years. Alternatives developed and analyzed in the SEIS include expanding the existing Bazza Waste Rock Facility (instead of constructing the proposed Clydesdale Waste Rock Facility) and the No Action alternatives. Alternatives considered but eliminated from detailed analysis include mining by underground methods rather than open pit, modifying the proposed Clydesdale Waste Rock Facility or constructing an offsite waste rock facility to reduce impacts to deer migration corridors, and a reduced tailings facility alternative. Mitigation measures, including reclamation scheduling to maintain a deer migration corridor, and designed landscape reclamation of the proposed Clydesdale Waste Rock Facility, were adopted by the proponent during the process, becoming part of the proposed action.

The Draft SEIS was released for public review on August 22, 2008, for a 45-day