TITLE 21 – LIQUOR

CHAPTER 1 – ALCOHOLIC BEVERAGES LICENSING AND CONTROL

Statement of Purpose: A chapter alternatively prohibiting or sanctioning and licensing the introduction, sale, possession and consumption of alcoholic beverages within the exterior boundaries of the Tohono O'odham Reservation, Arizona.

ARTICLE I – TITLE; INTERPRETATION; PROHIBITION; DISTRICT OPTION; SANCTION

Section 1101 Short Title

This chapter may be cited as 21 T.O.C. Chapter 1 - Alcoholic Beverages Licensing and Control.

Section 1102 Interpretation

This chapter shall be deemed an exercise of the police power of the Tohono O'odham Nation for the protection of the public welfare, health peace and morals of the people of the Tohono O'odham Reservation and all provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

Section 1103 Prohibition

The introduction, sale, possession and consumption of spirituous liquor within the exterior boundaries of the Tohono O'odham Reservation in violation of the federal Indian liquor laws, 18 U.S.C. 1154 and 1156, or in violation of the Criminal Code of the Tohono O'odham Nation is prohibited, except within the exterior boundaries of any of the twelve (12) Districts of the Tohono O'odham Nation which have, in accordance with the provisions of Section 1104 of this Article, sanctioned the introduction, sale, possession and consumption of spirituous liquor within the District in conformity with this chapter.

Section 1104 District Option

Each of the 12 Districts of the Tohono O'odham Nation are empowered to sanction the introduction, sale, possession and consumption of spirituous liquor within the exterior boundaries of the District in conformity with this chapter as follows:

(A) District Council: The District Council may by action of a majority of its members sanction the introduction, sale, possession and consumption of spirituous liquor within the exterior boundaries of the District. The action of the District Council shall be memorialized by formal resolution and shall be submitted to the Tohono O'odham Legislative Council for approval. Upon approval of the resolution by the Legislative Council, the introduction, sale, possession and consumption of spirituous liquor in conformity with this chapter shall be lawful within the exterior boundaries of the District.

(B) Election: The question of whether a District should sanction the introduction, sale, possession and consumption of spirituous liquor within the exterior boundaries of the District in conformity with this chapter shall be put to a referendum vote of the registered voters of the District upon receipt by the Tohono O'odham Election Board (1) of a resolution of the District Council requesting such referendum election, or (2) of a petition of registered voters of the District requesting such referendum election signed by at least ten per cent of the number of voters voting for candidates for the office of Representative to the Legislative Council from the District at the last general election of the Tohono O'odham Nation. Upon receipt of a petition the Election Board shall determine whether a sufficient number of registered voters from the District have signed the petition. If the resolution or valid petition is received by the Election Board within 180 days prior to the general election of the Tohono O'odham Nation, the referendum ballot shall be submitted to the voters at the general election. If the resolution or petition is received by the Board at any other time, it shall conduct a special referendum election in the District within ninety days of receipt of the resolution or valid petition in conformity with the Uniform Election Chapter on a date designated by the District Council. The referendum ballot shall contain the following question:

"Shall the introduction, sale, possession and consumption of spirituous liquor be made lawful within the exterior boundaries of this District in conformity with the Alcoholic Beverages Licensing and Control Chapter of the Tohono O'odham Nation?"

The registered voters of the District shall vote on said question, those in favor voting "Yes" on their ballots and those opposed "No", and the Election Board shall determine the number of votes cast for and against the referendum measure, and shall issue and post its Certificate of Election Results in conformity with the Uniform Election Chapter. If a majority of the votes cast was in favor of the referendum measure, the Legislative Council shall at its next meeting issue its certificate of election and the introduction, sale, possession and consumption of spirituous liquor in conformity with this chapter shall thereafter be lawful within the exterior boundaries of the District.

Section 1105 Sanction

The introduction, sale, possession and consumption of spirituous liquor shall be lawful within the exterior boundaries of any of the twelve (12) Districts of the Tohono O'odham Reservation which have, in accordance with the provisions of Section 1104 of this Article, sanctioned the introduction, sale, possession and consumption of spirituous liquor within their respective Districts in conformity with this chapter. The federal Indian liquor laws shall, however, remain applicable to any act or transaction which is not in conformity with this chapter. Violations of this chapter by any person may be subject to federal prosecution as well as legal action in the Tohono O'odham Judicial Courts.

ARTICLE II – DEFINITIONS

In this chapter, unless the context otherwise requires:

(A) “Beer” means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley, malt, hops, or other ingredients not drinkable, or any combination of them.

(B) “Broken package” means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed.

(C) “Commission” means the liquor licenses and control commission of the Tohono O’odham Nation.

(D) “Election days” means the biennial primary election for the nomination of United States, state, county and precinct officers, a special election called pursuant to Section 1, Article 21 of the Constitution of the State of Arizona, the biennial general election of the State of Arizona, and the biennial primary or general elections and any special elections of the Tohono O’odham Nation, and any Secretarial election called pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, as amended.

(E) “License” or “Tribal License” means a license issued pursuant to the provisions of this chapter.

(F) “Licensee” or “Tribal licensee” means a person who has been issued a license pursuant to the provisions of this chapter.

(G) “Off-sale retailer” means any person operating an established general merchandise or retail store selling groceries and commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original package, to be taken away from the store premises and to be consumed off the premises.

(H) “On-sale retailer” means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises and in individual portions for consumption on the premises.

(I) “Person” includes partnership, associations, company or corporation, as well as a natural person.

(J) “Premises” or “Licensed premises” means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provisions of the license.

(K) “Sanctioning District” means any of the twelve (12) Districts of the Tohono O’odham Reservation which have sanctioned the introduction, sale, possession and consumption of spirituous liquor within the District in conformity with this chapter, in accordance with the provisions of Section 1104 of Article I of this chapter.

(L) “Sell” includes soliciting or receiving an order for, keeping or exposing for sale, delivering for value, peddling, keeping with intent to sell and trafficking in.

(M) "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture of any of them, or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, and any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than 1/2 of 1 per cent of alcohol by volume.

(N) "Wines" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than 24 per cent of alcohol by volume.

ARTICLE III – UNLAWFUL ACTS

It is unlawful within the exterior boundaries of a sanctioning District:

Section 1301 For a person to have in his possession or custody or under his control a still or distilling apparatus, and any mash, wort or wash, for distillation or for the production of spirits or alcohol, and any still, distilling apparatus, mash, wort, wash or finished product produced therefrom found on or within the exterior boundaries of the Tohono O'odham Reservation shall be forfeited to the Tohono O'odham Nation, and shall forthwith be destroyed by the Tohono O'odham Police.

Section 1302 For a person to buy for resale, sell or deal in spirituous liquors on or within the exterior boundaries of a sanctioning District, without first having procured a valid license issued by the commission or otherwise first complying with the provisions of this chapter.

Section 1303 For any person, except the commission, to import spirituous liquors into the Tohono O'odham Reservation from a foreign country unless:

(A) such person is over 21 years of age.

(B) such person has been physically within such foreign country immediately prior to such importation and such importation coincides with his return from such foreign country.

(C) the amount of spirituous liquor imported does not exceed the amount permitted under federal law to be imported duty free in any period of thirty-one days.

Section 1304 For a person to take or solicit orders for spirituous liquors, except from or through the Tohono O'odham liquor licenses and control commission, or in accordance with any regulation of such commission.

Section 1305 For a licensee, or an officer or employee of a Tohono O'odham Liquor Store, to employ a person under the age of nineteen (19) years to manufacture, sell or dispose of

spirituous liquors. The provisions of this paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

Section 1306 Except as provided in Sections 1305 and 1309, for a licensee, or an officer or employee of a Tohono O'odham Liquor Store, or any other person to sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of or given, to any person under the age of 21 years, or for a person under the age of 21 years to buy, receive, have in his possession or consume spirituous liquors. This paragraph shall not prohibit the employment of an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor. It shall be the responsibility of the licensee or the manager of a Tohono O'odham Liquor Store, or their employees, and of anyone acting in their behalf to ascertain that the purchaser, acquirer or consumer of any intoxicating beverage, either by the drink or by the bottle or other container, is 21 years of age or older.

Section 1307 For a person under 21 years of age to offer or present to a licensee or their employees, or to officers of employees of a Tohono Liquor Store, or to other persons a fraudulent or false certificate of birth or other written evidence of age which is not actually his own, or to otherwise misrepresent his age for the purpose of inducing such licensee, manager or employee or other person to sell, give, serve or furnish spirituous liquors contrary to law.

Section 1308 To influence or attempt to influence the sale, giving or serving of spirituous liquor to a person under 21 years of age by misrepresenting the age of such person or to order, request, receive or procure spirituous liquor from any licensee, employee or other person for the purpose of selling, giving or serving it to a person under 21 years of age.

Section 1309 For an on-sale licensee to employ a person under the age of 21 years in any capacity connected with the handling of spirituous liquors.

Section 1310 For a licensee or an employee of a Tohono O'odham Liquor Store, when engaged in waiting on or serving customers, to consume spirituous liquor or remain on or about the premises while in an intoxicated or disorderly condition.

Section 1311 For an employee of a licensee or of a Tohono O'odham Liquor Store, during his working hours or in connection with his employment, to give or purchase for any other person, accept a gift of, purchase for himself or consume spirituous liquor.

Section 1312 For licensee or an employee thereof, or for a Tohono O'odham Liquor Store (except as in this chapter otherwise provided), or for any other person to sell or offer to sell, directly or indirectly, or to sanction the sale on credit of spirituous liquor, or to give, lend or advance money or anything of value to any person for the purpose of purchasing or bartering for,

spirituous liquor, except that sales of spirituous liquor consumed on the licensed premises may be included on bills rendered to registered guests in hotels and motels, and spirituous liquor sales for on-premises consumption only in connection with a served meal may be made a part of charges to patrons of bona fide restaurants whose credit is based upon standard bona fide credit cards.

Section 1313 For a licensee or a Tohono O'odham Liquor Store, or an employee thereof, or for any person to serve, sell, or furnish spirituous liquor to an intoxicated or disorderly person, or for a licensee or a Tohono O'odham Liquor Store, or employee thereof, to allow or permit an intoxicated or disorderly person to come into or remain on or about his premises.

Section 1314 For a licensee or a Tohono O'odham Liquor Store, or an employee thereof, to sell, dispose of, deliver, or give spirituous liquor to a person, or allow a person to consume spirituous liquors on his premises during hours polling places are open for voting on election days, or between the hours of 1:00 o'clock a.m. and 6:00 o'clock a.m. on weekdays and 1:00 o'clock a.m. and 12:00 o'clock noon Sundays.

Section 1315 For an off-sale retailer or a Tohono O'odham Liquor Store retailer to sell spirituous liquors except in the original container or to permit spirituous liquor to be consumed on the premises.

Section 1316 For an on-sale retail licensee to employ a person for the purpose of soliciting the purchase of spirituous liquors by patrons of the establishment for themselves, on a percentage basis or otherwise. No licensee shall serve employees or allow a patron of the establishment to give spirituous liquor to, or to purchase liquor for or drink liquor with, any employee.

Section 1317 For a person to consume spirituous liquor from a broken package in a public place, thoroughfare or gathering. This paragraph shall not apply to sale of spirituous liquors on the premises of and by an on-sale retail licensee. This paragraph shall also not apply to a person consuming beer from a broken package in a public recreation area, at a community feast house, park or meeting place pursuant to the customs of the community, or on private property with permission of the owner or lessor or on the walkways surrounding such private property.

Section 1318 For a person to have in his possession or to transport spirituous liquor which is manufactured in a distillery, winery, brewery, or rectifying plant contrary to the laws of the United States.

ARTICLE IV – LIQUOR LICENSES AND CONTROL COMMISSION

Section 1401 Appointment of members; terms; payment

There is created the liquor licenses and control commission which shall consist of three members appointed by the Legislative Council. Of the members first appointed, one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year from the date of

his appointment and until his successor shall have been appointed and qualified. Thereafter, all appointments shall be for terms of three years or until successors are appointed or qualified. No member of the commission, or any officer or employee of the commission shall be financially interested, directly or indirectly, in any business licensed to deal in spirituous liquor. The Legislative Council may remove any member of the commission for cause. The members of the commission shall appoint from among their membership a chairman and vice chairman, who shall serve at the pleasure of the commission. The majority of the commission shall constitute a quorum, but no decision of the commission on any matter shall be valid unless made upon the concurrence of the majority of the members. Members of the commission shall be entitled to receive, upon presentation of proper vouchers, such per diem and mileage payments as the Legislative Council shall from time to time establish for its standing committees, boards and commissions.

Section 1402 General powers of commission

The commission shall have the following powers and duties:

(A) To buy, import or have in its possession for sale, and sell spirituous liquor in the manner set forth in this chapter.

(B) To have control and supervision of the purchase, importation, transportation and sale of spirituous liquor in accordance with the provisions of this chapter, and to fix the wholesale and retail prices at which spirituous liquors are to be sold at Tohono O'odham Liquor Stores: Provided, that in fixing the sales prices, the commission shall not give any preference or make any discriminations as to classes, brands or otherwise, except where special sales are deemed necessary to remove unsaleable merchandise, or except where the addition of a service or handling charge to the fixed sales price of any merchandise in the same comparable price bracket, regardless of class, brand or otherwise is, in the opinion of the commission, required for the efficient operation of the Tohono O'odham store system.

(C) To determine the villages in sanctioning Districts within which Tohono O'odham Liquor Stores shall be established and locations of the stores within such villages.

(D) To grant, issue, suspend and revoke all licenses authorized to be issued under this chapter and the regulations of the commission.

(E) By regulation to require on-sale retailers to engage and provide security guards where deemed necessary by the commission to enforce the provisions of this chapter.

(F) To acquire, lease, furnish and equip such buildings, rooms or other accommodations as shall be required for the operation of this chapter.

(G) To appoint, fix the compensation and define the powers and duties of such managers, officers, clerks and other employees as shall be required for the operation of this chapter.

(H) To determine the nature, form and capacity of all packages and original containers to be

used for containing spirituous liquor.

(I) Without in any way limiting or being limited by the foregoing, to do all such things and perform all such acts as are deemed necessary or advisable for the purpose of carrying into effect the provisions of this chapter and the regulations made thereunder.

(J) Issue administrative rulings in response to a written inquiry from licensees or applicants regarding the application of this chapter. The inquiries shall state with specificity the facts involved in the question. The rulings shall be determinative of subsequent treatment of the matter and may be relied upon by the licensee or applicant until a regulation related to the subject of the inquiry is adopted. Any ruling remains in effect until a regulation related to the subject of the inquiry is adopted.

(K) From time to time, to make such regulations not inconsistent with this chapter as it may deem necessary for the efficient administration of this chapter. The commission shall cause such regulations to be published and disseminated throughout the Tohono O'odham Reservation in such manner as it shall deem necessary and advisable. Such regulations adopted by the commission shall have the same force as if they formed a part of this chapter.

(L) To investigate, whenever any person complains, or when the commission is aware that there is reasonable grounds to believe that spirituous liquor is being sold on premises not licensed under the provisions of this chapter. If the investigation produces evidence of the unlawful sale of spirituous liquor or of any other violation of the provisions of this chapter, the commission shall cause the prosecution of the person or persons believed to have been liable for the unlawful acts.

Section 1403 Specific subjects on which commission may adopt regulations

Subject to the provisions of this chapter and without limiting the general power conferred by the preceding section, the commission may make regulations regarding:

(A) The equipment and management of Tohono O'odham Liquor Stores and warehouses in which spirituous liquor is kept or sold, and the books and records to be kept therein.

(B) The duties and conduct of the officers and employees of the commission.

(C) The purchase as provided in this chapter of spirituous liquor, and its supply to Tohono O'odham Liquor Stores.

(D) The classes, varieties and brands of spirituous liquor to be kept and sold in Tohono O'odham Liquor Stores.

(E) The issuing and distribution of price lists for the various classes, varieties or brands of spirituous liquor kept for sale by the commission under this chapter.

(F) Forms to be used for the purposes of this chapter.

(G) The issuance of licenses and the conduct, management, sanitation and equipment of licensed premises.

(H) The place and manner of depositing the receipts of Tohono O'odham Liquor Stores and the transmission of balances to the Treasurer of the Tohono O'odham Nation.

ARTICLE V – TOHONO O'ODHAM LIQUOR STORES

Section 1501 Commission to establish Tohono O'odham Liquor Stores

The commission shall establish, equip, operate and maintain, at such places throughout the Tohono O'odham Reservation as it shall deem essential and advisable, stores to be known as "Tohono O'odham Liquor Stores" and warehouses and other merchandising facilities for the sale of spirituous liquors in accordance with the provisions of regulations made under this chapter. A Tohono O'odham warehouse and wholesale store shall be located on the Tohono O'odham Reservation in a place designated by the commission. When the commission shall have determined upon the location of a liquor store in any village within a sanctioning District, it shall give notice of such location by posting such notice for a period of at least thirty days following its determination in a conspicuous place on the outside of the premises in which the proposed store is to operate or, in the event that a new structure is to be built, in a similarly visible location. The notice shall be in such form, of such size and containing such provisions as the commission may require by its regulations. If, prior to the last day of such posted notice, ten or more persons residing within a one-half mile radius from such location, or the Village Council of the village within which such store is to be located, shall file a protest with the District Council of the District averring that the location is objectionable because of its proximity to a church, a school, or to a private residence, the District Council shall forthwith hold a hearing affording an opportunity to the protestants and to the commission to present evidence. The District Council shall render its decision immediately upon the conclusions of the testimony and from the decision there shall be no appeal. If the District Council shall determine that the proposed location is undesirable for the reasons set forth in the protest, the commission shall abandon it and find another location.

The commission may acquire or lease any rooms, buildings, warehouses or other merchandising facilities, and may purchase equipment and appointments necessary to carry out the provisions of this chapter.

Section 1502 Selection of Personnel

Officers and employees of the commission, except as herein provided, shall be appointed and employed in accordance with the employment practices and policies of the Tohono O'odham Nation.

Section 1503 Appointment of Superintendent and Managers of Tohono O'odham Liquor Stores

The commission shall appoint a person who shall serve at the discretion of the commission; shall be the chief administrative officer of the commission and shall be known as the "superintendent" of liquor licenses and control. He shall be responsible for carrying out the administrative provisions of this chapter and of the regulations adopted by the commission under this chapter. Every Tohono O'odham Liquor Store and/or commission warehouse or merchandising facility shall be under the supervision of a person appointed by the commission who shall be known as the "manager" and who shall, under direction of the commission, be responsible for carrying out the provisions of this chapter and the regulations adopted by the commission under this chapter as far as they relate to the conduct of such store, warehouse or facility. The superintendent may act as manager of such store, warehouse and/or facility.

Section 1504 Sales by Tohono O'odham Liquor Stores

(A) Every Tohono O'odham Liquor Store shall keep in stock for sale such classes, varieties and brands of spirituous liquors as the commission shall prescribe.

(B) Every Tohono O'odham Liquor Store shall sell spirituous liquors to Tribal licensees, licensed under this chapter, at standard wholesale discount prices established by the commission. All other sales by such stores shall be at retail prices. No liquor shall be sold except for cash, except that the commission may by regulation authorize the acceptance of checks for liquor sold at wholesale. The commission shall have the power to designate certain stores for wholesale or retail exclusively.

Section 1505 Working Capital

The net profits of the commission shall be general revenue of the Tohono O'odham Nation. The commission is authorized to keep and have on hand a stock of spirituous liquor for sale, the value of which, computed on less carload price quotations f.o.b. warehouse filed by spirituous liquor vendors, shall not at any time exceed the amount of working capital authorized. The maximum permanent working capital of the commission is established at $200,000.00 and permanent advances up to this amount may be authorized by the Chairman of the Legislative Council upon recommendation of the commission with the approval of the Treasurer of the Nation. At any time the total working capital exceeds the amount necessary to provide a turnover of stock approximately eight times annually, the Chairman, upon recommendation of the Treasurer of the Nation, may authorize the return of such excess to the general fund of the Tohono O'odham Nation.

Section 1506 Audits

It shall be the duty of the Treasurer of the Nation to make or cause to be made such audits as may be necessary in connection with the administration of the financial affairs of the commission and the Tohono O'odham Liquor Stores operated and maintained by the commission.

Section 1507 Tribal Taxes

Subject to the provision relating to wholesale sales contained in subsection (B) of Section 1504 above, the commission shall sell spirituous liquors at a price to be determined by the commission, which price shall include any luxury or transaction privilege or other taxes, levied and imposed by the Tohono O'odham Nation. All net revenue derived from such taxes shall be deposited to the credit of the general fund of the Tohono O'odham Nation.

ARTICLE VI – LICENSES AND REGULATIONS

Section 1601 Authority to issue liquor licenses

Subject to the provisions of this chapter and regulations made thereunder, the commission shall have the authority to issue on-sale and off-sale retailers' licenses for any premises kept or operated by any person licensed to operate a general merchandise or retail store, a restaurant, bar, motel or hotel within a sanctioning District on the Tohono O'odham Reservation.

Section 1602 Application procedure

Every applicant for a spirituous liquor license, or for the transfer of an existing license to himself or to another premises not then licensed, shall make application therefor on a form prescribed or furnished by the commission in duplicate, and shall file one copy with the commission and the other with the District Council of the sanctioning District where the applicant desires to do business. The applicant shall also post notice of his application (in such form, of such size and containing such provisions as the commission may require by its regulations) in a conspicuous place on the outside of the premises in which he proposes to do business, or, in the event that a new structure is to be built, in a similar visible location, with a statement requiring a person who is a resident of the age of nineteen years or more residing, owning or leasing property within a one-half radius from such location and who is opposed to such application, to file a written protest with the District Council within thirty (30) days after the date of posting. Proof of posting such notice shall be filed with the District Council and with the commission. The District Council shall then hold a hearing affording an opportunity to any protestants and the applicant to present evidence. The District Council shall render its decision and from this decision there shall be no appeal. If the District Council should recommend approval of the application, it shall file a copy of the Resolution certifying such approval with the commission and the commission shall set the application for hearing by the commission. The commission shall consider the application and any other facts relating to the qualifications of the applicant and shall approve or disapprove each application within one hundred and twenty (120) days after filing of the application.

Section 1603 Qualifications of spirituous liquor licensees

(A) Every licensee shall, if required, have a valid Federal license to trade with Indians pursuant to Part 140, Title 25, Code of Federal Regulations.

(B) No corporation shall receive or hold a license except through a designated agent who shall be a natural person. Upon the death, resignation or discharge of such agent, the license shall be

assigned forthwith to another qualified agent selected by the corporation.

(C) Every licensee, whether Indian or non-Indian, shall be subject to the civil jurisdiction of the Tohono O'odham Judicial Courts, and every non-Indian applicant for a license shall file his written consent to such jurisdiction with his application.

(D) No person who holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States or of the Tohono O'odham Nation shall be issued a license, nor shall such person have any interest, directly or indirectly, in such license.

(E) No license shall be issued to any person who, within one (1) year prior to application therefor, has violated any provision of a spirituous liquor license theretofore issued or has had a license revoked.

Section 1604 Application for licenses

(A) Every applicant for a spirituous liquor license, or for the transfer of an existing license to himself or to another premises not then licensed shall file written application with the commission in such form and containing such information as the commission shall from time to time prescribe, which shall be accompanied by an application fee of fifty dollars ($50) and the prescribed license or transfer fee. Every such application shall contain a description of that part of the general merchandise or retail store, the restaurant, bar, motel or hotel for which the applicant desires a license and shall set forth such other material information, description or plan of that part of the store, restaurant, bar, motel or hotel where it is proposed to keep and sell liquor as may be required by the commission. No licensee shall alter or change the physical arrangement of the licensed premises so as to encompass greater space or the use of different or additional entrances, openings or accommodations than the space, entrance or entrances, openings or accommodations offered to the public at the time of issuance of licensee's license or a prior written approval of the licensed premises, without first having filed with the commission floor plans and diagrams completely disclosing the proposed physical alterations of the licensed premises and shall have secured the written approval thereof by the commission. This requirement shall apply to any person to person transfer of the licensed premises.

(B) Each application shall be signed and verified by oath or affirmation by the owner, if a natural person, or, in the case of an association, by a member of partner thereof, or, in the case of a corporation, by its designated agent who shall hold the license for the corporation.

(C) If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and of a corporation, the names and addresses of the principal officers and of the persons owning ten per cent (10%) or more of the corporation. Each application shall state whether the applicant or any of the foregoing persons were in the past five years convicted of a felony.

(D) If any false statement is intentionally made in any part of the application, the applicant shall be deemed to be in violation of this chapter and shall be subject to the penalties provided in

this chapter.

Section 1605 Licenses; contents; transfers

(A) The licenses shall be to sell or deal in spirituous liquors only at the place and in the manner provided therein, and a separate license shall be issued for each specific business, each license specifying:

(1) The particular spirituous liquors which the licensee is authorized to sell or deal in.

(2) The place of business for which issued.

(3) The purpose for which the liquors may be sold.

(B) A spirituous liquor license shall be transferable as to any permitted location within the same sanctioning District, provided such transfer meets the requirements of an original application. A spirituous liquor license may be transferred to a person qualified to be a licensee, provided such transfer is pursuant to either a judicial decree, a bona fide sale of the entire business and stock in trade, or such bona fide transactions as may be provided by regulations of the commission and that such transfer meets the requirements of an original application. Any change in ownership of the business of a licensee, directly or indirectly, as defined by commission regulations, shall be deemed a transfer and shall comply with this section.

(C) All applications for transfer pursuant to subsection (B) of this section shall be filed and determined in accordance with the provisions of section 1602 and 1604 of this Article.

(D) No spirituous liquor license shall be assigned, transferred or sold, except as provided in this section. No spirituous liquor license shall be leased or subleased.

(E) A license which is not used by the licensee for a period in excess of six (6) months shall expire, except that the commission may grant additional time if, in its judgment, the licensee is in good faith attempting to comply with this section.

Section 1606 Issuance of licenses; regulatory provisions; revocation

(A) The commission shall issue a spirituous liquor license only after satisfactory showing of the capability, qualifications and reliability of the applicant, and that the public convenience required, and that the best interest of the community will be satisfactorily served by the issuance.

(B) The commission may issue on-sale retailer licenses:

(1) To any hotel or motel within a sanctioning District on the Tohono O'odham Reservation which has in conjunction therewith a bar or restaurant;

(2) To any restaurant within a sanctioning District of the Tohono O'odham Reservation which is regularly open for serving meals to guests for compensation and has

suitable kitchen facilities connected therewith for keeping, cooking and preparing foods required for ordinary meals; and

(3) To any bar within a sanctioning District of the Tohono O'odham Reservation operated by responsible persons which is regularly open for serving spirituous liquors to guests for compensation and where no food is sold and no other business is carried on except the sale of cigarettes and tobacco products.

The holder of an on-sale retailer license may sell and serve spirituous liquors in individual portions only for consumption on the licensed premises, and he may sell such liquors in original containers for consumption both on or off the licensed premises.

The holder of an on-sale retailer license may not sell or deal in spirituous liquors unless he has complied with the regulations of the commission requiring such licensee to provide security guards duly approved by the commission as being of good moral character and commissioned to enforce the provisions of this chapter on or about the licensed premises.

(C) The commission may issue off-sale retailer licenses to any general merchandise or retail store within a sanctioning District of the Tohono O'odham Reservation operated by responsible persons which is regularly open for selling groceries and commodities other than spirituous liquors to customers for compensation.

The holder of an off-sale retailer license may sell spirituous liquors only in the original package to be taken away from the licensed premises and to be consumed off of the premises.

(D) In addition to other grounds prescribed in this chapter upon which a license may be revoked, the commission may revoke a license in any case where in its judgment the licensee ceased to operate a hotel, motel, restaurant, bar or general merchandise or retail store, as prescribed in subsections (B) and (C) of this section.

Section 1607 Licensing premises near school building or church

Unless written approval is first obtained from the governing body of a school or church, no spirituous liquor license shall be issued for any building whose exterior walls are within three hundred horizontal feet of a school or church building in which classes or services are regularly conducted.

Section 1608 License fees

(A) A fee shall accompany an application for an original license or transfer of a license, or in case of renewal, shall be paid in advance. Every license shall expire on December 30 of each year. An application fee for an original license or the transfer of a license shall be fifty ($50) dollars, which shall be retained by the commission.

(B) Issuance fees for original licenses shall be:

(1) On-sale retailer's license to sell all spirituous liquor by individual portions and in original containers - Seven hundred fifty dollars ($750).

(2) On-sale retailer's license to sell wine and beer by individual portions and in the original containers - One hundred dollars ($100).

(3) On-sale retailer's license to sell beer by individual portions and in original containers – One hundred dollars ($100).

(4) Off-sale retailer's license to sell all spirituous liquors – Five hundred dollars ($500).

(5) Off-sale retailer's license to sell wine and beer – One hundred fifty dollars ($150).

(6) Off-sale retailer's license to sell beer – One hundred dollars ($100).

(C) If a license is issued on or after July 1 in any year, one-half of the annual license fee shall be charged.

(D) The annual fees for licenses shall be:

(1) On-sale retailer's license to sell all spirituous liquors by individual portions and in original containers – One hundred fifty dollars ($150).

(2) One-sale retailer's license to sell wine and beer by individual portions and in original containers – Seventy five dollars ($75).

(3) On-sale retailer's license to sell beer by individual portions and in original containers – Twenty five dollars ($25).

(4) Off-sale retailer's license to sell all spirituous liquors – Fifty dollars ($50).

(5) Off-sale retailer's license to sell wine and beer – Fifty dollars ($50).

(6) Off-sale retailer's license to sell beer – Twenty-five dollars ($25).

(E) Transfer fees from person to person and from place to place for licenses transferred pursuant to subsection (B) of Section 1605 shall be one-half of the fees prescribed in subsection (B) above.

Section 1609 Revocation or suspension of license

(A) The commission may suspend or revoke any license issued hereunder for cause and upon a hearing, with notice mailed to the licensee by registered mail at least ten (10) days prior to such hearing. Cause shall mean the failure to pay prescribed license fees and taxes as they become due; the failure of an on-sale retailer licensee to provide a security officer to enforce the

provisions of this chapter on or about the licensed premises as prescribed is subsection (B) of Section 1606; the transfer or attempted transfer of the license without the prior written approval of the commission; the violation or non-compliance with any provision of this chapter or of the regulations enacted thereunder.

(B) Any decision of the commission in any matter shall be final, unless any person aggrieved, or a village or District Council, within thirty (30) days after receiving notice of the decision of the commission, appeals to the Legislative Council. The Legislative Council may affirm the decision of the commission, remand the matter for further proceedings before the commission or reverse or modify the decision if it finds that the objection of the person aggrieved is well taken. The decision of the Legislative Council on all matters shall be final.

ARTICLE VII – EXEMPTIONS; VIOLATIONS; PENALTIES; JURISDICTION

Section 1701 Exemptions

(A) The provisions of this chapter shall not apply to drug stores or hospitals within sanctioning Districts selling or dispensing spirituous liquors upon prescription; to the production, consumption, sale, furnishing or possession of spirituous liquors within sanctioning Districts for scientific, sacramental, religious, medicinal or mechanical purposes; or to the production, consumption, sale, furnishing or possession within sanctioning Districts of wine produced according to Tribal custom from the fermentation of the fruit of the saguaro, cereus giganteus.

(B) The provisions of Article III, Sections 1302, 1304, 1305, 1306, 1309, 1311, 1312, and 1314 of this chapter shall not apply to the Tohono O'odham Gaming Enterprise with respect to its sale of spirituous liquors in the original container and individual portions for consumption on the premises of facilities operated by the Gaming Enterprise within a sanctioning District. If the Gaming Enterprise sells spirituous liquors, it shall do so in conformity with the laws of the State of Arizona applicable to any State-issued license held by the Gaming Enterprise.

~~(B)~~(C) The provisions of Article III, Sections 1302, 1304, 1305, 1306, 1309, 1311, 1312, 1314 and Article VI, Sections 1601, 1602, 1604, 1605, 1608, and 1609 of this chapter shall not apply to any business seeking to sell spirituous liquors in the original container and individual portions for consumption on the business's premises and operating within the 25 acres at West Valley or the 30.3 acres at White Tanks identified by the Nation as reserved for the San Lucy District for general economic and community development purposes. If the business sells spirituous liquors, it shall do so in conformity with the laws of the State of Arizona applicable to any State-issued license held by such business.

Section 1702 Violations

(A) Any person who violates any provision of Article III of this chapter shall be guilty of a criminal offense punishable by a fine of not more than five hundred dollars ($500), or by imprisonment in the Tribal jail for not more than six (6) months, or both.

(B) Any person who violates any other provision of this chapter, or any lawful regulation or ruling of the commission made pursuant thereto, shall be liable for a civil penalty of not more than five hundred dollars ($500), plus court costs, per violation.

(C) Any licensee violating any provision of this chapter may, in addition to the penalties prescribed in subsection (A) and (B) above and to the penalties prescribed by the federal Indian liquor laws, 18 U.S.C. 1154 and 1156, have his license suspended by the commission.

Section 1703 Jurisdiction

The Tohono O'odham Judicial Courts shall have jurisdiction over all violations of this chapter and may, in addition to the penalties prescribed in Section 1702 above, grant such other relief as is necessary and proper for the enforcement of this chapter, including but not limited to injunctive relief against acts in violation of this chapter. Nothing, however, in this chapter shall be construed to authorize or require the criminal trial and punishment of non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

ARTICLE VIII – CONTRABAND; SEIZURE; FORFEITURE

Section 1801 Seizure

All spirituous liquors within the exterior boundaries of the Tohono O'odham Reservation held, owned, or possessed by any person or licensee operating in violation of the provisions of this chapter, or of any regulations made thereunder, or of any other law of the Tohono O'odham Nation relating to the manufacture, introduction, sale, possession and consumption of spirituous liquors are hereby declared to be contraband and subject to forfeiture to the Nation. Upon presentation of a sworn affidavit the Judge of the Tohono O'odham Judicial Court shall issue an order directing the Tohono O'odham Police to seize contraband liquor within this Reservation and deliver it to the commission. A copy of the court order shall be delivered to the person from whom the property was seized or shall be posted at the place where the property was seized.

Section 1802 Hearing

Within three weeks following the seizure of the contraband a hearing shall be held in the Tohono O'odham Judicial Court, at which time the person from whom the property was seized shall be given an opportunity to present evidence in defense of his or her activities.

Section 1803 Notice of Hearing

Notice of the hearing of at least ten (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 such other public places on the Reservation as may be directed by the Judge. 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.

Section 1804 Judgment of Forfeiture – Disposition of Proceeds of Property

If upon the hearing the evidence warrants, or if no person appears as claimant, the Tohono O'odham Judicial Court shall thereupon enter a judgment of forfeiture, and order such articles sold or destroyed forthwith, and the proceeds of any sale shall become general revenue of the Tohono O'odham Nation.

ARTICLE IX – NUISANCE; ABATEMENT

Section 1901 Declaration of Nuisance

Any room, house, building, vehicle, structure, or other place where spirituous liquor is sold, manufactured, given away, furnished, or otherwise disposed of in violation of the provisions of this chapter or any regulations made thereunder, or of any other law of the Tohono O'odham Nation relating to the manufacture, introduction, sale, possession and consumption of spirituous liquor, and all property kept in and used in maintaining such place, are hereby declared to be a public nuisance.

Section 1902 Abatement of Nuisance

The commission shall institute and maintain an action in the Tohono O'odham Judicial Courts in the name of the Nation to abate and perpetually enjoin any nuisance declared under this chapter. The plaintiff shall not be required to give bond in this action. Restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of up to one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient surety to be approved by the Court in the sum of not less than One Thousand Dollars ($1,000.00), payable to the Nation and conditioned that spirituous liquor will not be thereafter manufactured, kept, sold, given away, furnished, or otherwise disposed of in violation of the provisions of this chapter or any other applicable Tribal law. If any condition of the bond be violated, the whole amount may be recovered as a penalty for the use of the Nation. Any action taken under this section shall be in addition to any other penalties provided in this chapter.

ARTICLE X – CONFLICTING CHAPTERS; AMENDMENTS

Section 11001 Conflicting Ordinances and Resolutions

All resolutions and ordinances of the Tohono O'odham Nation, including but not restricted to Section 18, Chapter 5 of the Law and Order Code of the Papago Tribe, heretofore enacted prohibiting the sale, introduction, possession or consumption of spirituous liquors on or within the exterior boundaries of the Tohono O'odham Reservation shall have no further legal force or

effect within the exterior boundaries of sanctioning Districts, but shall have full force and effect on or within the exterior boundaries of the Districts which have not sanctioned the introduction, sale, possession and consumption of spirituous liquor in accordance with the provisions of Section 1104 of Article I of this chapter.

Section 11002 Amendments

This chapter may hereby be amended by resolution of the Tohono O'odham Legislative Council approved by the Secretary of the Interior or his authorized representative.