

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicants have prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has not made a preliminary determination whether the issuance of the ITPs is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This determination will be made incorporating public comment received in response to this notice and will be based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: October 15, 2001.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. 01-26874 Filed 10-24-01; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Comanche Indian Tribe Liquor Control Ordinance

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

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Comanche Indian Tribe Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on Comanche trust lands, in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 7, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

**DATES:** This Ordinance is effective on October 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kaye Armstrong, Office of Tribal

Services, 1849 C Street NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** Under the Act of August 15, 1953, Public Law 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 Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32-01, was duly adopted by the Comanche Business Committee on April 7, 2001. The Comanche Indian Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Comanche Indian Tribe.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

I certify that by resolution No. 32-01, the Comanche Indian Tribe Liquor Control Ordinance was duly adopted by the Comanche Business Committee on April 7, 2001.

Dated: October 10, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32-01, reads as follows:

#### Comanche Indian Tribe Liquor Control Ordinance

##### *Article I. Declaration of Public Policy and Purpose*

(1) The Comanche Business Committee finds that exclusive tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use in Comanche Indian Country, and to achieve maximum economic benefit to the Tribe.

(2) The introduction, possession and sale of liquor in Comanche Indian Country is a matter of special concern to the Comanche Business Committee.

(3) The Comanche Business Committee finds that a complete ban on liquor within Comanche Indian Country is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions within Comanche Indian Country because of the many potential problems associated with the

unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

(4) Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is 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 substitute for, compliance with the laws of the State of Oklahoma.

(5) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales in Comanche Indian Country and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of Comanche Indian Country. Further, the Tribe has determined that said purchase, distribution and sale shall take place on designated Comanche tribal land only.

##### *Article II. Definitions*

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

(a) *Alcohol*. That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage*. This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.

(c) *Bar*. Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer*. Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Business Committee*. The governing body of the Comanche Indian Tribe, as defined in Article VI of the Comanche Constitution approved by the Commissioner of Indian Affairs on January 9, 1967, as ratified by the tribal membership on November 19, 1966.

(f) *Comanche Indian Country*. For the purposes of this ordinance, Comanche Indian Country means all lands within the exterior boundaries of the former Kiowa, Comanche and Apache reservation over which the Comanche Indian Tribe exercises jurisdiction; provided, that it shall not include lands

held jointly in trust for the Kiowa, Comanche and Apache tribes.

(g) *Liquor*. All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one half of one percent of alcohol.

(h) *Liquor Control Board*. The Comanche Indian Tribe Liquor Control Board as established by Article III of this Ordinance.

(i) *Liquor Store*. Any store at which liquor is sold and, for the purpose of this Ordinance, includes stores where only a portion of which are devoted to sale of liquor or beer.

(j) *Malt Liquor*. Beer, strong beer, ale, stout or porter.

(k) *Package*. Any container or receptacle used for holding liquor.

(l) *Public Place*. Federal, state, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filing stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(m) *Sale and Sell*. The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(n) *Spirits*. Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(o) *Tribal Court*. Refers to the Comanche Tribal Court or a court of competent jurisdiction.

(p) *Wine*. Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine

substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

#### *Article III. Comanche Indian Tribe Liquor Control Board*

(1) There is hereby established a Comanche Indian Tribe Liquor Control Board, composed of a Chairperson, Vice-Chairperson, Secretary-Treasurer, and four (4) members.

(2) The Comanche Indian Tribe Liquor Control Board shall consist of the officers and members of the Comanche Business Committee.

(3) Officers and members of the Comanche Business Committee shall hold the same positions on the Comanche Indian Tribe Liquor Control Board as such officers and members hold on the Business Committee.

(4) The Comanche Indian Tribe Liquor Control Board shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given.

(5) The Comanche Indian Tribe Liquor Control Board shall receive a stipend in lieu of expenses in an amount set by resolution of the Comanche Business Committee.

(6) A quorum of the Board shall consist of five (5) members and no fewer members are required to transact business.

#### *Article IV. Powers and Duties of the Comanche Indian Tribe Liquor Control Board*

(1) *Powers and Duties*. In furtherance of this ordinance, the Liquor Control Board shall have the following powers and duties:

(a) Publish and enforce rules and regulations adopted by the Comanche Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages within Comanche Indian Country.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Board to perform its function.

(c) Issue licenses permitting the sale or manufacture or distribution of liquor within Comanche Indian Country.

(d) Hold hearings on violations of this Ordinance or for the issuance of revocation of licenses hereunder.

(e) Bring suit in the Tribal Court or other appropriate court to enforce this Ordinance as necessary.

(f) Determine and seek damages for violation of this Ordinance.

(g) Make such reports as may be required by the Comanche Business Committee.

(h) Collect taxes and fees levied or set by the Comanche Business Committee and keep accurate records, books and accounts.

(i) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(2) *Limitation on Powers*. In the exercise of its powers and duties under this Ordinance, the Liquor Control Board and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(b) Waive the immunity of the Comanche Indian Tribe from suit without the express written consent and resolution of the Business Committee.

(3) *Inspection Rights*. The premises on which liquor is sold or distributed shall be open for inspection by the Liquor Control Board and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

#### *Article V. Sales of Liquor*

(1) *License Required*. A person or entity who is licensed by the Comanche Indian Tribe may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Article shall also be allowed. All other purchases and sales of liquor within Comanche Indian Country shall be prohibited. Sales of liquor and alcoholic beverages within Comanche Indian Country may only be made at businesses that hold a Comanche Indian Tribe Liquor License.

(2) *Sales for Cash*. All liquor sales within Comanche Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

(3) *Sale for Personal Consumption*. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages with

Comanche Indian Country is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within Comanche Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Comanche Indian Tribe as set forth herein.

#### *Article VI. Licensing and Application*

(1) *Procedure.* In order to control the proliferation of establishments within Comanche Indian Country that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within Comanche Indian Country must apply to the Comanche Indian Tribe Liquor Control Board for a license to sell or serve liquor.

(2) *Application.* Any enrolled member of the Comanche Tribe twenty-one (21) years of age and older, or an enrolled member of a federally-recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Board for a license to sell or serve liquor. Any person or entity applying for a license to sell or serve liquor within Comanche Indian Country must fill in the application provided for this purpose by the Comanche Indian Tribe and pay such application fee as may be set from time to time by the Business Committee. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

(3) *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Board that he/she is a person of good moral character, that he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the State, or any other state of the United States, or has a felony conviction preceding the date of his/her application for a license, or any of the laws commonly called "prohibition laws," or had any permit or license to sell any intoxicating liquors revoked in any county of this State and that at the time of his/her application for a license, he/she is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor.

(4) *Processing of Application.* The Liquor Control Board shall receive and process applications and related matters. All actions by the Liquor

Control Board shall be by majority vote. A quorum of the Liquor Control Board is that number of members set forth in Article III, paragraph (6) of this Ordinance. The Liquor Control Board may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

(5) *Issuance of License.* The Liquor Control Board may issue a license if it believes that such issuance is in the best interests of the Comanche Indian Tribe. The purpose of this Ordinance is to permit liquor sales and consumption at facilities located on designated Comanche Country lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Comanche Indian Tribe.

(6) *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

(7) *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Ordinance; provided however, that the Liquor Control Board may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the Comanche Indian Tribe.

(8) *Revocation of License.* The Liquor Control Board may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(9) *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Board under this Ordinance, the licensee may deliver to the Liquor Control Board a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Board and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Ordinance shall be in accord with due process of law.

(10) *Non-transferability of Licenses.* Licenses issued by the Liquor Control Board shall not be transferable and may

only be utilized by the person or entity in whose name it is issued.

#### *Article VII. Taxes*

(1) *Sales Tax.* The Liquor Control Board shall have the authority, as may subsequently be specified under tribal law, to collect tax on each retail sale of alcoholic beverages within Comanche Indian Country based upon a percent of the retail sale price. All taxes from the sale of alcoholic beverages within Comanche Indian Country shall be deposited in the General Treasury of the Comanche Indian Tribe.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages within Comanche Indian Country are due on or before the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayers shall submit, in the form specified by the Liquor Control Board, a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) *Audit.* As a condition of obtaining a license, an applicant must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages within Comanche Indian Country. Said review or audit may be done periodically, or when deemed necessary by the Tribe, to verify the accuracy of reports.

#### *Article VIII. Rules, Regulations and Enforcement*

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Ordinance shall be subject to civil damages assessed by the Liquor Control Board.

(3) Any person within the boundaries of Comanche Indian Country who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Article, shall be guilty of a violation of this Ordinance.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this Ordinance.

(6) Any person engaged wholly or in part 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 liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Ordinance.

(7) No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Ordinance.

(11) Any person guilty of violation of this Ordinance shall be liable to pay the Comanche Indian Tribe the amount of \$1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military identification card; or

(c) Passport.

(13) The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Ordinance will result in a declaration that such liquor

is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Board to enforce this Ordinance shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property.

Upon being found in violation of the ordinance, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Comanche Indian Tribe.

#### *Article IX. Abatement*

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

(2) The Chairman of the Liquor Control Board or, if the Chairman fails or refuses to do so, by a majority vote, the Liquor Control Board shall institute and maintain an action in the Tribal Court in the name of the Comanche Indian Tribe to abate and perpetually enjoin any nuisance declared under this Article. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Tribe under this Ordinance.

(3) In all cases where any person has been found in violation of this Ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Ordinance and violation of this Ordinance shall be prima facie evidence

that the room, house, vehicle, building, structure, or place against which such action is brought is a public nuisance.

#### *Article X. Revenue*

Revenue provided for under this Ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential and social services.

#### *Article XI. Severability and Effective Date*

(1) If any provision under this Ordinance is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

(3) Any and all previous liquor control enactments of the Business Committee which are inconsistent with this Ordinance are hereby rescinded.

#### *Article XII. Amendment and Construction*

(1) This Ordinance may only be amended by vote of the Comanche Business Committee.

(2) Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Comanche Indian Tribe or its tribal government.

[FR Doc. 01-26839 Filed 10-24-01; 8:45 am]

BILLING CODE 4310-02-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

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

**ACTION:** Notice of approved amendments to a Tribal-State Compact.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the