

BLACKFEET TRIBAL ORDINANCE #73, as Amended  
REGULATION AND CONTROL OF LIQUOR

Adopted by the Blackfeet Tribe on June 6, 1985

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## **ORDINANCE NO. 73**

### **REGULATION AND CONTROL OF LIQUOR**

#### **PART I. GENERAL PROVISIONS**

##### 1.0 Declaration of Public Policy-Subject Matters of Regulation

- (A) It is hereby declared to be the public policy of the Blackfeet Tribe to effectuate and ensure the entire control of the sale and distribution of all alcoholic beverages within the Blackfeet Indian Reservation, subject to the inherent sovereign power of the Blackfeet Nation and the power delegated to the Tribe by the United States Congress and concurrently with the State of Montana.
- (B) This code is an exercise of the police powers of the Blackfeet nation and the power delegated pursuant to Title 18, section 1161 of the United States Code, in and for the protection of the welfare, health, peace, morals and safety of the people of the Blackfeet Nation and residents of the Blackfeet Indian Reservation.
- (C) It is further the policy of the Blackfeet nation to effectuate the economic rights of members of the Blackfeet Nation, as guaranteed by Article VIII, Section 2 of the Blackfeet Constitution. This policy is implemented herein by limiting the issuance of new licenses in some cases<sup>1</sup> to enrolled members of the Blackfeet Nation or business entities which are at least fifty-one percent (51%) owned by enrolled members of the Blackfeet Nation.

##### 2.0 Sale of Alcoholic Beverages Privilege, Not Right

A license for the sale or distribution of alcoholic beverages within the Blackfeet Indian Reservation is a privilege which the Blackfeet Nation may grant or deny and is not a right to which any person or entity is entitled.

#### **PART 2. RETAIL SALES RESTRICTIONS**

##### 1.0 Unlawful Sales and other Transactions

- (A) It shall be unlawful for any licensee, his/her employee or employees, or any other person to sell, deliver, or give away, or cause or permit to be sold, delivered, or given away any alcoholic beverage to any person:

1. Under nineteen (19) years of age; or
2. Who is obviously, actually, or apparently intoxicated.

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<sup>1</sup> Resolution No. 325-87, "Approving Various Amendments Change #1" June 17, 1987

(B) It shall be unlawful for any person or entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation without first obtaining a license pursuant to this Ordinance.

(C) It shall be mandatory under this law for all licensees to display in a prominent place in their premises a placard stating fully the consequences for violations of this law by persons under nineteen (19) years of age.

## 2.0 Sale and Distribution of Alcoholic Beverages Unlawful

It shall be unlawful for a licensed person or business entity to sell or distribute alcoholic beverages within the exterior boundaries of the Blackfeet Indian Reservation, provided that the licensee complies with the provisions of this Ordinance, concurrently with the laws of the State of Montana.

## 3.0 Closing Hours for Licensed Retail Establishments

All licensed establishments wherein alcoholic beverages are offered for sale, or given away at retail shall be closed:

(A) Each day between 2:00 A.M. and 8 A.M.;

(B) Easter Sunday between 8:00 A.M. and 2:00 P.M. (all day);

(C) From 6:00 P.M. December 24 (Christmas Eve) to 6:00 P.M. December 25 (Christmas Day); and

(D) There will be no sales of alcoholic beverages, including sales at stores, bars, restaurants, and taverns within the Blackfeet Reservation during North American Indian Days and Heart Butte Society Celebration, beginning at 8:00 AM Thursday and ending at 8:00 AM the following Monday.<sup>2</sup>

The Blackfeet Tribal Business Council retains discretionary authority to close licensed retail establishments in recognition of Indian religious ceremonies, after giving due notice. Provided, however, that when a licensed retail establishment is operated in conjunction with a restaurant, hotel, or other lawful business other than the sale of intoxicating alcoholic beverages, then such other lawful business need not be closed, but only the part where of such alcoholic beverages are sold.

## 4.0 Sale of Alcoholic Beverages During Closed Hours

It shall be unlawful for any licensed Tribal establishments to sell, offer for sale, or give away alcoholic beverages during the hours when the licensed retail establishments are required by this Ordinance to be closed or otherwise refrain from the sale of alcoholic beverages.

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<sup>2</sup> 2008 Referendum Vote Language to close sales during North American Indian Days and Heart Butte Society Celebration; however, does not reference amendment to Ordinance #73.

## 5.0 Lapse of License for Non-Use

- (A) Any retail license issued pursuant to this Ordinance (including any retail license to sell alcoholic beverages for off premises consumption) not actually used in a going establishment for ninety (90) days shall automatically lapse. Upon determining the fact of nonuse, the Tribal Council shall cancel such license of record and no portion of the fee paid therefore shall be refundable.
- (B) The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide resort, park hotel, tourist facility from the Tribal Business Council to close the business.
- (C) The Tribal Council may, in its discretion, waive the effects of this section for a licensee who failed to use his license in a going establishment for ninety (90) days should the Council find that said lapse was reasonably beyond the control of the licensee.

## 6.0 Tribal License Automatically Revoked with Loss of State License

Pursuant to federal law, the regulation of transactions involving alcoholic beverages within the Indian Reservation is a matter of concurrent jurisdiction between the various Indian tribes and the States in which their reservations are located. Thus, to validly engage in the business of selling or distributing alcoholic beverages on Indian reservations a licensee must possess both the Tribal and state license.

- (A) Any Tribal license issued pursuant to this Ordinance will be automatically revoked ninety (90) days after the Tribal Council receives notification from proper State officials that the licensee's state license has been revoked or has otherwise expired, and that all state appeals processes have been exhausted.

## **PART 3. LICENSE ADMINISTRATION**

### 1.0 License Classification

- (A) The issuance of licenses for the retail sale of alcoholic beverages within the Blackfeet Indian Reservation shall be based upon the following classifications:

CLASS 1. All Beverage License: This license enables the licensee to sell liquor, beer, wine, and other alcoholic beverages within the boundaries of the Blackfeet Reservation.

CLASS 2. On-Premise Retail Beer License With Available Wine Sales Amendment: This license enables the licensee to sell beer for on-premises consumption. For an additional fee, a wine amendment is available. The licensee must make an initial showing that the sale of beer for on-premises consumption is supplementary to a

restaurant or prepared food business. Non-retention of the beer license, for any reason, will mean automatic loss of the wine license amendment.

CLASS 3. Off-Premises Retail Beer License With Available Wine Sales Amendment:

This license enables the licensee to sell beer and wine with an amendment, in the original package for off premises consumption only. The licensee must make an initial showing that the license will be used in conjunction with the business operated primarily as a bona fide grocery store or drugstore.

- (B) The issuance of new licenses in class 1 and 2<sup>3</sup> shall be limited to enrolled members of the Blackfeet Indian Nation or business entities which are at least fifty-one (51%) owned and operated by an enrolled member of the Blackfeet Indian Nation.

CLASS 4. Special Licenses: this license consists of special permission enabling the licensee to sell beer or wine to the patrons of some preplanned community event, to be consumed within the enclosure where the event is held. Allowable events include company picnics, conventions, fairs, civil entertainments, and sporting events.

2.0 Beer Retailer's License-Application and Issuance – Check of Books of Account and Premises by Tribe

- (A) Any person desiring to have and possess beer and wine for sale under this Ordinance for the purpose of selling it at retail shall first apply to the Tribal Council for a license to do so and tender with said application the license fee provided for.
- (B) Upon being satisfied, from such application or otherwise, that the applicant is qualified as provided, the Tribal Council shall issue a license to such person or applicant, which license shall at all times be prominently displayed in the place of business of the applicant.
- (C) If the Tribal Council finds that the applicant is not qualified, no license shall be granted, and the license fee tendered shall be promptly returned.
- (D) The Tribal Council shall have the right and is hereby given the authority to make, at any time an examination of the books of any such retailer and his premises and otherwise check his methods of conducting business in so much as it regards his retail liquor license, through independent licensed auditors.

3.0 Retailer Beer License for On-Premises Consumption-Wine License Amendment-Limit on Number of Licenses

- (A) Except as otherwise provided by law, a license to sell beer at retail for on-premises consumption, or beer and wine at retail for on-premises consumption, in accordance

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<sup>3</sup> Resolution No. 325-87, "Approving Various Amendments Change #2" June 17, 1987

with the provisions of this Ordinance, may be issued to any person, firm or corporation who is approved by the Tribal Council as a fit and proper person, firm or corporation to sell beer, except that:

1. in the town of Browning, and within a distance of five (5) miles from the city limits of Browning, not more than one (1) license for every 1000 persons residing in the above-described area shall be issued and said license may not be used in conjunction with a retail all-beverage license.
2. in the unincorporated town of East Glacier Park and within a distance of five (5) miles from the limits of East Glacier Park not more than one (1) license for every 1000 persons residing in the described area, shall be issued and said license may not be used in conjunction with the retail all-beverage license.
3. the number of retail beer licenses for on-premises consumption, which may be issued by the Tribal Council, excluding those provided for in subsections (1) and (2) above, shall be determined on the limitation of no more than one (1) per 750 persons in that area and provided further that, in the exercise of its sound discretion, the Tribal Council first determines that the issuance of said license is a required is required by public convenience and necessity.

(B) Retail beer licenses, or beer and wine licenses, of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(C) An applicant for a license to sell beer, or beer and wine for on-premises consumption, at retail, must make a satisfactory showing that the sale of beer or beer and wine for consumption on-premises would be supplemental to the applicant's primary business activity of operating a restaurant or other prepared food business.

(D) Any licensee possessing an on-premises retail beer license may apply for an on-premises retail wine license amendment. An applicant to sell wine for on-premises consumption at retail, must first possess a valid retail on-premises beer license provided, however, that this requirement shall not prevent an applicant from applying for an on-premises beer license and the retail on-premises wine license simultaneously. Non-retention of the retail beer license, for whatever reason, shall mean automatic loss of the amendment.

A person holding a retail on-premises beer and wine license may sell beer and wine for consumption on or off the premises.



4.0 Retail Beer and Wine License for Off-Premises Consumption Only Discretionary Authority to Issue<sup>4</sup>

- (A) A retail license to sell beer or wine, or both in the original package for off-premises consumption only may be issued to any person, firm, or corporation to sell beer or wine, or both, and whose premises proposed for licensing are operated as bona fide grocery store or drugstore.
- (B) The number of such licenses which the Tribal Council may issue is not limited but shall be determined by the Tribal Council in the exercise of its sound discretion, grant or deny any application for any such license or suspend or revoke any such license for cause.
- (C)<sup>5</sup>

5.0 Beer License Transfers

- (A) A transfer of any beer retailer's license, including transfer of a beer license with the wine license amendment, may be made upon application to the Tribal Council with the consent of the Council, provided that the transferee qualifies under this Ordinance, and subject to the following limitations:
1. Transfer of a license for on-premises consumption<sup>6</sup> which was issued after January 1, 1985, as a new license with Tribal member preference, may be made only to another enrolled member of the Blackfeet Nation or a business entity which is 51% owned by an enrolled member of the Blackfeet Nation.
  2. Transfer of any other beer retailers license may be made to any qualified applicant and will not be limited to Tribal member preference.<sup>7</sup>

6.0 All-Beverage License-Quotas

- (A) Except as otherwise provided by law, a license to sell beer, wine and liquor at retail (an all-beverage license) in accordance with the provisions of this Ordinance, may be issued to any person approved by the Tribal Council as a fit and proper person to sell such beverages, except that the number of all-beverage licenses with the Tribal Council may issue shall be limited as follows:
1. There shall be no more than four (4) Class 1 all-beverage licenses for the Town of Browning and within a five (5) mile radius of the town limits. An additional

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<sup>4</sup> Resolution No. 325-87, "Approving Various Amendments Change #3" June 17, 1987

<sup>5</sup> Resolution No. 325-87, "Approving Various Amendments Change #4" June 17, 1987

<sup>6</sup> Resolution No. 325-87, "Approving Various Amendments Change #5 (A)(1)" June 17, 1987

<sup>7</sup> Resolution No. 325-87, "Approving Various Amendments Change #5 (A)(2)" June 17, 1987

license will be available with each increase of 1,000 persons residing in the above-described area.

2. There shall be no more than one (1) Class 1 all-beverage license for the unincorporated town of East Glacier Park and within a five (5) mile distance from its limits, for every 1,000 persons residing in the said area.
  3. The number of all-beverage licenses which the Tribal Council may issue for premises situated outside the area identified in (1) and (2) above, may not be more than one license for every 750 persons residing on the Blackfeet Indian Reservation, excluding the population of the area identified in (1) and (2) above.
- (B) Retail all-beverage licenses of issue on January 1, 1985, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.
- (C) Any original license issued pursuant to this section shall be issued only upon the Tribal Council having first determined, upon a hearing held pursuant to this Ordinance, that the issuance of said license is justified by public convenience and necessity.
- (D) Transfers of all beverage licenses which were of issue prior to January 1, 1985, will not be limited to Tribal member preference, and may otherwise be made to any qualified applicant.

#### 7.0 Census

The most recent census of the Blackfeet nation shall be the basis upon which the limitations outlined in this Ordinance shall be determined.

#### 8.0 Special License to Sell Beer and Wine-Application and Issuance

- (A) any association or corporation conducting a picnic, convention, fair, community entertainment, or sporting event shall be in the sound discretion of the Tribal Council be entitled to a special permit to sell beer and wine to the patrons of such event to be consumed within the enclosure where the event is to be held.
- (B) An application for a special license shall be presented at least three (3) days in advance of the start of the proposed event and shall describe the location of the enclosure where the event is to be held.
- (C) The application shall be accompanied by the amount of the license fee and a written statement of approval of the premises where the event is to be held issued by (sic) law enforcement agency that has jurisdiction over the premises and the patrons.

- (D) The license issued as a special license and authorizes the sale of beer and wine only on the date and during the period stated in the application and approval.

#### **PART 4. LICENSING CRITERIA AND PROCEDURE**

##### **1.0 License as Privilege-Criteria for Decision on Application**

- (A) A license under this Ordinance is a privilege which the Blackfeet nation may grant to, or deny, any applicant and is not a right to which any applicant is entitled.

- (B) Except as provided herein, in the case of a license that permits on premises consumption, the Tribal Council must find in every case in which it issues a new license, or in which it approves the transfer of a license that:

1. In the case of the issuance of a new Class 1 or Class 2<sup>8</sup> license, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that the applicant is at least 51% owned by an enrolled member of the Blackfeet Indian Nation.
2. The applicant is financially responsible.
3. The applicant will not have an interest in more than one establishment licensed for all-beverage sales.
4. The applicant's past record and present status as a seller of alcoholic beverages and as a businessman and citizen demonstrates that he is likely to operate his establishment in compliance with all applicable Tribal laws.
5. The applicant is not under the age of twenty-one (21) years.
6. The applicant has obtained the necessary Tribal business license.
7. The applicant has not been convicted of a felony, or if the applicant has been convicted of a felony, that his rights have been restored.
8. In the case of the transfer of a license originally issued as a new Class 1 or Class 2<sup>9</sup> license after January 1, 1985, that the applicant is an enrolled member of the Blackfeet Indian Nation, or if the applicant is a firm or corporation, that at least 51% of the firm or corporation is owned by enrolled members of the Blackfeet Indian Nation.

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<sup>8</sup> Resolution No. 325-87, "Approving Various Amendments Change #6 (B)(1)" June 17, 1987

<sup>9</sup> Resolution No. 325-87, "Approving Various Amendments Change #6 (B)(8)" June 17, 1987

(C) The requirements of this subsection will apply to all new licenses and transfers occurring after January 1, 1985, in Class 1, Class 2 and Class 3 licenses, except as otherwise provided in specific subsections.

## 2.0 Application and Investigation

(A) Prior to the issuance of any license under this ordinance, the applicant shall file with the Tribal Council, an application in writing, signed by the applicant and containing such statements relative to the applicant and the premises where the alcoholic beverage is to be sold, as may be required by the Tribal Council, including, but not limited to the following:

1. The name, age and place or residence of the applicant.
2. The location of the premises where the license will be issued.
3. In the case of a firm or corporation, the names of all partners and shareholders in the firm or corporation; the percentage of ownership held by each partner or shareholder; the relationship, if any between the partners or shareholders (husband, wife, son, brother-in-law, etc.); and whether or not each shareholder of partner is an enrolled member of the Blackfeet Indian Nation.
4. In the case of an individual applicant, whether the applicant is an enrolled member of the Blackfeet Indian Nation.
5. Financial records and reports of the applicant. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(B) Upon receipt of a completed application of a license under this Ordinance, accompanied by the necessary license fee, as further required in this Ordinance, the Tribal Council shall within thirty (30) days make a complete and thorough investigation of all matters pertaining to the application and shall determine whether the applicant is qualified to receive a license and whether the applicant's premises are fit to carry on the business and that Tribal law will be complied with.

(C) Upon proof that the applicant has made any false statement on the application, the application may be denied or if issued, the license may be revoked.

## 3.0 Notice of Application-Publication-Protest

(A) When an application has been filed with the Tribal Council to sell alcoholic beverages at retail or to transfer such license, the Tribal Council shall promptly publish in a newspaper of general circulation within the Blackfeet Indian Reservation, a notice that such applicant has made application for such license and that protests against the

issuance of a license to the applicant may be mailed to a named Tribal administrator within ten (10) days after the final notice is published. Notice of application for either transfer or sale shall be published once a week for 4 consecutive weeks' notice may be substantially as follows:

Notice of Application for Trans of or for Retail Sale of Alcoholic Beverages

Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_\_, 198\_, one (name of applicant) filed an application for a license to engage in the retail sale of alcoholic beverages within the boundaries of the Blackfeet Indian Reservation.

The license is to be used at (describe location of premises where alcoholic beverages will be sold), and protests, if there are any, against the issuance of such license may be mailed to \_\_\_\_\_, Blackfeet Nation, Browning, MT 59417 on or before the \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

Dated: \_\_\_\_\_.

(B) Each applicant shall, at the time of filing his application, pay to the Blackfeet Nation an amount sufficient to cover the costs of publication of the notice.

(C) If the Tribal Council receives no written protests, it may issue a license without holding a public hearing if written protests against the issuance of the license or transfer of an existing license are received, the Tribal Council shall hold a public hearing in Browning at the Blackfeet Tribal Offices.

Additional public hearings may be held at the discretion of the Tribal Council.

4.0 Protests and Hearing-Posting and Contents of License-Privilege-Expiration

(A) No license may be issued until after the date set in the notice for hearing protests.

(B) Every license issued under this Ordinance shall contain:

1. The name of the person (sic) whom it was issued.
2. The location of the premises, by street number or other appropriate description, where the license is to be used.
3. Other information such as the Tribal Council shall deem necessary. Each license must be posted in a conspicuous place on the premises wherein the business authorized under the license is to be conducted. Such license shall be exhibited upon request to any authorized representative of the Tribal Council or to any peace officer of the Blackfeet Nation or Bureau of Indian Affairs.

- (C) Any license issued under this Ordinance shall be considered a personal privilege to the license named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

#### 5.0 Transfer-By Sale-In Case of Death of Licensee-From Premises to Premises

- (A) Except as otherwise provided in this Ordinance, no license for the retail sale of alcoholic beverages shall be transferred or sold. Nor shall said license be issued for any place of business not described in the license without first making an application to and receiving the approval of the Tribal Council.
- (B) A license for the retail sale of alcoholic beverages may be transferred to the executor or administrator of the estate of any business of selling alcoholic beverages under a license, and in such event a license may descend or be disposed of with the business to which it is applicable under the appropriate probate proceedings.
- (C) A license to sell alcoholic beverages at retail may be transferred to a qualified purchaser upon a bona fide sale of the business operated under that license. No transfer of any license as to person or location shall be effective until approval by the Tribal Council, and any licensee, transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license shall be considered as operating without a license to operate the business to be transferred, under the license, pending final approval, providing an application for transfer has been filed with the Tribal Council.

#### 6.0 Denial of License-Public Safety and Welfare

- (A) The Tribal Council may deny the issuance of any license for the retail sale of alcoholic beverages if it determines that the premises proposed for licensing cannot be properly policed by local authorities.
- (B) Normally a license under this Ordinance be issued if the Tribal Council finds upon the evidence presented at the hearing, that the welfare of the people residing in the vicinity of the place which such license is desired will be adversely and seriously affected and the public interest will not be served by issuance of such license.

#### 7.0 Expiration of License

- (A) Each July 1st, the Tribal Council shall issue licenses to holders of retail licenses to sell alcoholic beverages within the Blackfeet Reservation on an annual basis and as such fees as are prescribed by law, such licenses are subject to revocation or suspension as provided for in Part 4, Section 8 of this Ordinance after midnight on June 30th of the licensing year for which the license fee has not been paid, if the annual license fees are not paid. Initial licenses issued under this Ordinance shall be issued at the annual rate, for a period ending June 30, 1986, regardless of when issued.

## 8.0 Renewal-Revocation or Suspension-Penalty

- (A) The Tribal Council may upon its own motion, and shall upon the written, verified complaint of any person, investigate the action and operation of any retail seller of alcoholic beverages licensed under this Ordinance.
- (B) If the Tribal Council, after investigation, shall have reasonable cause to believe that any such licensee has violated the provisions of this Ordinance, it may, in its discretion, and in addition to other penalties prescribed:
1. Reprimand the licensee; or
  2. Suspend a license for a period not to exceed three (3) months; or
  3. Revoke the license of any such licensee; or
  4. Refuse to grant a renewal of such license upon the expiration thereof; or
  5. Impose a civil penalty not to exceed One Thousand, Five Hundred Dollars (\$1500), subject to the right to a hearing in the Blackfeet Tribal Court. The affected licensee may seek a stay of the imposition of the fine provided the licensee files a petition for hearing on the fine with the Blackfeet Tribal Court within ten (10) working days of the date of the licensee is notified of the fine. Failure to file a petition within the required time shall result in loss of the Tribal Court's jurisdiction to review the fine pursuant to this Ordinance.

## 9.0 Judicial Review Concerning Alcoholic Beverage Laws

- (A) Any interested party shall have the right to seek judicial review of any decision of the Tribal Council concerning the issuance, transfer, suspension, or revocation of any license to sell at retail alcoholic beverages within the Blackfeet Reservation by the Blackfeet Tribal Court.
- (B) Judicial review under this provision will be limited to a review of the record of the prior proceedings on the affected license. The Court will be limited to determining:
1. Whether the Tribal Council abused its discretion by acting arbitrarily or capriciously; or
  2. Whether the Tribal Council's decision is supported by the record of the case and the facts contained therein; or
  3. Whether the Tribal Council's decision is consistent with the applicable provisions of the law.

(C) The Tribal Council's decision shall be final unless modified or reversed by the Tribal Court.

10.0 Training for Responsible Alcohol Sales and Services (RASS)<sup>10</sup>

All retail liquor establishments prior to receiving a liquor license or a renewal of such license on the Blackfeet Reservation shall certify that all employees of such establishment have received Responsible Alcohol Sales and Service training also referred to as RASS, which training is given by the Montana Department of Revenue. Any new employee of such establishment shall receive such training within thirty (30) days of employment. The establishment shall keep a roster of all employees, including names and date of training, which shall be open for inspection by agents of the Blackfeet Tribe.

Failure to obtain such training for employees as set forth above, shall subject the liquor establishment to a civil penalty of \$500.00 per employee and/or the possible suspension of that establishment's liquor license until such time as the establishment is in compliance with this Ordinance.

The penalties collected as set out above shall be used solely for the purpose of funding the activities of the Blackfeet DUI Task Force, with \$100.00 of such penalty going to the Blackfeet Department of Commerce, for administration and enforcement of this Ordinance and that both the DUI Task Force and the Department of Commerce shall keep a strict accounting of the receipt and disbursement of such funds.

**PART 5. LICENSING FEES**

1.0 Retail Sales License and Special License Fees

(A) Each retail beer, or retail beer and wine license, under the provisions of this Ordinance, shall pay an annual license fee as follows:

1. Retail on-premises beer license, Two Hundred Dollars (\$200); with wine license amendment, an additional Two Hundred Dollars (\$200).
2. For a license to sell beer at retail for off-premises consumption only, Two Hundred Dollars (\$200); for a wine license amendment to sell at retail for off premises consumption only, and additional Two Hundred Dollars (\$200).

(B) The fee of special license to sell beer and wine at certain gatherings shall be computed at a rate of Thirty-Five Dollars (\$35.00) a day for 2 or more days, but in no case less than Seventy-Five Dollars (\$75.00).

(C) The fee for licensees licensed as a Class 1, all-beverage retail sellers of alcoholic beverages shall be Five Hundred Dollars (\$500.00).

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<sup>10</sup> Resolution No. 212-2011, Amending Ordinance 73, Implementing RASS, May 5, 2011



- (D) The license fee provided for in this Ordinance are exclusive of and in addition to other license fees chargeable by the Blackfeet Nation for the privilege of carrying on business within the Blackfeet Indian Reservation.
- (E) In addition to other license fees, the Tribal Council may require a licensee to pay a late fee of thirty percent (30%) of any license fee delinquent on July 1st of the renewal year, and sixty percent (60%) of any license fee delinquent of August 1st of the renewal year, and one hundred percent (100%) of any license fee delinquent on September 1st of the renewal year.

## **PART 6. VIOLATIONS AND ENFORCEMENT**

### 1.0 Investigations-Search Warrants-Seizure and Forfeiture of Unlawful Alcoholic Beverages and Conveyance Devices

- (A) The Tribal Council may employ or appoint investigators or prosecuting officers who, under the Council's discretion, will perform such duties as it may require, and who shall be paid such fees and expenses as the Council may fix.
- (B) Upon information or oath by any investigator appointed under this Ordinance or any Tribal or Bureau of Indian Affairs police officer showing reasonable cause to believe that alcoholic beverages are being illegally sold or kept for sale or for any unlawful purpose in any building or premises, it shall be lawful for the Tribal Court by warrant to authorize and empower the police officer or investigator or any other person named in the warrant to enter and search the building or premises and every part thereof and for that purpose to break open any lock, door, or fastening, to break open any closet, cupboard, box or other receptacle where alcoholic beverages may be concealed.
- (C) The Tribal Council or any duly authorized representative thereof or any Tribal or Bureau of Indian Affairs police officer shall have the right at any time to make an examination of the premises of any retail licensee as to whether the laws of the Blackfeet nation are being complied with.
- (D) Any investigator, duly appointed representative of the Blackfeet Tribal Council or any Tribal or Bureau of Indian Affairs police officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this Ordinance may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon a finding that the alcoholic beverages being kept or sold in violation of this Ordinance, the alcoholic beverage and all packages containing the same shall, in addition to other penalties prescribed by this Ordinance, be forfeited as a matter of law to the Blackfeet Nation.

Whenever a vehicle or other conveyance device of any kind is used to store or transport alcoholic beverages for purposes contrary to the provisions of this

Ordinance, the vehicle or conveyance device may be seized force with. Upon a finding by the Tribal Court that the person in possession of the vehicle or conveyance device or person in charge of said vehicle or conveyance device was in violation of the provisions of this Ordinance, the Court may, in addition to any other possible penalties, declare in and by a decree that the vehicle or conveyance device, which has been seized, to be forfeited to the Blackfeet Nation.

## 2.0 When Force May be Used in Seizure-Hearing Required in Forfeiture Cases

- (A) Where alcoholic beverages are found by an investigator or Tribal or Bureau of Indian Affairs police officer on any premises or in any place in such quantities as to satisfy the investigator or police officer that such alcoholic beverage is being had or kept contrary to the provisions of this Ordinance, it shall force if necessary and seize any alcoholic beverage found, including the packages in which it was had or kept, and immediately turn such alcoholic beverage over to the Tribal Council.
- (B) In all cases where alcoholic beverages, or alcoholic beverages and vehicles and conveyance devices, are seized, the Tribal Council or its designated prosecuting officer shall commence an action in the Tribal Court against the seized alcoholic beverage, vehicle, or conveyance device, and the person or persons actually or apparently in possession or control thereof if any such person be presented at the time of the seizure. The alcoholic beverage shall be named as a defendant to the action.
- (C) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in or [sic] control thereof if any such person be present at the time of the seizure, the reason the Tribal Council claims the right to possess the alcoholic beverage or conveyance device, or both, and shall demand that all persons who claim any right to the possession of the alcoholic beverage or conveyance device, or both, shall show the nature of their claim or claims and that the Court declare the same to be contraband and that the Court order the contraband forfeited to the Blackfeet Nation.
- (D) A summons shall be issued, served, or published as in all civil actions pursuant to the Tribal Law and Order Code, except that the Court summons shall be published in the local newspaper within the Blackfeet Indian Reservation.
- (E) In every case in which an alcoholic or a conveyance device is seized by an investigator or police officer, it shall be his duty to forth with make or cause to be paid to the Tribal Council a report in writing of the particulars of the seizure.

## 3.0 Inspection of Carrier's Records-Unlawful for Carrier to Refuse

- (A) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this Ordinance, the Tribal Council or any person appointed by it in writing for the purpose, may inspect the freight and express books,

and any other documents in the possession of any common carrier doing business within the exterior boundaries of the Blackfeet Indian Reservation, containing any information of record relating to any goods shipped, carried, received for shipment, or cosigned for shipment within the Reservation.

- (B) Every common carrier and every official employee of any such company or common carrier who neglects or refuses to produce and subject for inspection any book, record, or document requested by the Tribal Council or its authorized representative, where that document relates to enforcement or administration under this Ordinance, shall be deemed in violation of this Ordinance and shall be subject to a fine of One Hundred Dollars (\$100.00) per day for each day during which the violation continues, not to exceed Five Thousand Dollars (\$5000.00).

#### 4.0 Violation of Code Civil Action in Tribal Court-Corrective Action Before Judicial Proceedings

- (A) Every action charging a violation of the provisions of this Ordinance shall be brought by the Tribal Council or its prosecuting officer, in the name of the Blackfeet Tribe, against the licensee or other alleged violator in the Blackfeet Tribal Court as a civil action.
- (B) Provided, however, that the Tribal Council may, in the exercise of its sound discretion, resolve any alleged violation only when alleged to have been committed, by an authorized licensee, at the administrative level through the collection of an appropriate fine amount, an undertaking of corrective measures by the licensee, or other allowed penalty. Should an alleged violator agree to administrative resolution of the complaint, he shall not be allowed to seek judicial review of the administrative resolution.

### **PART 7. PROHIBITIONS AND PENALTIES**

#### 1.0 Unlawful Transfer, Sale, and Possession of Alcoholic Beverages

- (A) Except when in possession of fully issued Tribal license and as otherwise provided by this Ordinance no person shall, within the Blackfeet Indian Reservation, by himself or through others, keep for sale, or directly or indirectly sell or offer to sell, or to give any other person alcoholic beverages.
- (B) This section shall not apply to the county sheriff, Tribal police, Bureau of Indian Affairs police, Blackfeet Tribal Council, or its authorized representative when in possession of alcoholic beverages under judicial process or to sale by said entities and persons when under judicial process.

#### 2.0 Penalty for Sale of Alcoholic Beverages Without a License

Any person who has not been issued a license for the retail sale of any alcoholic beverages under this Ordinance who sells or keeps for sale any alcoholic beverage has committed a violation, and upon a finding thereof is punishable by a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00).

### 3.0 Providing Alcoholic Beverages to Intoxicated Persons Prohibited

- (A) No retail seller of alcoholic beverages licensed pursuant to this Ordinance may, either through themselves or an agent, sell any alcoholic beverages or permit alcoholic beverages to be sold to any person apparently under the influence of alcohol.
- (B) Any retail seller of alcoholic beverages who is licensed pursuant to this Ordinance who sells or allows to be sold alcoholic beverages to a person obviously intoxicated, is deemed to have violated this Ordinance and upon a finding thereof is punishable of a civil penalty of up to Five Hundred Dollars (\$500.00) for each infraction.
- (C) No person may give alcoholic beverages to a person apparently under the influence of alcohol.

### 4.0 Age Limit on Sale of Alcoholic Beverages, Social Host Law-Penalty for Violation

- (A) No person shall sell, give, purchase, or otherwise supply alcoholic beverages to any person under the age of twenty-one (21) years of age or permit any person under that age to consume an alcoholic beverage, including cases of alcohol beverages given to a person under twenty-one (21) years of age by his/her parent or guardian, and not adult shall knowingly provide a place for underage drinkers to consume alcohol, regardless of whether or not that adult provides the alcohol.
- (B) The penalty for violation of this Section shall be the same as for the offense of Contributing the Delinquency of a Minor, in Chapter 7, Blackfeet Law and Order Code of 1967, as amended. Chapter 14. Section 5.<sup>11</sup>
- (C) Any person who violates this provision may, upon finding thereof, be punished through a civil penalty or a fine of not less than Two Hundred Fifty Dollars (\$250.00) for each violation.
- (D) Provided, however, should the drinking age for the State of Montana be changed, the drinking age stated in this Ordinance will automatically be changed to reflect the new change.

### 5.0 Miscellaneous Prohibitions-Penalty

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<sup>11</sup> Resolution No. 214-2011, Amending Ordinance 73, Social Host Law and Penalty, May 5, 2011

(A) All licenses to sell at retail alcoholic beverages[sic] pursuant to this Ordinance are hereby prohibited from engaging in the following activities:

1. From engaging in pawnbroking or taking goods or materials in hock; or
2. Lending money or engaging in similar activity to indigent persons solely for the purpose of enabling them to purchase alcoholic beverages in his establishment; or
3. From allowing the consumption of alcoholic beverages on his premises which were purchased for off-premises consumption only; or
4. From allowing fighting or threatening to fight on his premises or from generally failing to keep order in his premises.

(B) Any licensee found to be in violation of any of the provisions of this section shall be deemed to have violated this Ordinance and is subject to a civil penalty of not less than Three Hundred Dollars (\$300.00) for each separate violation.

#### 6.0 Firearms Not Allowed on Premises

(A) There shall be no firearms or other dangerous weapons allowed at any time on the premises where alcoholic beverages are being sold at retail, with the exception of licensed firearms for the maintenance of order, firearms possessed by duly authorized peace officers, and firearms maintained by the licensee for protection of himself, his agents, and invitees.

(B) Any person found in possession of other dangerous weapons on a premises beverages are being sold at retail shall thereof in court, be subject to a civil than Two Hundred Fifty Dollars (\$250.00).

#### 7.0 Minors Not Allowed-Eating Establishments Exception

(A) Minors shall not be allowed in any establishment where alcoholic beverages are sold for on-premises consumption, except where a restaurant or other prepared food business is operated in conjunction therewith.

(B) Any licensee who is found to have violated this provision shall be deemed to have violated this Ordinance and be subject to a civil fine of not less than Two Hundred Fifty Dollars (\$250.00) for each violation.

#### 8.0 Sale of Alcoholic Beverages from Drive-In Windows or Similar Devices Prohibited

(A) It is the public policy of the people of the Blackfeet Nation to stop the carnage that is taking place on the highways of the Blackfeet Reservation, and which is occurring as

a result of the high number of drinking drivers. It has been statistically proven that drinking drivers account for a significant percentage of all highway deaths and accidents. It is the public policy of the people of the Blackfeet Nation to prevent drinking and driving, not to encourage or facilitate such action.

- (B) It shall be unlawful and a violation of this Ordinance to sell or offer to sell alcoholic beverages through drive-up windows or other similar devices which would allow the retail purchaser to purchase alcoholic beverages while remaining in his vehicle. Drive-up windows and other similar devices are hereby declared to be public nuisances and thus subject to injunction to prevent uses in violation of this Ordinance.
- (C) A licensee found to have violated this provision shall be subject to a civil penalty of not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

#### 9.0 Penalty for Violating Ordinance-Revocation of License

- (A) If any retail licensee is convicted of a violation under this Ordinance, his license shall be immediately revoked or in the discretion of the Tribal Council such other sanction may be imposed as is authorized by this Ordinance. Any person violating the provisions of this Ordinance shall, upon finding thereof, be deemed guilty and be subject to such fine or penalty as is provided in this Ordinance.
- (B) A person under the age of nineteen (19) years who is found to have violated any provision of this Ordinance shall be subject to a One Hundred Dollar (\$100.00) civil penalty for each offense.

#### 10.0 Officer or Agent, of Firm or Corporation, and Occupant of Premises Deemed Party to Violation

- (A) Where a violation of this Ordinance is committed by a corporation or firm, the officer or agent in charge of the premises where the violation was committed shall be deemed to be a party to the violation and shall be personally liable to [sic] the penalties prescribed for the offense as principal offender.
- (B) Upon proof of the fact that a violation of this Ordinance has been committed by any person in the employ of the occupant of any house or premises, or by any guest of the occupant of any premises where the violation was committed, the occupant of the premises shall be personally liable for the penalties prescribed for the violation as principal offender, notwithstanding the fact that the occupant did not commit the violation or authorize its commission.
- (C) Nothing in sections (A) and (B) above will relieve the person actually committing the offense for liability, therefore.

## 11.0 Injunction Actions

- (A) Upon the determination of the Tribal Council, in the exercise of its sound discretion, an injunction and immediate temporary restraining order may be sought against any retail licensee requesting that he be prohibited from further sales of alcoholic beverages and that his business as enacted activities be immediately suspended.
- (B) The action may be started by the Tribal Council filing a petition in the Tribal Court, verified by affidavit, showing the need for immediate measures and showing that the licensee has been notified.
- (C) If the Court finds that the circumstances present a public nuisance or that the public health and welfare has been or is endangered it shall issue a temporary restraining order and schedule a show cause hearing no later than five (5) working days from the date the temporary order is issued.
- (D) The temporary restraining order will dissolve of its own force and effect on the fifth day if the Tribe fails to go forward on its petition on the day set for the hearing.

## 12.0 Delegation of Authority

The Blackfeet Tribal Council hereby reserves the right to delegate any of the powers and duties stated in this Ordinance to any agency of the Blackfeet Tribe. In the event of such a delegation, the Tribal Council shall promptly notify all interested persons by proper publication of which activities or duties have been delegated and to which agency the delegation was made.

## 13.0 Federal Laws Applicable

The Federal Indian Liquor Laws remain applicable to any act or transaction not authorized by this Ordinance and not otherwise in compliance with Federal law, violators may be subject to federal prosecution.

# **PART 8. REGULATION OF WHOLESALERS, BREWERS, AND STATE LIQUOR STORES**

## 1.0 Brewers License to Sell Products-License Fee

- (A) It shall be unlawful for any brewer of beer, wherever located, to sell his product within the exterior boundaries of the Blackfeet Reservation without first obtaining a license and paying the appropriate fee as provided by this Ordinance.
- (B) Every brewer who is licensed to do business within the State of Montana, may obtain a license to sell his product within the Blackfeet Indian Reservation by making application with the Blackfeet Tribal Council and submitting a fee of Five Hundred Dollars (\$500.00) therewith.

- (C) Upon being satisfied that the applicant is duly licensed by the State of Montana, and otherwise of good moral character, the Tribal Council shall issue such a license to the applicant.

## 2.0 Wholesale Distribution of Beer and Wine-License Required-Fee

- (A) It shall be unlawful for any person or firm to sell, offer to sell, or possess for sale any beer, or wine, or both, for wholesale distribution, within the exterior boundaries of the Blackfeet Reservation without first obtaining license and paying the appropriate fee as required by this Ordinance.
- (B) Any person desiring to possess and sell beer for wholesale or wine for wholesale, or both, under the provisions of this Ordinance shall apply to the Tribal Council for a license to do so, submitting with his application his annual license fee of One Thousand Dollars (\$1,000.00).
- (C) Upon being satisfied that the applicant is a good moral character, has sufficient capital and is otherwise a law-abiding citizen, the Tribal Council shall issue the license to the applicant.
- (D) If the Tribal Council shall determine that the license should not be granted, the applicant shall be promptly notified, and his license fee returned.
- (E) This provision does not apply to stores owned or operated by the State of Montana as State Liquor Stores.

## 3.0 State Liquor Store-Limit-Fee

- (A) There shall be one (1) State Liquor Store on the Blackfeet Indian Reservation. Said store shall not sell alcoholic beverages on the Blackfeet Indian Reservation, whether at wholesale or retail, without first obtaining a license pursuant to this Ordinance and paying the appropriate fee.
- (B) Upon application by the State of Montana and the tendering of a One Thousand Dollars (\$1,000.00) license therewith, Tribal Council shall issue a license to the State Liquor Store which will enable said store to sell alcoholic beverages at wholesale and at retail.

## 4.0 Renewal-Suspension-Revocation-Expiration

Licenses issued to wholesale distributors of alcoholic use, brewers, and the State Liquor Store, pursuant to this Part, shall be subject to expiration, renewal, revocation, and suspension pursuant to the provisions of Part 4, Sections 7, 8 and 9.

## 5.0 Violators-Enforcement



The provisions of this Part may be enforced pursuant to the provisions of Part 6, Sections 1 through 6 of this Ordinance, including those provisions providing for the seizure and forfeiture of contraband alcoholic beverages and conveyance devices which are used in violation of this Ordinance.

## **PART 9. EFFECTIVE DATE AND REPEAL**

### **1.0 Effective Date**

This Ordinance shall be effective upon approval by the Bureau of Indian Affairs and publication as required by law.

### **2.0 Repeal of Prior Ordinances and Resolutions**

This Ordinance No. 73 hereby repeals all prior ordinances and resolutions which regulate or purport to regulate the sale and distribution of alcoholic beverages within the Blackfeet Indian Reservation including Ordinance No. 6A. This Ordinance is controlling.

## **LEGISLATIVE HISTORY**

Resolution No. 214-2011, Amending Ordinance 73, Social Host Law and Penalty, May 5, 2011

Resolution No. 212-2011, Amending Ordinance 73, Implementing RASS, May 5, 2011

2008 Referendum Vote Language to close sales during North American Indian Days and Heart Butte Society Celebration

Resolution No. 325-87, "Amending Issuance, Transfer or Renewal of new Class 3 Off-Premises Retail Beer and Wine Licenses to enrolled members and 51% member-owned businesses, June 17, 1987

Federal Register, Volume 51 No. 52 March 18, 1986

Resolution No. 283-85, "Adopting Ordinance #73, Regulation and Control of Alcohol, June 6, 1985