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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Grand Traverse Band of Ottawa and Chippewa Indians; Amendments to Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Grand Traverse Band of Ottawa and Chippewa Indians Liquor Ordinance, Title 14, Chapter 4. In 2016, the Grand Traverse Tribal Council enacted the amendments to the Liquor Ordinance. The amended Liquor Ordinance supersedes the existing Grand Traverse Band of Ottawa and Chippewa Indians Liquor Ordinance that was last published in the Federal Register on June 13, 2005 (70 FR 34146).

DATES: This ordinance shall become effective [Insert date 30-days after the date of publication in the FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Ms. Sherrel LaPointe, Tribal Operations Officer, Midwest Region, Bureau of Indian Affairs, Norman Pointe II, 5600 American Boulevard West, Suite 500, Bloomington, Minnesota 55437, Telephone: (612) 713-4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the Federal Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions

in Indian country. The Grand Traverse Band duly adopted Tribal Council Resolution Number 16-34.2713 on February 17, 2016. This notice is published with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Grand Traverse Band of Ottawa and Chippewa Indians duly adopted this amendment to the Grand Traverse Liquor Control Code by Resolution Number 16-34.2713 on February 17, 2016.

Dated: December 12, 2016

Lawrence S. Roberts,
Principal Deputy Assistant Secretary–Indian Affairs.

The Grand Traverse Band of Ottawa and Chippewa Indians Liquor Control Code, as amended, shall read as follows:

LIQUOR ORDINANCE OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

TITLE 14 - CHAPTER 4

14.401 Short Title. This ordinance may be cited as the “Liquor Ordinance” of the Grand Traverse Band of Ottawa and Chippewa Indians.

14.402 Authority. As required by 18 U.S.C. § 1161, this ordinance is in conformity with relevant provisions of State law and is enacted pursuant to Article IV of the constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.

14.403 Interpretation.

(a) This ordinance shall be deemed an exercise of the police and regulatory powers of the Grand Traverse Band of Ottawa and Chippewa Indians in order to promote Tribal self-determination and to protect the public welfare, and all provisions of this ordinance shall be liberally construed for the accomplishment of these purposes.

(b) Nothing in this ordinance may be construed as a waiver of Tribal sovereign immunity.

14.404 Definitions. In this ordinance, unless the context otherwise requires:

(a) “alcoholic beverage” means any of the following:

(1) any spirituous, vinous, malt or fermented liquor, liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (.5%) or more alcohol by volume, which is commonly used or reasonably adopted to use for beverage purposes;

- (2) any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops or other cereal in potable water;
 - (3) any product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks;
 - (4) any beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink;
 - (5) any drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine or cider and plain, sparkling or carbonated water, and contains any 1 or more of the following: (a) nonalcoholic beverages; (b) flavoring; (c) coloring materials; (d) fruit juices; (e) fruit adjuncts; (f) sugar; (g) carbon dioxide; (h) preservatives.
- (b) "liquor" means any alcoholic beverage.
 - (c) "person" means a natural person, firm, association, corporation, or other legal entity.
 - (d) "premises" means specified locations within Tribal lands where alcoholic beverages may be sold as described in a license issued by the Tribal Council.
 - (e) "Secretary" means the Secretary of the United States Department of the Interior.
 - (f) "State" means the State of Michigan, which regulates matters pertaining to the consumption, possession, delivery and/or sale of alcoholic beverages within the State through its Liquor Control Commission.

- (g) "Tribal Council" means the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (h) "Tribal lands" means:
- (1) land within the limits of the Grand Traverse Band of Ottawa and Chippewa Indians' Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and / or
- (2) land over which the Grand Traverse Band of Ottawa and Chippewa Indians exercises governmental power and which is either held in trust by the United States for the benefit of the Grand Traverse Band, or held by the Tribe or by one of its members subject to restriction by the United States against alienation.
- (i) "Tribal license" means an official action by the Tribal Council which authorizes the manufacture and / or sale of alcoholic beverages for consumption either on the premises and / or away from the premises. The manufacture, sale and / or delivery of alcoholic beverages intended for consumption away from Tribal lands must also comply with relevant provisions of State law.
- (j) "Tribal representative" means the Tribal Manager, a program director, or manager of a subsidiary enterprise of the Tribe.
- (k) "Tribe" means the Grand Traverse Band of Ottawa and Chippewa Indians.
- (l) "vendor" means a person licensed under this ordinance to sell alcoholic beverage, or a person employed by a vendor to do so.

14.405 Public Policy Declared.

- (a) It is the policy of the Tribe that no manufacture, sale, delivery, or importation of alcoholic beverages shall occur in Tribal lands unless such manufacture, sale, delivery or

importation is by a person licensed under this ordinance to do so, or by prior written order of the Tribal Council.

- (b) All alcoholic beverages for sale, use, storage, or distribution in Tribal lands shall originally be purchased by and imported into Tribal lands by a person licensed under this ordinance to do so, unless such alcoholic beverages are manufactured under appropriate Tribal license within the Tribal lands, or by prior written order of the Tribal Council.
- (c) This section shall not apply in the case of alcoholic beverages brought into Tribal lands personally by a person aged twenty-one (21) years or older to purchase or manufacture alcoholic beverages for personal or household use.

14.406 General Provisions.

- (a) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use or possess any alcoholic beverage or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for consumption on the premises, nor may any person aid or abet another person in doing any of the foregoing.
- (b) No vendor shall permit any person under the age of eighteen (18) on premises licensed under this ordinance, unless accompanied by an adult who is the legal guardian or parent of the minor.
- (c) No vendor shall sell, serve or allow to be consumed on premises licensed under this ordinance, alcoholic beverages other than during the hours permitted by its license.
- (d) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use or possess any alcoholic beverage, or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for distribution away from premises, nor may any person aid or abet another person in any of the foregoing.

(e) It shall be a violation of this ordinance for any person, by himself or by his agent or employee, to manufacture, sell, offer for sale, or possess any alcoholic beverage which is adulterated or misbranded or any alcoholic beverage in bottles which have been refilled.

For the purposes of this section:

(1) alcoholic beverages shall be deemed adulterated if they contain any liquid or other ingredient not placed there by the original manufacturer or bottler, other than by order of a consumer for immediate consumption on the premises;

(2) alcoholic beverages shall be deemed misbranded when not plainly labeled, marked or otherwise designated;

(3) alcoholic beverages bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

(4) this subsection 406(e) does not apply to beer containers. [**cf. MCL 436.2005(5)**]

(f) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to a person unless that person has attained twenty-one (21) years of age.

(1) No vendor may knowingly sell or furnish any alcoholic beverage to a person who is younger than twenty-one years of age, or fail to make diligent inquiry as to whether the person is twenty-one (21) years of age.

(2) A suitable sign which describes this section and the penalties for violating this section shall be posted in a conspicuous place in each room where alcoholic beverages are sold.

(g) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to any person who is visibly intoxicated at the time, or who is known to the vendor to be a habitual drunkard.

- (h) It shall be a violation of this ordinance for any person younger than twenty-one (21) years of age to purchase, attempt to purchase, possess or consume any alcoholic beverage, or for such a person to misrepresent his age for the purpose of purchasing or attempting to purchase such alcoholic beverage.
- (i) Upon attempt to purchase any alcoholic beverage on premises licensed under this ordinance by any person who appears to the vendor to be younger than twenty-one (21) years of age, that vendor shall demand, and the prospective purchaser upon such demand shall display, satisfactory evidence that he is of legal age. It shall be a violation of this ordinance for any person to present to any vendor falsified evidence as to his age.
- (j) No person under this ordinance shall make any delivery of any alcoholic beverage outside the premises described in the license, unless the license permits distribution of alcoholic liquor for consumption away from the premises.
- (k) No person, directly or indirectly, himself or herself or by his or her clerk, agent or employee shall manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, or import, import for sale, transport for hire, or transport, or possess any alcoholic beverage unless that person complies with this ordinance.
- (l) In order to retain its alcoholic beverage license under this ordinance, any Tribal operation is required to comply with other applicable Tribal law, as well as with the provisions of this ordinance.

14.407 Tribal Alcoholic Beverage Licenses.

- (a) Upon written authorization by a Tribal representative, the Tribal Council may issue a license authorizing:

- (1) the manufacture and / or sale or alcoholic beverages intended solely for consumption on the premises; and / or
 - (2) the manufacture and / or sale of alcoholic beverages intended solely for consumption away from the premises.
- (b) All such license applications must set forth the purpose for which the license is sought, together with a description of the premises upon which the alcoholic beverage manufacture and / or sales are proposed to take place.
- (c) In its sole discretion, the Tribal Council shall have the power and authority to determine the numbers and types of alcoholic beverage licenses to be issued pursuant to this ordinance.

14.408 Complaint of Violation.

- (a) Any complaint regarding violation of any provision of this ordinance shall be referred to the Tribal Prosecutor, who may cause such complaint to be placed in writing and served personally or by registered mail upon the licensee or other person against whom that complaint is made.
- (b) A hearing on any such complaint shall be held by the Tribal Court not less than seven (7) days nor more than twenty-eight (28) days after service of the complaint upon the licensee or other person against whom that complaint is made.
- (c) Any Indian person (defined in 9 GTBC § 102(a)) who violates any provision of this ordinance may be charged with a misdemeanor criminal offense and may be prosecuted pursuant to 9 GTBC § 107(s). If convicted, the Tribal Court may impose a fine of not greater than one thousand dollars (\$1,000.00), or imprisonment not exceeding sixty (60) days in the Tribal jail, or by both such fine and imprisonment.

- (d) Any non-Indian person who violates any provision of this ordinance may be charged with and prosecuted for a civil offense, and if convicted, may be subject to civil sanctions which the Tribal Council may prescribe, and/or may be excluded from Tribal lands.
- (e) Any person who violates any provision of this ordinance for which a specific penalty is not provided, shall be subject to a fine of not less than one hundred dollars (\$100.00), nor more than five thousand dollars (\$5,000.00), or by imprisonment in the Tribal jail for not more than sixty (60) days, or by both such fine and imprisonment, plus costs.

14.409 Severability. If any section or provision of this ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of this ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

14.410 Amendment or Repeal of this Ordinance. This ordinance may be amended or repealed only by majority vote of the Tribal Council in regular session.

14.411 Effective Date. The effective date of this ordinance shall be the date upon which it is certified by the Secretary or his delegate and published in the Federal Register in accordance with 18 U.S.C. § 1161.