

RESOLUTION NO. 147 -15
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Adopting the Yavapai-Apache Nation Liquor Code

- WHEREAS:** The Yavapai-Apache Nation Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided under Article V(a) of the Constitution; and
- WHEREAS:** The Council, as the legislative body of the Nation, is authorized to enact codes and ordinances governing law enforcement on lands within the jurisdiction of the Nation as provided under Article V (o) of the Constitution; and
- WHEREAS:** The Council is authorized to exercise civil jurisdiction over all tribal members, and any non-member of the Tribe to the extent permitted by federal law, as provided under Article V(u) of the Constitution; and
- WHEREAS:** The Council is authorized to enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers, as provided under Article V (v) of the Constitution; and
- WHEREAS:** Federal law prohibits the introduction of liquor into Indian Country, including the lands of the Yavapai-Apache Nation (18 U.S.C. §1154), and authorizes tribal governments to decide when and to what extent liquor possession, sales, and service shall be deemed permitted within their respective reservations (18 U.S.C. §1161) in a manner deemed consistent the liquor laws of the state wherein said reservation is located; and
- WHEREAS:** The Tribal Council has determined that it is in the best interest of the Nation to adopt a liquor code in accordance with federal law as authorized by 18 U.S.C §1161, and as authorized under the Nation’s Constitution, for the purpose of governing, controlling, and regulating liquor possession, distribution, sales and service within the Nation’s reservation; and
- WHEREAS:** The Council has reviewed the proposed Yavapai-Apache Nation Liquor Code, a copy of which is attached to this Resolution as Exhibit A, and has determined that adoption of the Yavapai-Apache Nation Liquor Code will serve the best interests of the Nation.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby adopts as a law of the Nation the Yavapai-Apache Nation Liquor Code as set out in the Liquor Code attached to this Resolution as Exhibit A.

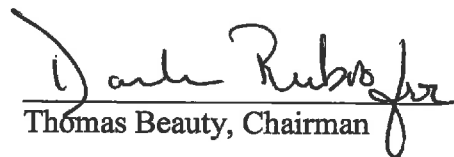
BE IT FURTHER RESOLVED that the Yavapai-Apache Nation Liquor Code shall be effective immediately upon adoption of this Resolution, subject only to the certification of the United States Secretary of the Interior ("Secretary"), or her designee, and its publication in the Federal Register as provided by federal law at 18 U.S.C. §1161.

BE IT FURTHER RESOLVED that the Tribal Council does hereby request that the Secretary certify the Nation's Liquor Code and publish the same in the Federal Register as required by 18 U.S.C §1161.


BE IT FINALLY RESOLVED that the Chairman, and Vice-Chairwoman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution and to implement the Yavapai-Apache Nation Liquor Code.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on August 27 2015, by a vote of 7 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.


Thomas Beauty, Chairman

ATTEST:


Karla Reimer, Council Secretary



YAVAPAI-APACHE NATION




Approved as to Form:


Office of the Attorney General

CERTIFICATION

I, the Secretary of the Yavapai-Apache Nation Tribal Council, hereby certify that the above and foregoing document is a true and correct Copy of the original document on file in my office.


Karla Reimer, Council Secretary

8-27-15
Date

EXHIBIT A

Yavapai-Apache Nation Liquor Code

August 27, 2015

**YAVAPAI-APACHE NATION
LIQUOR CODE**

CHAPTER I – INTRODUCTION

SECTION 101: TITLE

This Liquor Code is adopted by the Yavapai-Apache Nation (“YAN” or “Nation”) and shall be known as the Yavapai-Apache Nation Liquor Code (referred to herein as “Liquor Code” or “Code”).

SECTION 102: FINDINGS

The Tribal Council finds as follows:

- A. The introduction, possession, and sale of liquor in Indian Country is a matter of particular concern to Indian tribes and the United States. Consistent with the laws of the United States, the control of liquor on the Yavapai-Apache Nation Reservation remains subject to the legislative enactments of the Nation in the exercise of its governmental powers over the Reservation.
- B. Federal law prohibits the introduction of liquor into Indian Country (18 U.S.C. §1154), and authorizes tribal governments to decide when and to what extent liquor possession, sales, and service shall be permitted within their reservations (18 U.S.C. §1161) in a manner deemed consistent with state liquor laws.
- C. The Tribal Council, as the governing body of the Nation under Article IV, Section 1 of the Constitution of the Yavapai-Apache Nation (hereinafter “Tribal Council”), has approved the issuance of liquor licenses in accordance with the liquor control laws of the state of Arizona at the following locations only: Cliff Castle Casino and Hotel, Whitehills Chevron Convenience Store, Distant Drums RV Resort, and The Marketplace Convenience Store, and at no other locations. The limitation of liquor sales to the locations specified in this Code will increase the Nation’s ability to control possession and distribution of liquor within the Nation’s Reservation.

SECTION 103: AUTHORITY AND PURPOSE

- A. This Code is enacted under authority of the Act of August 15, 1953, 67 Stat. 586, (18 U.S.C. Section 1161) and under authority of the Constitution of the Yavapai-Apache Nation (“YAN Constitution”), which authorizes the Tribal Council to exercise the following powers relevant to the adoption of this Liquor Code:
 1. YAN Constitution, Article V(a), “To represent the Tribe and act in all matters that concern the health and welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution.”

2. YAN Constitution, Article V (o), to enact codes and ordinances governing law enforcement on lands within the jurisdiction of the Tribe.”
 3. YAN Constitution, Article V (u), “To exercise civil jurisdiction over all tribal members and any non-member of the Tribe to the extent permitted by federal law.”
 4. YAN Constitution, Article V (v), “To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers.”
- B. This Liquor Code is adopted for the purpose of governing, controlling and regulating liquor possession, distribution, sales and service within the Nation’s reservation.

SECTION 104: DEFINITIONS

- A. Unless otherwise required by the context in which it is used, the following words and phrases shall have the following meanings.
1. "Alcohol" means the substance known as ethyl alcohol, hydrated oxide or ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.
 2. “Alcoholic Beverage” is synonymous with the term “liquor” as defined in this Section 104. (4) below.
 3. “Beer” means any beverage obtained by the alcoholic fermentation, infusion, or decoction of barley malt, hops, or other ingredients not drinkable, or any combination thereof.
 4. "Liquor" or "Liquor Products" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and means all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one-half of one percent (.5%) of alcohol.
 5. “Liquor License” means the Liquor License approved by the Tribal Council and issued by the state of Arizona upon application by the Nation to such Subordinate Economic Organization or Enterprise of the Nation as the Council may authorize by resolution to hold such license and exercise the rights and privileges thereunder.

6. "Sale" and "Sell" means any transaction that includes any exchange, barter, sale and traffic; and also includes the selling, supplying or distributing, by any means whatsoever, of liquor by any person to any other person.
7. "Spirits" or "Distilled Spirits" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which, when consumed in sufficient quantities, produces intoxication to any degree, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent of alcohol by volume, and including wines exceeding twenty-four percent (24%) of alcohol by weight.
8. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four percent (24%) of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding twenty-four percent (24%) of alcohol by weight.

SECTION 105: JURISDICTION

In accordance with the law of the United States as set out at 18 U.S.C. §1161, the Nation asserts its jurisdiction to control and regulate liquor sales and service within the boundaries of the Yavapai-Apache Nation Reservation. For purposes of this Liquor Code "Reservation" or "Jurisdiction" means those lands within the exterior boundaries of the Yavapai-Apache Nation, any lands that are held in trust by the United States of America for the benefit of the Yavapai-Apache Nation or any of its members, both now and in the future, any other land constituting "Indian Country" within the meaning of 18 U.S.C. § 1151 or any successor provision, and all lands falling within the Nation's Jurisdiction as provided under Article I of the Constitution of the Yavapai-Apache Nation as approved by the United States Secretary of Interior on April 13, 1992.

SECTION 106: CONFORMITY WITH STATE LAW

- A. Authorized liquor sales and service within the Nation's Reservation and Jurisdiction shall comply with the State of Arizona's liquor laws to the extent required by 18 U.S.C. § 1161 and other applicable law of the United States.

- B. The Nation’s Attorney General shall ensure that all liquor license requirements under this Code and under the laws of the State of Arizona are satisfied, that the license(s) authorized by the Tribal Council under this Code are renewed on an annual basis, and that all sales and service of liquor as authorized under this Code are carried out in a manner consistent with this Code and applicable laws of the Nation, and under Arizona law to the extent required by applicable law of the United States.

SECTION 107: REPEAL OF PRIOR LAWS

All prior codes, ordinances and resolutions of the Yavapai-Apache Nation regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor, including, but not limited to the “Ordinance Legalizing the Introduction, Sale or Possession of Intoxicants”, as adopted under Tribal Council Resolution 91-85 on October 19, 1985, are hereby repealed and are declared to be of no further force or effect.

SECTION 108: AUTHORIZED SALES AND SERVICE OF LIQUOR

- A. **Liquor License Required.** Liquor may be offered for sale and served on the Yavapai-Apache Nation Reservation only under a Liquor License as expressly authorized by the Tribal Council in accordance with this Code and applicable federal law and only at the following business locations and in accordance with the following conditions:
 - 1. **Cliff Castle Casino and Hotel.** All sales and service of liquor at the Cliff Castle Casino and Hotel, and from all liquor sales and service facilities located therein, shall be consistent with the Arizona State Liquor License(s) maintained by the Nation for the Cliff Castle Casino and Hotel.
 - 2. **Whitehills Chevron Convenience Store.** All liquor sales at the Whitehills Chevron Convenience Store shall be consistent with the Arizona State liquor license maintained by the Nation for the Whitehills Chevron Convenience Store.
 - 3. **Distant Drums RV Resort.** All liquor sales at the Distant Drums RV Resort shall be consistent with the Arizona State liquor license maintained by the Nation for Distant Drums RV Resort.
 - 4. **The Marketplace Convenience Store.** All liquor sales at the Marketplace Convenience Store shall be consistent with the Arizona State liquor license maintained by the Nation for the Marketplace Convenience Store.
- B. The Council, by Amendment to this Code, may authorize liquor sales at such additional locations as the Council deems appropriate.

- C. Sales for Personal Consumption Only. All liquor sales shall be for the personal use and consumption of the purchaser and not for the purchaser's resale. Any resale of any alcoholic beverage within the Jurisdiction of the Nation is prohibited. Any person or entity that is not licensed under this Code who purchases or possesses an alcoholic beverage within the Nation's Jurisdiction and sells it, whether in the original container or not, shall be guilty of a violation of this Code and shall be subject to such penalties as are prescribed by this Code.
- D. License Not Transferable. Except as may be permitted under this Code, Liquor Licenses may not be transferred and said License may only be utilized by the entity holding the License under Section 108 A. above.
- E. Inspections. All businesses and their premises holding a Liquor License under this Code shall be open for inspection by the Nation, acting through its officials, agents, employees or other designated representatives, at all reasonable times for the purpose of determining whether said business is complying with this Code.

SECTION 109: ENFORCEMENT

- A. In enforcing this Code, the Tribal Council, acting on behalf of the Nation, may take the following actions:
 - 1. Publish and enforce such rules and regulations as deemed necessary by the Council to govern the manufacture, distribution, sale, and possession of liquor within the Nation's Jurisdiction.
 - 2. Revoke any Liquor License approved by the Council under this Code, following a determination by the Council that the holder of said License has violated any provision of this Code or that the License is no longer in the best interest of the Nation. The holder of the License shall be provided notice and an opportunity to be heard in any such revocation action.
 - 3. Bring suit in the Nation's Tribal Court, or any other court of competent jurisdiction, to enforce this Code.
 - 4. Hold such hearings as the Council deems necessary to administer and enforce this Code.
 - 5. Delegate to the Nation's Tribal Court such authority as may be necessary to enforce the civil penalties arising under this Code. Except as may otherwise be provided by applicable federal law, the Nation's Tribal Court shall have exclusive jurisdiction to enforce this Code.

6. Take all such actions as are within the Council's authority under the laws and Constitution of the Yavapai-Apache Nation in the enforcement of this Code.

SECTION 110: PROHIBITIONS AND VIOLATIONS

- A. **General Prohibition.** Except as authorized under a Liquor License issued under Section 107 of this Code, the introduction or possession of Liquor for sales, distribution or service is prohibited within the Yavapai-Apache Nation's Jurisdiction, and any such possession, sale, distribution or service without such License shall be a violation under this Code. Any person who, without a Liquor License authorized under this Code, introduces or possesses liquor within the Nation's jurisdiction with the intent to sell the same shall be in violation of this Code. In any proceeding under this Code, the conviction of any person in a criminal matter of one unlawful sale, possession or distribution of liquor under any law of the Nation, or a determination by the Tribal Court in a civil matter that said person has engaged in one unlawful sale, possession or distribution under this Code, shall establish prima facie intent of said person to unlawfully keep liquor for sale, selling liquor or distributing liquor in violation of this Code. Federal liquor laws applicable to Indian Country shall remain applicable to any person, act, or transaction which is not authorized by this Code and violators of this Code shall be subject to federal prosecution as well as to legal action in accordance with this Code and the laws of the Nation.
- B. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this Code, or who shall have liquor for sale in his possession without a Liquor License, shall be in violation of this Code.
- C. Any person who, within the Nation's Jurisdiction, buys liquor from any person other than a properly licensed business under Section 108.A. of this Code shall be in violation of this Code.
- D. Any person who knowingly keeps or possesses liquor upon his person or in any place or upon any premises conducted or maintained by his employer or principal or agent with the intent to sell or distribute the same contrary to the requirements of this Code, shall be in violation of this Code.
- E. No person shall be authorized to sell or serve liquor within the Reservation unless they are at least 21 years of age, except as may be authorized under Arizona liquor control laws. No person may be sold or served liquor unless they are 21 years of age. Any person acting contrary to this prohibition shall be in violation of this Code.
- F. No person under the age of 21 years shall consume, acquire or have in his/her possession any liquor. No person shall permit any other person under the age of 21 years to consume liquor on his/her premises or any premises under his/her control. Any

person acting contrary to these prohibitions shall be in violation of this Code, with a separate violation accruing for every drink so consumed by the person under the age of 21 years.

- G. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be in violation of this Code for each such drink so provided.
- H. Any person who lends, gives or in any way transfers in any manner an identification card or other representation of age to a person under the age of 21 years for the purpose of permitting such person to purchase or otherwise obtain liquor shall be in violation of this Code; provided that corroborative evidence from a source other than the underage person shall be a requirement for finding such violation.
- I. Any person who purchases or attempts to purchase liquor through the use of false or altered identification, which falsely purports to show the person to be over the age of 21 years shall be in violation of this Code.
- J. When requested by any business or entity holding a liquor license under this Code, any person shall be required to present, and shall present official documentation of the person's age, signature and photograph. This requirement may be satisfied by presentation of one of the following: (i) Driver's License or Identification Card issued by any state department of motor vehicles, (ii) United States Active Military Identification Card, or (iii) a Passport.
- K. Off Premises Consumption of Liquor – Cliff Castle Casino. All liquor sales and service authorized by this Code at the Cliff Castle Casino and Hotel shall be fully consumed within the areas of the Cliff Castle Casino and Hotel as set forth in section 107 A.1. of this Code. At the Cliff Castle Casino and Hotel, no open containers of liquor, or unopened containers of liquor in bottles, cans, cups or other containers, or otherwise shall be permitted outside of the above-described premises, except as provided in accordance with the liquor license(s) maintained by the Nation for the Cliff Castle Casino and Hotel, or under such special event license or permit as may be obtained consistent with said license(s). Any person acting contrary to these prohibitions shall be in violation of this Code.
- L. No Credit Liquor Sales. The sales and service of liquor authorized by this Code shall be made upon a cash basis only. For purposes of this Code, payment for liquor on a cash basis shall include payment by cash, credit card, or check. Any person making liquor sales contrary to this prohibition shall be in violation of this Code.

- M. All Liquor which is possessed, including for any distribution, consumption or sale, in violation of the requirements of this Code is hereby declared to be contraband. Any officer of the Yavapai-Apache Nation Police Department shall seize all such contraband and preserve it in accordance with such provisions as apply to the preservation of evidence and impounded property. Upon being found to be in violation of this Code, the person from whom the contraband was seized shall forfeit all right, title and interest in the contraband seized and the same shall become the property of the Nation to be disposed of as it chooses.

SECTION 111: JUDICIAL ENFORCEMENT, REMEDIES AND CIVIL PENALTIES

- A. The Nation's Tribal Court is hereby vested with exclusive jurisdiction to hear and determine all cases arising under this Code, including the determination of any violation by any person of the provisions of this Code and the imposition of any penalties arising from said violations.
- B. Any person or entity found by the Tribal Court to have violated any provision of this Code shall be liable to pay to the Nation a civil penalty in an amount not less than \$250.00 or greater than \$500.00 for each such violation. The Tribal Court shall issue such further orders as are within its powers to ensure collection of said penalties by the Nation. Persons who are not enrolled members of the Nation and who are determined to have violated this Code shall be subject to exclusion from the Yavapai-Apache Nation Reservation under such procedure as is provided under the Nation's Exclusion Ordinance. In addition, persons or entities subject to the criminal jurisdiction of the Nation who violate this Code shall be subject to such criminal punishment as may be provided in the Nation's Criminal Code and nothing in this Liquor Code shall be construed to deprive the Tribal Court of its criminal jurisdiction over such matters in any respect.
- C. DECLARATORY AND INJUNCTIVE RELIEF

In addition to all other remedies, whether at law or in equity, available to the Nation's Tribal Court under the Constitution and Laws of the Yavapai-Apache Nation in the enforcement of this Code, the Tribal Court may employ such declaratory and/or injunctive relief as may be necessary to determine the rights and liabilities arising under this Code and to otherwise provide for enforcement of this Code to the fullest extent possible under the Nation's laws.

SECTION 112: SOVEREIGN IMMUNITY PRESERVED

- A. Nothing in this Liquor Code is intended or shall be construed as a waiver of the sovereign immunity of the Yavapai-Apache Nation. No official or employee of the Nation or any

of the Subordinate Economic Organizations and Enterprises of the Nation shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Nation in any manner under this Code.

SECTION 113: SEVERABILITY

- A. If any provision or provisions in this Code are held invalid by a court of competent jurisdiction, this Code shall continue in effect as if the invalid provision(s) were not a part hereof.

SECTION 114: EFFECTIVE DATE

- A. This Code shall be effective immediately upon its approval by the Yavapai-Apache Nation Tribal Council, subject only to the certification of the United States Secretary of the Interior, or his/her designee, and its publication in the Federal Register as provided by federal law at 18 U.S.C §1161.