

Commission. Denial of recognition of a religion by the Commission shall be subject to immediate review by the Tribal Council.

§ 3. Jicarilla Apache Alcohol and Gaming Commission.

The Commission shall succeed to all the powers any duties of the Jicarilla Apache Gaming Board created by ordinance 94-O-384-3. Two of the members of the Commission shall serve on a part-time basis and one on a full-time basis. Each member shall serve for a term of three years commencing on the date of appointment; provided that the initial Commission appointed after adoption of this ordinance shall consist of a full-time member with a four-year term, one part-time member with a two-year term and one part-time member with a three-year term. The President shall appoint one Commission member to serve as Chairman.

In addition to the restrictions set forth in Title 18, Chapter 5, Section 7(e), no person may serve on the Commission if he or she:

- (1) Has within five (5) years been convicted of a liquor-related misdemeanor; or
- (2) Has any direct financial interest in, or is a manager of, any liquor establishment. A tribal member will not be disqualified from serving on the Commission on the basis of the Tribe's ownership of a liquor establishment.

In addition to the powers and duties under Title 18, Chapter 5, Section 7(f), the Commission shall be empowered to:

- (1) Review applications for a tribal liquor license and either grant a tribal liquor license or deny the application;
- (2) Conduct, or cause to be conducted, a background investigation of any person having or seeking to have an ownership interest in, or who is or is seeking to be a manager of, a liquor establishment;
- (3) Inspect, on its own initiative or in response to an affidavit based on a reasonable, good faith belief that a violation may have occurred, on its own or in collaboration with the tribal police, alleged violations by licensees of this Chapter;
- (4) Conduct, on its own initiative or in response to a complaint, hearings on alleged violations by licensees of this Chapter. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires. The Commission may order any licensee to take any appropriate action it deems necessary to comply with this Chapter;
- (5) Bring, in the name of the Tribe, any civil action in tribal court or in any

court of competent jurisdiction of any state or the United States to enforce the provisions of this Chapter or to enjoin or otherwise prevent any violation of this Chapter. The Commission may also refer suspected criminal violations of this Chapter to the appropriate governmental authority for investigation and prosecution;

(6) Adopt an annual operating budget which shall be subject to the approval of the Tribal Council and, in accordance with this budget, employ a staff as it deems necessary to fulfill its responsibilities under this Chapter. The Commission shall submit an annual report of the revenues it receives to the Tribal Council; such revenues shall be used to fund the operations of the Commission;

(7) Promulgate and adopt regulations, subject to approval by the Tribal Council, to assist in the implementation of this Chapter and to govern the purchase and sale of liquor on tribal lands; and

(8) Require payment of reasonable fees associated with licensing a liquor establishment additional to those set forth in this Chapter.

§ 4. Licensing.

(a) General Qualifications for License; Standards for Evaluating A License Application.

(1) *Applicants.* If the applicant for a tribal liquor license is an individual person, the person must be an enrolled member of the Jicarilla Apache Tribe who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. If the applicant is a corporation, partnership, or other business entity, majority ownership and control of the entity must be held by the Jicarilla Apache Tribe, tribal entities, tribal subdivisions and enrolled members of the Tribe; and the manager of the proposed licensed premises must be a person who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. For purposes of this section, majority ownership and control means the right to 51 percent or more of the profits and losses of the entity and the power to direct the management, policy and operations of the entity. No person may own or control ten percent (10%) or more of an entity holding a Tribal Liquor License if that person has been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, or is less than twenty-one (21) years of age.

(2) *Evaluation of Application.* The Commission shall issue a Tribal liquor license only if the qualifications set forth in this Chapter are satisfied and, in addition, if the Commission concludes within its discretion that issuing the license will serve the best interests of the Reservation community and the regulatory goals of this Chapter. The Commission shall not issue a tribal liquor license if the Commission determines that:

(A) The proposed activity is likely to undermine economic development on the Reservation;

(B) The proposed activity is likely to impose undue burdens on public safety;

(C) The applicant has failed to demonstrate financial capability to meet all obligations of this Chapter, or

(D) The applicant has failed to identify adequate procedures to prevent violations of this Chapter on the proposed licensed premises.

(3) *Factors to be Considered by Commission.* In deciding whether a proposed license will serve the best interests of the Reservation community, the Commission may consider the following factors, among others:

(A) Whether the application is for the operation of a new or an existing Liquor Establishment;

(B) Whether the applicant is in compliance with applicable tribal and federal law;

(C) Whether the applicant has violated any provision of this Chapter, and if so, whether the violation has been remedied;

(D) The location, number and density of liquor establishments on the Reservation;

(E) Whether food is sold at the establishment; and

(F) The health and welfare of the public.

(4) *Public Comments.* Before the issuance of any Tribal liquor license, the Commission shall allow comments from the public at a time and place advertised in a local newspaper of general circulation.

(5) *Location of Licensed Premises.* The Commission shall not grant a Tribal liquor license to any proposed liquor establishment which is located within 400 feet of the property boundary of a church or school. The Commission may designate other areas that are similarly to be protected.

(b) *Specific License Application Requirements.*

In order to apply for a Tribal liquor license, an applicant must:

(1) Submit to the Commission a written application for the license under oath, on a form prescribed by and stating the information required by the