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January 26, 2009

VIA FACSIMILE & U.S. MAIL

Glenna Wallace, Chief
Eastern Shawnee Tribe of Oklahoma
P.O. Box 350
Seneca, MO 64865
Fax: (918) 666-3325

Brett Barnes, Gaming Commissioner
Eastern Shawnee Tribe of Oklahoma
P.O. Box 350
Seneca, MO 64865
Fax: (918) 666-2186

RE: Eastern Shawnee Gaming Code

Dear Chief Wallace and Mr. Barnes:

This letter responds to your request that the National Indian Gaming Commission (NIGC) review and approve the newly enacted 2008 Eastern Shawnee Gaming Code (Gaming Ordinance) as enacted on August 20, 2008, under Resolution Nos. 082008-R01 and 082008-R09. The newly enacted gaming ordinance replaces the Tribe's prior gaming ordinance enacted on December 7, 1994. The NIGC received the new gaming ordinance on December 22, 2008.

This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations.

I must take this opportunity to again impress upon the Tribe the importance of maintaining a strong and independent gaming commission. An independent gaming commission ensures integrity of the gaming operation and can prevent significant violations of law without the need for state or federal action. Section II of the Tribe's gaming ordinance permits the Business Committee to take on the duties of the gaming commission when the Tribe lacks a gaming commissioner. Further, this section also permits the Business Committee to review and overturn gaming commission decisions. Because these provisions restrict the autonomy and efficacy of the Tribe's gaming commission, they cause me some concern. I would encourage the Business Committee to exercise these powers cautiously, if at all.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

# EASTERN SHAWNEE TRIBE
## OF OKLAHOMA

P.O. Box 350 · Seneca, MO 64865 · (918) 666-2435 · FAX (918) 666-3325


## RESOLUTION NUMBER 082008-R 21

**To amend the 2008 Eastern Shawnee Gaming Code.**

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is a federally recognized Indian Tribe organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution approved by the Secretary of the Interior, April 4, 1994 and Amended March 2, 1999; and

**WHEREAS,** the Constitution of the Eastern Shawnee Tribe of Oklahoma, Article IX, Section 1, empowers the Business Committee to protect and preserve the Interests of the Tribe; and

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is committed to protecting and Preserving the interests of the tribal membership; and

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is committed to the concept of Indian Tribes functioning as sovereign governments; and

**NOW THEREFORE BE IT RESOLVED,** that the Business Committee of the Eastern Shawnee Tribe of Oklahoma does hereby wish to amend the 2008 Eastern Shawnee Gaming Code. Section 1009 "Code may be amended only by majority vote **(of 3 or more)** of the Tribe's Business Committee." Section 2004 The Gaming Commissioner or Deputy Gaming Commissioner may be suspended or removed from office by a majority vote **(3 or more)** of the Business Committee upon conducting a hearing for such purpose in a regular or special meeting as provided in Subparagraph B hereof. Section 2004(B)5 "The Business Committee's decision in the Suspension or Removal Hearing is final. **The Business Committee's decision may be appealed to the CFR Court.**" Section 2008(20) "The Gaming Commission shall **review** collection of all Gaming Facility receipts and the payment of all Gaming Facility obligations." Section 5000(5)c "**The Business Committee's decision may be appealed to the CFR Court.**"

## CERTIFICATION

The foregoing Resolution **NUMBER 082008-R-01** was adopted at a duly called *[regular or special]* meeting of the Business Committee of the Eastern Shawnee Tribe of Oklahoma conducted on **August 20, 2008** A quorum was present at said meeting with the vote reflecting,

4 **FOR**
1 **AGAINST**
0 **ABSTAINING**
0 **ABSENT**

Motion Carries

| | | | |
|---|---|---|---|
| **Shawna B. Pickup, Secretary** | 8-20-08 **Date Signed** | **Jack Ross, Second Chief** | 08-20-08 **Date Signed** |

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## EXECUTIVE BRANCH

**Vetoed: YES** _____ **NO** ✓ **Date:** 8-21-08 **Time:** 9:35 a.m.

**Glenna J. Wallace, Chief**

# EASTERN SHAWNEE TRIBE
OF OKLAHOMA

P.O. Box 350 · Seneca, MO 64865 · (918) 666-2435 · FAX (918) 666-3325


## RESOLUTION NUMBER 082008-R 09

To approve the 2008 Eastern Shawnee Gaming Code with the changes recommended by Chairman Hogen. #1 NIGC Regulations require that key employee and primary management applicants list all ownership interests in businesses that deal with Indian Tribes and the gaming industry in general. 25 C.F.R. 556.4(a)(5),(6). The Tribe's gaming ordinance only requires applicants to list ownership interests of 5% or more. Please revise all related sections accordingly. "4001 (1)b, deleted of 5% or more in any business", "4001 (2) a (i), deleted 5% or more interest in publicly held securities",4001 (2) a deleted 1% or more of its issued and outstanding stock (5% or more interest in publicly traded corporations & added any of its issued and outstanding stock", "4001 (2)b(iv) deleted 5% or more" #2 NIGC regulations require tribe to cease employing any key employee or primary management official that fails to obtain a permanent gaming license after 90 days. 25 C.F.R. 558.3(b). The Tribe's gaming ordinance, however, permits the Gaming Commission to extend the 90 day temporary license period for good faith efforts on behalf of the applicant to provide information. Please revise all related sections accordingly. "4005 (4) deleted but the Gaming Commission may extend such period at its discretion so long as good faith efforts are being made by the applicant to provide required information, or the Gaming Commission is continuing to conduct its investigation or is waiting of is waiting on information from others, and provided that further in the course of such temporary or extended temporary licensing period, no information has come to the attention of the Gaming Commission which, in the absence of countervailing information then the record, would otherwise require denial of a permanent license." #3 NIGC regulations require the Privacy Act statement on all licensing applications for key employees and primary management officials. 25 C.F.R. 566.2. This statement does not appear verbatim in the Tribe's new ordinance. Please revise accordingly. "4001 (3) deleted and authorized members and staff of the Eastern Shawnee Tribe of Oklahoma, a federally recognized Indian Tribe organized pursuant to the sovereign powers of the Eastern Shawnee People"

WHEREAS, the Eastern Shawnee Tribe of Oklahoma is a federally recognized Indian Tribe organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution approved by the Secretary of the Interior, April 4, 1994 and Amended March 2, 1999; and

WHEREAS, the Constitution of the Eastern Shawnee Tribe of Oklahoma, Article IX, Section 1, empowers the Business Committee to protect and preserve the Interests of the Tribe; and

WHEREAS, the Eastern Shawnee Tribe of Oklahoma is committed to protecting and Preserving the interests of the tribal membership; and

WHEREAS, the Eastern Shawnee Tribe of Oklahoma is committed to the concept of Indian Tribes functioning as sovereign governments; and

**NOW THEREFORE BE IT RESOLVED,** that the Business Committee of the Eastern Shawnee Tribe of Oklahoma does hereby wish to approve the 2008 Eastern Shawnee Gaming Code with the changes recommended by Chairman Hogen. #1 NIGC Regulations require that key employee and primary management applicants list all ownership interests in businesses that deal with Indian Tribes and the gaming industry in general. 25 C.F.R. 556.4(a)(5),(6). The Tribe's gaming ordinance only requires applicants to list ownership interests of 5% or more. Please revise all related sections accordingly. "4001 (1)b, deleted of 5% or more in any business", "4001 (2) a (i), deleted 5% or more interest in publicly held securities",4001 (2) a deleted 1% or more of its issued and outstanding stock (5% or more interest in publicly traded corporations & added any of its issued and outstanding stock", "4001 (2)b(iv) deleted 5% or more" #2 NIGC regulations require tribe to cease employing any key employee or primary management official that fails to obtain a permanent gaming license after 90 days. 25 C.F.R. 558.3(b). The Tribe's gaming ordinance, however, permits the Gaming Commission to extend the 90 day temporary license period for good faith efforts on behalf of the applicant to provide information. Please revise all related sections accordingly. "4005 (4) deleted but the Gaming Commission may extend such period at its discretion so long as good faith efforts are being made by the applicant to provide required information, or the Gaming Commission is continuing to conduct its investigation or is waiting of is waiting on information from others, and provided that further in the course of such temporary or extended temporary licensing period, no information has come to the attention of the Gaming Commission which, in the absence of countervailing information then the record, would otherwise require denial of a permanent license." #3 NIGC regulations require the Privacy Act statement on all licensing applications for key employees and primary management officials. 25 C.F.R. 566.2. This statement does not appear verbatim in the Tribe's new ordinance. Please revise accordingly. "4001 (3) deleted and authorized members and staff of the Eastern Shawnee Tribe of Oklahoma, a federally recognized Indian Tribe organized pursuant to the sovereign powers of the Eastern Shawnee People"

## CERTIFICATION

The foregoing Resolution **NUMBER 082008-R-09** was adopted at a duly called *[regular or special]* meeting of the Business Committee of the Eastern Shawnee Tribe of Oklahoma conducted on **August 20, 2008** A quorum was present at said meeting with the vote reflecting,

5 **FOR**
0 **AGAINST**
0 **ABSTAINING**
0 **ABSENT**

Motion Carries

| | | | |
|---|---|---|---|
| **Shawna B. Pickup, Secretary** | 8-20-08 **Date Signed** | Jack Ross **Jack Ross, Second Chief** | 08-20-08 **Date Signed** |

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## EXECUTIVE BRANCH

**Vetoed: YES** _____ **NO** ✓ **Date:** 8-21-08 **Time:** 9:38 a.m.

Glenna J. Wallace
**Glenna J. Wallace, Chief**

# EASTERN SHAWNEE TRIBAL GAMING CODE OF 2008

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# EASTERN SHAWNEE TRIBAL GAMING CODE OF 2008

## SECTION I. GENERAL PROVISIONS

### 1000. TITLE

This ordinance shall be known and may be cited as the Eastern Shawnee Tribe of Oklahoma Gaming Code of 2008 (the "Code").

### 1001. ENACTMENT

The Tribe hereby enacts this Code in order to set forth the terms for gaming operations on Tribal lands.

### 1002. FINDINGS

The Tribe finds that:

1. The Tribe has a need to promote and provide services such as employment, education, training, public health and safety, welfare and other services that may contribute to the social and physical well being of citizens of the Tribe.

2. It is imperative for the Tribe to be self sufficient in its internal affairs, as continued reliance upon federal and other resources will adversely affect the quality of life of the Tribe.

3. It is in the best interest of the Tribe to promote economic development to produce and maintain an economic base which will enable the Tribe to fund essential governmental services and to promote a strong tribal government for the Tribe's citizens.

4. The Tribe recognizes that the operation and regulation of public gaming is a means of economic development that could produce revenues to support the needs of the Tribe.

### 1003. PURPOSE

The Business Committee determines the purpose of this enactment is to:

1. Authorize and regulate the conduct of gaming owned and operated by the Tribe, or its officially licensed agents, on Indian lands of the Tribe in compliance with the Act.

2. Provide a basis under tribal law for the operation of gaming on Indian lands as a means for promoting tribal economic development, self sufficiency and a strong tribal government.

3. Establish a Gaming Commission to regulate the conduct of gaming activities provided for by this Code and ensure Tribal gaming is conducted fairly and honestly both by the operator and the players as a genuine means of providing both recreation and entertainment, free from organized crime and other corrupting influences.

## 1004. DEFINITIONS

As used in this Code, the following definitions shall apply:

1. "BUSINESS COMMITTEE" means the Tribal Business Committee as described in the Constitution of the Eastern Shawnee Tribe of Oklahoma.

2. "CHAIRMAN" means the Chairman of the National Indian Gaming Commission, or his or her designee.

3. "CHEATING" means operating or playing a game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for himself/herself, or someone in privity with him/her, an advantage over and above the chance of the game.

4. "CLASS II GAMING" means that gaming defined in 25 U.S.C. § 2703(7) and 25 C.F.R. § 502.3.

5. "CLASS III GAMING" means that gaming defined in 25 U.S.C. § 2703(8) and 25 C.F.R. § 502.4.

6. "COMPACT" means an agreement between the Tribe and the State of Oklahoma concerning Class III gaming negotiated pursuant to 25 U.S.C. § 2710(d).

7. "GAMING COMMISSION" means the Eastern Shawnee Tribal Gaming Commission.

8. "GAMING COMMISSIONER" means the Commissioner of the Gaming Commission, as provided by this Code.

9. "GAMING EQUIPMENT" means any and all goods, materials, machines or devices used to conduct gaming activities by the Tribe.

10. "GAMING FACILITY" means any facility licensed by the Gaming Commission to offer Class II Gaming or Class III Gaming to the public. A Gaming Facility may be operated by the Tribe directly or operated by a Management Contractor as provided by this Code.

11. "GAMING OPERATION" means each economic entity that is licensed under this Code to operate Gaming Equipment, receive revenues, issue prizes and pay expenses associated with gaming conducted pursuant to this Code. A Gaming Operation may be owned by the Tribe directly or operated by a Management Contractor for the benefit of the Tribe.

12. "GROSS REVENUES" means all monies collected or received by a Gaming Facility for Class II Gaming or Class III Gaming activities, including admission fees.

13. "IGRA" means the Indian Gaming Regulatory Act of 1988, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701 et seq.

14. "IN PRIVITY WITH" means one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a conspirator with the other.

15. "INTERIM GAMING COMMISSIONER" means the Interim Commissioner of the Gaming Commission, as provided by this Code.

16. "KEY EMPLOYEE" of a Gaming Operation or Gaming Facility means:

    a. a person who performs one or more of the following functions:

        i. bingo caller;

        ii. counting room supervisor;

        iii. security personnel;

        iv. custodian of gaming supplies or cash;

        v. floor manager;

        vi. pit boss;

        vii. dealer;

        viii. croupier;

        ix. approver of credit; or

        x. custodian of gambling devices, including persons with access to cash and accounting records within such device;

b. if not otherwise included, any other person whose total cash compensation is in excess of Fifty Thousand Dollars ($50,000) per year; or

c. if not otherwise included, the four most highly compensated persons in a Gaming Operation or Gaming Facility.

17. "LENDER" means any person or entity extending financing, directly or indirectly, for the gaming related purposes to the Gaming Facility or the Tribe in excess of Fifty Thousand Dollars ($50,000) in any twelve-month period; provided, however, that financing provided by a federally regulated or state-regulated bank, savings and loan, or trust, or other federally or state-regulated lending institution; any agency of the federal, state, tribal or local government; or any person or entity, including, but not limited to, an institutional investor who, alone or in conjunction with others, lends money through publicly or commercially traded bonds or other commercially traded instruments, including but not limited to the holders of such bonds or instruments or their assignees or transferees, or which bonds or commercially traded instruments are underwritten by any entity whose shares are publicly traded or which underwriter, at the time of the underwriting, has assets in excess of One Hundred Million Dollars ($100,000,000), shall be exempt from the licensing and background investigation requirements contained herein.

18. "LICENSE" means the written permission to do any act, which without permission would be illegal, granted by the Gaming Commission to a person or to a location to pursue business subject to regulation under the jurisdiction of the Tribe and this Code.

19. "LICENSEE" means any person, entity or organization granted a license pursuant to the provisions of this Code.

20. "MANAGEMENT CONTRACT" means any contract, subcontract or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a Gaming Facility.

21. "MANAGEMENT CONTRACTOR" means the person or entity holding a contract entered into pursuant to 25 U.S.C. § 2710(d)(9) or § 2711.

22. "NIGC" means National Indian Gaming Commission, created pursuant to IGRA, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701 et seq.

23. "NET REVENUES" means Gross Revenues, less:

    a. amounts paid out as, or paid for, prizes; and

    b. total gaming-related operating expenses, excluding any management fee paid under any Management Contract.

24. "PATRON" means a person participating in a game at a Gaming Facility with the hope of winning money or other benefit, but does not include a Licensee, or any assistant of a Licensee.

25. "PERSON" means any individual, firm, partnership, corporation, company or association.

26. "PRIMARY MANAGEMENT OFFICIAL" means:

    a. the Person having management responsibility for a Gaming Facility or a Management Contract;

    b. any Person who has authority:

        i. to hire or fire employees; or

        ii. to set up working policy for a Gaming Operation or Gaming Facility; or

    c. the Chief Financial Officer or other person who has financial management responsibility of a Gaming Operation or Gaming Facility.

27. "STATE COMPLIANCE AGENCY" means the state agency that has the authority to carry out the state's oversight responsibilities under the Tribal-State Compact, which shall be the Oklahoma State Office of State Finance or its successor agency.

28. "TRIBAL COMPLEX" means the central offices of the Tribe as specified from time to time by the Business Committee.

29. "TRIBAL LANDS" means

    a. all lands within the limits of any Indian reservation; and

    b. any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises governmental power.

30. "TRIBE" means the Eastern Shawnee Tribe of Oklahoma, a federally recognized Indian Tribe organized pursuant to the sovereign powers of the Eastern Shawnee people.

31. "VENDOR" means any Person who, directly or indirectly, provides or is likely to cumulatively provide at least Twenty-Five Thousand Dollars ($25,000) in goods or services to all Gaming Facilities in any twelve-month period, or who has cumulatively received at least Twenty-Five Thousand Dollars ($25,000) for goods or services provided to all Gaming Facilities in any consecutive twelve-month period within the immediately preceding twenty-four-month period, or any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the Tribe or any Gaming Facility at any time and in any amount; provided, that attorneys or certified public accountants and their firms shall be exempt from the licensing and background investigation requirements contained herein to the extent that they are providing services covered by their professional licenses.

## 1005. EFFECT OF HEADINGS

Section and subsection headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any section or subsection of this Code.

## 1006. LIBERAL INTERPRETATION

The provisions of this Code, being necessary for the welfare of the Tribe and its members, shall be construed liberally to effect the purpose and objective contained herein.

## 1007. SEVERABILITY

The provisions of this Code are severable and if any part or provision hereof shall be held void by appropriate judicial authority, the decision of the court or agency so holding shall not affect or impair any of the remaining parts or provisions of the Code.

## 1008. IMPLEMENTATION

It being immediately necessary for the preservation of the public peace, health and safety of the Tribe and its members, this Code shall take effect and be in full force from and after its approval and passage.

## 1009. AMENDMENT

This Code may be amended only by majority vote (of 3 or more) of the Tribe's Business Committee.

## SECTION II. GAMING COMMISSION

### 2000. TRIBAL GAMING COMMISSION

The office of Gaming Commissioner of the Tribe is hereby created, which shall be called the Eastern Shawnee Tribal Gaming Commission. Such officer shall take an oath similar to that of elected officials and be sworn to service.

### 2001. GAMING COMMISSIONER TERM

The position of the Gaming Commissioner of the Tribe shall be considered full time with a term of four years from the date of oath of office.

### 2002. SELECTION OF GAMING COMMISSIONER

At any time when a vacancy occurs in the office of Gaming Commissioner, the office shall be filled by nomination of the Chief and confirmation by the Business Committee. After written nomination by the Chief, the Chairman of the Business Committee shall put the appointment upon the agenda of the next regular or specially called Business Committee meeting and address the selection at such meeting. The Business Committee shall have thirty (30) days from written nomination to confirm the appointment. Should the Business Committee fail to confirm the nomination by the Chief within the prescribed time period, the Chief shall make another nomination. This process shall continue until a nomination is confirmed. Nothing herein shall require that a Gaming Commissioner be appointed. A vacancy shall be deemed to occur when a Commissioner is removed, resigns or upon expiration of his or her term without regard to whether the Commissioner seeks reappointment; however, a Commissioner whose term has expired shall hold his/her seat until the office is filled according to the guidelines of this Code. This provision shall apply to the Deputy Gaming Commissioner as well, *see* Section 2010.

### 2003. INTERIM GAMING COMMISSIONER

An Interim Gaming Commissioner may be selected in the same manner as the Gaming Commissioner any time a vacancy in the office exists. No person shall serve as Interim Gaming Commissioner more than sixty (60) days before the qualifications of the office are met. Should it be determined that the Interim Gaming Commissioner does not meet the qualification of such office, the term of office shall expire upon such determination.

### 2004. GAMING COMMISSIONER SUSPENSION OR REMOVAL

The Gaming Commissioner or Deputy Gaming Commissioner may be suspended or removed from office by a majority vote (3 or more) of the Business Committee upon conducting a hearing for such purpose in a regular or special meeting as provided in Subparagraph B hereof. Cause for a Gaming Commissioner to be suspended or removed from office shall include but not be limited to:

A. Grounds for suspension or removal:

1. if he/she is convicted in a court of law of any felony;

2. if he/she is convicted in a court of law of any misdemeanor related to illegal gambling or bribery, or a crime involving dishonesty;

3. is convicted in a court of law of any crime involving moral turpitude;

4. if he/she uses a tribe position for personal gain;

5. if he/she fails to perform his/her Gaming Commission duties adequately or according to this Code; and

6. if he/she is involved in misconduct reflecting on the dignity and integrity of the Gaming Commission or tribal Government.

B. Procedures for the Suspension or Removal Hearing.

1. In the event allegations or information is brought to the attention of the Business Committee whereby the Gaming Commissioner or Deputy Gaming Commissioner has allegedly committed grounds for suspension or removal as provided in Subparagraph A above, then, in that event, the Business Committee shall notify the Gaming Commissioner or Deputy Gaming Commissioner of a Suspension or Removal Hearing which shall employ the same notice and procedure provided in Section 5000 – "Suspension and Removal Hearings".

2. The Suspension and Removal Hearings shall be conducted as provided in Section 5000 – "Suspension and Removal Hearings" - except the Business Committee shall conduct the hearing in lieu of the Gaming Commissioner.

3. The Business Committee shall replace all references to the Gaming Commissioner in Section 5000 – "Suspension and Removal Hearings".

4. In Section 5000 – "Suspension and Removal" – Subparagraphs 5-C and 6 – shall NOT apply to the Suspension or Removal Hearing for the Gaming Commissioner.

5. The Business Committee's decision in the Suspension or Removal Hearing is final. The Business Committee's decision may be appealed to the CFR Court.

## 2005. GAMING COMMISSIONER QUALIFICATIONS

To be eligible to serve as Gaming Commissioner, a person must be at least twenty-five (25) years of age, be of high moral character and integrity, never have been convicted of a criminal offense other than misdemeanor traffic offenses, and be physically able to carry out the duties of office. Any person considered for the position of Gaming Commissioner must be able to perform their duties of office free from political influence. The Gaming Commissioner of the Tribe shall not hold any managerial position within the Tribe other than committees whose purpose is not related to gaming. Should the Chief choose to nominate an individual whose current position within the Tribe is a managerial position, said individual must resign their position upon confirmation of the nomination by the Business Committee. Prior to any nomination of a Gaming Commissioner by the Chief, such person shall have passed a background investigation, examination and check of the same nature as a Key Employee pursuant to Section IV of this Code. A person may serve as Interim Gaming Commissioner only until background review is completed. Thereafter, such person shall be nominated for Gaming Commissioner within thirty (30) days or his/her appointment shall terminate. Should an Interim Gaming Commissioner fail to pass the background review, he/she shall be deemed immediately terminated.

## 2006. GAMING COMMISSIONER SALARY

The Gaming Commissioner or Interim Gaming Commissioner shall be paid a salary or by a contract approved by the Business Committee. Nothing herein prevents a decrease of the Interim Gaming Commissioner's salary or requires that an Interim Gaming Commissioner be paid any salary whatsoever.

## 2007. ABSENCE OF A GAMING COMMISSIONER

In the absence of a Gaming Commissioner or Interim Gaming Commissioner, the Business Committee shall be responsible for performing the duties of the Gaming Commissioner either by delegation to one or more of its members, one or more of its employees and/or one or more of its attorneys.

## 2008. DUTIES OF THE GAMING COMMISSION

The Gaming Commission shall be responsible for promulgating regulations, if necessary, to administer the provisions of this Code. The duties involved in the administration of this Code shall include, but not be limited to, the following:

1. The Gaming Commission shall have primary responsibility for oversight of Gaming Operations and Gaming Facilities to ensure the integrity of such operations and shall, for that purpose, employ non-uniformed inspectors who may be present in all Gaming Facilities during all hours of operation and who shall be under the sole supervision of the Gaming Commission and not under the supervision of any management employees of the Gaming Operations or Gaming Facilities. Such inspectors shall have

unfettered access to all areas of the gaming area at all times, and personnel employed by the Gaming Operations and Gaming Facilities shall for such purposes provide such inspectors access to locked and secure areas of the Gaming Facilities in accordance with the standards of operation and management promulgated pursuant to any Compact. Such inspectors shall report to the Gaming Commission regarding any failure by any Gaming Operation or Gaming Facility to comply with any of the provisions of any Compact or this Code and any other applicable laws and ordinances. Inspectors assigned by the Gaming Commission may also receive consumer complaints within the Gaming Facilities and shall assist in seeking voluntary resolution of such complaints. Inspectors appointed by the Gaming Commission shall be licensed as gaming employees in accordance with any Compact.

2. The Gaming Commission may, on its own initiative, investigate any aspect of the operations of any Gaming Operation or Gaming Facility in order to protect the public interest in the integrity of such gaming activities and to prevent improper or unlawful conduct in the course of such gaming activities, and shall investigate any report of a failure of the any Gaming Operation or Gaming Facility to comply with the provisions of any Compact or this Code and may require any Gaming Operation or Gaming Facility to take any corrective action deemed necessary by the Gaming Commission upon such terms and conditions as the Gaming Commission may determine appropriate. The Gaming Commission may compel any person employed by or doing business with any Gaming Operation or Gaming Facility to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any such investigation.

3. The Gaming Commission shall carry out each of the responsibilities and duties set forth for the Tribal Gaming Agency in any Compact.

4. The Gaming Commission shall enforce machine integrity and surveillance systems for each Gaming Facility and may confer with the State Compliance Agency or other organizations regarding the adequacy of such plans and systems.

5. The Gaming Commission shall enforce Standards of Operation and Management for Class III gaming activities in accordance with any Compact.

6. The Gaming Commission may issue, suspend or revoke Licenses for Class II gaming employees in accordance with this Code.

7. The Gaming Commission may issue, suspend or revoke Licenses for Class III gaming employees in accordance with this Code.

8. The Gaming Commission shall establish a list of persons barred from the Gaming Facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the gaming activities of the Tribe.

9. The Gaming Commission shall enforce the rules of each game of chance operated by any Gaming Operation or Gaming Facility pursuant to any Compact and shall, in accordance with the provisions of any Compact, notify the State Compliance Agency of such rules and of any change in such rules.

10. The Gaming Commission may impose monetary or injunctive penalties for violations of this Code or any Compact.

11. The Gaming Commission may, in the name of the Tribe, bring any civil action in the courts of the Tribe, or any competent administrative or other court system to enforce the provisions of this Code, IGRA or any Compact, occurring where Tribal gaming is conducted. The bringing of any such action by the Gaming Commission shall not be deemed to be a waiver of suit immunity by the Gaming Commission or the Tribe.

12. The Gaming Commission's annual operating budget shall be determined and approved by the Business Committee and may, in accordance with said budget, employ such staff from time to time as it deems necessary to fulfill its responsibilities under this Code, and may retain legal counsel, consultants and other professional services including investigative services to assist the Gaming Commission with respect to any of the issues over which the Gaming Commission exercises jurisdiction. The Chief shall provide oversight duties for the Gaming Commission Office.

13. The Gaming Commission may employ inspectors to conduct background investigations on Key Employees and Primary Management Officials. Inspectors employed to conduct background investigations shall not be licensed as a gaming employee.

14. The Gaming Commission shall design applications for employee and vendor licensure and renewal licensure.

15. The Gaming Commission shall design and describe procedures for resolving disputes between the gaming public and the Tribe, the Gaming Facilities or the Gaming Operations.

16. The Gaming Commission shall designate an agent for service of legal notice.

17. The Gaming Commission shall design and describe procedures for conducting criminal and credit history checks for License applicants.

18. The Gaming Commission shall design and describe procedures to prevent theft and insure the integrity of the gaming enterprise.

19. The Gaming Commission shall design and describe procedures for collection of license fees, taxes, other fees and levies as the same relates to any Gaming Operation or Gaming Facility.

20. The Gaming Commission shall review collection of all Gaming Facility receipts and the payment of all Gaming Facility obligations.

## 2009. GAMING COMMISSIONER

The Gaming Commissioner shall have the power and duty to make the final determination with respect to any decision to be made by the Gaming Commission Staff. The Gaming Commissioner or any other member of the Commission Staff acting in the absence of the Gaming Commissioner may, whenever the Gaming Commissioner deems it necessary to protect the public interest in the integrity of Tribal gaming operations, issue in the name of the Commission any order which the Commission has the power to issue, to any Gaming Operation or Gaming Facility or to any employee or contractor of the Enterprise or to any other person within the jurisdiction of the Tribe, to take any action or cease and desist from any action as may be required to protect the public interest; provided, that such order shall be subject to review by the Business Committee at its earliest opportunity, whereupon it may be confirmed or vacated by the Business Committee.

## 2010. DEPUTY GAMING COMMISSIONER

The appointment of a Deputy Gaming Commissioner shall comply with the same appointment procedures found in Section 2002 of this Code. The Deputy Gaming Commissioner shall perform all tasks assigned to him/her by the Gaming Commissioner. In the absence of the Gaming Commissioner, the Deputy Gaming Commissioner shall have the authority to take any action necessary to protect the gaming assets of the Tribe. However, any action taken by the Deputy Gaming Commissioner shall be subject to review and given final approval by the Gaming Commissioner. The Deputy Gaming Commissioner's salary shall be set by the Business Committee. The Removal of the Deputy Gaming Commissioner shall follow the same procedure as the Removal of the Gaming Commissioner as provided in Section 2004 hereof.

The Deputy Gaming Commissioner shall serve at the direction of the Gaming Commissioner. The Deputy Gaming Commissioner may be responsible for coordination of the functions of the Gaming Commission with the NIGC, any State Compliance Agency, and other state and local agencies as necessary.

The Gaming Commissioner may request the Deputy Gaming Commissioner conduct preliminary investigations and render interim recommendations to the Gaming Commissioner regarding background checks of Key Employees and Primary Management Officials. In the absence of the Gaming Commissioner, then in that event, the Deputy Gaming Commissioner may exercise the power and authority of the Gaming Commissioner until his return. The Deputy Gaming Commissioner may have the power, in the name of the Gaming Commission, to conduct any hearing, investigation or inquiry, compel the production of any information or documents.

## 2011. ETHICAL OBLIGATIONS AND DUTIES

1. ETHICS

The Tribe recognizes that the duties of the Gaming Commission include making important decisions on highly sensitive issues. As such, the Tribe has determined that the Gaming Commission shall be held to extremely high ethical standards. Prior to taking their positions on the Gaming Commission, employees of the Gaming Commission, including the Gaming Commissioner, Interim Gaming Commissioner and Deputy Gaming Commissioner, if any, shall agree to be bound by the following principles:

a. Employees shall not hold financial interests that conflict with the conscientious performance of their duties as managers and regulators of a Gaming Facility.

b. Employees shall not engage in financial transactions using nonpublic information or allow the improper use of such information by others on their behalf to further any private interest.

c. Employees shall not solicit or accept any gift or other item of monetary value, including complimentary items, from any person or entity seeking official action or inaction from, doing business with, or conducting activities regulated by the member's entity, or whose interests may be substantially affected by the performance or nonperformance of the employees' duties.

d. Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Gaming Facility or the Tribe.

e. Employees shall not use their positions for private gain.

f. Employees shall act impartially, in accordance with all relevant Tribal, Federal, and State laws (where applicable),

and shall not give preferential treatment to any private organization or individual, including any persons related to employees.

g. Employees shall ensure that Tribal Gaming Facilities, Tribal property, and gaming assets shall be properly segregated and safeguarded, and that such property and assets shall not be used for unauthorized activities.

h. Employees shall not engage in outside employment or activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities.

i. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

j. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards listed herein.

k. Employees shall disclose any real or apparent financial or personal conflicts to the Business Committee. If there is a real conflict or the appearance of one, the respective employee shall not take part in any decision related to the conflict.

2. COMPLIMENTARY ITEMS

a. Use of complimentary items shall be governed by regulations established by the Gaming Commission, which shall be in accord with the Commission's Minimum Internal Control Standards, found at 25 C.F.R.§ 542.17.

b. No Key Employee, Primary Management Official, Business Committee member, or Gaming Commission member, or any person directly related to or sharing a resident with the persons, shall be authorized to receive complimentary items.

## 2012. REGULATIONS

Any regulations promulgated by the Gaming Commissioner shall have full force and effect on this Code from the date of issuance; provided, however, the Business Committee may by affirmative action repeal, amend and/or enact such regulations. Any regulation enacted by the Business Committee shall not be subject to amendment by the Gaming Commissioner. Nonetheless, the Commissioner may withdraw, replace or amend any regulation that he/she has made.

1. NOTICE OF PROPOSED REGULATIONS

a. No notice is required for regulation changes made by the Business Committee.

b. Notice shall be deemed made by regular posting to the address of all persons described herein, by hand delivery from the Gaming Commissioner or his/her designate, by telephone confirmed facsimile, or by confirmed electronic mail.

c. Any new regulations promulgated by the Gaming Commission shall not take effect until thirty (30) days after notice is posted at all Gaming Facilities, pursuant to this Code.

2. NOTICE OF REGULATIONS

a. A copy of all adopted regulations shall be maintained at the Tribal Complex and at all Gaming Facilities.

b. Copies of all adopted regulations shall be available to the public for copy costs of twenty five cents ($.25) per page at all locations where the regulations must be maintained. Requests for such copies shall be processed within two (2) business days of receipt of the request and prepayment of any applicable copy costs.

c. Copies of Tort and Prize Claim Procedures shall be posted within Gaming Facilities in a prominent place by the Primary Management Official to inform Patrons of such procedures. The Primary Management Official shall train employees regarding the existence of such Procedures and refer Patrons to them in the event of a tort claim or prize dispute.

## SECTION III. GAMING AUTHORIZATION AND IMPLEMENTATION

### 3000. OWNERSHIP OF GAMING

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming activity and any Gaming Facility authorized by this Code.

### 3001. CLASS II GAMING

The Tribe shall be authorized to conduct all forms of Class II Gaming within Tribal jurisdiction, including without limitation any form of bingo (whether or not electronic, computer, or other technologic aides are used in connection therewith), and (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.

## 3002. CLASS III GAMING

The Tribe may conduct or operate all forms of Class III gaming authorized pursuant to a Compact and in accordance with IGRA.

## CONDUCT OF GAMING OPERATIONS, TRIBAL INTERNAL CONTROL STANDARDS, AND MINIMUM INTERNAL CONTROL STANDARDS

The Tribe acknowledges its obligation to adopt and implement Minimum Internal Control Standards for the operation of its Tribal gaming operations, no less stringent than those found in 25 C.F.R. Part 542. The Minimum Internal Control Standards shall be developed by the Gaming Commission to be reviewed and approved by the Business Committee. The Gaming Commission shall enforce the Minimum Internal Control Standards.

The Gaming Commission shall enforce the operation of Tribal gaming consistent with the following:

1. In compliance with 25 U.S.C. § 2710(b)(2)(E), the construction and maintenance of any Gaming Facility, and the operation of gaming activities, shall be conducted in a manner which adequately protects the environment and the public health and safety and for that purpose shall comply with the requirements of the Compact and all other applicable health, safety and environmental standards enacted by the Tribe.

2. The rules of play and operation of all games shall be prescribed and approved by the Business Committee.

3. Each and every player shall have a fair and equal opportunity to win.

4. The method of winning and the prize or prizes for each game should be clearly outlined on or near each game such that a patron has an opportunity to review them before playing.

5. The winner or winners of each game shall be verified in a manner that all present may witness.

6. No person who is conducting or assisting in any Gaming Operation shall participate directly or indirectly in the play of any game.

7. No person under the age of eighteen (18) years of age shall be permitted to play any Class II game for any reason and no person under the age of twenty-one (21) years of age shall be permitted to play any Class III game for any reason.

8. A Gaming Facility shall make the sole and final determination as to the validity of a winner or winners at the conclusion of that game at

which they were a winner. A patron may challenge the validity of this determination pursuant to the provisions of this Code, a Compact, and Procedures adopted by the Gaming Commission.

9. No alcoholic beverages shall be permitted in the facility during the time that the facility is being used for the gaming operation, unless the Business Committee has approved an alcoholic beverage license for on-site consumption.

10. No person under the influence of either intoxicants or drugs, or who is in any violation of any Tribal law or ordinance, shall be permitted to engage in any form of gaming or to remain in any Gaming Facility.

## SECTION IV. LICENSING

### 4000. LICENSES REQUIRED

A Tribal gaming license shall be required for:

1. Each Person having a Management Contract.

2. Each Primary Management Official and each Key Employee.

3. Each Gaming Facility and Gaming Operation.

4. Each Vendor and its employees and agents.

### 4001. APPLICATION FORMS FOR MANAGEMENT CONTRACTORS, PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

1. The Tribe shall request from each Management Contractor (if the Management Contractor is an individual), Primary Management Official and Key Employee all of the following information:

   a. Full name, other names used (oral or written), Social Security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

   b. Currently and for the previous five (5) years: business and employment positions held, all ownership interests as required by 25 CFR §556.4(a)(5), (6), business and residence addresses, and drivers license number(s);

   c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1) (b) of the section;

d. Current business and residence telephone numbers;

e. A description of any existing and previous business relationships with any Indian Tribes, including ownership interests in any such businesses;

f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in any such businesses;

g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted, and the status of such license or permit application (i.e., granted, denied, withdrawn, etc.);

h. For each felony for which there is an ongoing prosecution or a conviction in a court of law, the charge, the name and address of the court involved, and the date and disposition, if any;

i. For each misdemeanor for which there is an ongoing prosecution or a conviction in a court of law (excluding minor traffic violations) and which is within ten (10) years of the date of the application, the charge, the name and address of the court involved and the date and disposition, if any;

j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph (1)(H) or (1)(I) of this section, the criminal charge, the name and address of the court involved and the date and disposition, if any;

k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted, excluding any such information already included in paragraph (1)(G) of this section ;

l. A current photograph;

m. A current financial statement;

n. Military service history record;

o. Any other information the Tribe deems relevant; and

p. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h) which shall require that the Gaming Commission take fingerprints and submit them to the Federal Bureau of Investigation ("FBI") for a criminal check against FBI records. In the event that the Gaming Commission is temporarily unable to take the applicant's fingerprints, then the Gaming Commission may cause the fingerprints to be taken by Tribal law enforcement or any other city, county, state or federal law enforcement agency.

2. The Tribe shall request from each Management Contractor (if the Management Contractor is an entity):

a. the following information for the entity:

i. List of all officers, partners, limited partners, and owners of equity security or other ownership interest. If the Applicant is an association, list each officer and director. If the Applicant is a trust, list each trustee and beneficiary.

ii. Type of business (corporation, limited liability company, partnership, association, sole proprietorship, etc.).

iii. State of incorporation or formation.

iv. Date of incorporation or formation.

v. Date of qualification to do business in any state in which the entity is so qualified.

vi. Registered agent, address, and telephone number.

vii. Certified copy of the Articles of Incorporation or, if not a corporation, a true copy of the membership agreement, partnership agreement or other organizational document.

viii. Evidence of other license or permit applications related to gaming in any jurisdiction, including Native American Nations, whether or not such license or permit was granted, and the status of such license.

ix. All civil litigation, including all members of such litigation, (including bankruptcies and collection agencies) to which the applicant has been a party as a plaintiff or defendant during the immediately preceding ten (10) years.

x. Description of the nature of applicant's business, including types of supplies, services, and/or equipment offered by applicant.

xi. Applicant's audited financial statements and auditor's opinion for the applicant's last three fiscal years. If the statements and opinions for the most recently completed fiscal years are not available, explain why, and submit copies of statements and opinions for the most recent three fiscal years for which they are available.

b. the following information for each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such Management Contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) any of its issued and outstanding stock;

i. full name, other names used (oral or written), Social Security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

ii. a description of any previous experience such person has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming, or ownership interests in any business that has had such a relationship;

iii. a complete and current financial statement of such person and such persons tax filings for the last three (3) years;

iv. currently and for the previous five (5) years: business and employment positions held, all ownership interests in any business, business and residence addresses, and drivers license number(s);

v. the names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Subsection (iv) of this section;

vi. current business and residence telephone numbers;

vii. name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted, and the status of such license or permit application (i.e., granted, denied, withdrawn, etc.);

viii. for each felony for which there is an ongoing prosecution or a conviction in a court of law, the charge, the name and address of the court involved, the case number or numbers, and the date and disposition, if any;

ix. for each misdemeanor for which there is an ongoing prosecution or a conviction in a court of law (excluding minor traffic violations) and which is within ten (10) years of the date of the application, the charge, the name and address of the court involved, the case number or numbers, and the date and disposition, if any;

x. for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to Subsection (viii) or (ix) of this section, the criminal charge, the name and address of the court involved, the case number or numbers, and the date and disposition, if any;

xi. name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted, excluding any such information already included in Subsection (vii) of this section ;

xii. current photograph;

xiii. any other information the Tribe deems relevant; and

xiv. fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h) which shall require that the Gaming Commission take fingerprints and submit them to the Federal Bureau of Investigation ("FBI") for a criminal check against FBI records. In the event that the Gaming Commission is temporarily unable to take the applicant's fingerprints,

then the Gaming Commission may cause the fingerprints to be taken by Tribal law enforcement or any other city, county, state or federal law enforcement agency.

3. The following notice shall be placed on the application form for licensure as a Management Contractor, Key Employee or a Primary Management Official, before that form is filled out by an applicant:

> In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position.
>
> The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

4. Existing Management Contractors, Licensees, Key Employees and Primary Management Officials shall be notified in writing that they shall either:

   a. Complete a new application form that contains a Privacy Act notice; or

   b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

5. The following notice shall be placed on the application form for licensure as a Management Contractor, Key Employee or a Primary Management Official, before that form is filed out by an applicant:

A false statement on any part of your application may be grounds for License denial, not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment as allowed by applicable law. (U.S. Code, Title 18, Section 1001.)

6. The Tribe shall notify in writing existing Management Contractors, Licensees, Key Employees and Primary Management Officials that they shall either:

   a. complete a new application form that contains a notice regarding false statements; or

   b. Sign a statement that contains the notice regarding false statements.

**4002. BACKGROUND CHECKS**

The Gaming Commissioner shall conduct an appropriate investigation and/or cause such investigation to be conducted on all applicants for licensure as Management Contractors, Key Employees or Primary Management Officials.

Such procedures should include as a minimum:

1. Obtain and process fingerprints;

2. Explanation of job description, fitness of individual to perform the job, and explanation of how the individual was selected for position;

3. Credit check;

4. Verification of application;

5. Character check regarding prior activities, criminal record, including case numbers, reputation, habits and associations including, but not limited to, personal interview summaries with a sufficient number of people familiar with the character of the applicant, such as former employees, personal references and others to form a basis for character suitability determination; and

6. Document all potential problems and possible disqualification information.

After completion of the requisite background investigation, the Gaming Commissioner or his/her staff shall prepare an investigative report setting for the following

1. Who conducted and compiled various parts of the report;

2. An outline of the background investigation process including steps taken in the investigation;

3. A description of the information obtained together with conclusions of the investigation;

4. A statement setting forth the basis for the conclusions of the investigation; and

5. An organization chart showing the location within the organization of the individual investigated and the positions or people over which the individual investigated may be responsible.

**4003. PROCEDURES FOR FORWARDING APPLICATIONS AND REPORTS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS TO THE COMMISSION**

1. When a Key Employee or Primary Management Official begins work at a Gaming Operation or Gaming Facility authorized by this Code, the Tribe shall forward to NIGC a completed application for employment and conduct the background investigation and make the determination referred to in Subsection 4002 of this Code.

2. The Tribe shall forward the report referred to in this section to NIGC within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this Code by the Chairman of NIGC.

**4004. PROCEDURES FOR FORWARDING APPLICATIONS AND REPORTS FOR MANAGEMENT CONTRACTORS TO THE COMMISSION**

1. No Management Contractor shall be licensed and no Management Contract shall be approved by the Gaming Commission or the Tribe until the Commission has approved such Management Contractor and Management Contract in accordance with 25 U.S.C. §§ 2710(d)(9) and 2711.

2. Upon submission of an application for licensure as a Management Contractor or approval of a Management Contract, the Gaming Commission shall forward such application and contract NIGC for review in accordance with 25 U.S.C. §§ 2710(d)(9) and 2711.

**4005. ELIGIBILITY DETERMINATION AND ISSUANCE OF A TEMPORARY GAMING LICENSE**

1. The Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility for licensure of the individual as a Key Employee or Primary Management Official for employment in a gaming operation. If the Gaming Commission

determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming, a Gaming Facility shall not employ that person in a Key Employee or Primary Management Official position. Management Contractors of the Tribe shall be required to comply with the provisions of this section of this Code.

2. If a license is not issued to an applicant, the Tribe:

   a. Shall notify the Commission of such denial; and

   b. May forward copies of its eligibility determination and investigative report (if any) to NIGC for inclusion in the Indian Gaming Individual's Records System.

3. If the Gaming Commissioner denies an individual with a temporary gaming license a permanent license, and a Gaming Facility or a Tribally Managed Gaming Operation currently employs that individual in the position of manager or key employee, the Gaming Commissioner shall notify the General Manager of such facility that the individual in question is not eligible to receive a permanent gaming license. It is the responsibility of the General Manager to remove immediately such a person from their position.

   If a Management Contractor employee has a temporary gaming license and such employee is in management or is in a key employee position, the Gaming Commissioner shall notify the Management Contractor that such employee cannot receive a permanent gaming license. It will be the responsibility of the Management Contractor to take steps immediately to remove such an individual from their position.

   If any Tribally Managed Gaming Facility or Management Contractor fails to comply with the Gaming Commissioner's notification and order, such Gaming Facility may risk the revocation of the Facility's license. The Gaming Commissioner shall notify the Tribe's Business Committee immediately in writing if any Manager fails to comply with such orders.

4. If the Gaming Commission determines that an applicant is suitable to serve as a Key Employee of Primary Management Official, the Gaming Commissioner shall issue a temporary gaming license to the applicant, with the issuance of a permanent gaming license subject to the further restrictions contained in Section 4006 of this Code. A temporary gaming license shall expire after ninety (90) days if a permanent License is not issued by such time.

5. With respect to applicants for licensure as Management Contractors, Key Employees or Primary Management Officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for no less than three (3) years from the date of termination of employment or denial of licensure.

6. A temporary License shall not be issued to a Management Contractor, and a Management Contractor shall not be issued a permanent License until the applicable Management Contract has been approved by the Commission as provided for in Section 4004(1) of this Code.

## 4006. ISSUANCE OF A GAMING LICENSE

The Gaming Commissioner shall be responsible for issuing Tribal Licenses and sign the same for Licenses of Primary Management Officials and Key Employees who are involved in gaming. The issuance of a gaming license shall be subject to the following restrictions:

1. If, within a thirty (30) day period after NIGC receives an investigative report on an applicant, NIGC notifies the Gaming Commission that it has no objection to the issuance of a license pursuant to a license application filed by a Key Employee or a Primary Management Official for whom the Gaming Commissioner has provided an application and investigative report to NIGC, the Gaming Commission may issue a permanent license to such applicant.

2. The Gaming Commission shall respond to a request for additional information from NIGC concerning a Key Employee or a Primary Management Official who is the subject of an investigative report. Such a request shall suspend the thirty (30) day period under paragraph 1 of this section until they receive the additional information.

3. If, within the thirty (30) day period described under paragraph 1 of this section, NIGC provides the Gaming Commission with a statement itemizing objections to the issuance of a license to a Key Employee or to a Primary Management Official for whom the Gaming Commission has provided an application and investigative report to NIGC, the Gaming Commission shall reconsider the application, taking into account the objections itemized by NIGC. The Gaming Commission shall make the final decision to issue a permanent license to such applicant.

4. At any time prior to the issuance of a permanent license, should the Gaming Commissioner receive information on an applicant that in

the Commissioner's opinion disqualifies the applicant meeting the eligibility requirements of Section 4002 above, the Gaming Commissioner has the authority to deny the license. The denial of a temporary license by the Gaming Commissioner is final with no appeal.

## 4007. LICENSE SUSPENSION BASED UPON COMMISSION ACTION

1. If, after issuance of a permanent License, the Gaming Commission receives from NIGC reliable information indicating that a Key Employee or a Primary Management Official is not eligible for licensure and employment under Section 4002 above, the Gaming Commission shall suspend such license and shall notify the licensee, in writing, of the suspension and the proposed revocation.

2. The Gaming Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license, and such hearing shall be conducted in accordance with the provisions set forth in Section 5000.

3. After a revocation hearing under this Section, the Gaming Commissioner shall decide to revoke or to reinstate a gaming license. The Gaming Commissioner shall notify the license holder and NIGC of its decision within ten (10) days of such decision.

## 4008. FACILITY LICENSES

The Gaming Commission shall issue a separate License to each Gaming Facility. Such License must be renewed every two (2) years. The Gaming Commission shall specify the form, conditions and content for the application of such Licenses, and the initial License application shall include the following:

1. a legal description of the lands on which the Gaming Facility is located;

2. a certification that said lands constitute "Indian lands" as defined in IGRA;

3. an identification of the environmental, health and public safety standards with which the applicant must comply; and

4. a certification that the applicant is in compliance with such environmental, health and public safety standards.

Each renewal application under this Section shall identify any changes or additions to said legal description and applicable environmental, health and public safety standards, and include a current certification of compliance therewith.

## 4009. VENDOR AND LENDER LICENSES

Vendors and lenders shall be subject to the same licensing requirements as Management Contractors prior to providing goods, services or financing to the Tribe or any Gaming Facility.

## 4010. LICENSE EXPIRATION

Key Employee, Primary Management Official, Vendor and Lender Licenses shall be issued for periods of no more than two (2) years, after which they may be renewed only following review and update of the information upon which the License was based; provided, the Gaming Commission may extend the period in which the License is valid for a reasonable time pending the outcome of any investigation being conducted in connection with the renewal of such license. The Gaming Commission may issue any License for a period of less than two (2) years if it deems it in the best interests of the Tribe.

# SECTION V. HEARINGS

## 5000. SUSPENSION AND REMOVAL HEARINGS

The Gaming Commissioner shall have the right to immediately suspend the License of any Licensee, Key Employee or Primary Management Official, or bar a patron from entering any Gaming Facility, for violation of any Tribal Regulation, Tribal Compact, Tribal Law or Ordinance, Federal Regulation, or Federal law. Special provisions shall apply to a "management employee" employed by a Primary Management Official as provided below in Section 5000 (6). An individual Licensee who has had his/her license suspended by the Gaming Commissioner, or a patron that has been barred from entering a Gaming Facility, shall:

1. Be entitled to a hearing before the Gaming Commissioner within fourteen (14) days of the suspension or exclusion and shall be provided with written notice at least ten (10) days prior to the hearing date. The notice shall contain the date, time and place of the hearing and shall also contain a concise statement of the alleged violation(s) and the specific facts concerning the alleged violation(s) that led to the suspension of the license or ban from the Gaming Facility;

2. Such notice of proceeding shall be accomplished by (1) regular mail to the last known address or by physical service by an employee of the Gaming Commission or Tribal Police; and (2) publicly posting the same within the Gaming Facility where the affected employee works or from which the Patron was barred. Service by mail is not necessary if the Gaming Commissioner has no address for the person or entity;

3. At the hearing, the Gaming Commissioner shall state his/her understanding of the facts and allow the Person subject of the hearing the opportunity to be heard and present evidence;

4. At the hearing the Person subject of the hearing may show that specific allegations are inaccurate or that special conditions exist which mitigate suspension of the Person's license or exclusion from the Gaming Facility;

5. Following the hearing, the Gaming Commissioner shall issue an order, in writing, regarding the hearing and its outcome within seven (7) business days and provide interested persons copies of the written decision, or the matter shall be considered dismissed. A final License Suspension Order shall be made if, after examination of all of the evidence presented, the Gaming Commissioner has reasonable cause to believe that the Licensee violated a Tribal Regulation, Tribal Compact, Tribal Law, a Federal Regulation or Federal law. If the Gaming Commissioner determines that there is no reasonable cause to believe the Licensee committed a violation, the Licensee shall be reinstated immediately. In the event the Gaming Commissioner has reasonable cause to believe that the Licensee has committed a violation of any Tribal Regulation, Tribal Compact, Tribal Law, Federal Regulation or Federal law, but that the violation does not warrant revocation of his/her License, the Gaming Commissioner may order the License to be suspended for up to ninety (90) days. If the Gaming Commissioner determines that there is reasonable cause to believe that the Licensee has committed a violation of law which threatens the integrity or safety of the Tribe, the Gaming Commissioner may revoke said License. If, upon examination of the evidence and testimony, the Gaming Commissioner finds that a Patron has committed willful violations of any Tribal Regulation, Tribal Compact, Tribal Law, Federal Regulation or Federal law, the Gaming Commissioner bars the Patron from a Gaming Facility for a period up to two (2) years. If a suspension, revocation or disbarment Decision is issued, it shall be served upon all interested parties within seven (7) days from the hearing and shall include the following, to-wit:

   a. The specific violation, or violations, of law or regulation which forms the basis for the Decision, and

   b. Specify the suspension period imposed, stating beginning date and concluding date of suspension, or the Decision to revoke the subject License or ban the patron from the Gaming Facility;

   c. The aggrieved license holder may appeal such Decision of the Gaming Commissioner to the Business Committee and

he or she and the Gaming Commissioner or his or her designee may appear before the Business Committee and argue their positions. The Business Committee may uphold, modify or reverse and remand the Gaming Commissioner's determination based upon the record made before the Gaming Commissioner. No new evidence may be brought forward to the Business Committee. The Business Committee's Decision shall be final. The Business Committee's decision may be appealed to the CFR Court.

6. Whenever the Gaming Commissioner or his or her designee has reasonable cause to believe that a Primary Management Official employed at a Gaming Facility has violated a tribal regulation, tribal ordinance or law, the Tribe's Compact with the State, Federal Regulation or Federal Law, the Gaming Commissioner shall describe his/her findings in a detailed statement to the Business Committee stating the reasons he/she reached the conclusion that such alleged violations did occur. Included with this report to the Business Committee shall be a detailed statement and response by the Primary Management Official responding to allegations of the Gaming Commission.

The Business Committee shall independently research the circumstances surrounding the Gaming Commissioner's allegations, and the Primary Management Official response shall be provided the opportunity to appear in person with counsel before the Business Committee to plead his/her case.

The Primary Management Official shall be given the opportunity to produce documents, witnesses, and other evidence on his/her behalf regarding the alleged violation(s).

After hearing the evidence provided by the Gaming Commissioner and the response by the Primary Management Official, the Business Committee shall take action necessary or appropriate in conjunction with the Business Committee Contractual agreement with the Primary Management Official and the Gaming Operation.

All persons or entities subject to a suspension, revocation or exclusion order pursuant to this Section shall be excluded from any Gaming Facility during such period of suspension, revocation or exclusion. The Gaming Commissioner shall have the authority to direct Gaming Facility security to enforce the exclusion of any person as required by this Section.

## 5001. DEPOSITIONS

Either party to a Suspension Hearing shall have seven (7) days written notice to the other side to depose under oath any Licensee, employee or gaming participant or Patron.

## 5002. SUBMISSION OF DOCUMENTS

Any document, affidavit, return, deposition transcript, instrument or payment required to be filed, delivered or served upon the Gaming Commissioner or Tribe shall be deemed to be properly filed, delivered or served if it is filed, delivered or served upon the Gaming Commissioner or the Chairman of the Business Committee at the Tribal Complex.

## 5003. INFORMANTS

The Gaming Commissioner may refuse to reveal, in any judicial proceeding, the identity of an informant.

## 5004. PUBLIC HEARINGS

The Gaming Commissioner shall hold public hearings not less than annually to allow public comment on the operation of Tribal Gaming Facilities. The manager of each Gaming Facility shall attend the hearing and may be directed by the Gaming Commissioner, at his/her discretion, to respond to questions or explain operations to attendees at the hearing.

## 5005. DISPUTES WITH MANAGEMENT

In the event a tort claim or Prize Claim is made by a Patron of a Gaming Facility, which is covered by the Tribal State Gaming Compact, Part 6, between the Eastern Shawnee Tribe and the State of Oklahoma, effective February 9, 2005, then the respective provisions of the Compact control; otherwise, the following procedure shall control. Any Gaming Facility Patron or supplier may file a grievance against management of a Gaming Facility with the Gaming Commissioner. The Gaming Commissioner shall establish a time for hearing, give notice to all parties, hold hearing(s), and rule upon the grievance as set forth below. The ruling of the Gaming Commissioner may be appealed to the Code of Federal Regulations Court of Indian Offenses for the Tribe. This section is not a waiver of the Tribe's sovereign immunity. In resolving any dispute under this section, the Gaming Commissioner shall proceed as follows:

1. A Patron who has been denied the benefits of gaming by the management of a Gaming Facility, was injured on the premises due to the fault of the management of a Gaming Facility, or has any other claim for relief against the management of a Gaming Facility shall be heard by filing a written grievance with the Gaming Commissioner. The grievance shall contain the date, time and

event which give rise to the grievance, provide an address where the complainant may be served and signed by the complainant or his/her legal counsel.

2. The Gaming Commissioner shall set a date for hearing the grievance within ninety (90) days of the filing of the same.

3. The Gaming Commissioner shall give notice of such hearing, together with a copy of the grievance, to the management of the Gaming Facility involved in the grievance and to the complainant by regular mail to the address contained in the complaint, posted not less than ten (10) days in advance of the hearing.

4. At the hearing of any grievance, the complainant and management of the Gaming Facility shall be entitled to legal counsel. The complainant must be present for the hearing of the same and shall be responsible to present a prima facie case for relief before response by management of the Gaming Facility is required. The Gaming Commissioner shall be free to question any person present, continue the hearing from time to time and conduct independent investigations of facts. Upon conclusion of any such hearing, the Gaming Commissioner shall have forty five (45) days to render a written opinion. In the absence of a written opinion by the Gaming Commissioner within the time specified, the matter shall be deemed dismissed in favor of the Gaming Facility.

### 5006. ALTERNATIVE TO GRIEVANCE HEARING

The Gaming Commissioner shall have, at any time prior to the decision regarding any grievance, the authority to suspend proceedings conducted under Section 5005 and direct arbitration, mediation or other alternative dispute resolution process of the grievance under such terms as the Gaming Commissioner may direct.

## SECTION VI. SERVICE

### 6000. SERVICE OF PROCESS

The Tribe may be served notice of process for official determination, order or notice of violation of IGRA by NIGC or other Federal entity by service upon the Gaming Commissioner and upon the Chief of the Tribe.

1. Nothing herein shall be deemed to waive or impair the Tribe's right to sovereign immunity.

2. Nothing herein shall be deemed a grant of jurisdiction or venue for any court to review cases or controversies involving the Tribe when such court is not otherwise empowered to review.

## SECTION VII. GAMING ACCOUNT & ANNUAL AUDIT

### 7000. GAMING ACCOUNT AND DISTRIBUTION OF GAMING REVENUE

1. Gaming Account.

The Business Committee shall designate one banking account as the Tribal "Gaming Account." The account shall be maintained in a financial institution designated by the Business Committee. The Gaming Account shall be included in the Tribe's annual audit. Gross Revenues shall be deposited daily in the Gaming Account. No other funds shall be commingled with the funds held in the Gaming Account.

2. General Fund Account.

Net gaming revenues shall be transferred monthly to the Tribe's General Fund Account. These funds from the Tribe's General Fund Account shall be disbursed to other Tribal accounts as authorized solely by the Business Committee. The Business Committee shall determine the percentage of gaming revenue funds to be retained in the Gaming Account for gaming operational expenses.

### 7001. ANNUAL AUDIT

In compliance with 25 U.S.C. §§ 2710(b)(2)(C) and (D), all gaming activities shall be subject to an audit by an independent certified public accountant, not less than annually, and copies of the annual audit shall be provided to NIGC. All contracts for supplies, services, or concessions for a contract amount in excess of Twenty-Five Thousand Dollars ($25,000) annually (except contracts for professional legal or accounting services) relating to Class II Gaming or Class III Gaming shall be subject to such audits.

## SECTION VIII. REVENUES

### 8000. USE OF GAMING REVENUE

1. Net revenues from gaming shall be used only for the following purposes: (i) to fund Tribal government operations and programs; (ii) to provide for the general welfare of the Tribe and its members; (iii) promote Tribal economic development; (iv) donate to charitable organizations; or, (v) help fund operations of local government agencies.

2. No per capita payments to Tribal members shall be made from Tribal gaming revenues unless pursuant to 25 U.S.C. § 2710(b)(3) and applicable Code of Federal Regulations provisions.

## Jo Ann Beckham

**From:** Chad Kelly
**Sent:** Friday, December 19, 2008 3:18 PM
**To:** Glenna J. Wallace
**Cc:** Jo Ann Beckham
**Subject:** Gaming Code
**Attachments:** 2008 gaming code.pdf

Chief,

Attached is the Code which should have been submitted. Also I have not received any information regarding the resolution you mentioned during the Wednesday 12/17/08 meeting.

Thanks,
Chad

No virus found in this outgoing message.
http://www.avg-antivirus.net/
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.19/1857 - Release Date: 12/19/2008 10:09 AM