NATIONAL
INDIAN
GAMING
COMMISSION

NOV 12 1999

Kathryn L. Tierney, Attorney
Bay Mills Indian Community
12140 West Lake Shore Drive
Brimley, Michigan 49715

Dear Ms. Tierney:

This letter responds to your request to review and approve the amendment to the Bay Mills Indian Community's (Community) gaming ordinance submitted on October 12, 1999. The amendment to the ordinance was adopted by the Community by Resolution No. 99-10-11-A on October 11, 1999, and originally approved by the Chairman of the National Indian Gaming Commission (NIGC) on August 31, 1993. This letter constitutes approval under the Indian Gaming Regulatory Act (IGRA).

Thank you for submitting the amendment to the tribal gaming ordinance of the Bay Mills Indian Community for review and approval. If you have any questions or require further assistance, please contact Ms. Frances Fragua at 202/632-7003.

Sincerely yours,

Montie R. Deer by
Bub

Montie R. Deer
Chairman

1441 L STREET, N.W. 9TH FLOOR WASHINGTON, D.C. 20005 TEL.: 202-632-7003 FAX: 202-632-7066

BAY MILLS INDIAN COMMUNITY

RURAL ROUTE NO. 1

BRIMLEY, MICHIGAN 49715

RESOLUTION

Resolution No. 99-10-11-A
Amendment to Gaming Ordinance

WHEREAS: The Bay Mills Indian Community is a federally recognized Indian tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. sec. 461, *et seq.*, and

WHEREAS: The Tribe regulates gaming on its Reservation under a compact with the State of Michigan and under its Gaming Ordinance, and

WHEREAS: An amendment to the Gaming Ordinance is determined appropriate to clarify the conditions under which staff of the Gaming Commission are subject to conduct restrictions.

NOW, THEREFORE BE IT RESOLVED, that the Executive Council of the Bay Mills Indian Community hereby adopts the following amendment to the Gaming Ordinance, with deletions struck out and additions in italics:

4.25 **Staff of Gaming Commission.** Staff of the Gaming Commission are employees of the Bay Mills Indian Community, subject to the governmental personnel policies of the Tribe and supervised by the Commission. ~~No person shall be hired or retained in a staff position who does not meet the standards imposed on Commissioners by subsection 4.11(C) of this Ordinance.~~

(A) Any staff position which includes responsibility for monitoring, reviewing and investigating the day-to-day gaming operations of a tribally-operated gaming enterprise, or supervision of such monitoring, review, and investigation, must be held by a person who meets the standards contained in subsection 4.11(C) of this Ordinance.

(B) All other staff positions maintained by the Gaming Commission must be held by persons who meet the standards contained in subsection 4.11(C)(1)--(3) of this Ordinance.

Resolution No. 99-10-11-A

APPROVED:

Jeffrey D. Parker, President
Bay Mills Indian Community
Executive Council

ATTEST:

Andrew A. LeBlanc, Sr.
Secretary
Bay Mills Indian Community
Executive Council

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above resolution was adopted and approved at a meeting of the Bay Mills Indian Community Executive Council held at Bay Mills, Michigan, on the 11th day of October, 1999, with a vote of 4 for, 0 opposed, 0 absent, and 1 abstaining. As per provisions of the Bay Mills Constitution, the Tribal President must abstain except in the event of a tie.

Andrew A. LeBlanc, Sr.
Secretary
Bay Mills Indian Community
Executive Council

GAMING ORDINANCE
BAY MILLS INDIAN COMMUNITY

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4.22 **Investigations.** The Tribal Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any person who is subject to the provisions of this Ordinance. In conducting such investigation, the Tribal Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording any affected party notice and an opportunity for a hearing pursuant to Tribal Commission regulations.

4.23 **Hearings; Examiner.** Pursuant to regulations, the Tribal Commission may hold any hearing it deems to be reasonably required in administration of its powers and duties under this Ordinance. Whenever it shall appear to the satisfaction of the Tribal Commission that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Tribal Commission may issue its order without a hearing.

The Tribal Commission may designate one of its members to act as examiner for the purpose of holding any such hearing or the Tribal Commission may appoint another person to act as examiner under subsection 4.24 below. The Tribal Commission shall provide reasonable notice and the right to present oral or written testimony to all people interested therein as determined by the Tribal Commission.

4.24 **Appointment of Examiner; Power of Examiner.** The Tribal Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Tribal Commission, or any member thereof, has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Ordinance with respect to any such hearing.

4.25 **Staff of Gaming Commission.** Staff of the Gaming Commission are employees of the Bay Mills Indian Community, subject to the governmental personnel policies of the Tribe and supervised by the Commission.

(A) Any staff position which includes responsibility for monitoring, reviewing and investigating the day-to-day gaming operations of a tribally-operated gaming enterprise, or supervision of such monitoring, review, and investigation, must be held by a person who meets the standards contained in subsection 4.11(C) of this Ordinance.

(B) All other staff positions maintained by the Gaming Commission must be held by persons who meet the

standards contained in subsection 4.11(C)(1)--(3) of this Ordinance.

4.26 **Quarterly Reports.** The Tribal Commission shall file a quarterly report to the Council summarizing reports received from each of the Tribe's Primary Management Officials, and making such comments as it deems necessary to keep the Council fully informed as to the status of its various gaming operations.

Section 5. Gaming Licenses.

5.1 **Applicability.** This Ordinance applies to all people engaged in gaming within the jurisdiction of the Tribe. The application for license and the conduct of gaming within the jurisdiction of the Tribe shall be deemed to be a consent to the jurisdiction of the Tribe and the Tribal Court in all matters arising from the conduct of such gaming, and all matters arising under any of the provisions of this Ordinance or other tribal laws.

5.2 **License Required.** No person shall operate Class II or Class III gaming within the jurisdiction of the Tribe unless such gaming is licensed by the Tribe.

5.3 **Types of Licenses.** The Tribe shall issue each of the following types of gaming licenses:

(A) Tribally-Owned or Tribally-Operated Class II. This license shall be required of all tribally-owned or tribally-operated gaming enterprises operating one or more Class II gaming activities.

(B) Tribally-Owned or Tribally-Operated Class III. This license shall be required for all tribally-owned or operated gaming enterprises operating any gaming other than Class I or Class II gaming.

(C) Privately Owned Gaming Not Licensable. No license may be issued for any gaming operation, whether for one or more occasions, which are owned or operated by any person other than the Tribe.

5.4 **Application Procedures.**

(A) Tribally-Owned or Tribally-Operated Class II. Before issuing a license to a tribally-owned or operated Class II gaming activity the Tribal Commission shall:

(1) Review the proposed gaming activity to ensure that all threshold criteria required by this Ordinance shall be met.

(2) Perform the necessary background checks on management contractors, primary management officials and key employees required by this Ordinance.

(3) Review and approve the accounting procedures to be used in such gaming activity.

(4) Take any additional steps necessary to ensure the integrity of such gaming activity.

(B) Tribally-Owned or Tribally-Operated Class III. Before issuing a license to a tribally-owned or operated Class III gaming activity, the Tribal Commission shall:

(1) Review the proposed gaming activity to ensure that all threshold criteria required by this Ordinance shall be met.

(2) Perform the necessary background checks on management contractors, primary management officials and key employees required by this Ordinance.

(3) Review and approve the accounting procedures to be used in such gaming activity.

(4) Take any additional steps necessary to ensure the integrity of such gaming activity.

(5) Review all aspects of the proposed gaming operation to ensure that it will be in compliance with the provisions of the applicable state/tribal compact.

5.5 **Threshold Criteria Which a Potential Operator Must Meet.** The Tribal Commission shall automatically issue the above license to any tribally-owned or tribally-operated Class II or Class III proposed gaming enterprise if:

(A) The proposed gaming activity is to be located on land which was held in trust for the Tribe prior to October 17, 1988 or on trust lands which were located within or contiguous to the boundaries of the Reservation on October 17, 1988 or on lands taken into trust after October 17, 1988 as a settlement of a claim.

(B) The proposed gaming activity is to be played as Class II gaming as defined by this Ordinance and the IGRA.

(C) The proposed gaming activity is authorized by a Tribal Council resolution.

(D) The Tribe or one of its subdivisions will have the sole proprietary interest and the Tribe will have the exclusive responsibility for the conduct of the proposed gaming activity.

(E) The resolution authorizing the proposed gaming activity provides that:

(1) The revenues of the proposed gaming activity shall be audited annually and copies of those audits will be provided to the Tribal Commission and the National Indian Gaming Commission.

(2) The proposed gaming activity shall comply with all IRS reporting and filing requirements.

(3) All of the proceeds of the proposed gaming activity shall be used for the purposes stated in subsection 9.2.

(4) All contracts for supplies services or concessions for an amount in excess of $25,000 annually, except contracts for legal and consulting services, shall be subject to an annual independent audit.

(5) The construction or maintenance of the gaming facility and the operation of the proposed gaming activity shall be conducted in a manner which the Tribal Commission finds will adequately protect the environment and the public health and safety.

(6) All primary management officials and key employees shall pass the background checks and obtain the tribal gaming employee licenses required by this Ordinance.

(7) The Tribal Commission shall have the authority to regulate the proposed gaming activity.

(8) The proposed gaming activity shall pay to the National Indian Gaming Commission such fees as federal law may require to be paid.

(9) In the event the gaming activity is Class III gaming, such gaming activity meets all other criteria established by the Tribal-State Gaming Compact.

5.6 **License Application Fees.** An application fee shall be required for a or tribally-operated Class II or Class

III gaming enterprise. Said fee shall be in the amount of $250 and shall accompany the application.

5.7 **License Tax.** No annual license tax shall be required for a tribally-owned or tribally-operated Class II or Class III gaming operation.

5.8 **Terms of License.** A tribally-owned and tribally-operated Class II and Class III gaming license shall be valid for a period of one year from the date of issuance.

5.9 **Posting of Licenses.** Each operator shall post his tribal gaming license in a conspicuous location at his place of business. If an operator has more than one location, the operator must obtain and post a separate license for each location.

5.10 **Gaming License Renewals.** Each annual tribal gaming license must be renewed every 365 days from the date of issuance. A renewal fee shall be required for a tribally-owned Class II or Class III license in the amount of $100. In order to obtain a renewal of a license, the operator shall submit a written renewal application to the Tribal Commission on the form provided by the Tribal Commission. No renewal application shall be approved until the annual report, required by subsection 5.11, has been properly filed. All renewal applications submitted by a tribally-owned Class II or Class III gaming enterprise shall be approved in 30 days or less unless the Commission believes, based on reasonable grounds, that the enterprise has been or will be operated in violation of tribal, federal or other applicable law or the terms and conditions of the Tribal-State Compact.

5.11 **Annual Reports.** Each operator who possesses an annual Class II or Class III license must file an annual report with the Tribal Commission and the Tribal Council between the 15th and the last day of the 12th month duration of each such license. The report shall be submitted to the Tribal Commission on the annual report form provided by the Tribal Commission and shall include, at a minimum, the following information:

(A) The name, address and telephone number of the operator;

(B) The names, addresses and titles of all of the current managers of the operator;

(C) A description of the gaming activity that it has operated and the total gross sales;

(D) A written copy of any changes it proposes to initiate in its rules;

(E) A statement of the specific date or dates and time or times on which it wishes to operate its gaming activity over the next license period;

(F) The name and addresses of the person who will be designated as primary management official over the next license period;

(G) A statement of any changes in the primary management officials or key employees who will operate the gaming activity over the next license period;

(H) The names and addresses of any employees who the Tribal Commission may determine to be key employees during review of the application;

(I) Written proof that the operator has paid to the National Indian Gaming Commission such fees as federal and tribal law may require it to pay and will continue to do so;

(J) A sworn statement that the operator has complied with the Internal Revenue Codes and Regulations, including written notice of customer winnings, and a statement that the operator shall continue to obey all tribal and federal laws and shall hold the Tribal Commission and the Tribe harmless for failure to do so;

(K) Any location at which the gaming activity has been conducted and any new location which will be established in the next license period;

(L) The number of full-time equivalent people, on an annualized basis, employed by the operation during the past 12 months, together with a projection of the number of full-time equivalent people who are expected to be employed during the next license period;

(M) The total gross revenue of the operator attributable directly or indirectly to tribally-licensed gaming activity over the proceeding 12 months;

(N) Written proof that the operator has paid to the Tribe the gross receipts tax, and a sworn statement that it will continue to make such payments as may be required during the next license period;

(O) A sworn statement that the operator will continue to comply with all tribal and federal laws applicable to the operator's gaming operation;

(P) A sworn statement that the operator and all of its key employees and management contractors continue to consent to Tribal Court jurisdiction and service of process in all matters arising from the conduct of tribally-licensed gaming activity;

(Q) If the operator is a corporation, a copy of any amendment to its articles of incorporation, properly certified by the incorporating government, unless a current copy has already been filed with the Tribal Commission.

5.12 **Closure of a Tribally Licensed Gaming Activity.** If the Tribal Commission finds that any tribally owned gaming activity is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Tribal Commission must immediately notify the Tribal Chairman and the Tribal Council. The Tribal Council may close down any tribally owned or operated gaming activity temporarily or permanently at any time with or without cause.

Section 6. Gaming Employee Requirements.

6.1 **Current and Valid Gaming Employee License Required.** Each primary management official and key employee of a Class II or Class III gaming operation must possess a current, valid gaming employee license.

6.2 **Application Procedure for Employment.**

(A) Any person seeking employment with a gaming enterprise licensed by the Commission shall submit an application to the Tribal Commission on such form or in such manner as the Tribal Commission may require.

(B) At a minimum, the application shall contain the following information:

(1) The applicant's name, including all other names used, current home and work addresses and telephone numbers, gender, Social Security Number, place of birth, date of birth, citizenship, and driver's license number, as well as the address of his or her personal residences over the past 5 years.

(2) The name, address and telephone number of the Primary Management Official for whom the applicant is applying to work and the specific location at which s/he or she is applying to be employed.

(3) The name and job description of the position the applicant is applying for.

(4) The names and addresses of the applicant's living parents, grandparents, spouse, children, brothers, and sisters, including step-, half- and in-law.

(5) A statement as to whether or not the applicant has ever been charged with a crime, and if so, the charge, the name and address of the court involved, the applicant's explanation of the outcome of the case, including the date of final disposition.

(6) The names, current addresses and telephone numbers of three references who are not related to the applicant and who were acquainted with the applicant when the applicant was residing at each of the addresses listed in subsection 6.2(B)(1).

(7) A list of the applicant's current and previous jobs over the preceding 5 years, including the name, address and telephone number of his or her employer, and the position held.

(8) The names and addresses and a brief description of all businesses in which the applicant currently holds, or has within the last 5 years held, an ownership interest.

(9) A description of any existing and previous employment relationship with an Indian Tribe, including the employee position held, name of the Tribe involved and name and address of a person who can attest to the accuracy of the information provided.

(10) A description of any current or past non-employee business arrangement which the applicant has had with an Indian Tribe, including the name of the Tribe involved and the name and address of a person who can attest to the accuracy of the information provided.

(11) A statement as to whether the applicant has had any past employment with, or ownership interest in, any gaming business. If so, the applicant shall provide a written statement describing his or her position, the dates during which that position was held, a description of the applicant's ownership interest or job responsibilities and the name, address and phone number of the business, and a person who can attest to the accuracy of the information provided.

(12) A list of all gaming-related licenses the individual has applied for, whether or not those licenses were granted and the name and address and phone number of the regulatory agency involved.

(13) A list of all professional or business licenses the applicant has applied for, whether or not those licenses where granted and the name, address and phone number of the regulatory agency involved.

(14) A statement of all languages written or spoken.

(15) A sworn statement that neither the applicant nor any member of his immediate family has a past or current financial interest, other than a salary interest, in any gaming-related enterprise anywhere. If the applicant has any relative who has such a relationship, the applicant shall fully disclose his name and the nature of the relationship.

(16) Written permission giving the Tribal Commission or its designee the right to investigate the applicant's background, including his criminal record, civil and criminal judgments and credit history.

(17) A complete disclosure of any pending or anticipated civil or criminal action against the applicant, including the name and address of the police department and court involved.

(18) A disclosure of any civil or criminal judgments rendered against the applicant, including the case number, a description of the judgment and the name and address of the court involved.

(19) Any other information which might bring into question his fitness to serve as a primary management official or key employee of a licensed gaming operation.

(20) Each application shall be accompanied by a sworn statement that the applicant will submit to the jurisdiction of the Tribe and the Tribal Court, if employed.

(21) Each application shall be accompanied by a photograph of the applicant taken within the last year.

(22) Each application shall be accompanied by a sworn statement that the applicant will abide by all applicable tribal and federal laws, regulations and policies.

(23) Each application for a gaming employee license shall be accompanied by an application fee of $10.00.

(24) Each application shall be accompanied by a written statement that the applicant has read, understands and approves of the following Privacy Act notice and False Statement notice:

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 the 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 the Tribes 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.

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

(C) Any application for a gaming employee license shall be accompanied by an application fee of $10.00.

6.3 **Review Procedure.**

(A) The Tribal Commission or its designee shall forward a copy of each application to a tribal or state law enforcement agency and arrange for that agency to verify in writing the accuracy of the applicant's criminal record. The Commission or its designee shall also contact each reference provided in the application and take other appropriate steps to verify the accuracy of the other information presented and prepare a report of their findings for the Commission. Once these two reviews are completed, the Commission shall review the findings and either grant or deny the license, if one is required by this Ordinance, or advise the Primary Management Official that the applicant's information has been reviewed and there exists no barrier to employment. The applicant shall be notified in writing of the Commission's decision. If the Commission votes to deny a license, it shall include within this notification the specific reasons for its decision.

(B) A copy of the application, the results of the background checks performed and the Tribal Commission's findings and decision shall be forwarded to the National Indian Gaming Regulatory Commission before a license is issued.

(C) All applications, background checks and Commission decisions shall be retained in the Commission files for a period of at least five (5) years.

6.4 **Scope of License.**

(A) Any employee gaming licenses issued pursuant to this section shall be effective for only the location, job and employer contained in the application.

(B) Any licensed employee shall apply to have his license transferred to a new location by requesting that transfer in writing to the Tribal Commission in a manner which details the new job and location and the operator for whom s/he proposes to work.

6.5 **Licensing Period.** Any permanent employee gaming license issued pursuant to this section shall be effective for a period of one year from the date of issuance and shall contain the licensee's photograph and shall state on its face the name of the employee, the location at which s/he is licensed to work, the gaming operator who employs

him, the date that the license became effective and the date that it expires.

6.6 **Renewals.** A holder of an employee gaming license shall petition to have his license renewed, by applying to the Tribal Commission for a renewal before his original license has expired and updating all information contained in the original application.

6.7 **Requirement to Produce License Upon Request.** Any person receiving an employee gaming license must carry that license upon his person during all working hours and must produce that license upon the request of any person.

6.8 **Suspension or Termination of Employee License.**

(A) Grounds for Suspension or Termination. The Tribal Commission may suspend or terminate the license of any employee, after notice and an opportunity for a hearing, for any of the following reasons:

(1) The employee has withheld pertinent information on his application;

(2) The employee has made false statements on the application;

(3) The employee has participated in gaming activity which was not authorized by any tribal gaming license;

(4) The employee has attempted to bribe a tribal council member, Commissioner or other person in an attempt to avoid or circumvent tribal law;

(5) The employee has offered something of value or accepted a loan, financing or other thing of value from a Tribal Commission member, a subordinate employee or any person participating in any gaming activity;

(6) The employee has knowingly promoted, played or participated in any gaming activity operated in violation of tribal or federal law or the tribal/state gaming compact;

(7) The employee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity;

(8) The employee has violated any provision of this Ordinance or the rules and regulations of the Tribal Commission;

(9) The employee has been convicted of, or has entered a plea of nolo contendere to, any crime involving gaming, fraud, theft, embezzlement or other activity which, if perpetrated at his operator's place of employment, would injure or pose a threat to the public interest, or the integrity of the gaming activity, or the effective regulation of gaming or enhance the dangers of unfair, unsuitable or illegal gaming practices;

(10) The employee has refused to comply with any lawful order, inquiry or directive of the Tribal Commission, the Tribal Council, the federal government or any court of competent jurisdiction;

(11) The employee has been convicted of, or entered a plea of nolo contendere to, a crime involving the sale of illegal narcotics or controlled substances; or

(12) The employee has been determined to have present or prior activities, criminal record, if any, or reputation, habits and associations which pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

(B) Procedure for Suspension or Termination. Whenever it is brought to the attention of the Tribal Commission that a person has failed to comply with any of the conditions of subsection (A), above, the Tribal Commission or its designee may either undertake an investigation of the gaming enterprise, or serve upon such person or any agent of such person an order to show cause why the employee should not be subject to disciplinary action. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Commission, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses, and to present any other evidence as to why a disciplinary action should not be issued. The hearing shall be set for not less than ten (10) days nor more than 14 days from the date of the notice. The hearing shall be governed in all respects in accordance with tribal law and Tribal Commission regulations.

6.9 **Temporary Suspension of Employee Gaming License.**

(A) Any employee gaming license may be temporarily and immediately suspended by the Tribal Commission, the Tribal Court or the Council or its designee for not

more than 30 days if any of the following have occurred:

(1) The employee has been charged with a violation of any gaming law.

(2) The employee's continued employment as a primary management official or key employee of a game or gaming enterprise poses a threat to the general public.

(3) The employee has made a material false statement in his license application.

(4) The employee has participated in gaming activity unauthorized by his tribal gaming license.

(5) The employee has refused to comply with any lawful order of the Tribal Commission, the Council, the Tribal Court or the National Indian Gaming Commission.

(B) In the event the Tribal Commission determines that any employee meets any of the criteria stated in subsections 6.9(A)(1) through 6.9(A)(5) above or that his non-compliance with this Ordinance is a direct and immediate threat to the peace, safety, morals or health or welfare of the community, the Tribal Commission or its designee shall issue a notice of temporary suspension of his employee gaming license which shall be served upon the employee or any agent of the employee. The order shall state the grounds upon which it is issued and the employee's right to a hearing. The employee shall cease and desist operating in his management position or in his capacity as a key employee immediately upon receipt of the order, but s/he may file a notice of appeal with the Tribal Commission which shall hold a hearing on the order within 14 calendar days of its receipt of the appeal. At the hearing the employee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a temporary suspension order or an injunction should not be issued. The hearing shall be governed in all respects in accordance with tribal law and Tribal Commission regulations.

Section 7. Provisions of General Applicability to All Operators.

7.1 **Gaming License Required.** Each Class II or Class III gaming activity within the jurisdiction of the Tribe shall

be conducted only by an operator who possesses a current and valid tribal gaming license.

7.2 **Site and Operator Specified.** Each tribal gaming license shall be applicable only to one gaming site and the operator named on such license.

7.3 **License Not Assignable.** No tribal gaming license shall be sold, lent, assigned or otherwise transferred.

7.4 **Employee Licenses Required.** Each management and key employee of a licensed gaming operation shall possess a current and valid tribal gaming employee license.

7.5 **Eligible Licensees.** A tribal gaming license shall be issued only to a person who qualifies therefor under the Ordinance, or to the Tribe or a tribal subdivision.

7.6 **Employee Drug Tests.** Any person employed in a Commission-licensed gaming enterprise may be randomly selected for testing for utilization of marijuana, cocaine, amphetamines, opiates and phencyclidine (PCP). Random drug testing of employees is a mandatory operating procedure for all operators.

7.7 **Regulations Posted or Available.** Each operator shall have a copy of this Ordinance and regulations readily available for inspection by any person at each authorized gaming site.

7.8 **Minimum Age to Play.** No person under the age of 21 years shall be permitted to play any gaming activity being conducted within a facility which has a retail alcoholic beverage license.

7.9 **Minimum Age to Enter Facility.** No person, other than a Class III enterprise employee, shall be permitted to enter the area of any building in which a Class III gaming activity is being conducted, who is under the age of 21.

7.10 **Posting of Rules of Play.** Each operator shall post in a conspicuous location near where any gaming activity is being played, or shall otherwise provide the public with an explanation of the rules of play of every specific game s/he operates.

7.11 **Equipment Rental Restrictions.** Each operator of a gaming activity is prohibited from renting or lending gaming equipment to any person.

7.12 **Restrictions on Gaming Apparatus Exchange.** Each operator is prohibited from exchanging pull-tabs, punch-boards, sports pools, and twenty-one boxes (shoes). All

other gaming equipment may be exchanged without prior approval. Any request for approval shall be made to the Tribal Commission at least 5 days prior to the exchange.

7.13 **Approval of Gaming Materials Required.** Any operator who anticipates the printing, manufacture, or construction of any equipment for gaming activity shall first notify the Tribal Commission of his intention and shall have the finished product approved by the Tribal Commission before it is placed in service.

7.14 **Requisite Sale and Redemption Value.** Gaming chips and other tokens of value shall only be sold and redeemed by the operator and only for full value.

7.15 **Record Maintenance Requirements.** Each licensed gaming operation shall maintain and keep for not less than five (5) years permanent books of accounts and records, including inventory records of gaming supplies, sufficient to establish the gross and net income, deductions, expenses, receipts and disbursements of the enterprise.

7.16 **Liquor Sale Restrictions.** There shall be no sale of liquor at any gaming site without the requisite license for such sale issued under the Tribe's liquor control ordinance.

7.17 **Form of Payment for Chance to Play.** Consideration for the chance to play in any gaming activity shall only be cash, house token or chip, and shall be presented at the time the game is played. No other form of consideration shall be allowed unless the Tribal Commission gives prior written approval.

7.18 **Documentation of Winnings and Losses for Tax Purposes.** Evidence of any win or loss incurred by a player must, upon request, be provided to such player in such form as will be acceptable to the IRS.

7.19 **Taxes, Fees and Reports Timely Transmitted.** Each operator shall pay all applicable taxes and fees, including those assessed by the National Indian Gaming Commission, and file all applicable reports on time.

7.20 **Response to Regulatory Inquiries.** Each operator shall respond immediately to and obey all inquiries, subpoenas or orders of the Tribal Commission, the Tribal Council, the Tribal Court, or the National Indian Gaming Commission.

7.21 **Display of Gaming License.** Each operator shall prominently display at each gaming site a current, valid tribal gaming licence.

7.22 **Maintenance of Premises.** Each operator shall, at all times, maintain an orderly, clean, and neat gaming establishment, both inside and out.

7.23 **Facility Security.** Each operator shall provide adequate security to protect the public before, during and after any gaming activity.

7.24 **Cooperation with Law Enforcement.** Each operator shall cooperate at all times with law enforcement personnel.

7.25 **Record Inspection.** Each operator shall make its premises and books and records available for inspection during normal business hours by the Tribal Commission or their designee, and by authorized representatives of the National Indian Gaming Commission.

7.26 **Gaming Occasion Restrictions.** No gaming shall be conducted on special days of observance designated by the Tribal Council.

7.27 **Discrimination Prohibited.** No operator may discriminate on the basis of sex, race, color, or creed in the conduct of any licensed gaming activity. Employment preference for tribal members and other Native Americans shall not constitute discrimination by the operator.

7.28 **Financial Record Review.** Each operator shall keep accurate books and records of all moneys received and paid out and provide authorized representatives of the National Indian Gaming Commission and the Tribal Commission or its designee with copies of or access to the same upon request.

7.29 **Use of Net Proceeds.** All net proceeds of any gaming activity shall be used only in a manner prescribed by this Ordinance.

7.30 **Reporting Requirement Compliance.** Every operator shall comply with all applicable tribal and federal revenue reporting laws.

7.31 **Tribal Law Violation.** It shall be a violation of the Tribe's Criminal Code to violate any provision of this Ordinance, any regulation of the Tribal Commission, or any order of the Tribal Court.

7.32 **Employee Misconduct.** Each operator shall immediately suspend without pay any employee who is charged with an offense described in subsection 10.2(BB) or any offense related to the sale, possession, manufacture and/or transport of illegal drugs. The operator shall also immediately notify the Tribal

Commission in writing of the name of the person and the pending charge and advise the Tribal Commission of the outcome of the case. If the employee is convicted or pleads nolo contendere to the charge, his or her employment shall be terminated. An employee terminated under this section for a drug-related conviction may be rehired, provided that such person is eligible for a gaming license, and provided further that such person passes a pre-employment drug screen test, and furnishes a substance abuse assessment by a licensed substance abuse program, and demonstrates compliance with that program's rehabilitation/ counseling plan.

Section 8. Gross Proceeds Tax.

8.1 **Rate.** There is hereby levied upon and there shall be collected from all enterprises an annual tax for the purpose of funding the Tribal Gaming Commission equal to one (1) per cent of the adjusted gross proceeds thereof, as that term is defined in subsection 2.1 of this Ordinance. The tax levied by this section shall be a personal obligation of the taxpayer.

8.2 **Separate Accounting Practices.** Any enterprise which obtains revenue from sources other than activities directly related to gaming, such as the sale of food and beverages, shall keep books to show separately the transactions used to determine the tax levied in this section.

8.3 **Tax Due Date; Accrual, Return and Signature.**

(A) Duty of Enterprise. The enterprise shall, on or before the fifteenth (15th) day of each month, make out a return for the preceding month on a form prescribed by the Tribe, showing the entire amount of adjusted gross proceeds of his gaming activities, and the amount of tax for which it is liable, and shall transmit the return signed by the Primary Management Official, together with payment of the amount of tax owed, on or before the fifteenth day of the month. If the return is prepared by other than said Manager, the return shall so state, and shall give the name and address of the person preparing the return, together with his signature and the name of his employer, if any.

(B) Accrual of Tax. The tax imposed by this section shall accrue to the Tribe on the last day of the month in which the gaming activity occurred.

8.4 **Annual Periodic Reconciliations.** In the event that the annual financial report provided by each enterprise

indicates that the amount of adjusted gross proceeds for the year differs from the total of the adjusted gross proceeds reported monthly under sec. 8.3, the enterprise shall file with the Commission a reconciliation return, which indicates the proper amount of the adjusted gross proceeds, and if, additional tax is due, provide the correct amount together with one per cent (1%) penalty interest, compounded monthly, on the amount unreported or underreported, commencing with the month in which the report required by sec. 8.3 was due.

8.5 **Tax Revenue Distribution.** All sums of money received and collected under this section shall be deposited by the Tribe to the credit of an Internal Service Fund to be used solely for the purpose of funding the operations of the Tribal Gaming Commission, in carrying out its responsibilities pursuant to this ordinance, the Indian Gaming Regulatory Act, and the Tribe's Compact with the State of Michigan, published at 58 *Fed. Reg.* 63262 (Nov. 29, 1993).

8.6 **Internal Service Fund**. The Fund is used to account for the financing of goods and services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost reimbursement basis.

8.7 **Excess of Receipts over Expenses**. In the event that receipts exceed expenses, as determined by the annual audit, the Internal Service Fund will rebate such excess to enterprises proportionately.

8.8 **Annual Budget**. The Tribal Gaming Commission will prepare and submit for approval by the Executive Council an annual budget.

Section 9. Operation of Tribally-Owned or Tribally- Operated Games.

9.1 **Management by a Primary Management Official**.

(A) The Tribal Council shall appoint one person who shall serve as Primary Management Official at each of its tribally-operated gaming establishments. The person appointed shall undergo a background check by the Tribal Commission and shall obtain an employee gaming license before commencing work. The Tribal Council shall be the direct supervisor of the Primary Management Official.

(B) The Primary Management Official shall be responsible for managing and overseeing the day-to-day

operations of the gaming operation. S/he shall have such authority as the Tribal Council may delegate.

(C) The Primary Management Official shall present a written monthly report to the Tribal Commission and the Tribal Council which details the number of patrons served, the amount of income generated, the numbers of employees working at the establishment, a detailed description of any patron complaints and other problems experienced at the establishment, also a written statement of any changes in key employees or primary management officials and all bills which are 30 days or more past due.

(D) Any patron's cash winnings shall be paid in cash or check and shall be paid within 72 hours after it is won.

(E) The Primary Management Official shall propose and the Tribal Commission shall approve a patron's complaint process. Each tribally-owned and tribally-managed gaming establishment shall post at least one sign in each gaming room informing patrons that they may file any complaints that they have directly with the Tribal Commission, and advising them of the Tribal Commission's address and phone number.

(F) Each tribally-owned or tribally-operated gaming establishment shall carry sufficient liability insurance to protect the public in the event of an accident. The Tribal Council shall determine the amount of liability insurance required for each gaming establishment.

(G) Each tribally-owned or tribally-operated gaming establishment shall post the rules of play of each game in a conspicuous place in the establishment, and shall make written copies of them available to any member of the general public upon request.

(H) The Primary Management Official shall be personally responsible for seeing that gaming activity is managed in accordance with tribal and federal law and that such gaming activity complies with all IRS reporting requirements.

9.2 **Use of Net Revenues of Tribally-Owned or Tribally-Operated Gaming Enterprises.**

(A) All net proceeds of a tribally-owned or tribally-operated gaming enterprise shall be held in the name of the Tribe. Such net proceeds may only be expended by the Tribal Council by resolution and only for the following purposes:

(1) To fund tribal government operations or programs.

(2) To provide for the general welfare of the Tribe and its members.

(3) To promote tribal economic development.

(4) To donate to charitable organizations.

(5) To help to fund operations of local government agencies.

9.3 **Audit Requirements.**

(A) The Tribal Commission and the Primary Management Official of each tribally-owned or tribally-operated gaming establishment shall obtain an annual outside audit of such gaming establishment. A copy of such audit shall be provided to the Tribal Commission, the Tribal Council and the National Indian Gaming Commission.

(B) Each contract for supplies, services (other than legal and accounting services) or concessions for a contract amount in excess of $25,000.00 annually shall be subject to an independent audit. A copy of such audit will be provided to the Tribal Commission, the Tribal Council and the National Indian Gaming Commission.

9.4 **Management Contracts.**

(A) Each management contract is subject to the prior approval of the National Indian Gaming Commission.

(B) Each management contract shall be approved by the Council with the advice and comment of the Tribal Commission. Before giving final consideration to any proposed management contract, the Council shall direct the Tribal Commission to obtain the following information and submit it to the Council for review:

(1) Background information on the proposed management contractor including its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed management contractor, and in the case of a corporation, the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly 10 percent or more of its issued or outstanding stock.

(2) A description of any previous experience that each person listed in subsection 9.1 above has had with other gaming contracts with Indian tribes or with the gaming industry generally, including the name and address of any tribal government or licensing agency with which such person has had a contract relating to gaming.

(3) A complete financial statement of each person listed in subsection 9.4(B)(1) above.

(4) The Tribal Commission shall contact each of the tribal governments and licensing agencies in Subsection 9.4(B)(2) above to determine the performance history of the proposed management contractor.

(5) The Tribal Commission shall arrange to have each proposed management contractor investigated to learn of his personal attributes and to determine whether s/he has a prior criminal record or any pending criminal charges.

(6) The Tribal Commission shall obtain an independent verification of the completed financial statements of each proposed management contractor.

(7) The Commission shall undertake any additional steps it can to determine the character and reputation of each proposed management contractor.

(8) If the Tribal Council, after reviewing the above described information still desires to enter into a management contract with the proposed management contractor, such management contract shall be placed in writing and submitted to legal counsel for review before the Council approves it.

(C) Any management contract approved by the Council must contain at a minimum the following with respect to the gaming enterprise to which the contract is applicable:

(1) A provision requiring a monthly financial accounting of the gaming enterprise's income and expenses, with an annual financial accounting to be prepared by an independent auditor who is acceptable to the Tribe.

(2) A provision providing the Tribe absolute access to the daily operation of the gaming enterprise and to its books, and the Tribe's

absolute right to verify the daily gross revenues of the gaming enterprise at any time.

(3) A provision guaranteeing the Tribe a minimum guaranteed payment which shall always take precedence over the management contractor's right to recoup development and construction costs.

(4) An agreed upon ceiling for the management contractor's development and construction costs.

(5) A provision that the contract shall not exceed the term limit established by federal law.

(6) A provision for termination of the contract and the grounds for termination.

(D) If the Council is satisfied with the information it receives it shall submit its proposed contract along with all of the above described information to the Chairman of the National Indian Gaming Commission for approval.

Section 10. Enforcement.

10.1 **Jurisdiction.** Except as provided in this Ordinance and in any IGRA compact, the Tribal Court shall have jurisdiction over all violations of this Ordinance.

10.2 **Prohibited Acts.** In addition to other civil and criminal offenses provided for in this Ordinance, the following acts are prohibited and subject any violator to the civil or criminal penalties specified herein:

(A) Participating in any on-reservation gaming activity which is not authorized by this Ordinance.

(B) Knowingly making a false statement in an application for employment with any operator or with the Tribal Commission.

(C) Knowingly making a false statement in connection with any contract to participate in any gaming activity.

(D) Attempting to bribe any person participating in any gaming activity.

(E) Offering or accepting a loan, financing or other thing of value between a Tribal Commission member or employee and any person participating in any gaming activity.

(F) Promoting or participating in any illegal gaming activity.

(G) Failing to keep sufficient books and records to substantiate receipts, disbursements and expenses incurred or paid from any gaming activity authorized pursuant to this Ordinance.

(H) Falsifying any books or records which relate to any transaction connected with any gaming activity pursuant to this Ordinance.

(I) Conducting or participating in any gaming activity which in any manner results in cheating or misrepresentation, and which allows any other disreputable tactics which detract from the fair nature and equal chance of participation between gaming players, or which otherwise creates an advantage over and above the chance of such gaming activity which affects its outcome.

(J) To conduct gaming activity with or to allow participation in gaming activity by or with an intoxicated or disorderly player.

(K) To allow or participate in the sale of liquor at gaming sites when such sale is prohibited by tribal law.

(L) To accept consideration other than money, personal checks or other approved consideration for the chance to play or participate in any gaming activity.

(M) To use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any cards, charitable gaming tickets or gaming equipment that has been marked or tampered with.

(N) To employ or possess any cheating device or to facilitate cheating in any gaming activity.

(O) To willfully use any fraudulent scheme or technique to change the odds of any game of chance.

(P) To solicit, directly or indirectly, or use inside information on the nature or status of any gaming activity for the benefit of an individual.

(Q) To tamper with a gaming device, attempt to conspire to manipulate the outcome or the payoff of a gaming device, or otherwise unlawfully tamper with or interfere with the proper functioning of the machine.

(R) To alter or counterfeit a gaming license.

(S) To aid, abet, or conspire with another person knowingly or knowingly to cause any person to violate any provision of this Ordinance or any rules and regulations adopted thereunder.

(T) To operate, use or make available to the public any illegal gaming device, apparatus, material, or equipment.

(U) To sell, hold out for sale or transport into or out of the jurisdiction of the Tribe any illegal gaming device, apparatus, material, or equipment.

(V) To assist or allow a person who is under age to participate in a game of chance.

(W) To possess any illegal narcotics or controlled substances on any licensed gaming site.

(X) To steal or attempt to steal funds or other items of value from any gaming establishment or from the Tribal Commission.

(Y) To employ any person at a licensed gaming establishment whom the operator knows has been convicted of a gaming crime or a crime of fraud.

(Z) To conspire with or induce any person to violate any of the provisions of this Ordinance or any tribal or federal law.

(AA) No operator or any of his employees or agents shall engage in any act, practice, or course of operation which could result in a fraud or deceit upon any person.

(BB) No operator shall employ any person who has been convicted of or entered a plea of nolo contendere to a criminal offense committed in Michigan or any other jurisdiction, involving theft, fraud, or misrepresentation, which would be a felony if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the person's criminal record by executive pardon, state court order, or operation of law; or to a gaming crime.

10.3 **Criminal Violation.** Any Indian who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order or decision of the Tribal Commission, shall be guilty of a crime and may be required to pay a fine not to exceed $5,000 or be incarcerated for a period not to exceed 2 years. Each day during which any such violation or failure to comply

continues shall constitute a separate violation of this Ordinance.

10.4 **Civil Violation.** Any non-tribal member who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order of the Tribal Commission, shall be liable for a civil fine not to exceed $5,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a civil action in the Tribal Court.

10.5 **Cumulative Fines.** All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any operator, or any other person.

10.6 **Purpose of Civil Penalties.** The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and Tribal Commission regulations and not to punish such people for violation of such laws and regulations.

10.7 **Civil Action for Penalties.** In enforcing the civil infraction provisions of this Ordinance, the Tribal Commission shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Ordinance. The Tribal Commission in such action shall have the burden of showing, by the preponderance of the evidence, that such person violated the applicable provision of this Ordinance.

10.8 **Seizure of Property.** All property utilized in violation of this Ordinance shall be subject to seizure by order of the Tribal Court.

10.9 **Reporting of Offenders.** The Clerk of the Tribal Court shall, upon final conviction of any person under this subsection, report the name of the person convicted to the Tribal Commission.

Section 11. Authorized Games.

11.1 **Games Playable.** All games of chance which are valid under the law of the State of Michigan are authorized for licensing.

11.2 **License Required.** A separate tribal gaming license shall be obtained for the operation of each of the gaming establishments authorized by this Section.