



February 21, 2024

VIA EMAIL

Calvin Johnson, Chairman
Tonto Apache Tribe
Tonto Apache Reservation #30
Payson, AZ 85541

Re: Tonto Apache Tribe Amended Gaming Ordinance

Dear Chairman Johnson,

This letter responds to the January 30, 2024 resubmission on behalf of the Tonto Apache Tribe (Tribe) informing the National Indian Gaming Commission (NIGC) that the Tribe amended its gaming ordinance and regulations. We understand that these amendments reflect changes in tribal law and ensure consistency with federal and state law as required by its gaming compact with the state of Arizona. Upon review, many of the amendments are technical and non-substantive in nature, with some substantive changes made regarding the tribal gaming regulatory body and internal ethics standards.

We understand that that the Ordinance requires a “request for” fingerprints by the Executive Director on licensing applications, rather than just the fingerprints themselves. 25 C.F.R. § 556.4(a)(6) requires that for licensing applications, a tribe shall request from each primary management official and from each key employee fingerprints consistent with procedures adopted by said tribe. We interpret that the Tribe will still require fingerprint submissions for licensing applications consistent with our regulations.

Thank you for bringing these amendments to our attention. The amended ordinance and regulations, as noted above, are approved as they are consistent with the requirements of the Indian Gaming Regulatory Act and NIGC’s regulations. If you have any questions or require anything further, please contact Logan Takao Cooper at (503) 318-7524 or Logan.Takao-Cooper@nigc.gov

Sincerely,

A handwritten signature in blue ink that reads "E. Sequoyah Simermeyer". The signature is fluid and cursive, with the first name being the most prominent.

E. Sequoyah Simermeyer
Chairman

MAILING ADDRESS: NIGC/DEPARTMENT OF THE INTERIOR 1849 C Street NW, Mail Stop #1621 Washington, DC 20040 Tel: 202.632.7003 Fax: 202.632.7066

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TONTO APACHE TRIBE GAMING CODE

A law to authorize and regulate the conduct of Class II and Class III gaming within the jurisdiction of the Tonto Apache Tribe.

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**PART 1
GENERAL PROVISIONS**

Section # 1 – Authorized Conduct:

Subject to this Tonto Apache Tribe Gaming Code (“**Code**”), Class II and Class III gaming conduct is authorized.

Section # 2 – Authority:

Enacted by the Tribal Council of the Tonto Apache Tribe (“**Tribal Council**”) on October 17th, 2023 by Resolution No. 23-24.

Section # 3 – Purpose:

The Tribal Council, as the governing body of the Tonto Apache Tribe (**the “Tribe”**), hereby enacts this Code to govern and regulate Class II and Class III gaming conduct on the Tribe’s Indian Lands.

Section # 4 – Ownership of Gaming:

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Code, except as expressly provided in this Code.

Section # 5 – Policy:

5.1 The authorization and regulation of Class II and Class III gaming conduct is necessary to encourage economic development to improve the Tribe’s economic situation to provide basic governmental function for its members. The Tribe is committed to furthering self-determination and by doing so, net revenues from Class II and Class III gaming conduct may be utilized solely for:

- (a) funding the Tribal government operations or programs;
- (b) providing for the general welfare of the Tribe and its members;
- (c) promoting Tribal economic development;
- (d) donating to charitable organizations; or
- (e) providing financial assistance to help fund operations of local government agencies.

5.2 Per capita payments to Tribal members shall be made pursuant to a Revenue Allocation Plan, submitted to, and approved by the Secretary of the Interior pursuant to 25 C.F.R. Part 290.

Section # 6 – Repeal.

All prior laws enacted by the Tribal Council governing Class II and/or Class III gaming conduct are hereby repealed.

Section # 7 – Severability.

If any provision or application of this Code is determined by review to be invalid, such determination may not be held to render such provision inapplicable to other persons or circumstances, nor shall such determination render invalid any other provision of this Code.

Section # 8 – Definitions.

“Compact” means the Tribal-State Compact between the State of Arizona and the Tonto Apache Tribe.

“Gaming Operation” means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

“IGRA” means the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 et seq.).

“Indian Lands” means land: (1) within the limits of an Indian reservation; or (2) over which an Indian tribe exercises governmental power and that is either held: (a) in trust by the United States for the benefit of any Indian tribe or individual; or (b) by an Indian tribe or individual subject to restriction by the United States against alienation.

“Key Employee” means a person who is employed by a Gaming Operation; (1) who performs one or more of the following functions: (a) bingo caller; (b) counting room supervisor; (c) chief of security;; (d) floor manager; (e) pit boss; (f) dealer; (g) croupier; (h) approver of credit; (i) custodian of gaming systems as defined in 25 CFR 547.2 and similar class III systems, gaming cash, or gaming cash equivalents, gaming supplies or gaming records; (j) custodian of surveillance systems or surveillance system records; (2) any Gaming Operation employee authorized by the Gaming Operation for unescorted access to secured gaming areas designated as secured gaming areas by the TGRA; (3) if not otherwise included as a Key Employee or Primary Management Official, the four most highly compensated persons in the Gaming Operation; and (4) any person designated by the Tribe as a Primary Management Official.

“Primary Management Official” means: (1) the person(s) having management responsibility for a management contract; (2) any person who has authority: (a) to hire and fire employees of a Gaming Operation; (b) to establish working policy of a Gaming Operation; or (3) the chief financial officer or other person who has financial management responsibility; (4) the general

manager or a position with duties similar to a general manager; and (5) any other person designated by the Tribe as a primary management official.

PART 2 TRIBAL GAMING OFFICE

Section # 1 – Establishment:

- 1.1 Governmental Subdivision. The Tribal Council hereby establishes the Tonto Apache Gaming Office (“**Tribal Gaming Office**”) as a governmental subdivision of the Tribe, charged with implementation of this Code and regulation over Class II and Class III gaming conduct and enforcement of federal laws, this Code, regulations promulgated by the Tribal Gaming Office pursuant to Part 2 Section 2.1, and the Compact.
- 1.2 Place of Business. The Tribal Gaming Office shall maintain its headquarters and principal place of business within Tribal offices. The Tribal Gaming Office may establish other places of business if determined by the Tribal Gaming Office to be in the best interest of the Tribe.
- 1.3 Duration. The Tribal Gaming Office shall have perpetual existence in its own name, unless dissolved by the Tribal Council.
- 1.4 Arm of the Tribe. The Tribal Gaming Office is a function of the Tribe’s government. Notwithstanding any authority delegated to the Tribal Gaming Office under this Code, the Tribe reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe or on behalf of the Tribal Gaming Office, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Tribal Gaming Office.
- 1.5 Sovereign Immunity of the Tribal Gaming Office. As a governmental subdivision of the Tribe, all inherent sovereign rights of the Tribe are hereby expressly extended and reserved to the Tribal Gaming Office, including sovereign immunity from suit in any state, federal or tribal court.
- 1.6 Tribal Gaming Office Membership. The Tribal Gaming Office is comprised of one (1) Executive Director.
- 1.7 Decision Making. Unless the Executive Director has been delegated authority to take official action authorized through this Code or other Tribal Council approved regulation, all official actions must be approved by resolution of the Tribal Council.
- 1.8 Appointment. The Executive Director must be appointed by the Tribal Council and confirmed at any Tribal Council meeting.

- 1.9 Background Check. The Tribal Council must require the Executive Director to submit to a criminal background check. Based on the results of the background check, the Tribal Council shall make an appropriate eligibility determination and keep the Executive Director's criminal background check results on file.
- 1.10 Term. The Tribal Council may appoint an Executive Director to serve for an indefinite period of time.
- 1.11 Compensation. The Executive Director will be compensated at a rate set by the Tribal Council. In order to ensure the Executive Director is not improperly influenced, an Executive Director's compensation may not be based on a percentage of gaming revenue.
- 1.12 Eligibility. The following persons are not eligible to serve as Executive Director: Tribal Council members, while serving as such; current employees of the Gaming Operation; gaming contractors (including any principal of a management, or other contracting company); persons directly related to, or sharing a residence with, any of the above.

Section # 2 – Executive Director Powers:

- 2.1 Regulations. Subject to receiving Tribal Council approval the Executive Director may promulgate regulations:
- (a) to establish procedures designed to detect irregularities or fraud;
 - (b) to design a regulatory system to oversee Class II and Class III gaming;
 - (c) to establish procedures governing the conduct hearings and enforcement actions; or
 - (d) any other regulations to ensure compliance with this Code.
- 2.2 Inspections. The Executive Director may:
- (a) request assistance of federal or local law enforcement;
 - (b) during normal business hours, reasonably enter upon premises to examine accounts, books, papers and documents;
 - (c) inspect, examine, photocopy and audit all papers, books and records; or
 - (d) conduct any investigation to determine compliance with this Code.
- 2.3 Contracting. The Executive Director may enter contracts with Tribal Council approval.
- 2.4 Investigations. The Executive Director may investigate any suspicion of wrongdoing or violations to determine compliance with federal law, this Code, regulations promulgated

by the Executive Director pursuant to Part 2 Section 2.2, or the Compact in connection with any gaming activities and require correction of violations as the Executive Director deems necessary.

Section # 3 – Executive Director Duties:

3.1 Annual Budget. The Executive Director shall prepare an annual operating budget and present it to the Tribal Council no less than thirty (30) days prior to the commencement of each operating year.

3.2 Gaming Operation Licensing. The Executive Director shall:

(a) issue a separate Gaming Operation license to each place, facility or location on Indian lands where Class II and/or Class III gaming is conducted;

(b) establish Gaming Operation license applications, which at a minimum shall include:

i. a legal description of the lands upon which the facility is located;

ii. certification that the site constitutes Indian lands; and

iii. signed by a management official of the Gaming Operation for each gaming place, facility or location.

(c) receive and submit notice to the National Indian Gaming Commission that issuance of a Gaming Operation license is under consideration by the Executive Director at least one hundred twenty (120) days before the opening of any new place, facility or location on Indian lands where Class II and Class III gaming will occur;

(d) submit a copy of each newly issued or renewed facility license to National Indian Gaming Commission within thirty (30) days of issuance, along with any other required documentation; and

(e) notify the National Indian Gaming Commission within thirty (30) days if a Gaming Operation is terminated or expires, or if a gaming place, facility, or location closes or reopens.

3.3 Primary Management Officials and Key Employee Licensing. The Executive Director shall:

(a) establish applications for Primary Management Official and Key Employee licenses, which at a minimum shall include:

i. full name, other names used (oral or written), social security number, birth date, place of birth, citizenship, gender, and all languages (spoken and/or written);

- ii. currently, and for the previous five (5) years; business and employment positions held, ownership interests in those businesses, business and residential addresses, and driver's license numbers;
- iii. names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(ii) of this Section;
- iv. current business and residential telephone numbers, and all cell phone numbers;
- v. a description of any existing and previous business relationships with other tribes, including any ownership interest in those businesses;
- vi. a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- vii. 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;
- viii. for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
- ix. for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic charges), within ten (10) years of the date of the application, the name and address of the court involved, 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 10 years of the date of the application, and is not otherwise listed pursuant paragraphs (a)viii-ix of this Section, the criminal charge, the name and address of the court involved, and the date and disposition, if any;
- xi. the name and address of any licensing or regulatory authority with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- xii. a photograph;
- xiii. a signed statement confirming receipt of disclosures required under Part 2 Section 3.3(b);
- xiv. any other information Tribe deems relevant; and

- xv. request for fingerprints to be completed by the Executive Director, which is the law enforcement agency designated to take fingerprints.
- (b) provide Primary Management Officials and Key Employee applicants with the following disclosures prior to being filled out by an applicant:
- i. Privacy Act 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 granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and 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 by the Tribe or the NIGC 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 NIGC in connection with the issuance, denial, 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 being unable to license you for 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.*
 - ii. Notice Regarding False Statements. *A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).*
- (c) conduct background investigations for each Primary Management Official and Key Employee applicant to sufficiently allow the Executive Director to make an eligibility determination under Part 2 Section 3.3(e), which at a minimum shall include a check of:
- i. criminal history records information maintained by the Federal Bureau of Investigations;
 - ii. civil history; and
 - iii. personal credit check.
- (d) create and maintain an investigative report for each background investigation of a Primary Management Official or Key Employee which shall include:

- i. steps taken in conducting the investigations;
 - ii. results obtained;
 - iii. conclusions reached; and
 - iv. the basis for those conclusions.
- (e) make determination of suitability on whether to issue a license. Executive Director may not issue a license if the licensing of applicant poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods, and/or activities in the conduct of gaming. Executive Director shall consider the applicant's;
- i. prior activities;
 - ii. criminal record; and
 - iii. reputation, habits, and associations.
- (f) prior to issuing a license to a Primary Management Official or Key Employee, the Executive Director shall prepare a notice of results of the applicant's background investigation and submit it to the National Indian Gaming Commission no later than sixty (60) days after the applicant begins working, which at a minimum shall include:
- i. a copy of the eligibility determination made under Part 2 Section 3.3(e);
 - ii. the applicant's name, date of birth and social security number;
 - iii. the date on which the applicant began, or will begin, working as a Primary Management Official or Key Employee; and
 - iv. a summary of the information presented in the investigative report, including:
 1. licenses that have been previously denied;
 2. gaming licenses that have been revoked, even if subsequently reinstated;
 3. every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and
 4. every felony offense of which the applicant has been convicted or any ongoing prosecution.
- (g) require all Primary Management Officials and Key Employees to have a gaming license;

- (h) upon submission of the notice of results of the applicant's background investigation to the National Indian Gaming Commission under Part 2 Section 3.3(c), the Executive Director may issue a license to a Primary Management Official or Key Employee;
- (i) notify the National Indian Gaming Commission of the issuance of a license to a Primary Management Official or Key Employee within thirty (30) days of issuance;
- (j) reconsider license applications and take into account National Indian Gaming Commission objections mentioned in an objection statement to the issuance of a license received by the National Indian Gaming Commission;
- (k) notify the National Indian Gaming Commission if the Executive Director does not issue a license to an applicant for Primary Management Official or Key Employee and forward copies of the eligibility determination and notice of results of the applicant's background investigation to the National Indian Gaming Commission;
- (l) if, after a license is issued to a Primary Management Official or Key Employee, the Tribe receives notice from the National Indian Gaming Commission that the Key Employee or Primary Management Official is not eligible for employment, the Executive Director shall:
 - i. immediately suspend the license;
 - iii. provide the licensee, the Gaming Operation and the Tribal Council with written notice of the suspension and proposed revocation; and
 - iv. provide the licensee with notice of a time and a place for a hearing on the proposed revocation of a license. All rights to notice and hearing shall be governed by the regulations promulgated by the Executive Director pursuant to Part 2 Section 2.1(c).
- (m) If a tribe revokes a key employee or primary management official's license (1) the tribe shall notify the Commission; and (2) shall forward copies of its license revocation decision for the inclusion in the Indian Gaming Individuals Record System.
- (n) after a revocation hearing, the Executive Director shall decide whether to revoke or to reinstate the license at issue. The Executive Director shall notify the National Indian Gaming Commission of its decision to revoke or reinstate a license within 45-days of receiving notification from the National Indian Gaming Commission that a Primary Management Official or Key Employee is not eligible for employment; and
- (o) the Executive Director, and its investigators, shall keep confidential the identity of each person interviewed in the course of conducting a background investigation.
- (p) The right to a revocation hearing shall vest upon receipt of a license or at such earlier time as is determined by tribal law, regulation, and/or policy.

- 3.4 Meetings. The Executive Director shall keep meeting minutes.
- 3.5 Records Retention. The Executive Director shall retain:
- (a) for at least three (3) years from the date a Primary Management Official or Key Employee is terminated from employment with a Gaming Operation:
 - i. information contained in the application for licensing received under Part 2 Section 3.3(a);
 - ii. investigative reports created pursuant to Part 2 Section 3.3(d);
 - iii. eligibility determinations made pursuant to Part 2 Section 3.3(e);
 - iv. Privacy Act Notice; and
 - v. False Statement Notice.
 - (b) for at least two (2) years from the date the audit is sent to the NIGC pursuant to Part 2 Section 3.10.
- 3.6 Minimum Internal Control Standards. The Tribal Gaming Regulator shall comply with 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended) by formally adopting and making applicable to the Tribe's gaming activities, internal control standards that:
- (a) provide a level of controls that equals or exceeds those set forth in 25 CFR Part 542, as published or as revised by mutual agreement between the Nation Indian Gaming Commission and the Tribe;
 - (b) contain standards for currency transaction reporting in compliance with 31 CFR Part 103.
- 3.9 Appeals. The Executive Director shall file appeals of Executive Director decisions with the Tribal Court to be heard.
- 3.10 Annual Independent Audit. The Executive Director shall submit the annual independent audit to the National Indian Gaming Commission performed by the Gaming Operation under Part 3 Section 2.2 within sixty (60) days of receiving the annual independent audit from the Gaming Operation. A copy of the annual independent audit will be made available for review, upon request, to the Tribal Council.

- 3.11 Agent for Service of Process. The Executive Director shall serve as the agent for service of any official determination, order, or notice of violation and may accept service at:

ATTN: Executive Director
Tonto Apache Tribal Regulator
Tonto Apache Reservation #30
Payson, AZ 85541

PART 3 GAMING OPERATION

Section # 1 – Gaming Operation License:

- 1.1 License Required. No person or entity may conduct Class II and/or Class III gaming without having first applied for and obtained a Gaming Operation license. Each place, facility, or location on Indian lands where Class II and/or Class III gaming is conducted is required to obtain a license from the Executive Director.
- 1.2 Term. The Gaming Operation license is valid for a term of two (2) years.

Section # 2 – Gaming Operation Duties:

- 2.1 Environment and Public Health and Safety. A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.
- 2.2 Audit. Gaming Operations shall cause independent audits to be conducted:
- (a) annually;
 - (b) inclusive of all gaming-related contracts that result in the purchase of supplies, services, or non-gaming concessions for more than \$25,000 in any year (except contracts for professional legal and accounting services); and
 - (c) in conformance with generally accepted accounting standards.
- 2.3 Inspections. Gaming Operation shall provide the Executive Director with unrestricted access to any area of the gaming operation for inspections conducted pursuant to Part 2 Sections 2.2 and 2.4.
- 2.4 Reporting. The Gaming Operation shall submit the results of the independent audit conducted pursuant to Part 3 Section 2.2 to the Executive Director within one (1) week from receiving the findings from the independent auditor.

PART 4
PRIMARY MANAGEMENT OFFICIAL AND KEY EMPLOYEE

Section # 1 – Primary Management Official and Key Employee License:

- 1.1 License Required. A key employee or primary management official who does not have a license after ninety (90) days shall not be permitted to perform the duties, functions, and/or responsibilities of a key employee or primary management official until so licensed.
- 1.2 Term. A Primary Management Official or Key Employee license is valid for seven (7) years.

Section # 2 – Primary Management Official and Key Employee Duties:

- 2.1 Compliance with Laws. Primary Management Officials and Key Employees shall ensure all employees of the Gaming Operation, and gaming patrons comply with the federal laws, this Code, regulations promulgated by the Commission pursuant to Part 2 Section 2, and the Compact. Violations of these requirements may be grounds for termination of employment and expulsion from the Gaming Operation.
- 2.2 Material Changes. Primary Management Officials and Key Employees shall update the Executive Director of any material change that would be reflected on a license application.