



November 26, 2024

VIA EMAIL

Kathryn L. Tierney, Tribal Attorney
Bay Mills Indian Community
12140 West Lakeshore Drive
Brimley, MI 49715

Re: Bay Mills Indian Community Amended Gaming Ordinance

Dear Ms. Tierney:

This letter is to inform you that the Bay Mills Indian Community's (Tribe) amended gaming ordinance (Ordinance), enacted by Resolution No. #24-06-17B on June 17, 2024, and received by the National Indian Gaming Commission (NIGC) on August 8, 2024,¹ is deemed approved by operation of law.

Pursuant to the Indian Gaming Regulatory Act (IGRA), the NIGC Chair has 90 days from the date of submission to either approve or disapprove a gaming ordinance.² Any gaming ordinance not acted upon at the end of the 90-day period is considered to have been deemed approved by operation of law but only to the extent such ordinance is consistent with IGRA and NIGC regulations.³ Because no action was taken by the Chair within this period, the Tribe's Ordinance is considered approved, but only to the extent it is consistent with IGRA and NIGC regulations.

It is the opinion of the Office of General Counsel that the Tribe's amended ordinance is not consistent with the following provisions of IGRA and NIGC regulations:

- Section 2.33(A)(9) of the Ordinance, which defines Key Employee does not align with NIGC's definition found in 25 C.F.R. § 502.14(a)(9); and,

¹ Please be advised that future amendments should be submitted within 15 days after adoption by the Tribe in accordance with 25 C.F.R. § 522.3.

² 25 U.S.C. § 2710(e).

³ 25 C.F.R. § 522.10.

- Section 2.44 of the Ordinance, which defines Primary Management Official does not align with NIGC's definition found in 25 C.F.R. § 502.19.

We also note that the Ordinance provides that “the Tribal Commission shall perform the background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those contained in 25 C.F.R. Parts 556 and 558.”⁴ However, while some of the 556 and 558 requirements are explicitly enumerated in the Ordinance, there are many 556 and 558 requirements that are not. For example, the Ordinance does not explicitly list the requirement for the Tribe to create and maintain an investigative report before issuing a license to a primary management official or key employee.⁵ Moreover, the Ordinance does not explicitly prevent the gaming operation from employing a key employee or primary management official who does not have a license after 90 days.⁶ This inconsistent inclusion of 556 and 558 requirements in the Ordinance could lead to confusion in the overall background and licensing process.

We encourage the Tribe to address the issues identified above the next time the Tribe amends its gaming ordinance. If you have any questions, please contact NIGC Staff Attorney Josh Proper at joshua.proper@nigc.gov or (540) 760-3026.

Sincerely,



Rea Cisneros
General Counsel (Acting)

⁴ Bay Mills Gaming Ordinance § 6.3(A).

⁵ 25 C.F.R. § 556.6(b)(1).

⁶ 25 C.F.R. § 558.3(c).



RESOLUTION

Resolution No. 24-06-17B

Amendment to Definition of "Key Employee" in 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. §5101, et seq., and
- WHEREAS:** The Tribe regulates gaming on its tribal lands under a compact with the State of Michigan and under its Gaming Ordinance, and
- WHEREAS:** The Executive Council has determined that it is in the best interests of the Bay Mills Indian Community to update its key employee definitions in the Gaming Ordinance in order to reflect the Tribe's current employment positions in its gaming facilities.

NOW, THEREFORE BE IT RESOLVED, that the Executive Council hereby amends the Gaming Ordinance, with additions underlined and deletions struck out, as follows:

§2.33 "Key employee" means:

(A) A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;
- ~~(4) Custodian of gaming supplies or cash;~~
- (4) Floor manager;
- (5) Pit boss;
- (6) Dealer;
- (7) Croupier;
- (8) Approver of credit;
- (9) Custodian of gaming devices including persons with access to cash and accounting records within such devices;
- (10) Custodian of surveillance systems or surveillance system records.

Resolution No. 24-6-17B

- (B) ~~If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year, or~~ Any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the Tribal Commission;
or;

APPROVED:

ATTEST:




**Whitney E. Gravelle, President
Bay Mills Indian Community
Executive Council**



**Beverly Carrick, Secretary
Bay Mills Indian Community
Executive Council**

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community, do hereby certify that the above Resolution was adopted and approved at a meeting of the Executive Council held at Bay Mills, Michigan, on the 17th day of June, 2024, with a vote of 3 for, 0 opposed, 1 absent, and 1 abstaining. As per the provisions of the Bay Mills Constitution, the President must abstain except in the event of a tie.



**Beverly Carrick, Secretary
Bay Mills Indian Community
Executive Council**

**GAMING ORDINANCE
BAY MILLS INDIAN COMMUNITY**

Table of Contents

Section 1. Findings, Intent and Policy	1
Section 2. Definitions	3
Section 3. General Provisions	10
3.1 Authority and Sovereign Powers and Responsibilities	10
3.2 Title, Repeal of Prior Laws, and Effect of Repeal	10
3.3 Classes of Gaming	11
3.4 Construction	11
3.5 Savings Clause	11
Section 4. Tribal Gaming Commission	11
4.1 Establishment	11
4.2 Location and Place of Business	11
4.3 Duration	12
4.4 Attributes	12
4.5 Recognition as a Political Subdivision of the Tribe	12
4.6 Sovereign Immunity of the Tribal Commission	12
4.7 Waiver of Sovereign Immunity of the Tribal Commission	12
4.8 Sovereign Immunity of the Tribe	13
4.9 Credit of the Tribe	13
4.10 Assets of the Tribal Commission	13
4.11 Membership	13
4.12 Term of Office	14
4.13 Ex-Officio Members	15
4.14 Meetings	15
4.15 Organization	15
4.16 Removal of Members or Vacancies	15
4.17 Conflict of Interest	16
4.18 Powers of the Tribal Commission	16
4.19 Annual Budget	21
4.20 Tribal Commission Regulations	21
4.21 Right of Entrance; Monthly Inspection	22
4.22 Investigations	22
4.23 Hearings; Examiner	22
4.24 Appointment of Examiner; Power of Examiner	22
4.25 Staff of Gaming Commission	23
4.26 Quarterly Reports	23
Section 5. Gaming Licenses	23
5.1 Applicability	23
5.2 License Required	23
5.3 Types of Licenses	24

5.4	Application Procedures	24
5.5	Threshold Criteria Which a Potential Operator Must Meet	25
5.6	License Application Fees	26
5.7	License Tax	26
5.8	Terms of License	26
5.9	Posting of Licenses	26
5.10	Gaming License Renewals	26
5.11	Annual Reports	27
5.12	Closure of a Tribal Licensed Gaming Activity	28
Section 6.	Gaming Employee Requirements	29
6.1	Current and Valid Gaming Employee License Required	29
6.2	Application Procedure for Employment	29
6.3	Review Procedure	30
6.4	Scope of License	31
6.5	Licensing Period	31
6.6	Renewals	31
6.7	Display and Handling of Gaming License ...	31
6.8	Suspension or Termination of Employee License	32
6.9	Temporary Suspension of Employee Gaming License	34
Section 7.	Provisions of General Applicability to All Operators	35
7.1	Gaming License Required	35
7.2	Site and Operator Specified	35
7.3	License Not Assignable	35
7.4	Employee Licenses Required	35
7.5	Eligible Licensees	35
7.6	Employee Drug Tests	35
7.7	Regulations Posted or Available	35
7.8	Minimum Age to Play	36
7.9	Minimum Age to Enter Facility	36
7.10	Posting of Rules of Play	36
7.11	Equipment Rental Restrictions	36
7.12	Restrictions on Gaming Apparatus Exchange ..	36
7.13	Approval of Gaming Materials Required.....	36
7.14	Requisite Sale and Redemption Value	36
7.15	Record Maintenance Requirements	36
7.16	Liquor Sale Restrictions	36
7.17	Form of Payment for Chance to Play	37
7.18	Documentation of Winnings and Losses for Tax Purposes	37
7.19	Taxes, Fees and Reports Timely Transmitted..	37
7.20	Response to Regulatory Inquiries	37
7.21	Display of Gaming License	37
7.22	Maintenance of Premises	37
7.23	Facility Security	37
7.24	Cooperation with Law Enforcement	37
7.25	Record Inspection	37

7.26	Gaming Occasion Restrictions	37
7.27	Discrimination Prohibited	37
7.28	Financial Record Review	38
7.29	Use of Net Proceeds	38
7.30	Reporting Requirement Compliance	38
7.31	Tribal Law Violation	38
7.32	Employee Misconduct	38
Section 8.	Gross Proceeds Tax	38
8.1	Rate	38
8.2	Separate Accounting Practices	38
8.3	Tax Due Date; Accrual, Return and Signature	39
8.4	Annual Periodic Reconciliations	39
8.5	Tax Revenue Distribution	39
8.6	Internal Service Fund	39
8.7	Excess of Receipts over Expenses	40
8.8	Annual Budget	40
Section 9.	Operation of Tribally-Owned or Tribally- Operated Games	40
9.1	Management by a Primary Management Official.....	40
9.2	Use of Net Revenues of Tribally-Owned or Tribally- Operated Gaming Enterprises	41
9.3	Audit Requirements	41
9.4	Management Contracts	42
Section 10.	Enforcement	43
10.1	Jurisdiction	43
10.2	Prohibited Acts	44
10.3	Criminal Violation	46
10.4	Civil Violation	46
10.5	Cumulative Fines	46
10.6	Purpose of Civil Penalties	46
10.7	Civil Action for Penalties	47
10.8	Seizure of Property	47
10.9	Reporting of Offenders	47
Section 11.	Authorized Games	47
11.1	Games Playable	47
11.2	License Required	47

**ORDINANCE TO REGULATE THE OPERATION OF GAMING
BY THE BAY MILLS INDIAN COMMUNITY**

*A law to authorize, license and regulate certain forms of gaming, within the
jurisdiction of the Bay Mills Indian Community.*

Section 1. Findings, Intent and Policy.

1.1 **Findings.** The General Tribal Council on behalf of the Bay Mills Indian Community finds that:

(A) Tribal regulation and control of gaming activity within the jurisdiction of the Bay Mills Indian Community is essential for the protection of public health and welfare, and the interests of the Tribe and the residents and visitors to Indian country.

(B) The Bay Mills Indian Community has the legal authority to license and regulate any gaming activity within the jurisdiction of the Tribe which is not specifically prohibited by federal law.

(C) Properly licensed and regulated gaming enterprises are in conformance with federal policy promoting Indian self-government and Indian tribal economic self-sufficiency.

(D) It is essential that the Tribal Council regulate gaming in a manner commensurate with applicable federal and tribal law and policy.

(E) The present needs of the Tribe include increased employment, training, housing, health care, nutrition, educational opportunities, social services and community and economic development, and these needs are not adequately addressed by state and federal programs.

(F) Tribal operation and licensing of gaming activity is a legitimate means of generating revenue to address the above described needs.

(G) The Tribe is vigorously pursuing its goal of self-sufficiency and self-determination through the development of tribal businesses and enterprises. Due to the lack of income-generating economic development, the Tribe is the sole source of increased employment opportunity, and economic development efforts. Federal and state financial support for these efforts has decreased over time. Gaming provides additional tribal revenue for governmental and program support, and employment opportunities.

(H) As a result of subsections 1.1(A) and 1.1(G) above, the adoption of the following expanded gaming law is in the best interest of the Bay Mills Indian Community.

1.2 **Intent.** The intent of this Ordinance is to:

(A) Regulate, control, and oversee all gaming within the jurisdiction of the Tribe.

(B) State, declare and otherwise clarify that a tribal license to operate a gaming enterprise is a revocable privilege, not a right.

(C) Ensure that the operation of tribally-regulated gaming can continue as a means of generating tribal revenue.

(D) Ensure that gaming is conducted fairly and honestly by both operators and players, and that it remain free from corrupt, incompetent, unconscionable and dishonest practices.

(E) Encourage tribal economic development and employment opportunities.

(F) Ensure that all gaming revenue is used for the benefit of the Tribe and its people.

(G) Ensure that the Tribe provide a fair and impartial forum for the resolution of all gaming disputes.

(H) Ensure that tribal gaming laws are strictly and fairly enforced upon all people involved in gaming activity within the jurisdiction of the Tribe.

1.3 **Policy.**

(A) **Policy of Self-Government.** The Tribe is firmly committed to the principle of tribal self-government. Consistent with federal policy, the Bay Mills tribal government provides a wide range of public services on the Reservation, including general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

(B) **Gaming Policy.** The establishment, promotion and operation of gaming is necessary and desirable, provided that such gaming is regulated and controlled by the Tribe pursuant to tribal and federal law and any Tribal-State compact authorized by the Indian

Gaming Regulatory Act, and that the proceeds of such gaming are used exclusively for the benefit of the Tribe as required by the Indian Gaming Regulatory Act. When operated in accordance with the provisions of this Ordinance, such gaming shall be beneficial to the general welfare of all residents of the Reservation.

Section 2. Definitions.

In this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

2.1 "**Adjusted gross proceeds**" means gross proceeds less all cash prizes or the aggregate price of merchandise prizes, except in the case of the games of draw poker and stud poker. Regarding games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the operator.

2.2 "**Bingo**" means the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of each card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tipjars, instant bingo and other games similar to bingo.

2.3 "**Breakage**" means the remainder by which the amount payable on each dollar wagered exceeds a multiple of ten cents, and in a minus pool, five cents.

2.4 "**Capital cost**" means any disbursement for personal property, the useful life of which is expected to extend beyond one year.

2.5 "**Casino**" means an establishment in which several gaming activities or enterprises are operated.

2.6 "**Charitable gaming ticket**" means any game piece used in the play of a paper pull tab game, or a jar ticket game, or raffle.

2.7 "**Cheating**" means a person's operating or playing in any game in a manner in violation of the written or commonly understood rules of the game, with the intent to

create for himself or someone in privity with him an advantage over and above the chance of the game.

2.8 "Class I Gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

2.9 "Class II Gaming" means

(A) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith), when players play for prizes with cards bearing numbers or other designations and cover numbers or designations when a similarly numbered or designated object is drawn or electronically determined and win the game by being the first person to cover a designated pattern on such cards;

(B) Pull-tabs; punch boards; tip jars; instant bingo; and other games similar to bingo if played at the same location;

(C) All card games operated by the Tribe prior to May 1, 1988;

(D) Any additional nonbanking card games explicitly authorized or not explicitly prohibited by the laws of Michigan and which are played legally anywhere in the State in conformity with state law and regulation concerning hours, periods of operation, and limitations on wagers and pot sizes.

2.10 "Class III Gaming" means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

(A) Any house banking game not operated by the Tribe prior to May 1, 1988;

(B) Any slot machines as defined in 15 U.S.C. 1171 (a)(1) and electronic or electromechanical facsimiles of any game of chance;

(C) Any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jail alai; and

(D) Lotteries.

2.11 "Compact" means any gaming compact between the Tribe and the State as authorized by the Indian Gaming Regulatory Act (IGRA), or by state or tribal law.

2.12 "Compensation" means all wages, salaries, bonuses, and all other forms of remuneration for services rendered.

2.13 "Contractual agreement" means any legally binding agreement made between an operator and another person for the purpose of conducting any form of lawful gaming activity, or providing goods or services to any lawful gaming activity or operation.

2.14 "Council" means the governing body of the Bay Mills Indian Community.

2.15 "Educational, charitable, patriotic, veterans, fraternal, religious, civic, or public-spirited uses" are:

(A) Uses benefiting an indefinite number of people by bringing them under the influence of education or cultural programs.

(B) Uses otherwise lessening the burden of Bay Mills Indian Community government.

(C) Uses benefiting one or more people suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.

(D) Uses for community service projects which promote the common good, enhance the social and economic welfare of the community, and benefit an indefinite number of people.

2.16 "Eligible organization" means any nonprofit organization operated for educational, charitable, patriotic, veterans, fraternal, religious, civic, or public-spirited purposes, or for the relief of poverty, distress, or other condition on the Bay Mills Reservation.

2.17 "Enterprise" means a Class II and/or Class III gaming business which is owned and/or operated by the Tribe, either as the sole proprietor or in partnership with one or more other federally recognized Indian tribes.

2.18 "Exclusive license" means a license which precludes the Tribal Commission from issuing to another a license for the same specific form of gaming during the life of the exclusive license. An applicant must demonstrate and the Tribal Commission must find that the issuance of an exclusive license is in the economic interest and welfare of the Tribe.

2.19 "Games of chance" mean any game or activity which falls within the broad definition of gaming or gaming

activity.

2.20 "Gaming" or "gaming activity" means any activity, operation or game of chance in which any valuable consideration may be wagered upon the outcome determined by chance, skill, speed, strength or endurance, and in which any valuable prize is awarded to the player so wagering.

2.21 "Gaming apparatus" or "gaming equipment" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gaming activity, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of any gaming establishment.

2.22 "Gaming establishment" means any location or structure, stationary or movable, wherein gaming is permitted, promoted, performed, conducted, or operated and the operator of which establishment contributes the net proceeds derived from the gaming activity toward eligible organizational uses as defined. Gaming establishment does not include the site of a fair, carnival, exposition, or similar occasion.

2.23 "Gaming machine" or "slot machine" means any device which, upon insertion of cash, tokens or cash equivalent, allows a player to play games of chance, some of which may be affected by skill, that may deliver or entitle the person playing or operating the machine to receive cash, tokens cash equivalents, merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner.

2.24 "Gaming Program" means any Tribal Program which oversees one or more parts of the operation of all tribal gaming activity. The Gaming Program must work closely with the Tribal Commission or be licensed by it.

2.25 "Gaming Supplier" means any person or entity that manufactures or supplies gaming equipment, devices, supplies or services to the Tribe's gaming facilities.

2.26 "Gross proceeds" means all money collected or received from lawful gaming activity.

2.27 "Gross proceeds tax" means a tax imposed and collected by the Tribe on all monies received by any gaming establishment in return for the opportunity to play a game of chance.

2.28 "Indian Gaming Regulatory Act" or "IGRA" means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, et seq., as amended.

2.29 "Immediate family" means, with respect to the person under consideration, a husband or wife, and any other individual who resides in the household of the person under consideration.

2.30 "In privity with" means a relationship involving one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a co-conspirator with the other.

2.31 "Indian lands" means:

(A) All lands within the limits of the Reservation of the Bay Mills Indian Community; and

(B) Any lands title to which is either held in trust by the United States for the benefit of the Bay Mills Indian Community or held by the Bay Mills Indian Community subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.

2.32 "IRS" means the United States Internal Revenue Service.

2.33 "Key employee" means:

(A) A person who performs one or more of the following functions:

(1) Bingo caller;

(2) Counting room supervisor;

(3) Chief of security;

(4) Floor manager;

(5) Pit boss;

(6) Dealer;

(7) Croupier;

(8) Approver of credit;

(9) Custodian of gaming devices including persons with access to cash and accounting records within such devices; or

(10) Custodian of surveillance systems or surveillance system records; or

(B) Any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the Tribal Commission; or

(C) If not otherwise included, the four most highly compensated persons in the gaming operation; or

(D) any employee whom the Tribal Commission may by written notice classify as a key employee.

2.34 "License" means the official, legal, and revocable permission granted by the Tribal Commission to an applicant to conduct "licensed" gaming activity on the lands of the Tribe.

2.35 "Manager" means an entity who has a management contract pursuant to Section 9.4 to operate a tribal gaming enterprise.

2.36 "Manufacturer" means any person or entity that manufactures gaming devices, component parts or gaming equipment, which is intended for use or play in the Tribe's gaming facilities.

2.37 "National Indian Gaming Commission" means the National Indian Gaming Commission established by the Indian Gaming Regulatory Act.

2.38 "Net proceeds" or "net revenues" means gross gaming revenues of a gaming operation less amounts paid out as, or paid for, prizes, and total gaming-related operating expenses, excluding management fees.

2.39 "Operator" means a person which has obtained a gaming license under this Ordinance or which is otherwise permitted by this Ordinance to perform, promote, conduct, or operate any lawful gaming activity on tribal lands at a gaming establishment.

2.40 "Ordinance" means the Gaming Ordinance of the Bay Mills Indian Community, as it may from time to time be amended.

2.41 "Participate" or "Participation" or "Participating" in any gaming activity means operating, directing, financing or in any way assisting in the establishment of or operation of any class of gaming or any site at which such gaming is being conducted, directly or indirectly, whether at the site in person or off the Reservation.

2.42 "Person" means any individual, partnership, joint venture, corporation, joint stock company, company, firm, association, trust, estate, club, business trust,

municipal corporation, society, receiver, assignee, trustee in bankruptcy, political entity, and any owner, director, officer or employee of any such entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe, or any of the above listed forms of business entities that are wholly owned or operated by the Tribe; provided, however, that the term does not include the federal government and any agency thereof. The plural of "person" is "people".

2.43 "**Player**" means a person participating in a game with the hope of winning money or other benefit, but does not include an operator, or any assistant of an operator.

2.44 "**Primary Management Official**" means

(A) The person having management responsibility for a management contract;

(B) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(C) The chief financial officer or other person who has financial management responsibility.

2.45 "**Progressive gaming**" means any game in which a cash prize which, not being won by any player during any game, is retained and further monetarily enhanced by the operator or eligible organization, and offered as a prize to players in the next game.

2.46 "**Pull-tabs, punchboards and tip jars**" means a form of gaming in which preprinted cards utilizing symbols or numbers in random order which are uncovered by random choice in expectation of cash prizes if prescribed combinations of symbols and numbers are revealed.

2.47 "**Raffle**" means a form of gaming in which each player buys a ticket for a chance to win a prize with the winner determined by a random method. "Raffle" does not include a slot machine.

2.48 "**State**" means the State of Michigan.

2.49 "**Takeout**" means that portion of a wager which is deducted from or not included in the pari-mutual pool, and which is distributed to people other than those placing wagers.

2.50 "Tele-bet" means any system of telephone account wagering on a gaming event.

2.51 "Tele-bingo" means a form of lawful gaming in which the game defined as "bingo" is conducted on tribal lands, but through a system combining the use of computers and cable television or telephone lines, and does not require the presence of the players at the site from where the telecast is originating. The presence of players is required, however, at the site on the reservation where the tele-bingo game is being offered.

2.52 "Tribal Commission" means the Gaming Commission described in Section 4 of this Ordinance.

2.53 "Tribal Court" means the Tribal Court of the Bay Mills Indian Community.

2.54 "Tribe" means the Bay Mills Indian Community.

2.55 "Twenty-one", also known as "blackjack," is the card game played by a maximum of seven players and one dealer wherein each player plays his hand against the dealer's hand, and the object of which is for a player to obtain a higher total card count than the dealer by reaching 21 or as close to 21 as possible without exceeding that count. The cards have the following value:

(A) Aces count either one or 11, at the player's option.

(B) Kings, queens, and jacks each have a count of ten.

(C) All other cards are counted at their face value.

2.56 "Wager" means the initial bet made in any game.

2.57 "Wagering Office" means any location within tribal lands at which wagers are placed or accepted by an operator.

Section 3. General Provisions.

3.1 Authority and Sovereign Powers and Responsibilities. This ordinance is enacted pursuant to the inherent sovereign powers of the Tribe. The power to enact these ordinances is expressly delegated to the Tribal Council in Article VI of the Tribal Constitution.

3.2 Title, Repeal of Prior Laws, and Effect of Repeal. This Ordinance may be cited as the Bay Mills Gaming Ordinance.

All titles, chapters, and sections of the Tribal Code of the Bay Mills Indian Community which pertain to gaming, and are in effect as of the date that this Ordinance becomes operative, are hereby repealed, and all other laws, or parts thereof, inconsistent with the provisions of this Ordinance are hereby repealed.

Repeal of this Ordinance or any portion thereof shall not have the effect of reviving any prior Law, Ordinance, or Resolution theretofore repealed or suspended.

3.3 **Classes of Gaming.** This Ordinance shall divide gaming into the following three Classes: Class I, Class II and Class III.

3.4 **Construction.** In construing the provisions of this Ordinance, unless the context otherwise requires, the following shall apply:

(A) This Ordinance shall be liberally construed to effect its purpose and to promote substantial justice.

(B) Words in the present tense include the future and past tenses.

(C) Words in the singular number include the plural, and words in the plural number include the singular.

(D) Words of the masculine gender or neuter include masculine and feminine genders and the neuter.

3.5 **Savings Clause.** If any section of this Ordinance is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

Section 4. Tribal Gaming Commission.

4.1 **Establishment.** The Council hereby charters, creates and establishes the Gaming Commission as a governmental subdivision of the Tribe. The Commission shall be referred to throughout this Ordinance as the Tribal Commission.

4.2 **Location and Place of Business.** The Tribal Commission shall be a resident of and maintain its headquarters, principal place of business and office on the Bay Mills Reservation, Michigan. The Tribal Commission may, however, establish other places of business in such other locations as the Tribal Commission may from time to time determine to be in the best interest of the Tribe.

4.3 **Duration.** The Tribal Commission shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to Tribal law.

4.4 **Attributes.** As a governmental subdivision of the Tribe, the Tribal Commission has been delegated the right to exercise one or more of the substantial governmental functions of the Tribe. In creating the Tribal Commission, it is the purpose and intent of the Tribal Council that the operations of the Tribal Commission be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members and the residents of the Reservation. In carrying out its purposes under this Ordinance, the Tribal Commission shall function as an arm of the Tribe. Notwithstanding any authority delegated to the Tribal Commission under this Ordinance, 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 Commission, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Tribal Commission.

4.5 **Recognition as a Political Subdivision of the Tribe.** The Tribe, on behalf of the Tribal Commission, shall take all necessary steps to acquire recognition of the Tribal Commission as a political subdivision of the Tribe, recognized by all branches of the United States Government as having been delegated the right to exercise one or more substantial governmental functions of the Tribe.

4.6 **Sovereign Immunity of the Tribal Commission.** The Tribal Commission is clothed by federal and tribal law with all the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Tribal Commission from suit, which shall only be waived pursuant to subsection 4.7. Nothing in this Ordinance shall be deemed or construed to be a consent of the Tribal Commission to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Tribal Commission.

4.7 **Waiver of Sovereign Immunity of the Tribal Commission.** Sovereign immunity of the Tribal Commission may be waived only by express resolutions of both the Tribal Commission and the Tribal Council after consultation with its attorneys. All waivers of sovereign immunity must be preserved with the resolutions of the Tribal Commission and the Tribal Council of continuing force and effect. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal

Commission. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Tribal Commission subject thereto, and shall specify the court having jurisdiction pursuant thereto and the applicable law. Neither the power to sue and be sued provided in Subsection 4.18(Z), nor any express waiver of sovereign immunity by resolution of the Tribal Commission shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribal Commission other than property specifically pledged or assigned, or a consent to suit in respect of any land within the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

4.8 **Sovereign Immunity of the Tribe.** All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Tribal Commission are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance, nor any action of the Tribal Commission, shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe; or to be a consent of the Tribe to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Tribal Commission or the Tribe; or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit with respect to any land within the exterior boundaries of the Reservation, or to be a consent to the alienation, attachment or encumbrance of any such land.

4.9 **Credit of the Tribe.** Nothing in this Ordinance nor any activity of the Tribal Commission shall implicate or any way involve the credit of the Tribe.

4.10 **Assets of the Tribal Commission.** The Tribal Commission shall have only those assets specifically assigned to it by the Council or acquired in its name by the Tribe or by it on its own behalf. No activity of the Tribal Commission nor any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Tribal Commission.

4.11 **Membership.**

(A) **Number of Commissioners.** The Tribal Commission shall be comprised of five (5) Tribal Gaming Commissioners consisting of persons appointed by the Executive Council.

(B) Qualification of Commissioners. Each Commissioner must be a member of the Tribe, and, as of the date of appointment, shall not be:

(1) An employee of a gaming enterprise of the Tribe; or

(2) A member of the Gaming Commission staff.

(C) Background Check. Prior to the time that any Tribal Commission member takes office on the Tribal Commission, the Tribe shall perform or arrange to have performed a comprehensive background check on each prospective member, the results of which shall be transmitted to the Executive Council. No person shall serve as a Commissioner if:

(1) His prior activities, criminal record, if any, or reputation, habits or associations:

(a) Pose a threat to the public interest; or

(b) Threaten the effective regulation and control of gaming; or

(c) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming; or

(2) S/he has been convicted of or entered a plea of nolo contendere to a felony or any gaming offense in any jurisdiction or to a misdemeanor within five (5) years of consideration for appointment involving a matter which would be a crime under the provisions of the Michigan Penal Code or the controlled substance provisions of the Michigan Public Health Code; or

(3) S/he has a present interest in the conduct of any gaming enterprise or in any business which is licensed as a vendor to a gaming enterprise of the Tribe; or

(4) S/he has a member of his immediate family employed as a primary management official by any tribal gaming establishment.

4.12 Term of Office. Each Commissioner shall serve a term of four years, commencing on January 1st, or until a successor Commissioner is appointed. On January 1, 1998, two Commissioners shall be appointed for a term of two years, and three Commissioners shall be appointed for a term of four years. Thereafter, all Commissioners shall serve four-year terms.

4.13 **Ex Officio Members.** At the direction of the Tribal Council, any member of the Tribal Council, any Tribal or Bureau of Indian Affairs employee or any other person may be designated to participate, without vote, in Tribal Commission meetings.

4.14 **Meetings.**

(A) **Regular Meetings.** The Tribal Commission shall hold at least two regular monthly meetings, which shall take place on the first and third Tuesdays of each month. If the meeting date falls on a holiday, it may be rescheduled to another date not in conflict with the regular meetings of the Executive Council on the second and fourth Mondays of each month.

(B) **Special Meetings.** Special meetings may be called at the request of the Tribal Council, the Chairman of the Tribal Commission or three (3) or more members of the Tribal Commission.

(C) **Compensation of Commissioners.** An honorarium set by the Executive Council may be paid to Commissioners as compensation.

(D) **Quorum.** A quorum for all meetings shall consist of four (4) members.

(E) **Voting.** All questions arising in connection with the action of the Tribal Commission shall be decided by majority vote. The Chairman of the Tribal Commission shall only be entitled to vote to break a tie.

4.15 **Organization.** The Tribal Commission shall develop its own operating procedures and shall elect from within itself a Chairman to direct meetings, a reporter to be responsible for keeping Tribal Commission minutes and transmitting to the Tribal Council a copy of those minutes, handling correspondence and reporting Tribal Commission decisions and such other officers as it deems advisable.

4.16 **Removal of Members or Vacancies.**

(A) **Removal.**

(1) A Commissioner shall be immediately removed by the Executive Council for any action which bars eligibility for serving in that capacity under subsections 4.11(C)(2), (3), or (4) of this Ordinance.

(2) A Commissioner may be removed by the Council

for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of the Tribal Commission or otherwise violates the letter or intent of this Ordinance. Except as provided below, no Commissioner may be removed without notice and an opportunity for a hearing before the Council, and then only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his behalf. If the Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Council may immediately remove the Commissioner temporarily, and the question of permanent removal shall be determined thereafter pursuant to Tribal Commission hearing procedures. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. The decision of the Council upon the removal of a Commissioner shall be final.

(B) Vacancies. If any Commissioner shall die, resign, be removed or for any reason be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill the position. The terms of office of each person appointed to replace an initial Commissioner shall be for the balance of any unexpired term for such position, provided, however, that any prospective appointee must meet the qualifications established by this Ordinance.

4.17 Conflict of Interest. No person shall serve as a Commissioner if s/he or any member of his immediate family is a primary management official of, or has a financial interest in, any management contract or gaming supply business, or if s/he has any other personal or legal relationship which places him in a conflict of interest.

4.18 Powers of the Tribal Commission. In furtherance, but not in limitation, of the Tribal Commission's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Tribal Commission shall have and is authorized to exercise by majority vote, the following powers in addition to all powers already conferred by this Ordinance:

(A) To regulate all day-to-day gaming activity within the jurisdiction of the Tribe including tele-bingo and other unusual games.

(B) To promote the full and proper enforcement of all tribal civil and criminal gaming laws and policies.

(C) To enact and enforce such rules and regulations regarding its activities and governing its internal affairs as the Tribal Commission may deem necessary and proper to effectuate the powers granted by this Ordinance and the powers granted and duties imposed by applicable law.

(D) To publish and distribute copies of this Ordinance, Tribal Commission rules, and any Council, Tribal Commission or Tribal Court decisions regarding gaming matters.

(E) To prepare and submit for Council approval proposals, including budget and monetary proposals, which could enable the Tribe to better carry forth the policies and intent of this Ordinance.

(F) To work with the staff of any tribal department, program, project, or operation and to cooperate with the Council or any Council Committee in regard to gaming issues.

(G) Where it is in the best interest of the Tribe, to develop a cooperative working relationship with federal and state agencies and officials.

(H) To arrange for and direct such inspections and investigations as it deems necessary to ensure compliance with this Ordinance and implementing regulations. In undertaking such investigations, the Tribal Commission may request the assistance of tribal gaming staff, federal, state and tribal law enforcement officials, legal counsel and other third parties.

(I) To maintain and keep current a record of new developments in the area of Indian gaming.

(J) To request the assistance of the Tribal Court or Tribal Appellate Court in conducting gaming hearings, defining terms used in this Ordinance or other tribal laws, or in any other matter in which the Tribal Commission deems such assistance to be necessary or proper.

(K) To consider any gaming matter brought before it by any person, organization or business, and all matters referred to it by the Tribal Council.

(L) To obtain and publish a summary of federal revenue

laws relating to gaming and to insure compliance with the same.

(M) To arrange for training of Tribal Commission members, tribal employees and others in areas relating to the regulation or operation of gaming.

(N) With the approval of the Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and gaming professionals.

(O) To make recommendations to the Council on the hiring of all supervisory gaming employees.

(P) To promulgate rules and regulations to implement and further the provisions of this Ordinance.

(Q) To approve or disapprove any application for a tribal gaming license and to adopt a schedule of fees for each type of license application.

(R) To consult with and make recommendations to the Council regarding changes in tribal gaming laws and policies.

(S) To administer oaths, conduct hearings, and by subpoena compel the attendance of witnesses and the production of any books, records and papers relating to the enforcement of tribal gaming laws, regulations and policies.

(T) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents and financial statements of any gaming or enterprise operating, or suspected to be operating, within the jurisdiction of the Tribe.

(U) When necessary or appropriate, to request the assistance and utilize the services of the courts, law enforcement and government officials and agencies, and private parties, in exercising its powers and carrying out its responsibilities.

(V) To examine under oath, either orally or in writing, any person or agent, officer, or employee of any person, with respect to any matters related to this Ordinance.

(W) To delegate to an individual member of the Commission, or to an individual member of the Tribal Council, or to the Tribal Commission or tribal staff,

such of its functions as may be necessary to administer these ordinances efficiently; provided, that the Tribal Commission may not re-delegate its power to exercise any of the substantial governmental functions of the Tribe delegated to the Tribal Commission by the Tribe; and provided further, that the Tribal Commission may not delegate its power to promulgate rules and regulations. It may also not delegate to anybody except the Tribal Council or Tribal Court the power to revoke a tribal gaming license permanently. The Tribal Commission may, however, delegate the power to suspend a gaming license temporarily and to close a licensed gaming enterprise for no more than 30 days when its continued operation threatens the public health, welfare or safety.

(X) To close permanently, after notice and a hearing, any game or games which are operating in violation of tribal law.

(Y) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to the provisions of this Ordinance and other tribal laws relating to sovereign immunity; provided, that no suit shall be brought by the Tribal Commission without the prior explicit written approval of the Tribal Council.

(Z) To purchase, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve and use property and assets of every description, real and personal, tangible or intangible, including money, securities, or any interests therein, rights and services of any kind and description or any interest therein; provided that the Tribal Commission shall have authority to purchase any interest in real property, whether located on or off the Reservation, only with the express, prior written consent of the Tribal Council as to each such action, and title to such real property and property which is to become a fixture or permanent improvement or part of the real property shall be taken in the name of the Tribe or in the name of the United States in trust for the Tribe, and title to all trust and restricted real property shall remain in trust or restricted status.

(AA) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its personal property and assets.

(BB) With the prior permission of the Tribal Council, to borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes,

guarantees and other obligations of the Tribal Commission for moneys borrowed, or in payment for property acquired or for any of the purposes of the Tribal Commission and to secure payment of any obligations by secured interest, mortgage, pledge, deed, indenture, agreement or other instrument of trust or by other lien upon, assignment of or agreement in regard to all or any part of the property, rights or privileges of the Tribal Commission.

(CC) To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Tribal Commission's authorized activities.

(DD) To enter into, make, perform and carry out any agreement, partnership, joint venture contract or other undertaking with any federal, state or local governmental agency, tribe, person, partnership, corporation or other association or entity for any lawful purpose pertaining to the business of the Tribal Commission or which is necessary or incidental to the accomplishment of the purposes of the Tribal Commission.

(EE) To invest and reinvest its funds in such mortgages, bonds, notes, debentures, share of preferred and common stock, and any other securities of any kind whatsoever, and property, real, personal or mixed, tangible or intangible, as the Tribal Commission shall deem advisable and as may be permitted under applicable law, provided that the Tribal Commission shall have authority to invest or reinvest in real property, whether located on or off the Reservation, subject to the restrictions set forth in Subsection 4.18(DD) above.

(FF) To exercise the tribal power to tax authorized by the Tribal Constitution, and, in accordance with other applicable law, by establishing and collecting gaming fees from gaming enterprises.

(GG) To purchase insurance from any stock or mutual company for any property, or against any risk or hazard.

(HH) To establish and maintain such bank accounts as may be necessary or convenient.

(II) To engage in any and all activities which directly or indirectly carry out the purposes of the Tribe as set forth in this Ordinance.

(JJ) With prior approval of the Tribal Council, to

make application and accept grants and other awards from private and governmental sources in carrying out or furthering the purposes of the Tribal Commission or the Tribe.

(KK) To exercise all authority delegated to it or conferred upon it by law and to take all action which shall be reasonably necessary and proper for carrying into execution the foregoing powers and all of the powers vested in this Ordinance as permitted by the purposes and powers herein stated and which are deemed to be in the best interests of the Tribe, exercising prudent management and good business judgment, all in compliance with applicable law.

4.19 **Annual Budget.** The Tribal Commission shall prepare an annual operating budget for all Tribal Commission activities and present it to the Council by November 15th of each year.

4.20 **Tribal Commission Regulations.**

(A) Tribal Commission regulations necessary to carry out the orderly performance of its duties and powers shall include, but shall not be limited to the following:

(1) Internal operational procedures of the Tribal Commission and its staff;

(2) Interpretation and application of this Ordinance as may be necessary to carry out the Tribal Commission's duties and exercise its powers;

(3) A regulatory system for all gaming activity, including accounting, contracting, management and supervision;

(4) The findings of any reports or other information required by or necessary to implement this Ordinance; and

(5) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Tribal Commission authorized by this Ordinance.

(B) No regulation of the Tribal Commission shall be of any force or effect unless it is adopted by the Tribal Commission by formal action and subsequently approved by a resolution of the Tribal Council and maintained in the official records of the Tribe.

(C) The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all Tribal Commission regulations adopted pursuant to this Ordinance.

4.21 **Right of Entrance; Monthly Inspection.** The Tribal Commission and duly authorized officers and employees of the Tribal Commission, during regular business hours, may enter upon any premises of any operator or gaming establishment for the purpose of making inspections and examining the accounts, books, papers, and documents, of any such operator or gaming establishment. Such operator shall facilitate such inspection or examinations by giving every reasonable aid to the Tribal Commission and to any properly authorized officer or employee.

A Commissioner or a member of the Tribal Commission's staff shall visit each tribally-owned or tribally-operated gaming establishment during normal business hours for the purpose of monitoring its operation. Such visits shall be unannounced.

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.

(C) No staff member may serve as a Commissioner of the Tribal Gaming Commission.

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.

(A) No person shall operate Class II or Class III gaming within the jurisdiction of the Tribe unless such gaming is licensed by the Tribe.

(B) A tribal license shall not be required for any Class I gaming activity or operation; provided,

however, that each Class I gaming activity or operation must obtain prior written authorization from the Tribal Council, which is filed with the official records of the Tribe and a copy of which is provided to the permittee and the Gaming Commission.

5.3 Types of Licenses. The Tribal Commission 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 "Indian lands", as defined in Section 2.30 of this Ordinance, and is not prohibited by Section 20 of IGRA.

(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) A listing of all positions, both licensed and unlicensed, maintained by the facility;
- (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 preceding 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. The application form and any changes thereto shall be reviewed and approved by the Bay Mills Indian Community Executive Council prior to utilization.

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

(1) All information required under Part 556 of Title 25, *Code of Federal Regulations*, as that may from time to time be amended.

(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 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.

(6) 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.

(7) A disclosure of any civil judgments rendered against the applicant, which constitute a collection action for money owed by the applicant,

including the case number, a description of the judgment and the name and address of the court involved.

(8) 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.

(9) 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.

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

(11) Each application for a gaming employee license shall be accompanied by an application fee at an amount established by the Tribal Commission.

6.3 Review Procedure.

(A) The Tribal Commission shall perform the background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those contained in 25 C.F.R. Parts 556 and 558, as they may from time to time be amended, and shall follow the procedures established in this section.

(B) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license. If the authorized tribal official, in applying the standards contained in this Ordinance and in the Class III Gaming Compact with the State of Michigan, determines that licensing of a person 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 and methods and activities in the conduct of gaming, the authorized tribal official shall not license that person in a key employee or primary management official position. The authorized Tribal Official shall be the Tribal Commission.

(C) Upon completion of the criminal record and employee reference reviews, 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.

(D) The results of the background checks performed and the Tribal Commission's findings and decision shall be forwarded to the National Indian Gaming Commission.

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

6.4 Scope of License.

(A) Any employee gaming license issued pursuant to this section shall be effective for only the position and gaming operator employer contained in the application. An employee gaming license shall apply to all locations for which a gaming operator holds a license issued by the Tribal Commission.

(B) Any licensed employee shall apply to have his license transferred to a new position by requesting that transfer in writing to the Tribal Commission in a manner which details the new position 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 expire on the employee's birthday. If the employee's birthday is less than six (6) months in the future, the employee shall receive a license which is valid until the employee's birthday following the employee's next birthday. The license shall contain the licensee's photograph and shall state at a minimum on its face, the name of the employee, the location at which s/he is licensed to work, 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 Display and Handling of Gaming License. Any person receiving an employee gaming license shall wear the license on his/her upper torso in a manner that does not

obscure and clearly displays the licensee's photograph and the license expiration date.

(A) Prohibited Modifications of License. No individual to whom a gaming license is issued shall cause, or permit any other person to cause, damage to or alteration or mutilation of, any portion of the gaming license.

(B) Consequences of Alteration. Upon notice that a gaming license is displayed by the licensee which is damaged, altered or mutilated, the Tribal Commission shall:

(1) confiscate the gaming license and notify the gaming operator in writing of the action; and

(2) prohibit the licensee from engaging in any activities for which a gaming license is required until a replacement license is issued; provided, that the obligation to obtain a replacement license is solely that of the licensee when the Tribal Commission finds that the licensee purposefully altered or mutilated the license, or permitted another person to do so.

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.

(C) **Mandatory Suspension and Revocation.** Upon receipt of notification from the National Indian Gaming Commission that a licensed key employee or primary management official is not eligible for employment in such position, due to failure to meet the criteria contained in 25 C.F.F. sec. 558.2, as that section may from time to time be amended, the Tribal Commission shall suspend the license and notify the licensee in writing of the suspension and proposed revocation, along with the time and place for the revocation hearing. Upon the completion of the revocation hearing, the Tribal Commission shall decide to revoke or reinstate the gaming license, and shall notify the National Indian Gaming Commission of its decision.

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.** In any gaming facility, the minimum age to play any Class III game is 18 years of age.

7.9 **Minimum Age to Enter Facility.** No person under the age of 18 years, other than a Class III enterprise employee, shall be permitted to remain in an area of any building in which Class III gaming is conducted, but may be permitted to pass through a gaming area to nongaming areas.

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, punchboards, 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 may, upon request, be provided to such player.

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 may 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. If a suspension is made on these grounds, 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 numbers of employees working at the establishment, a detailed description of any patron complaints and other problems experienced at the establishment, and such other information which from time to time is requested by the Tribal Commission or Tribal Council.

(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. 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:

- (A) To fund tribal government operations or programs.
- (B) To provide for the general welfare of the Tribe and its members.
- (C) To promote tribal economic development.
- (D) To donate to charitable organizations.
- (E) To help to fund operations of local government agencies.

9.3 Audit Requirements.

(A) 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.