

NATIONAL
INDIAN
GAMING
COMMISSION

Jonathan L. Taylor
Principal Chief
Eastern Band of Cherokee Indians
Cherokee Tribal Council House
P.O. Box 455
Cherokee, North Carolina 28719

Dear Chief Taylor:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by the Eastern Band of Cherokee Indians (the Band) on May 11, 1994. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Such approval does not constitute approval of specific games. Also, the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

It is important to note that while we have approved the Band's gaming ordinance, the Band must still submit a description of procedures for resolving disputes between the gaming public and the tribe pursuant to 25 C.F.R. § 522.2(f). Also, if the ordinance governs an existing operation, the Band must submit financial statements for the previous fiscal year and the most recent audit report and management letter.

With the Chairman's approval of the Band's gaming ordinance, the Band is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

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Thank you for submitting the ordinance of the Eastern Band of Cherokee Indians for review and approval. The NIGC staff and I look forward to working with you and the Band in implementing the IGRA.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'A. Hope', written in dark ink.

Anthony J. Hope
Chairman

TABLED
AMENDED
PASSED
MAY 11 1994

Cherokee Council House
Cherokee, North Carolina
APR 8 1994

Date

ORDINANCE NO. 134 (1994)

SHORT TITLE: EASTERN CHEROKEE GAMING ORDINANCE

§16-1. POLICY.

(a) The Tribal Council finds that the Eastern Band of Cherokee Indians has conducted bingo gaming operations continuously since December 1982 as a means of generating tribal government revenue.

(b) The federal courts and congress have declared that Indian tribal gaming operations are a lawful and valid means of promoting economic development, self-sufficiency and for strengthening tribal governments.

(c) Congress has established federal regulatory authority and standards for gaming on Indian lands in order to protect such gaming from organized crime and other corrupting influences and to preserve such gaming as a means of generating tribal revenue.

(d) The Eastern Band of Cherokee Indians does enact this Gaming Ordinance in compliance with the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., to replace its prior gaming ordinances and to provide appropriate regulation of these essential governmental activities.

§16-2. PURPOSE.

The Tribal Council of the Tribe is the authorized governing body empowered by the Tribe's Charter and Governing Document to enact laws and hereby enacts this Ordinance in order to establish the terms for class II and class III gaming operating on tribal lands.

§16-3. GAMING AUTHORIZED.

(a) Class II gaming, as defined in the Indian Gaming Regulatory Act (hereafter "IGRA") at 25 U.S.C. §2703(7)(A) and by regulations promulgated by the National Indian Gaming Commission (hereafter "NIGC") at 25 C.F.R. §502.3, is hereby authorized.

(b) Class III gaming, as defined in the IGRA at 25 U.S.C. §2703(8), is hereby authorized so long as it is conducted consistent with the provisions of an executed and approved class

III gaming compact between the Tribe and the State of North Carolina.

\$16-4. OWNERSHIP OF GAMING.

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any class II or class III gaming operation authorized by this ordinance. No individually owned gaming is authorized by this ordinance.

\$16-5. USE OF GAMING REVENUES.

(a) Net revenues from class II and III gaming shall be used only for the following purposes: to fund tribal government operations, enterprises and programs; provide for the general welfare of the Tribe and its enrolled members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

(b) The Tribe shall make per capita payments from either class II or class III gaming to tribal members and shall authorize payment of 50% of net revenues to its members and the remaining funds shall be used as outlined in (a) above and submitted by the Principal Chief to the Secretary of the Interior under 25 U.S.C. §2710(b)(3).

\$16-6. AUDIT.

(a) The Tribe shall cause to be conducted annually an independent audit of all gaming operations and shall submit the resulting audit reports to the NIGC.

(b) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit described in subsection (a) above.

\$16-7. PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY.

Class II and class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety. The Commission shall have responsibility and authority to insure compliance with this requirement.

\$16-8. LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS.

The Tribe shall insure that the policies and procedures set forth in this section are implemented with respect to key employees

and primary management officials employed at any class II or class III gaming enterprise operated on Eastern Cherokee lands:

(a) Definitions.

(1) "Key employee" shall mean:

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

- (i) bingo caller
- (ii) counting room supervisor
- (iii) chief of security
- (iv) custodian of gaming supplies or cash
- (v) floor manager
- (vi) pit boss
- (vii) dealer
- (viii) croupier
- (ix) custodian of gaming devices, including persons with access to cash and accounting records within such devices,
- (x) video maintenance worker
- (xi) credit approver

(B) if not otherwise included, any other persons whose total cash compensation is in excess of \$50,000 per year; or,

(C) if not otherwise included, the four most highly compensated persons in the gaming operation.

(2) "Primary management official" shall mean:

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

(B) any person who has authority

- (i) to hire and fire employees, or
- (ii) to set up working policy for the gaming operation, or

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

(b) Application forms.

(1) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by the applicant:

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

(2) Existing key employees and primary management officials shall be notified in writing that they shall either:

(A) complete a new application form that contains a Privacy Act notice, or

(B) sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(3) The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also you may be punished by fine or imprisonment. 18 U.S.C. §1001.

(4) The Tribe shall notify in writing all existing key employees and primary management officials that they shall either:

(A) complete a new application form that contains a notice regarding false statements, or

(B) sign a statement that contains the notice regarding false statements.

(c) Background Investigations.

(1) The Tribe shall request from each primary management official and each key employee all of the following information:

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

(B) currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

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

(D) current business and residence telephone numbers;

(E) a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(F) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(G) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(H) for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;

(I) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(J) for each criminal charge (excluding minor traffic violations) whether or not there is a conviction, if such criminal charge is within 10 years of the date of

the application and is not otherwise listed pursuant to paragraph (1)(H) or (1)(I) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(K) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(L) a current photograph;

(M) any other information the Tribe deems relevant;
and

(N) fingerprints consistent with procedures adopted by the Tribe in accordance with 25 C.F.R. §522.2(h).

(2) The Tribe shall conduct an investigation sufficient to make a determination under subsection (d) below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(d) Eligibility Determination.

The Tribe 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 employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming or creates or enhances dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

(e) Procedures for Forwarding Applications and Reports to the NIGC.

(1) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the NIGC a completed application for employment and conduct the background investigation and make the determination referred to in subsection (d) above.

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

(3) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license 90 days after NIGC has received the application.

(f) Report to the NIGC.

(1) Pursuant to the procedures set out in subsection (e) above, the Tribe shall prepare and forward to the NIGC an investigative report on each background investigation. An investigative report shall include all of the following:

(A) steps taken in conducting a background investigation;

(B) results obtained;

(C) conclusions reached; and

(D) the basis for those conclusions.

(2) The Tribe shall submit with the report a copy of the eligibility determination made under subsection (d) above.

(3) If a license is not issued to an applicant, the Tribe:

(A) shall notify the NIGC; and

(B) may forward copies of its eligibility determination and investigative report, if any, to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(4) With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports, if any, of background investigations for inspection by the Chairman of the NIGC or their designee for not less than three (3) years from the date of termination of employment.

(g) Granting a Gaming License.

(1) If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the NIGC, the Tribe may issue a license to such applicant.

(2) The Tribe shall respond to a request for additional information from the Chairman of the NIGC concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under subsection (g)(1) until the Chairman of the NIGC receives the additional information.

(3) If, within the thirty (30) day period described above, the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the NIGC, the Tribe shall reconsider the application, taking into account the objections itemized by the NIGC. The Tribe shall make the final decision whether to issue a license to such applicant.

(h) License Suspension.

(1) If after the issuance of a gaming license the Tribe receives from the NIGC reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection (d) above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(2) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(3) After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the NIGC of its decision.

§16-9. LICENSE LOCATIONS.

(a) The Tribe shall issue a separate license to each place, facility or location on Eastern Cherokee lands where class II gaming is conducted under this ordinance. Such license shall be referred to as a class II License.

(b) The Tribe shall issue a separate license to each place, facility or location on Eastern Cherokee lands where class III gaming is conducted under this ordinance. Such license shall be referred to as a class III License.

(c) The Tribe shall issue a separate license to each key employee and primary management official as defined in §16-8. Such licenses shall be referred to as an Individual License.

§16-10. NATURE OF LICENSE.

(a) The Cherokee gaming license is a revocable privilege and no licensee shall be deemed to have any vested rights therein or thereunder. The burden of proving qualification to hold any license shall rest at all times with the license applicant. The Commission is charged with the duty of continually observing the conduct of all licensees to the end that licenses shall not be held by unqualified, disqualified or unsuitable persons, firms or entities. Acceptance of a license or renewal thereof, shall constitute an agreement on the part of the licensee to be bound by all the regulations or conditions established by the Commission or by the provisions of this ordinance. It shall be the responsibility of the licensee to keep informed of the terms and contents of all such regulations, conditions and ordinances and ignorance thereof shall not excuse violations.

(b) The Cherokee gaming license shall be valid only for the person, firm or entity at the place of business shown on the face of the license. The license shall not be assignable or otherwise transferable to any other person or organization or for any other location.

§16-11. BACKGROUND INVESTIGATIONS: PROCEDURES

(a) The Cherokee Police Department (hereafter the "Department") shall be the agency with primary responsibility for conducting background investigations and issuing a written report to the Commission and the NIGC on all key employees or primary management officials for tribal gaming activities.

(b) The Department shall conduct background investigations by performing the following procedures as minimal investigation techniques, supplementing these inquiries as the Department deems necessary or appropriate in individual instances.

(1) The Department shall obtain or prepare a complete personal history from all key employees and primary management officials on forms provided by the NIGC or Tribe.

(2) The Department shall obtain fingerprints from each individual subject to the background investigation and shall submit such prints on NIGC approved forms to the NIGC for processing by the FBI.

(3) The Department shall access the National Crime Information Center and request information concerning the persons under investigation.

(4) The Department shall utilize a third generation checking procedure to establish or confirm the character and

reputation of the person through personal references provided on the tribal personal history forms.

(5) The Department shall request the assistance of the Bureau of Indian Affairs Agency Criminal Investigator when necessary during such investigation. The Department shall also compare their procedures and practices with those established by the local United States Marshall's Office and where appropriate adopt such additional procedures and standards as the Department may deem proper to insure full and accurate investigations.

§16-12. BACKGROUND INVESTIGATION: EVALUATION STANDARDS.

(a) The Commission shall carefully consider the written report and recommendations of the Department upon completion of the background investigations of key employees and primary management officials. Approval or disapproval of a gaming license shall require a two-thirds majority of the Commission.

(b) The Commission shall not approve a gaming license where any key employee or primary management official has been determined by the Department's investigation to have engaged in prior criminal activities, have a criminal record or reputation, personal or professional habits, personal or professional associations which would pose a threat to the effective regulation of the gaming enterprise or would create a danger of illegal activities in the gaming activities.

(c) Objective evidence of such threat shall include conviction of a felony, conviction of any gaming related offense, conviction of an offense involving moral turpitude, a past or present personal or business relationship with persons known or reasonably suspected of engaging in organized criminal activities.

§16-13. ESTABLISHMENT OF GAMING COMMISSION.

(a) There shall be established a Commission to be known as the Cherokee Gaming Commission.

(b) The Commission shall be composed of three members, none of whom may hold tribal elected office or be immediately related to any tribal elected official. No commissioner or any member of their immediate family shall own an interest in or be employed by or for any tribal gaming enterprise or any person or entity with an interest in management of any gaming enterprise or gaming related activity.

(c) The members of the Commission shall be appointed by the Tribal Council. Members shall not be appointed to serve more than two consecutive two year terms. The members shall elect a chairperson from among themselves.

§16-14. POWERS OF COMMISSION.

(a) The Commission shall have power to:

(1) issue orders of temporary closure of gaming activities for violations of this gaming ordinance or of contractual obligations to the Tribe, the IGRA or the approved class III compact or orders of permanent closure of gaming activities for violations of this gaming ordinance, tribal gaming regulations or contractual obligations to the Tribe;

(2) initiate civil and criminal actions in court to enforce provisions of this ordinance, tribal gaming regulations or the IGRA;

(3) negotiate and approve management agreements for class II gaming to be submitted to the Tribal Council for approval by Tribal Council resolution;

(4) approve, deny or revoke gaming licenses for class II or class III gaming;

(5) monitor all gaming activities conducted on Eastern Cherokee lands on a continuing basis;

(6) insure that background investigations are conducted as required by this ordinance and the IGRA as well as conduct such additional investigations as the Commission may deem necessary;

(7) demand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any gaming activity conducted on Eastern Cherokee lands and any other matters necessary to carry out their duties under this ordinance;

(8) conduct such hearings as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel witnesses to appear at such hearings;

(9) when information is received through audits or other investigations that indicates a violation of tribal, federal or applicable state ordinances, laws or regulations, to treat as confidential and provide such information to the appropriate law enforcement officials;

(10) adopt regulations deemed necessary to clarify or enforce provisions of this ordinance or tribal rights and interests established in approved management agreements or an approved class III compact.

(11) Adopt an Eastern Band of Cherokee Indians contract manager class II and class III gaming license application.

\$16-15. FINANCIAL CONTROLS.

The Commission shall adopt such reasonable financial controls, standards and procedures concerning accounting, cash reconciliation and record keeping as are necessary and appropriate to insure the financial integrity of all tribal gaming activities. Such controls, standards and procedures shall be adopted within one hundred twenty (120) days after ratification of this ordinance. Failure to comply with such controls and procedures established by the Commission shall constitute grounds for the Commission to suspend a gaming license. Such suspension may be either temporary or permanent, at the discretion of the Commission.

\$16-16. PENALTIES.

(a) It shall constitute a violation of the laws of the Tribe to violate the provisions of this ordinance or any regulations promulgated by the Tribe under this ordinance, or any order issued by the Commission under the authority of this ordinance. Any person so violating these laws or regulations may be charged with criminal or civil violation in the Cherokee Court.

(b) Any member of the Tribe or of any other federally recognized Indian tribe residing or employed on Eastern Cherokee lands may be charged with a criminal violation and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment not to exceed twelve (12) months, for each separate offense, or by both fine and imprisonment or other sentencing alternatives under tribal law.

(c) Any person who is not an enrolled member of any federally recognized Indian tribe may be charged with a civil violation of tribal law and shall, upon judgment, be required to pay a civil fine of not more than five thousand dollars (\$5,000) per offense or violation plus such actual civil damages as may be awarded by the Cherokee Court. Any person against whom such a judgment shall be entered shall also be subject to removal from Eastern Cherokee lands under the standards and policies of the Tribe for removal.

\$16-17. Class II and III Gaming.

All prior gaming ordinances enacted by the Tribal Council pertaining to Class II and Class III gaming are hereby repealed

NOW THEREFORE, BE IT ENACTED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Annual Council assembled, with a quorum present, that the foregoing Eastern Cherokee Gaming Ordinance is hereby enacted into tribal law in ordinance form, with the ordinance to be henceforth incorporated into the

Cherokee Code as set forth above immediately upon ratification by the Principal Chief and approval by the National Indian Gaming Commission.

Submitted by: As required by National Indian Gaming Commission for review in May 1994.

The attached Resolution/Ordinance No. 134 dated APR 8 1994 was Passed () Killed () and ratified in open Council on _____ by 94 voting for the act and 6 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
William R. Taylor	✓			
Glenn J. Bradley	✓			
Teresa McCoy	✓			
Dan McCoy	✓			
Jess Murphy	✓			
Richard Welch	✓			
Robert Blankenship	✓			
Marion Teesateskie		✓		
Larry Blythe	✓			
Carroll Parker	✓			
Abe Wachacha	✓			
Jimmy Welch	✓			
TOTAL	94	6	0	0

William R. Taylor
 TRIBAL COUNCIL CHAIRMAN

Myrtle Johnson
 TRIBAL COUNCIL ENGLISH CLERK

Jonathan Z. Taylor
 PRINCIPAL CHIEF

APPROVED () VETOED ()

VETO UPHELD () VETO DENIED () DATE _____

I hereby certify that the foregoing act of the Council was duly Passed () Killed () and ratified in open Council after the same has been interpreted by the Official Interpreter and has been fully and freely discussed.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians Superintendent, Cherokee Indian Agency.

INTERPRETED () William E. Chubbuck, Jr.
 OMITTED

() _____
 INTERPRETED