

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

DEC 9 1996

Samuel N. Penney  
Chairman  
Nez Perce Tribe  
Tribal Executive Committee  
P.O. Box 305  
Lapwai, ID 83540-0305


Dear Chairman Penney:

This letter responds to your request to review and approve the amendment to the tribal gaming ordinance of the Nez Perce Tribe (Tribe). The amendment to the ordinance was adopted by the Tribe by Resolution No. 96-590 on August 13 and 14, 1996. 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 amendments to 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.

Thank you for submitting the amendment to the tribal gaming ordinance of the Nez Perce Tribe. The NIGC staff and I continue to look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

  
Harold A. Monteau  
Chairman

R E S O L U T I O N

SEP 20 1995

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, the Nez Perce Tribe is a sovereign nation with the powers and sovereign rights of tribal governments to regulate activities and enforce laws on Indian lands; and

WHEREAS, the Nez Perce Tribe retains all rights that were not expressly relinquished including rights to regulate gaming on Indian lands; and

WHEREAS, the Nez Perce Tribal Executive Committee (NPTEC) adopted a gaming ordinance, as set forth in resolutions NP 89-232, NP 94-44, NP 95-102, NP 95-102(amended) and NP 95-103, which has been approved by the National Indian Gaming Commission (NIGC); and

WHEREAS, NPTEC recognizes the need for the gaming ordinance to be codified and incorporated into the Nez Perce Tribal Code;

NOW, THEREFORE, BE IT RESOLVED, that the Nez Perce Tribal Executive Committee hereby authorizes the codification of the Gaming Ordinance as Chapter 6-2 of the Nez Perce Tribal Code; and

BE IT FURTHER RESOLVED, that NPTEC has reviewed and approved Chapter 6-2, and finds all language from the gaming ordinance resolutions has been incorporated; and

BE IT FURTHER RESOLVED, that this codification will rescind resolutions NP 89-232, NP 94-44, NP 95-102(amended) and NP 95-103; and

BE IT FINALLY RESOLVED, that NP 95-102 which authorizes the Memorandum of Understanding between the National Indian Gaming Commission and the Nez Perce Tribe regarding the dissemination of criminal history record information by

NIGC, shall remain in full force and effect.

C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Regular Session, August 13, 14, 1996, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its members being present and voting.

BY: *Tonia Garcia*  
Tonia Garcia, Secretary

ATTEST:

*Samuel N. Penney*  
Samuel N. Penney, Chairman

**CHAPTER 6-2**  
**GAMING ORDINANCE**

**§ 6-2-1      Definitions**

(a)      “Bingo” means a game, whether or not electronic, computer, or other technological aids are used in connection therewith

- (1)      which is played for prizes, including monetary prizes with cards bearing numbers or other designations;
- (2)      in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
- (3)      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 same location) pull-tabs, lotto, punch cards, tip jars, instant bingo, and other games similar to bingo.

(b)      “Fishing Derby” means a fishing contest, with or without the payment or given of any entry fee or other consideration by some or all of the contestants wherein prizes are awarded for the species, size, weight or quality of fish caught in a bona fide fishing or recreational event.

(c)      “Fund raising event” means a fund raising event sponsored by a bona fide religious, charitable or nonprofit organization at which gaming activities will be conducted under the authority and regulation of the Nez Perce Tribal Gaming Commission. Gaming as authorized under this section may be allowed provided that sixty percent of the net income from such events shall be devoted solely to lawful purpose of the Nez Perce Tribe and provided that the tribal or BIA law enforcement agency shall be notified as to the time and place where such activity shall be conducted.

(d)      “Gaming” means those activities defined in §6-2-7, §6-2-8 and § 6-2-9.

(e)      “Key employee” means a person who performs one or more of the following functions:

- (1)      bingo caller; or
- (2)      counting room supervisor; or
- (3)      chief of security; or
- (4)      custodian of gaming supplies or cash; or

- (5) floor manager; or
- (6) pit boss; or
- (7) dealer; or
- (8) croupier; or
- (9) approver of credit; or
- (10) custodian of gambling devices including persons with access to cash and the accounting records within such devices; or
- (11) any other person whose total cash compensation is in excess of \$50,000.00 per year; or
- (12) the four most highly compensated persons in the gaming operation.

(f) "License" and variations of that word such as licenses and licensed, unless otherwise defined herein and as indicated by the context, means either:

- (1) the authority granted by the Nez Perce Tribe to engage in gaming under this Act as evidenced by a formal document executed by tribal officials, or
- (2) the formal document evidencing authority granted by the Nez Perce Tribe to engage in gaming under this Act.

(g) "Licensee" means a person, organization or entity authorized by the Nez Perce Tribe pursuant to this Act to operate a gaming activity on the Nez Perce Reservation.

(h) "Net revenue" means gross gaming receipts of a gaming operation minus amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.

(i) "NIGC" means the National Indian Gaming Commission.

(j) "Operator" means any person, organization or entity that operates any gaming activity that is subject to regulation under this Act, on the Nez Perce Reservation.

(k) "Player" means a natural person who engages, on equal terms with the other participants, and solely as a contestant or better, in any form of gaming in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gaming activity.

(l) "Primary management official" means:

- (1) the person having management responsibility for a management contract; or
- (2) any person who has authority to hire and fire employees or to set up working policy for the gaming operation; or

- (4) the chief financial officer; or
- (5) other person who has financial management responsibility.

(n) "Thing of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or any interest therein.

(o) "Tribe" means the Nez Perce Tribe.

**§ 6-2-2 Purpose**

This ordinance is enacted to:

(a) Regulate all forms of permissible and authorized gaming within the jurisdiction of the Nez Perce Tribe.

(b) Safeguard all persons from unscrupulous and illegal operations of any type of gaming.

(c) Protect all persons from any infiltration of organized crime into any gaming operation within the jurisdiction.

(d) Provide for tribal audit system on all gaming operations.

(e) Provide that the Tribe will have primary regulatory authority over all forms of gaming on the Nez Perce Reservation subject only to applicable federal law.

(f) Provide for system of investigations of all persons associated with gaming.

(g) Provide a system of licensing for any gaming activities subject to the provisions of this Act that occur within the Nez Perce Reservation.

(h) To provide revenues for the operation of the tribal government.

(i) To allow the tribal government to use the revenues generated for tribal self determination, to generate value on the reservation, to provide additional tribal services, employment for tribal members and for general economic development and individual self-sufficiency of tribal members.

(j) To harmonize with and adhere as much as possible to the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467-88. 25 U.S.C. §§ 2701 *et seq.* as enacted by the U.S. Congress on October 17, 1988.

(k) To cooperate and agree on a sovereign to sovereign basis with the State of Idaho and any other concerned or affected states to enter into compacts or other agreements for gaming operation, regulation or coordination.

(l) To establish a commission within the tribal organization to oversee and regulate gaming consistent with this ordinance and within the precepts established by the Nez Perce Tribal Executive Committee.

**§ 6-2-3 Ownership of Gaming and Use of Gaming Revenue**

(a) The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance, unless individually owned gaming is approved and licensed under this ordinance.

(1) In order to be licensed by the Nez Perce Tribe, individual owners, in addition to the requirements of this ordinance, shall also be required to:

(i) Pay to the Nez Perce Tribe not less than 60 percent of the individually owned operation's net revenues, to be used only for the purposes set forth below;

(ii) Pay an assessment to the National Indian Gaming Commission as set forth in 25 CFR § 514.1;

(iii) Comply with eligibility standards of a State license for the same activity, so that if the individual is ineligible to receive a State license to conduct the same activity within that jurisdiction, a tribal license shall be denied.

(b) Net revenues from tribal gaming or from individually owned games shall be used only for one or more of the following purposes:

(1) To fund tribal government operations or programs;

(2) To provide for the general welfare of the tribe and its members;

(3) To promote tribal economic development;

(4) To donate to charitable organizations; or

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

(c) If the Tribe elects to make per capita payments to tribal members, it shall authorize

such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

(d) The Nez Perce Tribe hereby specifically reserves, through its inherent power, the full right and authority to adopt or impose a uniform and comprehensive system of revenue, taxation and licensing relating to gaming allowed by this ordinance.

**§ 6-2-4 Severability**

If any clause, provision or section of this ordinance shall be ruled invalid or unenforceable by any court of competent jurisdiction by final order after all appellate jurisdiction is exhausted, such holding shall not invalidate or render unenforceable any other remaining provisions of this ordinance. Until such final order is entered and review exhausted, the questioned provisions shall be absent and enforceable in full force and effect.

**§ 6-2-5 Amendment**

Except as provided in § 6-2-13(m), all powers of amendment are retained by the Nez Perce Tribal Executive Committee.

**§ 6-2-6 Sovereignty**

The Nez Perce Tribal Executive Committee acting for the Nez Perce Tribe by this enactment, does expressly retain and does not in any way waive its right of sovereignty as expressed in treaties, laws or in any other manner.

**AUTHORIZED GAMBLING ACTIVITIES**

**§ 6-2-7 Class I Gaming**

Class I gaming is defined as social games solely for prize of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(a) Class I gaming may be engaged in by individuals and organizations without restriction and is not subject to the provisions of this Act.

**§ 6-2-8 Class II Gaming**

Class II gaming is defined as:

(a) The game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith)



- (1) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;
  - (2) in which the holder of the card covers such numbers or designations with objects, similarly numbered or designated, which are drawn or electronically determined; and
  - (3) 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, tip jars, instant bingo, and other games similar to bingo; and
- (b) Card games that:
- (1) are explicitly authorized by the laws of the State of Idaho, or
  - (2) are not explicitly prohibited by the laws of the State of Idaho and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(c) The Nez Perce Tribe may engage in Class II gaming as an operator without the necessity of a license under this Act but shall comply with other applicable provisions of this Act.

(d) Until this Act is amended by appropriate action of the Nez Perce Tribal Executive Committee in a manner consistent with the relevant provisions of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, the Nez Perce Tribe shall be the only entity or organization authorized to engage in gaming activities on the Nez Perce Reservation for profit to the exclusion of any other entity, organization or person. The Nez Perce Tribe may conduct or license gaming activities on behalf of a bona fide charitable, religious and non-profit organizations subject to regulations promulgated by the Commission on this topic and the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*

**§ 6-2-9 Class III Gaming**

- (a) Class III gaming means all forms of gaming that are not Class I or Class II gaming.
- (b) No person, entity, corporation, organization or government, except the Nez Perce Tribe, shall authorize or conduct any form of Class III gaming within the Nez Perce Reservation unless such gaming is consistent with:
- (1) the Indian Gaming Regulatory Act;

(2) a Tribal-State compact for Class III gaming; and

(3) is licensed by the Nez Perce Tribe.

(c) The Nez Perce Tribe shall enact rules and regulations regarding licensing of Class III games which shall be consistent with the provisions of the Indian Gaming Regulatory Act and the laws of the Nez Perce Tribe.

(d) Any person, entity, corporation, organization or government that conducts Class III gaming within the Nez Perce Reservation or that purports to authorize such gaming in violation of the laws or regulations of the Nez Perce Tribe commits a civil infraction.

(e) Any person, entity, corporation, organization or government found to have committed a civil infraction by failing to comply with the laws of the Nez Perce Tribe shall be subject to a civil fine in addition to other legal and equitable remedies available in civil cases.

(f) The Nez Perce Tribal Executive Committee hereby reserves the right to later enact authorization of Class III gaming as defined herein upon proper compliance with the Class III gaming requirements of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701*et seq.*

#### **§ 6-2-10 Gaming Prohibited**

All gaming activities not authorized by this Act, including, but not limited to, those activities commonly known as bookmaking, betting, card parlors, bunco or confidence games, pyramid clubs or schemes, chain letters and three card monte, are unlawful and prohibited.

### **GAMING COMMISSION**

#### **§ 6-2-11 Nez Perce Tribal Gaming Commission Established**

(a) The Nez Perce Tribal Gaming Commission (the "Commission") shall consist of five individuals appointed by the Nez Perce Tribal Executive Committee.

(b) Each Commissioner shall serve for a term of three (3) years, with the term beginning on January 1 of the year of the appointment and ending on December 31 of the third year; except that for the initial group of Commissioners, two positions will be for a term of three (3) years, two positions will be for a term of two (2) years and one position will be for a term of one (1) year allowing for a staggered term process thereafter.

(c) Commission members shall serve beyond their one year term only in the event that NPTEC fails to promptly make appointments for the subsequent year. Upon the appointments for the following year, the prior year's appointments shall expire.

(d) Commission positions vacated prior to the end of the term shall be promptly filled by NPTEC so that a full Commission may serve on a continual basis. However, a temporary vacancy on the Commission shall not mean the Commission will be non-functional, since business can be conducted with a minimum of three members being present.

(e) The Commission shall elect among themselves a President, Vice President and Secretary-Treasurer. Elections shall be conducted each year, within two weeks after NPTEC appointments are made.

(f) The Commission shall meet at least six times each year, with additional meetings held as necessary to properly carry out the duties of the Commission.

#### **§ 6-2-12 Powers and Duties of the Commission**

The Commission shall:

(a) Oversee and regulate the gambling activities authorized by this chapter. Such power includes the power to inspect premises.

(b) Safeguard the morals of the Nez Perce people and keep community peace by regulating by civil fines and/or civil prosecution of violations of this chapter.

(c) Issue licenses when such are required by this chapter, and also to deny or revoke such licenses when it is deemed to be in the public interest.

(d) Formulate and promulgate rules and regulations which shall govern in detail the issuance of licenses, the amount of the license fee, the conduct of the authorized gambling activities, and the revocation of licenses.

(e) Insure the proper record keeping regarding gambling of all, namely licensees, persons, associations, organizations and the Nez Perce Tribe.

(f) Cause a review of all the records of all the above licensees at least annually.

(g) Cause annual outside audits of all gaming activities on the Nez Perce Reservation to be conducted and submitted to the National Indian Gaming Commission specifically including all contracts for supplies, services or concessions having a contract amount in excess of \$25,000.00.

(h) Insure that facilities where gaming occurs are properly constructed and maintained and that the operation of the game is conducted in a manner which adequately protects the environment and the public health and safety.

(i) It shall be the responsibility of the Commission, to cause to be conducted background

investigation and suitability determinations of potential gaming employees as required by the National Indian Gaming Regulatory Act, 25 U.S.C. § 2701*et seq.*

## **GAMING OPERATIONS**

### **§6-2-13 General Gaming Operations Requirements**

(a) An investigation of each employee or operator including owners of an operating entity as defined in (n) of this section, prior to beginning work, shall be required to apply to the Commission for a determination that he:

- (1) has committed no felony or gambling offense in any jurisdiction;
- (2) has no prior activities, reputation, habits, or associations affecting his present conduct that would pose a threat to the effective regulation and control of gaming, or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities, in the conduct of gaming; and
- (3) has no present interest in the conduct of any gaming business.

(b) The determination shall be confidential unless otherwise required for purposes of the tribal Personnel, Policies and Procedures or the requirements of federal law or regulation.

(c) The employee or contractor shall follow the application procedure for licenses described herein, provided that, no notice shall be published, and no public hearing shall be held. No employee may accept any gift or thing of value from a gaming contractor.

(d) In addition to any provisions of the tribal Personnel, Policies and Procedures which may be applicable, any employee or operator shall be required to comply with the provisions of this ordinance, the provisions of his contract with the Tribe, if any, and the provisions of applicable federal law.

(e) Any entity which contracts with a tribal gaming operation, shall be required to submit to a determination as required in (a) of this section. No such contract will be valid until it is approved by the Commission and the Secretary of the Interior as is necessary under federal law.

(f) Tribally operated gaming shall be held in compliance with this ordinance.

(g) Operators, or employees in charge of tribally operated gaming shall report quarterly to the Commission on the result of an outside audit of the operation, and the results of any contract for service or supplies.

(h) Any operator or employee of the tribal gaming operation shall deposit the proceeds

of the gaming operation according to applicable federal and tribal law.

(i) Any operator or employee may request the assistance of the Commission in obtaining training or instruction for the benefit of the tribal gaming operation as well as in determining the proper meaning of this ordinance.

(j) The Commission may require that any operator or employee of a tribal gaming operation be bonded in a particular amount.

(k) The Commission may recommend to the Nez Perce Tribal Executive Committee that a particular type of tribal gaming be operated through a management contract. The management contract must be in compliance with applicable federal law. The Commission shall require that the proposed operator comply with the requirements for licenses under this section of the ordinance, provided that a proposed manager need not be a tribal member. Sole tribal approval of all management contracts shall remain with the Nez Perce Tribal Executive Committee.

(l) All tribal gaming operations are subject to monitoring and inspection by the Commission or agents of the Commission.

(m) The Commission shall issue regulations, which will control:

- (1) The possession of firearms by operators or employees. No other firearms or weapons of any kind shall be allowed on gaming premises.
- (2) The security requirements for the operations.
- (3) The posting of rules of play.
- (4) The maximum limit, if any, which may be offered as a prize.
- (5) Rules for the conduct of the games, should the Commission deem that such rules are necessary for the proper conduct of gaming.
- (6) Any other regulations controlling the operation which is deemed necessary by the Commission or the Nez Perce Tribal Executive Committee.

(n) Any person authorized by the Commission, an employee or independent contractor, who has a financial interest other than salary or wages or management responsibility in the conduct of tribal gaming activities must be licensed by the Commission including those persons who may serve on the Board of Directors or other governing body of a corporation, trust, partnership or other entity or who own ten (10%) or more of the stock of a corporation or like interest in profits or capital of any other business entity.

(o) Each affected person covered in (n) above must apply for a license to the Commission giving the name, social security number and address; previous gaming experience; any felonies, violations of any kind whatsoever relating to the gaming, fraud or illegal practices; fingerprints; and any and all other reasonable requirements as may be determined by the Commission.

(p) The Commission shall determine whether or not to issue the license within sixty (60) days after application.

(q) A license shall be valid for not more than one year and shall be renewed in the same manner as the original application.

(r) The Commission may charge a fee not in excess of \$50.00 for each application of renewal.

(s) The members of the Commission shall be reimbursed for out of pocket expenses and shall be allowed per diems which have received the prior approval of the Nez Perce Tribal Executive Committee. The Nez Perce Tribal Executive Committee shall establish Commission members salaries provided such payments shall come out of the license fees or the net proceeds of the gambling activities of the Nez Perce Tribe.

(t) Members of the Commission and Nez Perce Tribal Executive Committee members are prohibited from participating in bingo games.

**§ 6-2-14 Inspection of Premises**

(a) The premises where authorized gambling activities are being held shall be subject to inspection and audit at any reasonable time by persons designated by the Commission, with or without notice as follows:

- (1) if the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open;
- (2) or if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) above, then any time between the hours of 8:00 a.m. and 9:00 p.m, Monday through Friday.

(b) The Commission shall be provided at such reasonable intervals as the Commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter.

**§ 6-2-15 Dispensing of Food and Beverages**

Regulation of the wholesale, retail, serving and licensing of, or the dispensation of any and all kinds of beverages, spirituous or otherwise, and the serving of all kinds and types of food at gaming premises is hereby vested in the Nez Perce Tribal Gaming Commission.

**KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS**

**§ 6-2-16 Applications for Key Employee and Primary Management Official Positions**

(a) Applications for key employee and primary management official positions with the Nez Perce Tribe's gaming enterprises shall be submitted to the Commission. The Commission shall conduct oral interviews of persons selected as potential candidates for a particular position. Copies of such applications and notes from interviews shall be provided to the Nez Perce Tribe's Investigative Officer.

(b) 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 an applicant:

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

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

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

- (1) Complete a new application form that contains a Privacy Act notice; or
- (2) Sign a statement that contains the Privacy Act notice and consent to the

routine uses described in that notice.

(d) The following notice shall be placed on the application form for a key employee or primary management 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 terminating you from employment after you begin work. Also, you may be punished by fine or imprisonment. 18 U.S.C. § 1001.

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

- (1) Complete a new application form that contains a notice regarding false statements; or
- (2) Sign a statement that contains the notice regarding false statements.

### **Background Investigations**

#### **§ 6-2-17 Applications - Required Information**

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

- (1) Full name, other names used (oral or written), social security numbers, birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently and for the previous five (5) years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) 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 addresses, and drivers license numbers;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (6) 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;



- (7) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name or address of the court involved, and the date and disposition if any;
- (8) 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;
- (9) For each criminal charge (excluding minor traffic charges), whether or not there was a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (7) or (8) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- (10) 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;
- (11) A current photograph;
- (12) Any other information the Tribe deems relevant;
- (13) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. 522.2(h).

(b) The Tribe shall conduct an investigation sufficient to make a determination under § 6-2-19. 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.

**§ 6-2-18 Investigative Procedures for Background Checks**

- (a) The Nez Perce Tribe's Investigative Officer shall conduct the initial investigation by:
  - (1) Verifying written or oral information submitted by the applicant;
  - (2) Inquiring into the applicant's prior activities, criminal record, if any, and reputation, habits and associations;
  - (3) Interviewing a sufficient number of knowledgeable people such as former employers, personal references, and others to whom referred; and
  - (4) Documenting the disposition of all potential problem areas noted and

disqualifying information obtained.

(b) The Investigative Officer shall then prepare and submit to the Commission an investigative report detailing:

- (1) Steps taken in conducting the background investigation; and
- (2) Results obtained;

(c) Fingerprints of applicants for key employee and primary management official positions shall also be taken. The law enforcement officers for the Bureau of Indian Affairs (BIA), Northern Idaho Agency (NIA), P.O. Box 277, Lapwai, ID, 83540, (located at the corner of Beaver Grade and Agency Road) shall be responsible for taking such fingerprints.

- (1) Completed fingerprint cards will be sent directly by the BIA-NIA law enforcement agency to the NIGC, 1441 L Street, N.W., 9th Floor, Washington, D.C., 20005.
- (2) The Commission, shall send to the NIGC at the address above, a list of those persons for whom FBI fingerprint checks are requested accompanied by a \$35.00 check to cover the costs involved with such inquiry.
- (3) Information obtained from NIGC as a result of the FBI fingerprint check shall be reviewed only by the Commission and the Tribe's Investigative Officer. No further dissemination of this information is authorized; and in fact, the Tribe is subject to the restrictions set forth in an MOU with NIGC forbidding use of such information for any other purpose. See NP 95-102.

#### **§ 6-2-19 Eligibility Determination**

The Commission shall meet with the Investigative Officer, make a suitability determination based on all the information gathered from the various sources set forth above, including prior activities, criminal record, reputation, habits and associations, and the information received from NIGC resulting from the FBI fingerprint check; and submit this determination in written form to the National Indian Gaming Commission (NIGC) for review. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices 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 position. (If the applicant is not hired and issued a license by the Tribe, NIGC shall be notified, but submittal of the determination and report shall be at the discretion of the Commission.) The report to NIGC shall also contain the information documenting investigative steps taken by the Investigative Officer, including those set forth above.

1. The report to NIGC shall be sent within 60 days after an employee begins work with the Tribe. A response from NIGC is required within 30 days of receipt of the Commission's report.
2. If the Chairman of NIGC requests additional information from the Commission regarding any employee who is a subject of a report, such information, if available shall be forwarded as soon as possible. The 30 day NIGC response time shall be suspended pending the submittal of the additional information.
3. If NIGC notifies the Commission that it has no objections to the issuance of a license to a particular applicant, the Commission may proceed with licensing of the applicant.
4. If NIGC provides the Commission with a statement itemizing objections to the issuance of a license to a particular applicant, the Commission must reconsider the application, taking into account the objections itemized by NIGC. The Commission, upon approval by NPTEC, may then make a final licensing decision as to such applicant.

**§6-2-20 Procedure for Submission of Applications and Reports for National Indian Gaming Commission Approval**

(a) The Tribe shall follow the following procedures when forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission (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 §6-2-19 above.
- (2) The Tribe shall forward the report referred to in (b) of this section 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 a primary management official a person who does not have a license after 90 days.

(b) Pursuant to the procedures set forth in paragraph (a) above, the Tribe shall forward to NIGC an investigative report on each background investigation.

- (1) An investigative report shall include all of the following:
  - (i) Steps taken in conducting a background investigation;

- (ii) Results obtained;
  - (iii) Conclusions reached; and
  - (iv) The basis for those conclusions.
- (2) The Tribe shall submit, with the report, a copy of the eligibility determination made under § 6-2-19.
  - (3) If a license is not issued to the applicant by the Tribe, the Tribe:
    - (i) Shall notify NIGC; and
    - (ii) May forward copies of its eligibility determination and investigative report (if any) to NIGC for inclusion in the Indian Gaming Individuals Records System.
  - (4) With respect to key employees and primary management officials, the Tribe shall retain application for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee no less than three (3) years from the date of termination of employment.

**§ 6-2-21 Issuance of Gaming Licenses**

- (a) Response from National Indian Gaming Commission (NIGC)
  - (1) If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies that Tribe that it has no objection to the issuance of a license by the Tribe to the individual 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 30-day period under the preceding paragraph until the Chairman of 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.

**§ 6-2-22 License Locations**

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where any gaming is conducted under this ordinance.

**§ 6-2-23 License Suspension**

1. If, after the issuance of a gaming license by the Commission, the NIGC receives reliable information indicating that a key employee or a primary management official is not eligible for employment, NIGC shall notify the Tribe.
2. Upon receipt of such notification, the Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
3. The Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.
4. After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify NIGC of its decision.

**§ 6-2-24 Dispute Resolution Process**

(a) The Nez Perce Tribal Gaming Commission, as established in § 6-2-11 is authorized to oversee and regulate all gambling activities authorized by this ordinance, including decision-making authority in regard to any disputes that may arise by applicants, licensees, or the gaming public.

(b) Any person having a dispute with the Tribe or any Gaming Operator or Management Company licensed by the Tribe may request a hearing with the Nez Perce Tribal Gaming Commission. Such a hearing shall be held within thirty (30) days of receipt of a written request from the grievant. A decision shall be issued at the hearing or within two (2) weeks of the hearing.

**§ 6-2-25 Appeal from Decisions of the Commission**

(a) If the Commission denies a person a license, or if the Commission revokes a license which was previously granted, the Commission shall do so in writing, outlining the reasons for such decision. If a person considers himself or herself aggrieved by such a decision, he or she may appeal to the Nez Perce Tribal Court within thirty days of the date of written denial. The appeal shall be only on the record, and shall not be heard de novo. If the Court finds that the order of the Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the

Constitution of the Nez Perce Tribe or the constitutional rights of the Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure of some other clear error of law, the Court shall vacate the same and remand the issuance or re-issuance of a license. Otherwise, the denial shall be upheld.

(b) If the grievant is dissatisfied with the decision issued by the Nez Perce Tribal Gaming Commission, he or she may appeal to the Nez Perce Tribal Court within thirty (30) days of the issuance of the written decision from the Nez Perce Tribal Gaming Commission. The appeal shall be only on the record and shall not be heard de novo. If the Court finds that the order of the Nez Perce Tribal Gaming Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Constitution of the Nez Perce Tribe of Indians or the constitutional rights of Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure or some other clear error of law, the Court shall vacate the same and remand. Otherwise, the decision of the Nez Perce Tribal Gaming Commission shall be upheld.

**§ 6-2-26 Civil Penalties for Violations**

(a) Any person who shall violate any provisions of this ordinance or shall conduct gambling operations without a required license, shall commit fraud or deceit, or shall engage in professional gambling, shall be subject to one or more of the following civil remedies:

- (1) A letter of reprimand;
- (2) A civil fine of \$500.00 per occurrence per day; and
- (3) revocation of license;
- (4) A civil injunction against continued violations of this ordinance;
- (5) Exclusion from the Nez Perce Reservation in conformity with the Nez Perce Tribal Code.

**§ 6-2-27 Exclusion of Individuals from Gaming Activities**

(a) Any operator shall have the authority and discretion to exclude from gaming activities or gaming facilities, any individual who:

- (1) Appears to be under the influence of intoxicants;
- (2) Appears to be losing an unreasonable amount of money at gaming activities;
- (3) Appears to be violating rules or regulations governing gaming activities as established by the Commission or operator;

(4) By virtue of his condition or activities, disturbs the peaceful participation of other individuals in gaming activities or disrupts the orderly conduct of the gaming activity;

(b) An operator may make reasonable inquiries of individuals in the course of determining whether any of the activities defined in paragraph (a) above are occurring;

(c) An operator who excludes any individual pursuant to this section shall not incur any liability, criminal or civil, as a result of doing so.

(d) Any person who is excluded from gaming by an operator pursuant to this section may petition the Commission for an order lifting the exclusion. The Commission shall have full discretion in determining whether to hear any such petition and shall have the authority to enact such rules as may be necessary regarding the procedures for acting upon any such petition. The Commission shall further have discretion to impose such conditions as they deem appropriate in issuing any order lifting an exclusion.