

NATIONAL  
INDIAN  
GAMING  
COMMISSION

FILE COPY

JUN 21 1995

Stephen Cournoyer, Jr., Chairperson  
Yankton Sioux Tribe  
Box 248  
Marty, South Dakota 57361

Dear Chairperson Cournoyer:

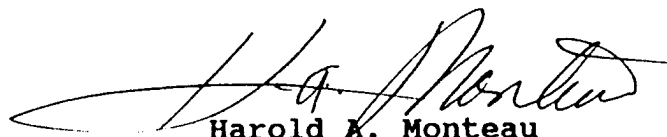
This letter responds to your request to review and approve the tribal gaming ordinance adopted on May 22, 1995, by the Yankton Sioux Tribe (Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

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. Also, such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe 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).

Thank you for submitting the ordinance of the Yankton Sioux Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

  
Harold A. Monteau  
Chairman

**YANKTON SIOUX TRIBE  
GAMING ORDINANCE**

Enacted 5-22, 1995

**Introductory Note:**

*The Yankton Sioux Tribe Gaming Ordinance Complies with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., and the National Indian Gaming Commission (NIGC) Regulations by Adoption of Standard Provisions of the NIGC Model Tribal Gaming Ordinance; Establishment of Tribal Gaming Commission for Gaming Licensing, Regulation and Enforcement; Designation of Tribal Police as Agency for Background Investigation*

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## CHAPTER 1: TITLE, AUTHORITY, AND PURPOSES.

### Section 1. *Title.*

This Ordinance shall be known as "The Yankton Sioux Tribe Gaming Ordinance."

### Section 2. *Authority.*

A. Inherent Authority. The Yankton Sioux Tribe is a sovereign Indian tribe, whose authority pre-dates the the United States of America. The Yankton Sioux Tribe has a long history of sanctioning gaming within its territory. Prior to treaty-making with the United States, the Yankton Sioux engaged in a variety of traditional classes of gaming, including *inter alia* horse-racing.

B. Treaty Recognition. In the Treaty with the Yankton Sioux Tribe, 1858, 11 Stat. 743, and the Treaty of Fort Laramie with the Sioux Nation, 1851, 11 Stat. 749, the Yankton Sioux Tribe retained its original, inherent right to self-government and corresponding tribal jurisdiction over activities within Yankton Sioux territory, including gaming. The United States recognized the sovereignty of the Yankton Sioux Tribe by entering into those treaties.

C. Constitutional Authority. The General Council of the Yankton Sioux Tribe, is vested, by and through the Constitution of the Yankton Sioux Tribe, with the original, inherent and treaty recognized authority of the Tribe to enact ordinances to provide for the welfare of the Tribe, to maintain law and order, and to establish justice. The General Council hereby enacts this Yankton Sioux Tribe Gaming Ordinance to set the terms for the conduct of class II and class III gaming the Yankton Sioux Tribe's territory.

D. Compliance With the Federal Indian Gaming Regulatory Act. In accordance with the Indian Gaming Regulatory Act and National Indian Gaming Commission Regulations, the Yankton Sioux Tribe Gaming Ordinance sets forth the subjects required by the Indian Gaming Regulatory Act in the form of the NIGC Model Tribal Gaming Ordinance. The Tribe supplements the NIGC Model Tribal Gaming Ordinance by establishing the Yankton Sioux Tribal Gaming Commission for licensing of gaming operations, gaming management, and employees, regulation of gaming operations, and enforcement of gaming laws and regulations, and by vesting the Tribal Police with responsibility for the required background investigations.

### Section 3. *Legislative Purposes.*

A. The purposes of the Yankton Sioux Tribe Gaming Ordinance are as follows:

- (1) To provide a statutory basis for the conduct of class II and class III gaming on tribal lands in a manner that is equitable, honest, and in accordance with applicable law;

- (2) To protect the Tribe and the gaming public from any form of dishonesty in the conduct of class II and class III gaming on the Yankton Sioux Tribe's Indian lands;
- (3) To ensure that the Tribe and its members are the primary beneficiaries of any gaming activities; and
- (4) To establish an independent Tribal Gaming Commission to ensure that the foregoing purposes are accomplished.



## CHAPTER 2. GAMING AUTHORIZED.

### Section 1. *Class II Gaming.*

Class II gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703 and regulations promulgated thereunder is hereby authorized by tribal law, provided such class II gaming is conducted consistent with the Indian Gaming Regulatory Act, regulations promulgated thereunder, this Ordinance, and other tribal laws and regulations.

### Section 2. *Class III Gaming.*

Class III gaming as defined by the Indian Gaming Regulatory Act, including, blackjack, poker, slot machines, video games, parimutuel wagering, horse and dog-racing, and such other class III gaming as is authorized by the State of South Dakota is hereby authorized by tribal law, provided such class III gaming is authorized by, and conducted consistent with, the Indian Gaming Regulatory Act, the Tribal-State Class III Gaming Compact entered into between the Yankton Sioux Tribe and the State of South Dakota, and the Yankton Sioux Tribe Gaming Ordinance.

**CHAPTER 3. OWNERSHIP OF GAMING;  
USE OF GAMING REVENUE; PER CAPITA PAYMENTS.**

**Section 1. *Ownership of Gaming.***

The Tribe, or its wholly owned tribal corporation, shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation that is authorized by this ordinance.

**Section 2. *Use of Gaming Revenue.***

Net revenues from class II and class III gaming shall be used only for the following purposes:

- (A) to fund tribal government operations and 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; or
- (E) to help fund operations of local government agencies.

**Section 3. *Per Capita Payments Permissible Only in Accordance With Plan Authorized by the Secretary of Interior.***

If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a tribal plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

## CHAPTER 4. MANDATORY AUDITS.

### Section 1. *Audit of Gaming Operations.*

The Yankton Sioux Tribe Gaming Commission, as established in Chapter 6 below, shall require annual audits of gaming operations to be conducted by an independent certified public accountant, and the Tribal Gaming Commission shall submit the resulting audit reports to both the Yankton Sioux Tribe and the National Indian Gaming Commission.

### Section 2. *Contracts Over \$25,000.*

Gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included in the scope of the audit that is described above in section 1 above.

**CHAPTER 5. PROTECTION OF THE ENVIRONMENT  
AND PUBLIC HEALTH AND SAFETY.**

Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

## CHAPTER 6. THE YANKTON SIOUX TRIBE GAMING COMMISSION.

### Section 1. *Tribal Gaming Commission Established.*

The Yankton Sioux Tribe Gaming Commission (hereafter Tribal Gaming Commission) is hereby established as an independent agency of tribal government to regulate Class II and Class III Gaming, see 25 U.S.C. § 2701 et seq., throughout the territory of the Yankton Sioux Tribe.

### Section 2. *Tribal Gaming Commission Membership; Chairman, Vice-Chairman; Treasurer; and Secretary.*

A. Tribal Gaming Commission Membership. The Tribal Gaming Commission shall be composed of five members elected by the General Council, as set forth in Section 3 below.

B. Commission Chairman. The Commissioner who receives the highest number of votes shall serve as the Chairman of the Tribal Gaming Commission. Subject to the oversight of the Commission, the Commission Chairman shall be vested with the following powers and duties:

- (1) to preside at all Commission meetings and hearings;
- (2) to call special meetings of the Commission as necessary;
- (3) to cause Commission process, subpoenas, orders and other papers to be served on interested parties in accordance with tribal law;
- (4) to access books and records of the Commission;
- (5) to cause reports to be made to the Business and Claims Committee, the General Council, and the National Indian Gaming Commission as may be required by law or otherwise deemed necessary;
- (6) to prepare a proposed annual budget for submission to the Commission; and
- (7) to carry out such other powers as may be delegated by the Commission.

C. Commission Vice-Chairman. The Commissioner who receives the second highest number of votes shall serve as Vice-Chairman of the Tribal Gaming Commission. In the absence of the Chairman, the Vice-Chairman shall serve as Chairman.

D. Commission Treasurer. The Commission shall select from

among its membership a Treasurer. Subject to the oversight of the Commission, the Treasurer shall be vested with the following powers and duties:

- (1) to ensure, in consultation with an independent certified public accountant, that a system of internal financial controls is in place for Commission finances, including revenues, receipts, checks, and expenditures;
- (2) to ensure, in consultation with an independent certified public accountant, that proper records are maintained of all Commission finances, including revenues, receipts, checks, and expenditures;
- (3) to periodically report to the Commission on Commission finances; and
- (4) to consult with the Chairman in the preparation of the proposed annual budget for the Commission.

E. Commission Secretary. The Commission shall select from among its membership a Secretary. Subject to the oversight of the Commission, the Secretary shall be vested with the following powers and duties:

- (1) to ensure that accurate, verbatim records are kept of all Commission meetings, hearings, actions, and orders;
- (2) to regularly review the work of any Commission employees hired to assist with Commission record keeping; and
- (3) to present the minutes of Commission meetings to the Commission for approval; and
- (4) to periodically report to the Commission on Commission record keeping.

### Section 3. *Terms of Office.*

A. In General. Each member of the Tribal Gaming Commission shall hold office for a term of 5 years, except as provided in subparagraph B below.

B. Initial Appointments. The initial members of the Tribal Gaming Commission shall be those Commission members elected prior to the effective date of this Ordinance, who shall serve until the expiration of their original terms as set forth in the Ordinance of March 1, 1990.

Thereafter, to stagger the terms of the members of the Gaming Commission and provide a means to ensure institutional experience, the initial General Council election for the Commission under the

terms this Ordinance shall be made as follows:

- (1) The Chairperson shall be elected for a term of five years;
- (2) The Vice-Chairperson shall be elected for a term of four years;
- (3) One member, who having received the third highest number of votes, shall be elected for three years;
- (4) One member, who having received the fourth highest number of votes, shall be elected for two years; and
- (5) One member, who having received the fourth highest number of votes, shall be elected for one year.

C. Commission Member Elections. Prior to the expiration of a Commission member's term, the Business and Claims Committee shall call a meeting of the General Council to elect a person to serve as Commission member for the next term.

D. Limitation. No member shall serve for more than 2 terms of 5 years each.

#### Section 4. *Requirements of Members.*

No member of the Tribal Gaming Commission may-

- A. be actively engage in or have any direct financial interest in gaming activities;
- B. have any financial interest (other than a general financial interest shared by all members of the Tribe as tribal members) in any business or organization that does business with a gaming operation of the Yankton Sioux Tribe;
- C. have been convicted of any felony or gaming offense;
- D. have any financial interest in, or management responsibility for, any gaming-related contract or any other contract to supply goods or services to a gaming operation of the Yankton Sioux Tribe; or
- E. be less than twenty-five years of age.

#### Section 5. *Additional Factors to Be Considered.*

As far as possible, the Yankton Sioux Tribe shall seek to ensure that:

- A. at least one member of the Tribal Gaming Commission has a background in financial accounting, record keeping, and finance; and
- B. at least one member of the Tribal Gaming Commission has a background in law enforcement, with experience in the field of investigation or regulatory enforcement.

**Section 6. Commission Member Background Investigations, Eligibility Determinations, and Election to the Tribal Gaming Commission.**

Prior to an election of a person to the Tribal Gaming Commission, the Tribe's Business and Claims Committee shall cause a background check to be conducted and shall make an eligibility determination as set forth below:

A. The Tribal Police Department shall conduct a background investigation concerning any person who has petitioned or has been nominated for election to the Commission with particular regard to the requirements for members of the Tribal Gaming Commission, set forth above in section 4 above, the financial stability, integrity, responsibility, and reputation good character of the prospective Gaming Commission Member.

B. The Tribe's Business and Claims Committee shall review the nominee's prior activities, including criminal record, if any, and reputation, habits, and associations to make a finding regarding eligibility for election to the Tribal Gaming Commission.

C. If a prospective Tribal Gaming Commission member fails to meet the requirements for members of the Tribal Gaming Commission, set forth in section 4 above, or the Business and Claims Committee determines that appointment of the nominee poses a threat to the public interest, or effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods or activities in the conduct of gaming, then he or she shall not be eligible to stand for election by the General Council to the Tribal Gaming Commission.

D. No individual who is not eligible for employment as a primary management official or key employee shall be elected to the Tribal Gaming Commission.

E. If the Tribe's Business and Claims Committee determines that a prospective Gaming Commission member has met all of the requirements for members of the Tribal Gaming Commission, set forth in section 4 above, and is eligible for election as set forth in this sub-section, then the General Council may consider that person for election to the Tribal Gaming Commission.



**Section 7. *Removal of Members; Good Cause; Unexcused Absence -- Vacancies.***

A. Removal from Office. The General Council may only remove Tribal Gaming Commission members prior to the expiration of his or her term of office for good cause. The Tribal Gaming Commission may only remove one of its members before expiration of the term of office after he or she has been absent without excuse for 3 or more consecutive meetings.

B. Good Cause for Removal. The following shall be and are cause for removal from the Tribal Gaming Commission:

- (1) Abuse of office, including the acceptance of any bribe or inducement to influence the official decision making of the Tribal Gaming Commission;
- (2) Malfeasance or misfeasance in the performance of official duties;
- (3) Neglect of duty;
- (4) Conviction of a felony or a gaming related offense;
- (5) Failure to comply with federal or tribal gaming laws and regulations, including failure to comply with the requirements for members of the Tribal Gaming Commission, set forth in section 4 above.

C. Procedure for Removal for Cause by General Council. When the Yankton Sioux Tribe receives evidence that good cause exists to remove a Tribal Gaming Commission member from office prior to the expiration of his or her term, the following procedure shall be followed:

- (1) Probable Cause Determination by Business and Claims Committee; Call for General Council Meeting; Notice to Commissioner. The Tribe's Business and Claims Committee shall review the evidence, and if the Business and Claims Committee determines said evidence shows the existence of probable cause for removal, shall call a General Council Meeting to conduct a hearing to consider removal of the member from the Tribal Gaming Commission. The Business and Claims Committee shall provide said Tribal Gaming Commission member with no less than 15 days written notice of the hearing before the General Council and the allegations against him or her.
- (2) Removal Hearing Before the General Council; Rights of Commission Member. The General Council shall conduct the hearing on removal, which provides said member with a right to hear all evidence that good cause exists for

removal, a right to answer that evidence and a right to present evidence in his or her own behalf, including testimony, affidavits, documents and other competent materials.

(3) General Council Determination. The General Council shall make a determination whether good cause exists for removal after the close of evidence:

(a) If the General Council determines by majority vote that a preponderance of evidence proves that good cause exists to remove said Gaming Commission member from office, he or she shall be and is thereby removed from office.

(b) If the General Council determines that no good cause exists to remove said Gaming Commission member from office, he or she shall continue in office and the hearing shall be at an end.

D. Procedure for Removal by Tribal Gaming Commission for Unexcused Absences From Gaming Commission Meetings. The Tribal Gaming Commission may, after 3 or more consecutive unexcused absences from regularly scheduled Commission meetings by any member:

(1) Scheduling of Hearing; Notice to Commission Member. Schedule a hearing and provide said member with no less than 15 days notice of the hearing and the allegations against him or her.

(2) Removal Hearing Before Tribal Gaming Commission; Rights of Commission Member. Conduct a hearing, which provides said member with a right to hear all evidence that shows that he or she was absent without excuse from 3 or more consecutive Tribal Gaming Commission meetings, a right to answer said evidence, and a right to present evidence in his or her own behalf, including excuses for said absences.

(3) Tribal Gaming Commission Determination. Determine whether said members was absent without excuse for 3 or more consecutive Tribal Gaming Commission meetings after the close of the evidence:

(a) If the Tribal Gaming Commission determines by majority vote that a preponderance of evidence proves that said member was absent without excuse for 3 or more consecutive Tribal Gaming Commission meetings, he or she is thereby immediately removed from office.

(b) If the Tribal Gaming Commission determines that said

member was not absent without excuse for 3 or more consecutive Tribal Gaming Commission meetings, he or she shall continue in office and the hearing shall be at an end.

E. Filling Vacancies. When a Tribal Gaming Commission member vacates or is removed from his or her office before the expiration of the term of office, the General Council shall elect a qualified individual for the remainder of that term of office in accordance with the procedure and the requirements for regular elections to the Tribal Gaming Commission.

## CHAPTER 7. POWERS OF THE TRIBAL GAMING COMMISSION.

The Tribal Gaming Commission shall have the following powers in addition to any powers specified elsewhere in this Ordinance:

### Section 1. *Regulations.*

To promulgate regulations necessary to carry out the Tribal Gaming Commission's duties and responsibilities to regulate class II and class III gaming under this Ordinance, after providing a notice and comment period of thirty days for the general public.

### Section 2. *Background Investigations.*

To cause the Tribal Police to conduct background investigations of management officials and employees of gaming operations.

### Section 3. *Licensing Gaming Operators, Primary Management Officials and All Employees of Gaming Operations.*

To license gaming operators, primary management officials and employees of gaming operations.

### Section 4. *Licensing Gaming Facilities.*

To license, each facility, place or location on the Indian lands of the Tribe where gaming is to be conducted.

### Section 5. *Monitoring Compliance and Accountability.*

To monitor compliance with this Ordinance and regulations promulgated thereunder, the Class III Compact Between the Tribe and the State of South Dakota, and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, to ensure that all gaming is conducted fairly and honestly by both the operator and players, and to ensure that all gaming funds, proceeds, and revenues are properly accounted for, through inspections of records, procedures, and premises, reviews of security and surveillance systems, accounting reviews, audits and investigations.

### Section 6. *Enforcement.*

To enforce this Ordinance and regulations promulgated thereunder, the Class III Compact Between the Tribe and the State of South Dakota, and the Indian Gaming Regulatory Act, 25 U.S.C. § 2710 *et seq.* by issuing or denying licenses, conducting administrative review hearings, and after holding hearings, by issuing compliance orders, issuing license restrictions, suspensions, revocations, and terminations, imposing fines, and in the case of a licensee's failure to comply with Gaming Commission orders, to seek injunctive relief in tribal court.

**Section 7. *Cooperation with Law Enforcement Agencies.***

To cooperate, confer with and assist, as appropriate, the Tribal and Bureau of Indian Affairs law enforcement agencies, Federal Bureau of Investigation, National Indian Gaming Commission, and other law enforcement agencies in enforcing federal and tribal gaming laws and prosecuting gaming law violations.

**Section 8. *Reports.***

To report to the General Council, the Business and Claims Committee, and the National Indian Gaming Regulatory Committee as necessary.

**Section 9. *Budget, Expenses and Accounting.***

To approve a proposed annual budget for submission to the Business and Claims Committee and after Business and Claims Committee approval of its budget, to pay expenses, salaries, stipends and miscellaneous costs as necessary in accordance with its budget; provided, that complete and accurate records shall be maintained of all Tribal Gaming Commission funds, expenses, salaries, stipends and miscellaneous costs.

**Section 10. *Personnel.***

To hire, supervise and discipline personnel necessary to assist the Tribal Gaming Commission in the fulfillment of its duties and responsibilities.

**Section 11. *Necessary and Proper.***

To exercise such other incidental powers as are necessary and proper to carry out the above powers, including the issuance of process and subpoenas, discovery requests, show cause orders, and citations for contempt of Tribal Gaming Commission orders or process.

## CHAPTER 8. MEETINGS OF THE TRIBAL GAMING COMMISSION.

The Tribal Gaming Commission shall meet in regular meetings to conduct the ordinary business of the Tribal Gaming Commission. The Tribal Gaming Commission shall meet in special meetings as necessary to resolve urgent matters or to conclude unfinished business from regular meetings.

### Section 1. *Regular Meetings.*

Regular meetings of the Tribal Gaming Commission shall be held once per month and said meetings shall convene on the first Monday of each month, unless the Tribal Gaming Commission sets a different date at its prior Regular meeting.

### Section 2. *Special Meetings.*

Special Meetings shall convene at the call of the Chairman or any three Tribal Gaming Commission members upon not less than 3 days written notice to all Tribal Gaming Commission members, specifying the time and place of, and subjects to be considered at, the meeting.

### Section 3. *Quorum; Voting; Meeting Procedure; and Records.*

A. Quorum. The *quorum* of the Tribal Gaming Commission shall be 3 members at any regular or special meeting.

B. Voting. Each member of the Tribal Gaming Commission shall be entitled to one vote. Tribal Gaming Commission regulatory and business matters shall be decided by a majority vote unless otherwise required by tribal law.

C. Procedure. The Tribal Gaming Commission may establish written procedures for the conduct of meetings. Unless and until such written procedures are adopted, the procedures for the conduct of meetings shall be governed by this Ordinance as supplemented by Roberts Rules of Order.

D. Verbatim Records of Proceedings. The Tribal Gaming Commission shall maintain verbatim records of all Tribal Gaming Commission meetings, hearings, and proceedings.

E. Records of Finances. The Tribal Gaming Commission shall maintain complete and accurate records of Commission finances in accordance with standard accounting principles and in consultation with an independent certified public accountant.

## CHAPTER 9. HEARINGS BEFORE THE TRIBAL GAMING COMMISSION.

The Tribal Gaming Commission shall schedule hearings whenever necessary to ensure compliance with gaming laws, the integrity of tribal gaming operations, or the accountability of gaming operations for funds.

### Section 1. *Notice.*

Except as provided below in section 2, the Tribal Gaming Commission shall provide 15 days written notice of hearings to the interested parties setting forth the nature of and reason for the hearing, any allegations against those parties, and the time and place for the hearing.

### Section 2. *Temporary Restraining Orders and Show Cause Orders.*

When the Tribal Gaming Commission has reason to believe that there has been a violation of tribal or federal gaming laws, or the integrity of a gaming operation or its accountability for funds is in jeopardy, the Tribal Gaming Commission may protect the Tribe and the gaming public by issuing temporary restraining orders as may be necessary to prevent irreparable harm or violation of the law and may issue show cause orders to require interested parties to appear on 24 hours notice for an emergency hearing. Service of a show cause order shall be by hand delivery to interested parties or their agents.

### Section 3. *Subpoenas.*

The Tribal Gaming Commission may issue subpoenas for witnesses, documents, and other tangible evidence as necessary to aid in enforcement of this Ordinance and regulations promulgated thereunder, the Class III Compact between the Tribe and the State, and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* An interested party may request in writing that the Tribal Gaming Commission issue subpoenas to compel the attendance of witnesses or production of other evidence favorable to that party.

### Section 4. *Procedure.*

Hearings shall be conducted before the full Tribal Gaming Commission, unless the Tribal Gaming Commission delegates to the Chairman the authority to hear particular cases or claims. Provided, however, that in any case where the Chairman is delegated to conduct the hearing, interested parties may appeal any adverse order by the Chairman to the full Tribal Gaming Commission.

A. Chairman Presides. Unless otherwise ordered by the Tribal Gaming Commission, the Chairman shall regulate the proceedings at

Tribal Gaming Commission hearings, swear witnesses, admit evidence and rule on evidentiary issues, including objections or preliminary motions by counsel for interested parties.

B. Order of Proceeding. An attorney or agent of the Tribal Gaming Commission shall begin by presenting information or evidence concerning the Commission's reason for holding the hearing. Then any interested parties shall have an opportunity to rebut and offer information or evidence in their own behalf. At the close of the evidence, the Tribal Gaming Commission shall take the matter under advisement and render its decision thereafter.

**Section 5. *Evidence.***

The Chairman of the Tribal Gaming Commission may admit probative information and evidence without regard to formal Rules of Evidence, provided, that all parties' rights to due process of law are protected. If witnesses are called to testify, testimony may be limited to relevant matters, and opposing parties shall be afforded an opportunity to cross-examine the witnesses.

**Section 6. *Commission Orders.***

Whenever official action is necessary after a hearing, the Tribal Gaming Commission shall issue written orders which may grant, deny, restrict, suspend, revoke, or terminate a license, enjoin an activity or order an activity to be undertaken, impose a fine, or grant such further relief as it finds necessary to fulfill its regulatory responsibility together with the reasons for the action taken.

**Section 7. *Appeal.***

Within 30 days after the issuance of an order of the Tribal Gaming Commission, an interested party may appeal an adverse order to tribal court. The tribal court shall uphold the order of the Tribal Gaming Commission, unless it finds that the Tribal Gaming Commission committed a clear error of law, abused its discretion, or there was no support for the Commission's factual findings.



## CHAPTER 10. CONFLICTS OF INTEREST.

All Tribal Gaming Commission members shall avoid conflicts of interest generally. No Tribal Gaming Commission member, attorney, or employee, or immediate family member thereof, shall have a financial interest (other than a generalized interest shared by all members of the Tribe as tribal members) in a gaming operation or a business which contracts with or provides services to a gaming operation.

**CHAPTER 11. LICENSES FOR KEY EMPLOYEES  
AND PRIMARY MANAGEMENT OFFICIALS.**

The Tribal Gaming Commission shall ensure that the policies and procedures set out in this section are implemented with respect to key employees, and primary management officials employed at any class II gaming or class III gaming enterprises operated on the Yankton Sioux Tribe's Indian lands:

**Section 1. *Definitions.***

For the purposes of this section, the following definitions apply:

**A. Key employee means**

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

- (a) Bingo caller;
- (b) Counting room supervisor;
- (c) Chief of security;
- (d) Custodian of gaming supplies or cash;
- (e) Floor manager;
- (f) Pit boss;
- (g) Dealer;
- (h) Croupier;
- (i) Approver of credit; or
- (j) Custodian of gambling devices including persons with access to cash and accounting records within such devices.

(2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year; or

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

**B. Primary management official means**

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

- (2) Any person who has authority:
  - (a) To hire and fire employees; or
  - (b) To set up working policy for the gaming operation;  
or
- (3) The chief financial officer or other person who has financial management responsibility.

**Section 2. *Application Forms.***

A. Class II and Class III Gaming Key Employee and Primary Management Official Licensees. 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:

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 the tribal gaming operation 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.

B. 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.

C. 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. You may also be punished by fine or imprisonment under applicable federal or tribal law. See 18 U.S.C. § 1001.

D. Existing key employees and primary management officials shall be notified in writing that they shall either:

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

### Section 3. *Background Investigations*

A. Information Required. The Tribal Gaming Commission shall require each primary management official and each key employee to furnish all of the following information:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) 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;
- (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 listed under paragraph 2 of this section;
- (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) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (7) 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;

- (8) 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;
- (9) For each misdemeanor conviction or an 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;
- (10) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph 1(h) or 1(i) of this subsection, the criminal charge, the name and the address of the court involved and the date and disposition;
- (11) 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;
- (12) A current photograph;
- (13) Any other information the Tribal Gaming Commission deems relevant;
- (14) Fingerprints; and
- (15) For Class III applicants, a written release authorizing the State of South Dakota to conduct a concurrent background investigation.

Upon receipt of the information required of each key employee and primary management official applicant, the Tribal Gaming Commission shall forward a certified copy of each applicant's information to the Tribal Police Department.

B. Investigation. The Tribal Police Department shall conduct a background investigation sufficient to make a determination under section 4 below, and to comply with the terms of the Class III Tribal-State Gaming Compact entered into by the Tribe and the State of South Dakota, where applicable.

In conducting such investigations, the Tribal Police shall perform the following functions:

Insert, after Chapter 11 § 3(A)(14)(a), page 23 of Ordinance.

Chapter 11 § 3(A)14(b)

Alternately, the Tribe's Gaming Commission may enter into a memorandum of understanding with a state law enforcement agency pursuant to which the state agency will conduct fingerprinting of prospective applicants for licenses and other persons required to be fingerprinted hereunder. Provided, that the state law enforcement agency selected by the YSTGC agrees to, and, in fact does, meet all requirements set forth in this ordinance and any applicable regulations of the National Indian Gaming Commission regarding fingerprinting.

- (1) Fingerprinting. In accord with standard law enforcement procedures, the Tribal Police shall fingerprint any and all applicants for key employee and primary management official positions after verifying the identity of each applicant by a review of at least two forms of picture identification issued by the federal, state or tribal government.
- (2) Verifying Applicant Information. The Tribal Police shall verify the required information provided by applicants by written or oral communication with former employers and business associates, neighbors, personal references, and as appropriate government regulatory agencies and courts.
- (3) Inquiring Into Past Activities and Character. The Tribal Police shall conduct inquiries regarding each applicant's criminal records, past business and personal activities, reputation, and character, through:
  - (a) the review of required information;
  - (b) standard law enforcement search of National Crime Information Center (NCIC) data;
  - (c) personal and telephonic interviews of prior employers for at least ten years, prior business associates, neighbors, personal references; and
  - (d) as appropriate, review of records held by government agency records and court records.
- (4) Documenting Potential Problem Areas and Disqualifying Information. The Tribal Police shall document potential problem areas and disqualifying information revealed by the background investigation.
- (5) Issuing Background Investigation Reports to Tribal Gaming Commission. In concluding every background investigation the Tribal Police shall issue an investigative report to the Tribal Gaming Commission, including the following:
  - (a) Steps taken in conducting the background investigation;
  - (b) A List of Results Obtained;
  - (c) Description of Conclusions Reached; and
  - (d) The Bases for Those Conclusions.

#### **Section 4. *Eligibility Determination.***

Based upon the applicant's submission of required information, a thorough review of the background investigation and investigative reports developed by Tribal Police, the Tribal Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding regarding the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribal Gaming Commission determines that employment of a 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, methods or activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

#### **Section 5. *Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission***

A. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribal Gaming Commission shall forward to the National Indian Gaming Commission a completed application for employment and:

1. the Tribal Police shall conduct the background investigation referred to in section 3 of this chapter; and
2. the Tribal Gaming Commission shall make the determination referred to in subsection D of this section.

B. The Tribal Gaming Commission shall forward the report referred to in section 6 of this chapter to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

C. No gaming operation shall employ as a key employee or primary management official a person who does not have a license after 90 days.

#### **Section 6. *Report to the National Indian Gaming Commission***

A. Pursuant to the procedure set out in section 5 of this chapter, the Tribal Gaming Commission shall prepare, or cause to be prepared under its oversight, an investigative report on each background investigation, and forward said investigative report to the National Indian Gaming Commission. Said investigative report shall include all of the following:



- (1) Steps taken in conducting a background investigation;
- (2) Results obtained;
- (3) Conclusions reached; and
- (4) The bases for those conclusions.

B. The Tribal Gaming Commission shall submit, with the report, a copy of the eligibility determination made under section 4 of this chapter.

C. If a license is not issued to an applicant, the Tribal Gaming Commission:

- (1) Shall notify the National Indian Gaming Commission; and
- (2) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

D. 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 National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

#### **Section 7. *Granting a Gaming License.***

A. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission 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 Tribal Gaming Commission has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission may issue a license to such applicant.

B. The Tribal Gaming Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under paragraph A of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

C. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribal Gaming Commission with a statement itemizing objections to the issuance of

a license to a key employee or primary management official for whom the Tribal Gaming Commission has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission shall reconsider the application, taking into account objections itemized by the National Indian Gaming Commission. The Tribal Gaming Commission shall make the final decision whether to issue a license to such applicant.

**Section 8. *License Suspension.***

A. If, after the issuance of a gaming license, the Tribal Gaming Commission receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under section 4 above, the Tribal Gaming Commission shall suspend such license and shall notify in writing the licensee of the suspension and proposed revocation.

B. If, after the issuance of a gaming license, the Tribal Gaming Commission receives from a another reliable source reliable information indicating that a key employee or a primary management official is not eligible for employment under section 4 above, the Tribal Gaming Commission may suspend such license and shall notify in writing the licensee of the suspension and proposed revocation.

C. The Tribal Gaming Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license and shall conduct the hearing accordingly.

D. After a revocation hearing, the Tribal Gaming Commission shall decide to revoke or to reinstate a gaming license. The Tribal Gaming Commission shall notify the National Indian Gaming Commission of its decision.

## CHAPTER 12. FACILITY AND OTHER LICENSES; ANNUAL FEES.

### Section 1. *Facility Licenses.*

The Tribal Gaming Commission shall issue a separate operating license to each place, facility, or location on tribal lands where class II or class III gaming is conducted under this ordinance. The fee for each facility license shall be \$5,000, unless the Tribal Gaming Commission by regulation establishes a different fee. This fee is in addition to the cost of any background investigation.

### Section 2. *Other Licenses.*

In addition to facility licenses, the Tribal Gaming Commission shall issue the following licenses:

- A. Slot Machine Operator. The fee for a license to operate slot machines is \$1,000 annually unless the Tribal Gaming Commission by regulation establishes a different fee. No person or entity that is not eligible for a key employee or primary management license shall be granted a license to operate slot machines. This fee is in addition to the cost of any background investigation.
- B. Video Lottery Operator. The fee for a license to operate video lottery machines is \$1,000 annually unless the Tribal Gaming Commission by regulation establishes a different fee. No person or entity that is not eligible for a key employee or primary management license shall be granted a license to operate video lottery machines. This fee is in addition to the cost of any background investigation.
- C. Class III Card Game Operator. The fee for a license to operate class III card games is \$1,000 annually unless the Tribal Gaming Commission by regulation establishes a different fee. No person or entity that is not eligible for a key employee or primary management license shall be granted a license to operate class III card games. This fee is in addition to the cost of any background investigation.
- D. Class II Gaming Operator. The fee for a license to operate class II gaming is \$1,000 annually unless the Tribal Gaming Commission by regulation establishes a different fee. No person or entity that is not eligible for a key employee or primary management license shall be granted a license to operate class III card games. This fee is in addition to the cost of any background investigation.

- D. Key Employee and Primary Management Official Licenses. The fee for a key employee or primary management official license is \$100 annually unless the Tribal Gaming Commission by regulation establishes a different fee. The procedure for granting Key Employee and Primary Management Official Licenses is set forth in Chapter 11 above. This fee is in addition to the cost of any background investigation.
- E. Employee Licenses. The fee for an employee license to work at a class II or class III gaming facility is \$25 annually unless the Tribal Gaming Commission by regulation establishes a different fee. This fee is in addition to the cost of any background investigation.

**Section 3. *Licenses Subject to Restriction, Revocation, or Termination.***

Every gaming license issued by the Tribal Gaming Commission remain subject to suspension, restriction, revocation, and/or termination for failure to meet the requirements of this Ordinance and any regulations promulgated hereunder, the Indian Gaming Regulatory Act and the regulations promulgated thereunder, or other good cause shown in accordance with the procedures set forth in this Ordinance.

**Section 4. *Class III Gaming Standard.***

No person or entity shall be granted a license to manage or work in any class III gaming facility, unless that person or entity meets or exceeds the qualifications and the requirements for obtaining a comparable gaming license from the State of South Dakota.

## CHAPTER 13. PROHIBITIONS AND PENALTIES

### Section 1. *Prohibition on Unauthorized Gaming.*

Any Class II and Class III Gaming not in accordance with this ordinance or any other tribal or federal gaming law is strictly prohibited.

### Section 2. *Prohibition on Gaming by Minors.*

Gaming by any person under the age of twenty-one is prohibited to participate in any gaming activity, except that persons eighteen years of age or older may play bingo and purchase raffle or lottery tickets.

### Section 3. *Prohibition on Gaming by Intoxicated Persons.*

It is prohibited for any person who is visibly intoxicated to participate in any gaming activity.

### Section 4. *Prohibition on Cheating.*

It is prohibited for any person to conduct or knowingly participate in any gaming or gaming related activity which results in cheating, misrepresentation, or other unfair practice which detracts from the opportunity of all players to have a fair and equal chance to win, or which otherwise removes the outcome of the game from the realm of chance.

### Section 5. *Mandatory Compliance with Federal and Tribal Revenue Laws.*

It is prohibited for any operator to fail to comply with all applicable federal and tribal revenue laws.

### Section 6. *No Credit Extended.*

Gaming shall be conducted on a cash basis only. Except as herein provided, no person shall be extended credit for gaming by any gaming facility operated within the territory of the Tribe, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not apply to credits won by players who activate play on gaming machines after inserting coins or currency into the game, and shall not restrict the right of the Tribe or any other person to offer check cashing or accept bank card or credit card transactions.

### Section 7. *Standards for Class III Gaming Devices.*

No class III gaming device shall be operated within the territory of the Tribe, unless it meets or exceeds requirements for hardware

and software established by state law.

**Section 8. *Penalties for Violations; Forfeiture of Property.***

In addition to any civil or criminal penalty, the Tribal Gaming Commission may impose a civil fine of up to \$5,000 per day for any violation of this Ordinance, regulations thereunder, or any order of the Commission. Property used in violation of this Ordinance, regulations promulgated thereunder, or any order of the Commission is subject to immediate seizure and forfeiture in accordance with tribal law.

## CHAPTER 14. DISPUTE RESOLUTION

Any dispute arising between the gaming public and the tribal gaming corporation or the Tribe may be resolved in the tribal courts of the Yankton Sioux Tribe in accordance with tribal law, except to the extent the Class III Gaming Compact entered into between the State and the Tribe require different procedures.

## CHAPTER 15. PRIOR GAMING LAWS REPEALED

Upon approval of this Ordinance by the Chairman of the National Indian Gaming Commission, all prior tribal gaming ordinances and regulations shall be and are immediately repealed.