



MAR 24 2008

Marcus Wells, Jr  
Chairman  
Three Affiliated Tribes  
404 Frontage Road  
New Town, ND 58763-9404

RE: Gaming Ordinance Amendment

Dear Mr. Wells:

This letter responds to your request on behalf of the Three Affiliated Tribes for the National Indian Gaming Commission (NIGC) to review and approve the Tribes' amendment to their gaming ordinance. The amendment to the gaming ordinance was adopted by the Three Affiliated Tribes Tribal Business Council Resolution 07-236 VJB. This proposed amendment eliminates the statutory requirement of a Gaming Commission Comptroller and restructures the Tribal Gaming Commission and staff.

This letter constitutes approval under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, of this amendment to the Tribe's gaming ordinance.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Jennifer Ward at (202) 418-9814.

Sincerely,

A handwritten signature in black ink, appearing to read "PHILIP N. HOGEN". The signature is fluid and cursive, with a large loop at the beginning.

Philip N. Hogen  
Chairman



JUN 15 2003

**RESOLUTION OF THE GOVERNING BODY  
OF THE  
THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

**A Resolution Entitled: *Amendment to Chapter 27- Gaming of the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation***

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

**WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 3 of the Constitution grants the Tribal Business Council all legislative authority necessary for the purpose of exercising the jurisdiction granted by Article I of the Constitution; and

**WHEREAS,** the Indian Gaming Regulatory Act, 25 USC §2701 authorizes Indian Tribes to engage in Class III Gaming provided it is conducted in accordance with a Gaming Compact between the tribe and State in which the Indian Tribe is located and provided the gaming the is authorized by an Ordinance adopted by the governing body of the tribe having jurisdiction over the lands where the gaming will be conducted which is approved by the Chairman of the National Indian Gaming Commission; and

**WHEREAS,** 25 CFR §522.3 provides that an Indian Tribe shall submit for the chairman's approval any amendment to a tribal gaming ordinance within 15 days of its adoption; and

**WHEREAS,** 25 CFR § 522.2 sets forth the NIGC's submission requirements for tribal gaming ordinances and amendments to such ordinances; and



**WHEREAS,** The Tribal Business Council believes that the proposed restructuring of the Gaming Commission will enable the Commission to act as a fully autonomous regulatory agency with less potential conflicts of interests because the Commission staff will be conducting investigations of matters that will be considered by the Commission rather than then Commissions performing investigations and other day to day functions; and

**WHEREAS,** The Tribal Business Council intends to amend Title 27 to meet its objectives and to establish that the Gaming Commission staff will be hired by the Tribal Business Council under a plan developed by the Tribal Business Council pursuant to a Resolution but such staff will be under the immediate and direct supervision of the Gaming Commission;

**NOW THEREFORE BE IT RESOLVED,** that Chapter 27- Gaming of the Code of Laws of the Three Affiliated Tribes is hereby amended as follows:

1. Section 2.5 is amended by striking the language *a Comptroller* and the language *The Comptroller shall be bonded and shall be responsible for all money collected by the Commission.*
2. Section 4.1.21 is amended by deleting it in its entirety.
3. By adding a new Section 2.6 as follows:

*2.6 Gaming Commissioners may be compensated for services at an amount determined by the Tribal Business Council of the Three Affiliated Tribes.*

4. By adding a new Section 2.7 as follows:

*2.7 The Gaming Commission shall be staffed by personnel who shall assist the Commission with its regulatory functions, according to a budget and staffing plan developed by the Commission and approved by the Tribal Business Council. Gaming Commission personnel shall be recruited and selected by the Tribal Business Council but be under the immediate and direct supervision of the Commission.*



- WHEREAS,** pursuant to the authority set out in the Constitution and the Indian Gaming Regulatory Act, the Tribal Business Council adopted Resolution No. 94-084 JJR which enacted Chapter 27- Gaming of the Code of Laws of the Three Affiliated Tribes on October 14, 1994 which authorizes Class III gaming on the Fort Berthold Indian Reservation; and
- WHEREAS,** The Tribal Business Council also adopted Resolutions 94-38 and 00-171 DSB amending Chapter 27 of the Code of Laws of the Three Affiliated Tribes; and
- WHEREAS,** Title 27- Gaming was approved by the Chairman of the National Indian Gaming Commission on October 19<sup>th</sup>, 2000; and
- WHEREAS,** Section 2 of Chapter 27 establishes the Three Affiliated Tribes Tribal Gaming Commission which is a seven member Commission appointed by the Tribal Business Council; and
- WHEREAS,** Section 2.5 of Chapter 27 provides that the Gaming Commission shall elect from among its members a chairman, a comptroller and such other officers as the commission shall deem appropriate; and
- WHEREAS,** Section 4 of Title 27 sets for the powers of the Tribal Gaming Commission and Section 4.1.21 provides that the Commission has the power to employ such staff as necessary to administer and enforce the ordinance; and
- WHEREAS,** The Tribal Gaming Commission members currently serve in the capacity as full-time staff members to the Commission; and
- WHEREAS,** The Tribal Business Council has determined that it is necessary to restructure the operation of the Gaming Commission so that it may operate as a regular functioning Commission and meet its overall responsibility of regulating gaming on the Fort Berthold Reservation and whereby Gaming Commissioners shall not be full-time employees but instead the Commission will supervise a staff of between 5 and 8 employees who will be hired by the Tribal Business Council, be compensated pursuant to the Commissions annual budget and be under the direct supervision of the Gaming Commission; and



**BE IT FURTHER RESOLVED**, That these amendments to Chapter 27 shall be submitted to the National Indian Gaming Commission for approval by the NIGC Chairman in accordance with 25 CFR § 522.2 within 15 day of the date of adoption of this Resolution.

**BE IT FINALLY RESOLVED**, that the amendments to Chapter 5-18, Part 7 herein enacted shall become effective upon adoption and certification of this Resolution by the Tribal Business Council and approval of the Chairman of the National Indian Gaming Commission.

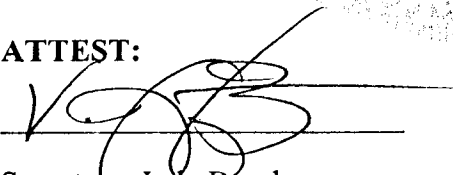
**CERTIFICATION**

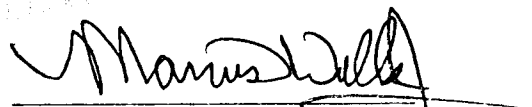
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 20<sup>th</sup> day of December 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] voting. [ ] not voting.

Dated this 20<sup>th</sup> day December 2007.

**ATTEST:**

  
Secretary, Judy Brugh  
Tribal Business Council

  
Chairman, Marcus Wells, Jr.  
Tribal Business Council

**GAMING**  
**CHAPTER 27**  
**CODE OF LAWS**  
**OF THE THREE AFFILIATED TRIBES**  
**OF THE FORT BERTHOLD RESERVATION**

As amended by Resolution of the Tribal Business Council  
Mandan, Hidatsa & Arikara Tribes

October 14, 1994

Resolution No. 94-084-JJR

AND

December 13, 1994

Resolution No. 94-38-MW

AND

October 19<sup>th</sup>, 2000

Resolution No. 00-171-DSB

AND

December 20<sup>th</sup> 2007

Resolution No. 07-236-VJB

Ordinance Approved, as amended, by  
the National Indian Gaming Commission Chairman

October 19, 2000

# GAMING

## CHAPTER 27

### CODE OF LAWS OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

An Ordinance to authorize, license and regulate gaming on lands of the Three Affiliated Tribes.

#### SECTION 1. DECLARATION OF POLICY AND DEFINITIONS

1.1 It is the declared policy of the Three Affiliated Tribes:

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- 1.1.1 That gaming conducted on Indian lands of the Three Affiliated Tribes shall be regulated by the Council for the protection of the public health, welfare and morals of all residents, employees and persons who visit the reservation for gaming purposes from the adverse affects which may from unregulated gaming;
  - 1.1.2 That is the objective of the Tribe (i) to achieve the maximum potential for Tribal revenue from gaming and (ii) to sustain the highest achievable levels of tribal revenue from gaming ; and
  - 1.1.3 That the conduct of gaming activities provided for by this Ordinance within lands of the Three Affiliated Tribes and regulation thereof shall be in conformance with the Indian Gaming Regulatory Act, 102 Stat. 2467, 25 U.S.C. § 2701 et seq. (IGRA)

1.2 As used in this Ordinance, unless the context requires otherwise:

- 1.2.1 Adjusted gross revenues mean gross revenues less cash prizes or the cost of merchandise prizes;
- 1.2.2 Cheating means operating or playing in a game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for himself/herself or someone in privity with him/her an advantage over and above the chance of the game;

- 1.2.3 Class 1 gaming means that gaming defined in 25 U.S.C. § 2703 (6), and by the regulations promulgated by the National Indian Gaming Commission (NIGC) at 25 CFR § 502.2.
- 1.2.4 Class II gaming means that gaming defined in 25 U.S.C. § 2703(7), and by the regulations promulgated by the NIGC at 25 C.F.R. § 502.3;
- 1.2.5 Class III gaming means that gaming defined in 25 U.S.C. § 2703 (8), and by the regulations promulgated by the NIGC at 25 C.F.R. § 502.4;
- 1.2.6. Commission means the Tribal Gaming Commission as established pursuant to section 2 of this Ordinance.
- 1.2.7. Council means the Tribal Business Council as described in the Tribal Constitution;
- 1.2.8. Gaming means risking any money or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gaming apparatus, or the happening or outcome of an event over which the person taking the risk has no control;
- 1.2.9. Gaming establishment means any location or structure, wherein gaming is licensed, promoted, performed, conducted, or operated;
- 1.2.9.10. Gross revenues means all moneys collected or received from a gaming operation and admissions thereto;
- 1.2.11. In privity with means one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a co-conspirator with the other;
- 1.2.12. Key employee means:
  - 1.2.12.1 A person who performs one or more of the following functions:
    - (i) Bingo caller;
    - (ii) Counting room supervisor;
    - (iii) Chief of security;



- (iv) Custodian of gaming supplies or cash;
- (v) Floor manager;
- (vi) Pit boss;
- (vii) Dealer;
- (viii) Croupier;
- (ix) Approver of credit;
- (x) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

If not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year.

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

Any other person for whom the Commission deems a license is necessary

- 1.2.13 Net revenues means gross gaming revenues of any gaming operation less:
  - 1.2.13.1 Amounts paid out as, or paid for, prizes; and
  - 1.2.13.2 Total gaming-related operating expenses, excluding management fees.
- 1.2.14 Persons means any individual, firm, partnership, corporation, corporation, company or association;
- 1.2.15 Player means a person participating in a game with the hope of winning money or other benefit but does not include a licensee, or any assistant of a licensee;
- 1.2.16 Primary management official means:
  - 1.2.16.1 The person having management responsibility for a management contract;

- 1.2.16.2 Any person who has authority:
  - (i) To hire and fire employees; or
  - (ii) To set up working policy for the gaming operation;
- 1.2.16.3 The chief financial officer or other person who has financial management responsibility;
- 1.2.16.4 Any other person for whom the Commission deems a license is necessary.

- 1.2.17 Reservation means the Fort Berthold Reservation specifically including all lands, whether title thereto is held in trust or in fee, situated within the exterior boundaries thereof, as such boundaries were established by the Act of March 3, 1891, 26 Stat.1032, and such other Indian lands as provided in 25 U.S.C. § 2703(4);
- 1.2.18 Tribe means the Three Affiliated Tribes

**SECTION 2. TRIBAL GAMING COMMISSION**

- 2.1 There is hereby established a gaming Commission which shall be called the Three Affiliated Tribes' Tribal Gaming Commission. The Commission shall have seven (7) members all of whom shall be appointed by the Tribal Business Council. The Commission shall be filled by selecting from the adult enrolled members of the Three Affiliated Tribes resident on the Reservation. The members and alternate member of the Commission shall serve terms of four (4) years. Successor Commission members shall be designated not sooner than sixty (60) days nor later than thirty (30) days before the terms of the members expire. A Commission member may be removed during his or her term for cause upon a two-thirds vote of the members voting of the Council. Vacancies which occur by death, disability, resignation or removal shall be filled by the Council within thirty (30) days after the vacancy occurs, and such replacement shall serve the remainder of the terms of the former member.
  - 2.1.1 The Commission shall be funded in accordance with a budget prepared by the Commission and as approved by the Council.
- 2.2 No member or alternate member of the Commission shall engage in any business which is subject to regulation by the provisions of this Ordinance.

- 2.3 The Commission shall act by majority vote of a quorum present and each member of the Commission shall be entitled to one vote except that the alternate member shall only be entitled to vote in place of an absent member. A quorum shall consist of five (5) members.
- 2.4 The Tribal Business Council shall appoint the members of the Commission as soon as possible after the effective date of the Ordinance. Such members and alternate members shall assume their offices immediately upon appointment, and shall serve until their successors are appointed.
- 2.5 The Commission shall elect from among its members a Chairman, and such other officers as the Commission may deem appropriate.
- 2.6 Gaming Commissioners may be compensated for services at an amount determined by the Tribal Business Council of the Three Affiliated Tribes.
- 2.7 The Gaming Commission may be staffed by personnel who shall assist the Commission with its regulatory functions, according to a budget and staffing plan developed by the Commission and approved by the Tribal Business Council. Gaming Commission personnel shall be recruited and selected by the Tribal Business Council but be under the immediate and direct supervision of the Commission.

### **SECTION 3. GAMING AUTHORIZED**

- 3.1 The Tribe shall have sole proprietary interest in all gaming authorized by this section, except as otherwise provided pursuant to the Indian Gaming Regulatory Act.
- 3.2 The following Class I games may be licensed for conduct on the reservation: Social games played solely for prizes of minimal value; traditional forms of Indian gaming engaged in as a part of tribal ceremonies, celebrations or pow wows, including but not limited to rodeos or horse races and "stick" or "bone" games; and as further defined in 25 C.F.R. § 502.2.
- 3.3 Class II games as follows may be licensed for conduct on the Reservation: bingo (whether or not electronic, computer, or other technologic-aids are used in connection therewith) including, if played in the same location, pull-tabs, lotto, punchboards, tip jars, instant bingo, and other games similar to bingo and as may be further defined in 25 C.F.R. § 502.3.
- 3.4 Class III games as follows may be licensed for conduct on the Reservation: gaming to the full extent authorized by and in accordance

with the procedures of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., and as further defined in 25 CFR § 502.4.

**SECTION 4. TRIBAL GAMING COMMISSION AUTHORITY**

- 4.1 The Tribal Gaming Commission shall have the authority and responsibility to:
  - 4.1.1 receive applications to license and conduct Class I gaming activities on the Reservation.
  - 4.1.2 receive applications to license and conduct Class II gaming activities on the Reservation.
  - 4.1.3 receive applications to license and conduct Class III gaming activities on the Reservation upon such terms and conditions which may be provided for in any compact entered into between the Three Affiliated Tribes and the State of North Dakota.
  - 4.1.4 enforce and administer the provisions of this Ordinance, the IGRA, and the Tribal/State Compacts;
  - 4.1.5 upon application issue and renew gaming licenses and permits as provided in this Ordinance and in regulations promulgated by the Commission:
  - 4.1.6 grant, revoke, suspend, or condition a license or deny an application for a license for a violation of this Ordinance or federal laws and regulations governing the conduct of gaming;
  - 4.1.7 promulgate regulations governing the procedures of the Commission implementing this Ordinance;
  - 4.1.8 collect fees and interest as provided in this Ordinance and the IGRA;
  - 4.1.9 levy and collect penalties as provided in this Ordinance;
  - 4.1.10 increase the respective amounts of the annual license and permit fees, provided that such fees shall not be increased retroactively;
  - 4.1.11 audit expenditures, receipts, and reports;

- 4.1.12 review, on demand, such books and records and inspect the premises and operations of applicants and licensees as it deems necessary for the enforcement of this Ordinance;
- 4.1.13 issue such forms as it deems necessary;
- 4.1.14 institute such legal proceedings in a court of competent jurisdiction as it deems necessary for the enforcement of this Ordinance. Such action taken, however, shall not be deemed an express or implied waiver of sovereign immunity of the Commission or the Tribe;
- 4.1.15 conduct hearings on matters involving the application for any license required by this Ordinance and as may otherwise be required in this Ordinance.
- 4.1.16 deposit all fees, penalties, interest and civil fines collected under authority of this Ordinance into an account designated by the Council;
- 4.1.17 maintain a correct and full accounting of all fees, penalties, interest, and civil fines received under authority of this Ordinance, and provide a monthly record of that accounting to the Council upon its request;
- 4.1.18 take all actions and issue orders necessary to perform properly and fully its duties and responsibilities under this Ordinance with all protection otherwise afforded to members of the Tribal Business Council and its employees including but not limited to sovereign immunity from any legal action taken against the Commissioners, its staff, contractors and employees.
- 4.1.19 resolve disputes and complaints of the gaming public;
- 4.1.20 prepare a budget sufficient to carry out the duties of the Commission under this Ordinance; and

## **SECTION 5. GAMING LICENSE REQUIRED**

- 5.1 A tribal gaming license shall be required for each person having a management contract, each primary management official and key employee and such other employees as designated by the Commission in its rules.

- 5.2 Each gaming establishment shall be separately licensed by the gaming Commission. No gaming shall be conducted at any place, location or facility without a duly issued license.

## **SECTION 6. APPLICATION FOR LICENSES**

- 6.1 Application for an initial license or renewal of an existing gaming license shall be made for each gaming establishment in the form prescribed by the Commission and shall set forth the name under which the applicant transacts or intends to transact business on the Reservation, and the location of the gaming establishment for which the initial issuance or renewal of a gaming license is sought. The application shall be signed by the applicant if a natural person; or, in the case of an association or partnership, by a member or partner thereof, or in the case of a corporation, by an executive officer thereof; or, by some other person specifically authorized by the corporation to sign the application, in which case written evidence of the signatory authority shall be attached. In addition, the applicant shall provide evidence of authority of the signatory or any other representative to act for and bind the applicant. If any change is made in that authority the Commission shall immediately be informed in writing and until that information is filed with the Commission any action or the representative shall be presumed to be that of the applicant.
- 6.2 Prior to issuing a license to a key employee or management official, the Commission shall conduct a background investigation which at a minimum shall be consistent with 25 C.F.R. Part 556 pursuant to 25 C.F.R. § 522.4(b) (5), as amended and insure that such employee or official has properly completed the "Personal History Statement for Key Employees and Primary Management Officials" attached hereto as Appendix 1. Unless they have previously completed the Appendix I. form or another form which contains the information required by 25C.F.R. § 556.4 (including the notices specified herein), the Commission shall notify existing key employees or management officials that they must sign both a statement containing a notice regarding false statements (18 U.S.C. § 1001) and a statement containing a Privacy Act notice and consent to routine uses.
- 6.3 Each applicant shall be accompanied by payment of the appropriate annual license fee and evidence of compliance with applicable ordinances of the Tribe, including the Tribal Employment Rights Ordinance (TERO).
- 6.4 The Commission shall conduct an investigation sufficient to make a determination under Section 6.2 herein, and Section 7.1 below. In conducting a background investigation, the Commissioner or its agent shall promise to keep confidential the identity of each person interviewed

in the course of the investigation. Fingerprints taken by the Commission or on behalf of the Commission by the North Dakota Bureau of Criminal Investigation shall be submitted through the National Indian Gaming Commission or the State of North Dakota to the Federal Bureau of Investigation for the fingerprint check. In addition, for Class III gaming, the Commission shall conduct an investigation as required by the Tribal/State Compact. The Commission may by regulation establish a schedule of fees applicable to background investigations.

## **SECTION 7. ISSUANCE OF LICENSES**

- 7.1 Upon receipt of a complete application, the Commission shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment and licensing in a gaming operation. If the Commission determines that employment or licensing of the applicant 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, the applicant shall not be employed or licensed.
- 7.2 The Commission may issue or renew a gaming license to an applicant who submits a proper and completed application and pays the appropriate annual fee, provided that no license shall be issued to or renewed for an applicant:
- 7.2.1 who is not a person of good character, honesty, and integrity;
  - 7.2.2 whose prior activities, criminal record, reputation, habits, and association pose a threat to the public interest of the Reservation or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods, and activities in the conduct of gaming, or the carrying on of the business and financial arrangements incidental to the conduct of gaming;
  - 7.2.3 who has had, or who is in privity with anyone who has had, a gaming license revoked for cause in any jurisdiction;
  - 7.2.4 who is delinquent in the payment of any obligation owed to the Tribe pursuant to this Ordinance or a management contract;
  - 7.2.5 who has failed to comply with this Ordinance or any resolution adopted by the Council;

- 7.2.6 who occupies a competing position within a five hundred mile radius of the tribal gaming enterprise.
- 7.3 Each license shall be valid for one-year following issuance.
- 7.4 A license may not be assigned or transferred and is valid only for use by the person in whose name it is issued and at the gaming establishment for which it is issued. A license issued to a gaming organization or individual licensee shall be conspicuously displayed at all times.
- 7.5 Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission:
- 7.5.1 When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Commission shall forward to the National Indian Gaming Commission a complete application for employment and conduct the background investigation and make the determination referred to in Section 7.1;
- 7.5.2 The Commission shall forward the report referred to in Section 7.5 to the National Indian Gaming Commission within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission;
- 7.5.3 No gaming establishment shall employ as a key employee or primary management official a person who does not have a tribal license after ninety (90) days;
- 7.5.4 With respect to key employees and primary management officials, the Commission 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.
- 7.6 Report to the National Indian Gaming Commission:
- 7.6.1 Pursuant to the procedures set out in Section 7, the Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each



background investigation. An investigative report shall include all of the following:

- 7.6.1.1 Steps taken in conducting a background investigation.
  - 7.6.1.2 Results obtained;
  - 7.6.1.3 Conclusions reached; and
  - 7.6.1.4 The basis for those conclusions.
- 7.6.2 The Commission shall submit, with the report, a copy of the eligibility determination made under Section 7.1.;
- 7.6.3 If a license is not issued to an applicant, the Commission:
- 7.6.3.1 Shall notify the National Indian Gaming Commission; and
  - 7.6.3.2 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 Record System.
- 7.6.4 With respect to key employees and primary management officials, the Commission 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.
- 7.7 The National Indian Gaming Commission shall be promptly notified of the issuance of licenses for primary management officials and key employees of a gaming enterprise
- 7.8 Granting a gaming license:
- 7.8.1 If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Commission 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 Commission has provided

an application and investigative report to the National Indian Gaming Commission, the Commission may issue a license to such applicant.

- 7.8.2 The Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under Section 7.8.1 until the Chairman of the National Indian Gaming Commission receives the additional information.
  - 7.8.3 If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Commission with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Commission has provided an application and investigative report to the National Indian Gaming Commission, the Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Commission shall make the final decision whether to issue a license to such applicant.
- 7.9 License Suspension:
- 7.9.1 If, after the issuance of a gaming license, the 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 7.1 above, the Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation;
  - 7.9.2 The Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license;
  - 7.9.3 After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify the National Indian Gaming Commission of its decision.
- 7.10 Until authorized by a tribal-state compact, no license shall be issued for any Class III gaming establishment, primary management official, key employee or any other employee or person as may be required by the Commission from time to time.

7.11 Conditions of the Tribal License. Any tribal license issued under this Ordinance shall be the subject to such reasonable conditions as the Commission may establish, including, but not limited to the following:

- 7.11.1 The license shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.
- 7.11.2 The licensed premises shall be opened to inspection by duly authorized tribal officials and officials of the National Indian Gaming Commission and officials of the Commission at all times upon demand;
- 7.11.3 There shall be no discrimination in the operations under the tribal license by reason of race, color or creed, provided, however, that the licensee shall give a preference in employment to qualified Indians. In observing Indian preference, the licensee shall grant preference to qualified members of the Three Affiliated Tribes.
- 7.11.4 No person who is under the age of 18 shall participate nor shall be allowed to participate in any manner in the operation of any game. No person who is under the age of 18 shall play in any game of chance. No person under the age of 18 shall be allowed to premises where games are being conducted. It shall be the responsibility of the licensee to assure that no unauthorized person is allowed to play in or participate in any manner in the operation of any game.
- 7.11.5 A licensee shall continuously provide information that impacts, or may reasonably be expected to impact their status as licensee. No person involved in the operation of any activity authorized by this Ordinance shall, directly or indirectly, in the course of such operation employ any devise, scheme, or artifice to defraud; make any untrue statement of fact, or omit to state a fact necessary in order to make a statement not misleading in consideration of the circumstances under which such statement was made; engage in any act, practice, or course of operation as would operate as fraud or deceit under any person;
- 7.11.6 The Commission may issue such regulations, at such time, and in such a manner as it shall choose to govern the conduct of gaming as defined under this Ordinance and to insure its operation for lawful purposes.

## **SECTION 8. GAMING LICENSE FEES**

- 8.1 The Commission may establish the amount of the annual fee, provided that any increase shall take effect only on the ensuing January 1.
- 8.2 The annual license fee shall be paid in advance of the initial issuance or renewal of a license.
- 8.3 The annual license fee shall be prorated in the case of each initially issued license.

## **SECTION 9. RECORDS AND REPORTS**

- 9.1 Each licensee responsible for the gaming organization shall keep and maintain sufficient books and records substantiate the receipts, expenses, and uses of revenues relating to the conduct of gaming activities authorized under a license. The records shall include but is not limited to session summary sheets, operational budgets and projections and tour/bus attendance and compensation. No later than the first and fifteenth day of each month, each gaming organization shall provide, in a report form prescribed by the Commission, a statement of gross revenues and adjusted gross revenues received or collected at each gaming organization during immediately preceding period.
- 9.3 No license shall falsify any books or records relating to any transaction connected with the conduct of gaming activities authorized under a license.
- 9.4 All books and records of a gaming organization relating to licensed gaming activities shall be subject to review by the Commission or a person designated by the Commission at any time during reasonable hours; provided, that the Commission shall cause, at least annually, to be conducted an independent audit of gaming operations and of all contracts in excess of \$25,000.00 for supplies, services or concessions, except contracts for professional legal or accounting services.
- 9.5 A copy of all insurance policies covering a gaming organization or any part thereof shall be filed with the Commission.
- 9.6 The Commission shall submit the results of an audit performed pursuant to Section 9.4 to the National Indian Gaming Commission.

## **SECTION 10. REVENUES**

- 10.1 The gross revenues derived from operations of a tribally-owned and licensed gaming enterprises are tribal funds and may be expended by a manager only upon authority delegated by the Tribal Council.
- 10.2 All monies collected or received at a gaming establishment from the conduct of gaming activities and admissions thereto, except any winnings or cash prize of one hundred dollars (\$100.00) or less paid immediately, shall be deposited by the licensee daily in a separate bank account designated by the Tribal Treasurer, which account will contain only such monies. Cash prizes of more than one hundred dollars (\$100.00), the purchase prices of merchandise prizes and all expenses for such gaming activities shall be withdrawn from such account by consecutively numbered checks duly signed by a specified officer of officers of a licensee and payable to a specific person or organization. There shall also be written on the check the nature of the expense or prize for which the check is drawn. No check shall be drawn to cash or a fictitious payee.

## **SECTION 11. VIOLATIONS**

- 11.1 No person shall operate or conduct any gaming activity in a gaming establishment on the Reservation without a gaming license issued by the Commission, as required by this Ordinance, or in violation of this Ordinance, IGRA, or Tribal/State Compact
- 11.2 No licensee or license applicant shall provide false information in connection with any document or proceeding under this Ordinance.
- 11.3 No licensee shall fail to account fully for all monies received or collected in connection with gaming activities.
- 11.4 No person under the age of eighteen (18) shall be permitted to participate in any gaming activities.
- 11.5 No person shall engage in cheating (as that term is defined in Section 1.2.2 of this Ordinance) in any gaming activity.
- 11.6 No person, other than a law enforcement officer, may enter or remain in a gaming establishment licensed under this Ordinance while in the possession of a firearm or other weapon.
- 11.7 No person shall intentionally violate any of the regulatory provisions of the other sections of this Ordinance, nor any rule, regulation or order of the Commission.
- 11.8 Any person who is in privity with a violator shall be deemed to be in violation of this Ordinance to the same extent as the violator.

- 11.9 The licensee who employs persons in a gaming establishment is responsible to ensure that all primary management officials and key employees assisting in operating any gaming activity on the licensee's behalf comply with the Ordinance. A violation by any such official or any employees shall be deemed a violation by the licensee, subjecting such licensee to civil enforcement action, and it shall not be a defense that a licensee was unaware of the violation.
- 11.10 No person, playing in or conducting any gaming activity authorized under this Ordinance, shall:
- 11.10.1 use bogus or counterfeit cards, or substitutes or use any game cards that have been tampered with;
  - 11.10.2 employ or have on one's person any cheating device to facilitate cheating in any gaming activity.
  - 11.10.3 use any fraudulent scheme or technique, including when an operator or player of games of charitable gaming tickets directly or indirectly solicits, provides, or receives inside information of the status of a game for the benefit of either person:
  - 11.10.4 cause, aid, abet, or conspire with another person or cause any person to violate any provision of this Ordinance or any rule adopted under this Ordinance.

## **SECTION 12. CIVIL ENFORCEMENT**

- 12.1 The Commission may take any one or a combination of the following actions with respect to any person who violates any provision of this Ordinance:
- 12.1.1 Impose a civil penalty not to exceed five hundred dollars (\$500.00) for each violation, and if such violation is a continuing one, for each day of such violation, a penalty of one hundred dollars (\$100.00) per day for failure to file any report when due and one thousand dollars (\$1,000.00) per day for failure to file such report after notice and demand;
  - 12.1.2 Suspend, revoke or condition any gaming license or deny an application for the issuance or renewal of a license issued by the Commission;

- 12.1.3 Following a final decision of the Commission with respect to the suspension, revocation, or conditioning of a license, the Commission may bring an action in the Tribal Court for imposition of one or more of the following sanctions.
  - 12.1.3.1 Seizure of any gaming apparatus, proceeds, or other property of a licensee or connected with the gaming activities engaged in by the licensee;
  - 12.1.3.2 in case of any nonmember of the tribes, expulsion from Indian lands;
  - 12.1.3.3 collection of any unpaid fees, interest, and penalties unpaid after thirty (30) days;
  - 12.1.3.4 execution on any nonexempt property on a violator located within the exterior boundaries of the Indian lands; and
  - 12.1.3.5 such other relief as necessary to enforce its decision.
- 12.2 Any court of competent jurisdiction shall have jurisdiction over any civil action brought by the Commission under this Ordinance and any court of competent jurisdiction shall have authority to impose any and all sanctions provided for herein.
- 12.3 Before taking any action authorized in Section 12.1, the Commission shall use its best efforts to notify the alleged violator, in person or by letter delivered, to his/her last known address, of the charges against him/her and allow the alleged violator an opportunity for a prompt hearing. If the alleged violator fails to respond, or cannot be found, the Commission may proceed with a hearing notwithstanding, and take such action as it deems appropriate.
- 12.4 Every person who applies for a gaming license and accepts such license thereby acknowledges the civil enforcement jurisdiction and authority of the Commission and a court of competent jurisdiction under this Ordinance to order an execution on his/her nonexempt property, the suspension or termination of his/her further conduct of gaming activities and the seizure of his/her gaming equipment or proceeds or other property, upon a proper finding of the Commission or the court that the person has violated a provision of this Ordinance, despite lack of actual notice, provided that the Commission has used its best efforts to notify the accused personally or by letter delivered to his/her last known address.

- 12.5 Any licensee paying a penalty for late filing or failing to file a report for which there is an acceptable excuse may petition the Commission for a credit. The petition shall be filed within thirty (30) days after the petitioner knew or should have known that the payment was excusable, but not more than six (6) months after payment in any case.
- 12.6 Any person aggrieved by a decision made or action taken by the Commission without notice and opportunity for hearing, may petition the Commission for a hearing and reconsideration. The petition shall be filed within (30) days after the petitioner knew or should have known of the decision or action. The Commission shall grant a prompt hearing upon receiving such a petition, and shall reconsider its decision or action in light of what is presented at a hearing.
- 12.7 Any person aggrieved by a decision made or action taken by the Commission after notice and opportunity for hearing may petition any court of competent jurisdiction for review. Such petition shall specifically set forth the reasons for aggrievement, and be filed with the court no later than sixty (60) days after the Commission decision or action. The court shall set the matter for hearing no later than thirty (30) days after receipt of the petition, and may, upon establishing that it has jurisdiction, affirm, modify or set aside the Commission's order. The reviewing court shall modify or set aside Commission action, findings, and conclusions found to be arbitrary or capricious, not in accordance with law, or without observance of procedure required by law.

**SECTION 13. USE OF GAMING REVENUES**

- 13.1 Net revenues from gaming conducted under this Ordinance shall not be used for purposes other than:
  - 13.1.1 to fund tribal government operations or programs;
  - 13.1.2 to provide for the general welfare of The Three Affiliated Tribes and its members.;
  - 13.1.3 to promote tribal economic development;
  - 13.1.4 to donate to charitable organizations;
  - 13.1.5 to help fund operations of local government agencies.

**SECTION 14. PROTECTION OF ENVIRONMENTAL AND PUBLIC HEALTH AND SAFETY**



- 14.1 Gaming establishments on the Reservation shall be constructed, maintained and operated so as to protect the natural environment and the public health and safety.

#### **SECTION 15. CLASS III GAMING COMPACT**

- 15.1 Operation of any Class III games within the Reservation by the Tribe or other entity or individual shall not be permitted unless the games are authorized by a Tribe/State Compact approved by the Secretary. Any such compact shall conform to the requirements set forth in Public Law 100-497, 25 U.S.C. § 2701, et seq. for such compacts, and shall also conform to the terms of this Ordinance, unless any provision of this Ordinance is specifically modified by the Compact.
- 15.2 This Ordinance hereby incorporates the provisions of the Gaming Compact between the Three Affiliated Tribes and the State of North Dakota for the operation of Class III gaming on the Fort Berthold Reservation dated October 7, 1992.
- 15.3 This Ordinance hereby incorporates the provisions of the Pari-Mutual Racing Addendum to the Gaming Compact between the Three Affiliated Tribes and the State of North Dakota, which said Addendum is dated April 14, 1993, and provides for the operation of pari-mutal racing within the Fort Berthold Reservation.

#### **SECTION 16. APPLICABLE LAW**

- 16.1 All controversies involving contracts related to gaming entered under the authority of the Three Affiliated Tribes on its Indian lands shall be resolved, as appropriate, in accordance with (i) Indian Gaming Regulatory Act, (ii) the law of the Tribe and (iii) if no tribal law exists, the Commission or a court may, as its discretion, adopt state laws as tribal law,

#### **SECTION 17. SAVINGS PROVISIONS**

- 17.1 If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not effect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are severable.

#### **SECTION 18. EFFECTIVE DATE**

- 18.1 This Ordinance shall be effective immediately.

#### **SECTION 19. DISPUTE RESOLUTION**

- 19.1 Disputes involving members of the public and a gaming enterprise operated by the Tribe shall be submitted first in writing to the Manager of the gaming enterprise, who shall render a decision on the dispute in writing, stating reasons thereof. If thereafter the member of the public is unsatisfied, a written statement of the dispute and reasons for dissatisfaction may be submitted to the gaming Commission, which may in its discretion request additional information from the disputant and/or the Manager, and which shall render its decision on the dispute in writing.