



March 11, 2008

Via U.S. Mail and Facsimile

Bobby Barrett, Chairman
Viejas Band of Kumeyaay Indians
#1 Viejas Grade Road
Alpine, CA 91903
Fax: (619) 445-5337

Jerry McCawley, Interim Gaming Commissioner
5000 Willows Road
Alpine, CA 91903
Fax: (619) 659-1968

RE: Amendment to Viejas Band of Kumeyaay Indians Gaming Ordinance

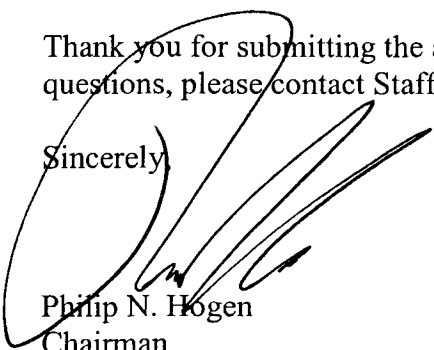
Dear Chairman Barrett and Mr. McCawley:

On February 27, 2008, Mr. McCawley on behalf of the Viejas Band of Kumeyaay Indians (Band) requested that the Office of General Counsel for the National Indian Gaming Commission (NIGC) review and approve the Band's amendment to the Viejas Band of Kumeyaay Indians Gaming Ordinance (gaming ordinance). The Band amended the gaming ordinance on February 5, 2008, via Resolution No. 020508A. In this amendment, the Band clarified its compliance with NIGC Minimum Internal Control Standards (MICS) for Class II and III gaming and added an independent review board to promulgate regulations.

This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,



Philip N. Hogen
Chairman

Viejas Tribal Gaming Ordinance Amendments

FEB 27 2012

1. The word “Code” has been replaced by the word “Ordinance” wherever the former referred to the Viejas Tribal Gaming Ordinance.

2. Section 1.31 “Viejas Independent Review Board,”(also known as the “Review Board”) means a four member board appointed by the Council for the review and approval of Tribal Gaming regulations promulgated by the Commissioner and to hear and decide appeals relating to licensing actions, impositions of fines, patron disputes, and appeals pursuant to the Tribe’s Tort Liability Ordinance.

3. Section 2.07 Minimum Internal Control Standards

A. The Gaming Commission shall comply with 25 CFR Part 542 by formally adopting and making applicable to the Tribe’s gaming operation(s) internal control standards that:

1. Provide a level of control that equals or exceeds those set forth in 25 CFR part 542, as published or as revised by mutual agreement between the National Indian Gaming Commission and the Tribe;
2. Contain standards for currency transaction reporting that comply with 31 CFR Part 103; and
3. Establish internal control standards for Class II and Class III games that are not addressed in the MICS, if any.

B. In order to verify that the gaming operation is in compliance with the internal control standards adopted pursuant to paragraph A, an independent certified public accountant (CPA) shall be engaged annually to perform “Agreed-Upon Procedures” in the manner provided for in 25 CFR 542.3(f).

C. Compliance. The Gaming Commission and the National Indian Gaming Commission shall monitor and enforce compliance with the internal control standards adopted pursuant to paragraph A in the manner provided for in 25 CFR 542.3(g). In addition, the National Indian Gaming Commission shall, for the purpose of enforcing compliance with the internal control standards, have the power to:

1. monitor all Class II and Class III gaming on a continuing basis;
2. inspect and examine all premises on which Class II or Class III gaming is conducted; and
3. demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of all Class II and Class III gaming or any other matters necessary to ensure and enforce compliance with the MICS.

D. Enforcement. Any failure to adopt internal control standards pursuant to paragraph A, to perform Agreed-Upon Procedures pursuant to paragraph B, to prevent or obstruct the exercise of any of the Commission's powers under paragraph C, or to comply with the internal control standards once adopted is a violation of this Ordinance. The Chairman of the National Indian Gaming Commission shall have the authority to remedy violations of this ordinance under 25 U.S.C. 2713 and its implementing regulations, and the Tribe shall have all rights and remedies available thereunder.

4. Section 3.03 Establishment of the Viejas Independent Review Board. The Viejas Independent Review Board is hereby established. The Review Board shall consist of four (4) members appointed by a majority vote of the Council. A Board Member shall serve for three (3) years and may be removed from office prior to the end of their term only for cause and by a unanimous vote of Council. In order to establish annually

staggered terms, the first Board members shall be appointed by the Council as follows: one (1) member shall serve a three (3) year term, one (1) shall serve a two (2) year term, and one (1) shall serve a one year (1) year term for the initial appointment terms only. Thereafter, all successive terms of appointment shall run for three (3) years. Vacancies shall be filled within thirty (30) days by the Council.

5. Section 3.04 Review Board Qualifications for Membership. Each member shall have a minimum of a four (4) year college degree and eight (8) years of experience in accounting, gaming management or gaming regulation, or eight (8) years of law experience, or an equivalent combination thereof. Each member shall be subject to the same background and licensing standards as currently required for top-level Casino management positions according to this ordinance and National Indian Gaming Commission regulations. No person shall be eligible to serve as a Viejas Independent Review Board member who has been convicted or is currently being prosecuted for any crime of moral turpitude or any felony. Viejas Independent Review Board members may not be concurrently employed in any gaming operation, may not concurrently hold any elected Tribal office, and may not be related to any person employed by the Tribal Gaming Operation. Board members and their immediate family members may not engage in any gaming activity at the Viejas Tribal Gaming operation. For the purpose of this section “relative” or “immediate family member” shall be defined as mother, father, (including step, adopted, or in-law for all), son, daughter, brother, sister, grandparent, niece, nephew, , uncle, aunt and first cousins.

6. Section 3.05 Purpose and Authority of Review Board. The Review Board shall be responsible for the review and approval of any Tribal gaming regulations promulgated by the Commission under the authority of this ordinance. In addition, the Review Board shall serve as a final appeal board to review any disputes between patrons and the gaming operation as well as review and/or hear any appeals for any contested licensing actions or fines imposed by the Commission.

7. Section 3.06 Compensation for Review Board Members. Review Board members

shall be paid a stipend at a rate to be established annually by the Gaming Office budget, and approved by the Tribal Council. Initially the stipend shall be at the rate of \$350.00 per member per meeting. Board members shall be reimbursed for actual expenses incurred on Gaming Office business, including necessary travel expenses. In no event shall compensation be based on a percentage of net profits from gaming operations of the Tribe.

8. Section 3.07 Selection of Chairperson. The Review Board shall select annually from its membership a Chairperson, who shall chair all necessary hearings and meetings. If the Chairperson determines that a meeting must be continued or postponed, the Chairperson may set the time and date for additional meeting/hearing times. The Chairperson shall communicate the scheduling of all meetings/hearings with the Gaming Commissioner.

9. Section 3.08 Meetings/Hearings. The Review Board shall not meet more than twice per month unless deemed necessary by the Chairperson or at special request of the Commissioner. Should additional meetings be necessary, the Chairperson and Commissioner shall concur on mutually agreeable dates and times. Meeting and hearings shall take place on the Viejas reservation. Meetings and hearing proceedings shall have official minutes recorded by the secretary or administrative assistant of the Commission. Records of board meetings and hearings shall be exempt from state subpoena.

10. Section 3.09 Quorum – Majority Vote. A quorum shall consist of three (3) members of the Review Board. All decisions shall be made by a majority vote of the Board members.

11. Section 3.13 Request for Review Board Action. The General Manager of the Gaming operation may file a petition in a manner and form approved by the Review Board requesting the amendment or repeal of a regulation. Upon receipt of the petition, the Chair of the Review Board shall within thirty (30) days schedule the matter for consideration by the Review Board pursuant to this chapter, and shall immediately

forward a copy of the petition to the Gaming Commissioner. The Chair of the Review Board will consult with the Gaming Commissioner before ruling on any petition and will schedule the matter for hearing only if the Review Board disagrees with the Gaming Commissioner's recommendation.

12. Section 3.26 *Violations of Code – Punishment.* Any violation of this Ordinance may be punished by a fine of no more than Five Thousand Dollars (\$5, 000.00) for each separate count or violation. Each day of violation shall constitute a separate count or violation under this Ordinance. A violator may also be required to pay costs, storage fees, and auction or sales fees. All property used or which may be used in activities in each and every separate violation of this Ordinance may become the property of the Tribe; persons may be prohibited from trespassing on premises licensed under this Ordinance, licenses may be suspended, revoked, or limited and gaming establishments may be closed. All such action shall be taken at the discretion of the Gaming Commission, subject to the right of appeal to the Viejas Independent Review Board. Winnings found to have been received in violation of this Ordinance shall be forfeited and become the property of the Tribe.

13. Section 3.27 *Due Process Regarding Enforcement Actions.* The Gaming Commission shall promulgate regulations protecting due process rights of all individuals subject to the enforcement of this Ordinance. Such regulations shall, at a minimum:

(a) provide standards for emergency or summary suspension of license;

(b) provide fair notice and opportunity for hearing before the Gaming Commission

regarding any revocation or suspension of license, and regarding any enforcement

action taken pursuant to this Ordinance; and

(c) provide the right to appeal, de novo, any Gaming Commission disciplinary or

enforcement action to the Viejas Independent Review Board.

14. Section 3.28 Patron Disputes.

(a) Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings or machine credits to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron, and the dispute involves:

(1) At least five hundred dollars (\$500), the Gaming Facility Operator shall immediately notify the Tribal Gaming Commission. The Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

(2) Less than five hundred dollars (\$500) and the patron and operator do not come to an agreement, the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Commission conduct an investigation. Upon request of the patron, the Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice to Patrons. The Tribal Gaming Commission shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of the decision resolving the dispute within thirty (30) days after the date that the Tribal Gaming Commission first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron. Such notice shall include an explanation of the decision.

(c) Effective Date of Decision. The decision of the Tribal Gaming Commission is effective on the date it is received by the aggrieved party as reflected on the return receipt.

(d) Review of Decision. Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Viejas Independent Review Board. Upon receipt of the petition the Chairperson of the Review Board shall immediately forward a copy of the petition to the Gaming Commissioner. The Review Board shall promulgate procedures to determine whether patron disputes are eligible for a hearing and for the conduct of any hearing. The Review Board shall take into consideration the prior decision and other documentation provided to it by the patron, the Gaming Commission, and the Gaming Facility Operator. The Chairperson of the Review Board shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in Section 3.28 (b). The decision of the Viejas Gaming Review Board shall be final and binding upon the patron and the Gaming Facility Operator and shall not be subject to judicial review, dispute resolution or other legal action.

15. Section 7.01 Prohibition Against Gaming. No person licensed by the Gaming Commission shall engage, conduct or condone any game unless such game is approved by the Gaming Commission and regulations for rules governing such game have been duly promulgated by the Gaming Commission and approved by The Viejas Independent Review Board.

1/11/21

TRIBAL GAMING ORDINANCE

For the

VIEJAS BAND OF KUMEYAAY INDIANS

CHAPTER I

DEFINITIONS

Section 1.01 Definitions. Unless a different meaning is clearly indicated, the terms used in this Ordinance shall have the same meaning as defined in the “Indian Gaming Regulatory Act”, Public Law 100 §497, 102 Stat. 2467, codified at 25 U.S.C. §§2701 et. seq. (Oct. 17, 1988).

Section 1.02 “Calendar Year” means the period beginning on the first day of January at 12:00:01 a.m. and ending the immediately following December 31 at 12:00 o’clock midnight.

Section 1.03 “Chairman” means the Chairman of the National Indian Gaming Commission.

Section 1.04 “Class I Gaming” means:

- (a) Social games played solely for prizes of minimal value; or
- (b) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

Section 1.05 “Class II Gaming” means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

- 1) Play for prizes with cards bearing numbers or other designations;
- 2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
- 3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;

(c) Non-banking card games that:

- 1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and
- 2) Players play in conformity with state laws and regulations concerning hours, periods of operation and limitations on wagers and pot sizes;

Section 1.06 “Class III Gaming” means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

(a) Any banking game, including but not limited to:

- 1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played allowing only one person or entity the opportunity to bank);

- 2) Casino games such as roulette, craps, and keno;

(b) Any gaming device as defined in 15 U.S.C. §117 (a)(1) and electronic or electromechanical facsimiles of any game of chance;

(c) Any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or

(d) Lotteries.

Section 1.07 “Collateral agreement” means any contract, whether or not in writing, that is related either directly or indirectly, to a management contract or to any rights, duties, or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

Section 1.08 “Commission” means the National Indian Gaming Commission.

Section 1.09 “Compact” means any agreement reached between the Tribe and the State of California pursuant to 25 U.S.C. §2710 (d) and approved by the Secretary of the Interior. Any such agreement shall affect the scope and regulation of Class III gaming activities only.

Section 1.10 “Electronic, computer or other technologic aid” means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used:

(a) is not a game of chance but merely assists a player or the playing of a game;

(b) is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) is operated according to applicable Federal communications law.

Section 1.11 “Electronic or electromechanical facsimile” means any gambling device as defined in 15 U.S.C. §1117 (a) (2) or (3).

Section 1.12 “Game similar to bingo” means any game that meets the requirements for bingo under Section 1.05 (a) of this part and that is not a house banking game under Section 1.06 of this part.

Section 1.13 “Gaming employee” means any person employed by the Viejas gaming operation engaged in the conduct of Class II or Class III Gaming activity as well as any primary management official or key employee.

Section 1.14 “Gaming operation” means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly, by a management contractor, or, under certain conditions, by another person or other entity. The operation also includes all ancillary casino activities which enhance or support the gaming operation.

Section 1.15 “House banking game” means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.

Section 1.16 “Indian lands” means:

(a) Land within the limits of an Indian reservation; or

(b) Land over which an Indian tribe exercises governmental power and that is either--

1) Held in trust by the United States for the benefit of any Indian tribe or individual;

or

2) Held by an Indian tribe or individual subject to restriction by the United States

against alienation.

Section 1.17 “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as--

- (a) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians and
- (b) Having powers of self-government.

Section 1.18 “Key employee” means:

- (a) A person who performs one or more of the following functions:
 - 1) Bingo caller, supervisor, cashier;
 - 2) Counting room supervisor; and count and drop personnel;
 - 3) Chief of security; and security personnel;
 - 4) Custodian of gaming supplies or cash;
 - 5) Floor manager;
 - 6) Pit boss;
 - 7) Dealer;
 - 8) Cashier;
 - 9) Croupier;
 - 10) Approver of credit;
 - 11) Any employee engaged in finance or accounting functions;
 - 12) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- (b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
- (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

Section 1.19 “Management contract” means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

Section 1.20 “Net revenues” means gross gaming revenues of an Indian gaming operation less:

- (a) Amounts paid out as, or paid for, prizes; and
- (b) Total gaming – related operating expenses, excluding management fees.

Section 1.21 “Non-gaming employee” means any employee of the gaming operation who is not a gaming employee, primary management official or key employee. Non-gaming employees shall also be licensed by the Tribal Gaming Commission in accordance with any limitations, restrictions or regulatory requirements deemed appropriate by the Commission.

Section 1.22 “Person having a direct or indirect financial interest in a management contract” means:

- (a) When a person is a party to a management contract, any person having a direct financial interest in a management contract;
- (b) When a trust is a party to a management contract, any beneficiary or trustee;
- (c) When a partnership is a party to a management contract, any partner;
- (d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or
- (e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract.

Section 1.23 “Person having management responsibility for a management contract” means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof.

Section 1.24 “Primary management official” means

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

Section 1.25 “Secretary” means the Secretary of the Interior.

Section 1.26 “Viejas Tribal Gaming Office” (also known as the Viejas Gaming Commission) means the Viejas Tribe Gaming Office, established as the Tribal Governmental gaming regulatory agency.

Section 1.27 “Viejas Tribal Gaming Agent” means any of the members or employees of the Viejas Tribal Gaming Office, or Commission.

Section 1.28 “Council” means the Viejas Tribal Council.

Section 1.29 “Commissioner” means the Commissioner of the Viejas Tribal Gaming Office appointed by the Council as the chief administrator of Viejas Tribal gaming regulatory agency.

Section 1.30 “Tribe” means the Viejas Band of Kumeyaay Indians.

Additionally, any definitions set forth in any provisions of a compact signed by the Tribe and the State of California are adopted as if set forth at this point.

Section 1.31 “*Viejias Independent Review Board*” (also known as the “*Review Board*”)

means a four member board appointed by the Council for the review and approval of Tribal Gaming regulations promulgated by the Commissioner, and to hear and decide appeals relating to licensing actions, impositions of fines, patron disputes, and appeals pursuant to the Tribe’s Tort Liability Ordinance.

Section 1.32 “*Words and Terms*” tense, number and gender. In constructing the provisions of this Ordinance, save when otherwise plainly declared or clearly apparent from the context:

- (a) words in the present tense shall include the future tense;
- (b) words in masculine, feminine and neuter genders shall include all genders;
- (c) words in the singular shall include the plural, and in the plural shall include the singular.

Section 1.33 “*Working Days*” means Monday through Friday except for Federal or Tribal holidays.

CHAPTER II

ORDINANCE

Section 2.01 Purpose.

The Viejas Band of Kumeyaay Indians (hereinafter “Tribe”), a Federally recognized Sovereign Indian Tribe hereby enacts this ordinance to authorize and set the terms for Class II and Class III gaming operations on Tribal lands.

Section 2.02 Gaming Authorized.

Class II gaming as defined in the Indian Gaming Regulatory Act, P. L. 100-447, 25 U.S.C. §2703 (7) (a) (“IGRA”) and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1993) is hereby authorized. Additionally, all forms of Class III gaming set forth in any Compact between the Tribe and the State of California are authorized.

Section 2.03 Ownership of Gaming.

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance (unless the Tribe elects to allow individually owned gaming).

Section 2.04 License Required.

A Tribal license shall be required for each place, facility, or location on Tribal lands where gaming occurs pursuant to 25 C.F.R. §522.4 (b) (6).

Section 2.05 Use of Gaming Revenues.

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

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

Section 2.06 Audit.

(a) The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

(b) All 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 within the scope of the audit that is described in subsection (a) above.

Section 2.07 Minimum Internal Control Standards

(a) The Gaming Commission shall comply with 25 CFR Part 542 by formally adopting and making applicable to the Tribe's gaming operation(s) internal control standards that:

1) Provide a level of control that equals or exceeds those set forth in 25 CFR Part 542, as a published or as revised by mutual agreement between the National Indian Gaming Commission and the Tribe:

2) Contain standards for currency transaction reporting that comply with 31 CFR Part 103; and

3) Establish internal control standards for Class II and Class III games that are not addressed in the MICS, if any.

(b) In order to verify that the gaming operation is in compliance with the internal control standards adopted pursuant to paragraph (a), an independent certified public accountant (CPA) shall be engaged annually to perform “Agreed-Upon Procedures” in the manner provided for in 25 CFR 542.3(f).

(c) Compliance. The Gaming Commission and the National Indian Gaming Commission shall monitor and enforce compliance with the internal control standards adopted pursuant to paragraph (a) in the manner provided for in 25 CFR 542.3(g). In addition, the National Indian Gaming Commission shall, for the purpose of enforcing compliance with the internal control standards, have to power to:

- 1) monitor all Class II and Class III gaming on a continuing basis;
- 2) inspect and examine all premises on which Class II and Class III gaming is conducted; and
- 3) demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of all Class II and Class III gaming or any other matters necessary to ensure and enforce compliance with the MICS.

(d) Enforcement. Any failure to adopt internal control standards pursuant to paragraph (a), to perform Agreed-Upon Procedures pursuant to paragraph (b), to prevent or obstruct the exercise of any of the Commission’s powers under paragraph (c), or to comply with the internal control standards once adopted is a violation of this Ordinance. The Chairman of the National Indian Gaming Commission shall have the authority to remedy violations of this Ordinance under 25 U.S.C. §2713 and its implementing regulations, and the Tribe shall have all rights and remedies available thereunder.

Section 2.08 Protection of the Environment and Public Health and Safety.

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

Section 2.09 Licenses for Class II and Class III Key Employees and Primary Management Officials, and Gaming Employees, and Non-Gaming Employees.

All gaming employees, non- gaming employees, key employees and primary management officials shall apply for and be granted a Tribal gaming license prior to employment in the gaming operation. The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to anyone employed at any Class II or Class III gaming enterprise operated on Indian lands:

A. Definitions:

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

1. Key employee means:

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

- 1) Bingo caller, supervisor, cashier;
- 2) Counting room supervisor, personnel, and drop team personnel;
- 3) Chief of security, and all security personnel;
- 4) Custodian of gaming supplies or cash;
- 5) Floor manager;
- 6) Pit boss;
- 7) Dealer;
- 8) Croupier;

- 9) Any cashier;
- 10) Approver of credit; or
- 11) Any employee engaged in finance or accounting functions;
- 12) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

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

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

2. Primary management official means:

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

(b) Any person who has authority:

1) to hire and fire employees; or

2) to set up working policy for any portion of the gaming operation; or

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

B. Application forms

1. The following notice shall be placed on the application form for a gaming employee, non-gaming employees, key employee, or a primary management official before that form is filled out by an applicant:

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

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

“A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)”

3. Existing gaming employees, non-gaming employees, key employees and primary management officials who have not filled out applications with the privacy act notice or false statement notice as described in section 2.09, (B) (1) and (2) above shall be notified in writing that they shall either:

(a) Complete a new application which contains the appropriate Privacy Act notice and/or false statement notice; or

(b) Sign a statement that contains the Privacy Act and/or false statement notice.

C. Background Investigation: No license shall be granted to any person or entity who has been determined to be a person or entity whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest 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 by the carrying on of the business and financial arrangements incidental thereto.

1. License Application Minimum Requirements:

(a) The Tribe shall request from each license applicant 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 10 years; business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
- 3) The names and current address of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a) (2) of this section;
- 4) Current business and residence telephone numbers;
- 5) A description of any existing and previous business relationships with Indian Tribes, including ownership interests in those businesses;
- 6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest 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 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 conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(9) of this section, the criminal charge, the name and 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 Tribe deems relevant; and

14) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. §522.2 (h). Fingerprints shall be required for employees defined as key employees and primary management officials only unless otherwise requested by the Tribal gaming commission.

Section 2.10 Background Investigation of License Applicants Pursuant to Section 522.2 (b) of the Rules and Regulations of the National Indian Gaming Commission. The Tribe shall conduct an investigation sufficient to make a determination under Section 2.12. below. In conducting a

background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(a) Pursuant to any approved compact between the Tribe and the State of California any applicable procedures for Tribal licensing and/or State licensing or certification of all gaming employees for the conduct of Class III gaming are hereby adopted and incorporated by reference.

(b) The minimum procedures for conducting background investigations on license applicants are:

- 1) Criminal history check;
- 2) Civil history check;
- 3) Financial and credit check;
- 4) Reference check;
- 5) Previous business and employment check;
- 6) Relative check;
- 7) Business and personal associates check;
- 8) Educational verification;
- 9) Document the disposition of all potential problem areas noted and disqualifying information needed.
- 10) Any other investigation deemed necessary or appropriate by the Tribal Gaming Office.

(c) The Tribal Gaming Commissioner is primarily responsible for the conduct of the background investigations and suitability determinations in consultation with the National Indian Gaming Commission;

(d) The Tribal Gaming Commission shall be responsible for conducting, reviewing and either approving or disapproving the investigative work;

(e) The Tribal Gaming Commissioner is responsible for reporting the results of the background investigations to the National Indian Gaming Commission for key employees and primary management officials only.

(f) For the purposes of obtaining necessary fingerprints for processing, the Tribal Gaming Commissioner and designated agents shall have Tribal law enforcement authority.

(g) Suitability determination and selection of Gaming Office members is more specifically Set forth later in this ordinance.

(h) The investigative reports shall set forth, in detail, the:

- 1) Steps taken in conducting the background investigation;
- 2) Results obtained;
- 3) Conclusions reached;
- 4) The basis for those conclusions.

Section 2.11 Application Fee. The Gaming Office shall set a fee for applications, background investigations and licenses. All such fees shall be made payable to the Viejas Tribe and delivered to the Viejas Tribal Treasurer.

Section 2.12 Eligibility Determination. The Tribal Gaming Office shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a Gaming license applicant. If the Gaming Office determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, or jeopardizes the integrity or reputation of the Tribe or its Gaming Operation, a license shall not be granted.

Section 2.13. 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 Gaming Commission shall forward to the National Indian Gaming Commission a completed application for a gaming license and conduct the background investigation and make the determination referred to in Section 2.12.

(b) The Tribal Gaming Commission shall forward the report referred to in Section 2.13(a) 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) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license.

Section 2.14 Report to the National Indian Gaming Commission.

(a) Pursuant to the procedures set out in Section 2.09, the Tribal Gaming Office shall prepare and forward the National Indian Gaming Commission an investigative report on each background investigation. An 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 Gaming Commission shall submit, with the report, a copy of the eligibility determination made under Section 2.12.

(c) If a license is not issued to an applicant, the Gaming Commission:

- 1) Shall notify the National Indian Gaming Commission;
- 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 license applicants, the Tribal Gaming Office shall retain applications for licensing and 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 denial or revocation of a license, or termination of employment, whichever is later.

Section 2.15 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 Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

(e) The Tribe 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 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 Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the

application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

Section 2.16 License Suspension.

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

(b) The Gaming Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license.

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

Section 2.17 Class III Gaming. In addition to the above, any Tribal-State licensing and/or certification requirements and procedures for Tribal licensing and/or State certification or licensing in a Compact between the Tribe and State of California are adopted and incorporated herein by reference.

Section 2.18 Repeal.

Upon approval of this gaming ordinance by the Chairman of the National Indian Gaming Commission all prior gaming ordinances enacted by the Tribe are hereby repealed.

CHAPTER III

ADMINISTRATION AND ENFORCEMENT

Section 3.01 Unauthorized Gaming. Any person who commits any act of unauthorized gaming on this reservation shall be in violation of this Ordinance and shall be prosecuted in the appropriate court of competent jurisdiction. Prosecution for such a violation in other than Federal court is not meant to be exclusive; a finding of guilt or innocence shall not deprive the Federal government from jurisdiction.

Section 3.02 Ownership- Revenues to Benefit Tribe. The Tribe shall have the sole proprietary interest in, and sole responsibility for, the conduct of the gaming activity. Such provision does not, however, limit the Tribe's ability to enter into a management contract wherein net profits are divided between the Tribe and other parties to the contract. The Tribe's share of net revenues will go entirely to the Tribe and will be used solely for the following purposes:

- (a) to fund Tribal government operations or programs;
- (b) to provide for the general welfare of the Tribe and its members;
- (c) to promote Tribal economic development;
- (d) to donate to charitable organizations; or
- (e) to help fund operations of local government agencies.

(f) Net revenues from the gaming establishment may be used to make per capita payments to members of the Tribe pursuant to a plan approved by the Secretary of the Interior.

Section 3.03 Establishment of the Viejas Independent Review Board. The Viejas Independent Review Board is hereby established. The Review Board shall consist of four (4) members appointed by a majority vote of the Council. A Board Member shall serve for three (3)

years and may be removed from of the Council. A Board Member shall serve for three (3) years and may be removed from office prior to the end of their term only for cause and by a unanimous vote of Council. In order to establish annually staggered terms, the first Board Members shall be appointed by the Council as follows: one (1) member shall serve a three (3) year term, one (1) shall serve a two (2) year term, and one (1) shall serve a one (1) year term for the initial appointment terms only. Thereafter, all successive terms of appointment shall run for three (3) years. Vacancies shall be filled within thirty (30) days by the Council.

Section 3.04 Review Board Qualifications for Membership. Each member shall have a minimum of a four (4) year college degree and eight (8) years of experience in accounting, gaming management or gaming regulation, or eight (8) years of law experience, or an equivalent combination thereof. Each member shall be subject to the same background and licensing standards as currently required for top-level casino management positions according to this Ordinance and National Indian Gaming Commission regulations. No person shall be eligible to serve as a Viejas Independent Review Board member who has been convicted or is currently being prosecuted for any crime of moral turpitude or any felony. Viejas Independent Review Board members may not be concurrently employed in any gaming operation, may not concurrently hold any elected Tribal office, and may not be related to any person employed by the Tribal Gaming Operation. Board Members and their immediate family members may not engage in any gaming activity at the Viejas Tribal Gaming operation. For the purpose of this section “relative” or “immediate family member” shall be defined as mother, father, (including step, adopted, or in-law for all), son, daughter, brother, sister, grandparent, niece, nephew, uncle, aunt, and first cousins.

Section 3.05 Purpose and Authority of Review Board. The Review Board shall be responsible for the review and approval of any Tribal gaming regulations promulgated by the Commission under the authority of this ordinance. In addition, the Review Board shall serve as a final appeal board to review any disputes between patrons and the gaming operation as well as review and/or hear any appeals for any contested licensing actions or fines imposed by the Commission.

Section 3.06 Compensation for Review Board Members. Review Board members shall be paid a stipend at a rate to be established annually by the Viejas Tribal Gaming Office budget, and approved by the Tribal Council. Initially the stipend shall be at the rate of \$350.00 per member per meeting. Board members shall be reimbursed for actual expenses incurred on Viejas Tribal Gaming Office business, including necessary travel expenses. In no event shall compensation be based on a percentage of net profits from gaming operation of the Tribe.

Section 3.07 Selection of Chairperson. The Review Board shall select annually from its membership a chairperson, who shall chair all necessary hearings and meetings. If the chairperson determines that a meeting must be continued or postponed, the chairperson may set the time and date for additional meeting/hearing times. The chairperson shall communicate the scheduling of all meetings/hearings with the Commissioner.

Section 3.08 Meetings/Hearings. The Review Board shall not meet more than twice per month unless deemed necessary by the chairperson or at special request of the Commissioner. Should additional meetings be necessary, the chairperson and Commissioner shall concur on mutually agreeable dates and times. Meeting and hearings shall take place on the Viejas reservation. Meetings and hearing proceedings shall have official minutes recorded by the secretary or administrative assistant of the Commission. Records of board meetings and hearings shall be exempt from state subpoena.

Section 3.09 Quorum – Majority Vote. A quorum shall consist of all three (3) members of the Review Board. All decisions shall be made by a majority vote of the board members.

Section 3.10 Establishment and Authority of the Tribal Gaming Commission. The Viejas Tribal Gaming Commission is hereby established. The Gaming Commission (also referred to as Gaming Office) shall exercise all powers necessary to effectuate the purposes of this Ordinance. The Gaming Commission may exercise any proper power and authority necessary to perform the duties assigned to it by this Ordinance, and is not limited by the enumeration of powers in this chapter. The Gaming Commission shall promulgate rules and regulations for the operation of any gaming establishment and shall hear and resolve all disputes regarding any provision of the Ordinance. In all decisions, the Gaming Commission shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of gaming and ancillary activities of the gaming operation. The Gaming Commission shall have the power and authority to deny any application; to limit, condition, suspend, or restrict any license; make a finding of suitability or approval of a license, or find suitable the imposition of a fine upon any person or entity licensed, for any cause deemed reasonable by the Gaming Commission.

Section 3.11 Monthly Report. The Gaming Commissioner shall make at least monthly reports to the Council within thirty (30) days after the close of the month for which the information is being required. The report shall at a minimum include a full and complete statement of auditing activities, expenses and all other financial transactions of the Commission and summary of all licensing and enforcement actions.

Section 3.12 *Prior Notice of Actions.* In promulgating, amending, and repealing regulations, the Gaming Commission shall give prior notice of the proposed action to all licensees and other persons whom the Commissioner has reason to believe have a legitimate and bona fide interest in such proposed action. Said notice shall inform such persons as to the general nature of the proposed actions and advise them as to the manner in which comments on said proposed action shall be received by the Gaming Commission. Upon receipt of input and comments from affected parties, the Commissioner shall schedule a meeting with the Review Board and present proposed regulations for approval and adoption. Any disagreements between parties affected by the proposed regulations and the Commission will be considered by the Review Board prior to adoption. In emergencies, the Gaming Commission may summarily adopt, amend or repeal any regulation if at the time the Commissioner determines such action is necessary for the immediate preservation of the public peace, health, safety, morals, and good order or general welfare, together with a statement of facts constituting the emergency; provided the Gaming Commissioner and Review Board shall schedule such emergency action for a regular hearing as soon as possible not to exceed thirty (30) days after any such emergency action.

Section 3.13 *Request for Review Board Action.* The General Manager of the Gaming operation may file a petition in a manner and form approved by the Review Board requesting the amendment or repeal of a regulation. Upon receipt of the petition, the Chair of the Review Board shall within thirty (30) days schedule the matter for consideration by the Review Board pursuant to this chapter, and shall immediately forward a copy of the petition to the Gaming Commissioner. The Chair of the Review Board will consult with the Gaming Commissioner before ruling on any petition and will schedule the matter for hearing only if the Review Board disagrees with the Gaming Commissioner's recommendation.

Section 3.14 Due Process, Appealing Commission Actions. Any Commission decision resulting in approving, disapproving, revoking, suspending, limiting or conditioning a license, or the imposition of other sanctions under this Ordinance shall be made by the Commissioner. Should an applicant or licensee disagree with the determination of the Commissioner, the Commissioner shall schedule a hearing with the Review Board to review the decision, within thirty (30) working days from the date an applicant files his/her written appeal with the Gaming Commission.

Section 3.15 Review Board's Findings. Following such hearing, the Review Board shall, within three (3) working days reach a determination concerning:

- (a) the accuracy of the facts presented at the hearing;
- (b) whether the license in question should be granted, denied, reinstated suspended, revoked, conditioned, or limited; and
- (c) whether any other action recommended to the Review Board including, but not limited to fines and forfeitures, should be taken

Section 3.16 Notification of Review Board Decision. Within ten (10) working days following this determination, the Review Board shall inform the subject and the Commission in writing of the determination. The determination of the Review Board shall be final and not subject to further appeal.

Section 3.17 Appointment of Commissioner. The Council shall appoint a Commissioner who shall be responsible for the day-to-day management of the affairs of the Gaming Commission as well as overseeing the establishment and operation of all gaming activities for compliance with all applicable Federal, State and Tribal gaming laws and regulations. A detailed background investigation shall be conducted on the Commissioner before his/her appointment. The Commissioner shall report directly and only to the Tribal Council. No one convicted of a felony of

any kind or misdemeanor related to gambling or moral turpitude can serve as Commissioner. The Commissioner shall have no personal interest in the gaming activity. Neither the Commissioner nor any Commission employees may gamble in the gaming establishment nor have any personal financial interest in any gaming establishment patron.

Section 3.18 Commissioner's Contract. The Commissioner shall be hired on a contract. The terms of the contract will be negotiated with the Tribal Council and approved by the Council. The Commissioner's compensation shall be part of the negotiations. Compensation for the Commissioner shall not be based, in whole or in part, on the profitability of the gaming operation.

Section 3.19 Termination of Commissioner. The Commissioner shall be terminated immediately and without the necessity of a vote of the Council upon the Commissioner's conviction in a Federal or State court of competent jurisdiction for any felony, or for any misdemeanor related to gambling or moral turpitude, or upon conviction of any charge that the Council finds relates to the Commissioner's honesty or ability to fulfill his/hers duties. If the Commissioner is convicted of violating any part of this Ordinance, he/she shall be immediately terminated. Additionally, the Commissioner may be terminated for inadequate performance of the duties required, or may additionally be terminated for associations or conduct that would tend to bring the Commissioner's integrity or gaming operation into disrepute.

Section 3.20 Duties of Commissioner. The Commissioner shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Ordinance relating to the regulation of all gaming activity. In all decisions, the Commissioner shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity. The Commissioner's duties shall include but not be limited to the following:

(a) Negotiating contracts for payments by the Tribe for the provision of security, surveillance, outside independent auditing services. Such contracts must be approved by the Council and shall not constitute a waiver of jurisdiction by the Tribe;

(b) Correspond with the National Indian Gaming Commission and do whatever is necessary to ensure compliance with the rules and regulations of that agency. Specifically, the Commissioner, with approval of the Tribal Council, shall arrange for an annual outside audit of authorized gaming and will provide a copy to the National Indian Gaming Commission.

(c) The Commissioner will assure that all gaming activity is conducted in a manner which adequately protects the environment and the public's health and safety;

(d) The Commissioner will ensure that background investigations are conducted pursuant to section 2.09 on all primary management officials, key employees, gaming employees and non-gaming employees of any gaming establishment and that oversight of such officials and their management is conducted on an ongoing basis. The Commissioner will make suitability determinations on the granting of Tribal licenses for all of the gaming operation employees. The Commissioner shall immediately notify the National Indian Gaming Commission of the issuance of such licenses for primary management officials and key employees. The Commissioner will review all license applications and background investigations to ensure that no person shall be eligible for employment if that person's prior activities, criminal record (if any), or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming or jeopardize the integrity or reputation of the Tribe or its Gaming Operation. The Commissioner shall notify the National Indian Gaming Commission of the results of such background checks before the issuance of such licenses to primary management officials and key employees.

(e) Hiring, pursuant to the approval of the Tribal Council, such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this Ordinance.

(f) Inspect, review and copy all records, documents, equipment and facilities, or anything else necessary and pertinent to enforcement of any provisions of this Ordinance.

(g) Making decisions and execute any sanctions on any person subject to the jurisdiction of this Ordinance, as deemed necessary, appropriate and lawful.

Section 3.21 *Right of Inspection.* The Commissioner and his/her agents, inspectors, and employees have the authority:

(a) to inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are used, manufactured, sold or distributed;

(b) to inspect all equipment and supplies in, upon or about a gaming establishment, or inspect any equipment or supplies wherever located, which may, or have been used in the gaming establishment;

(c) to summarily to seize and remove from a gaming establishment (or wherever located) and impound such equipment or supplies for the purpose of examination, inspection, evidence, or forfeiture;

(d) to demand immediate access to and inspect, examine and audit all papers, books, and records of applicants and licensees, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Ordinance;

(e) to seize and impound any patron's winnings which the Gaming office has reason to believe may have been won or obtained in violation of this Ordinance pending a civil forfeiture hearing on such seizure;

(f) The Review Board members and the Commissioner shall each have full power and authority to issue subpoenas and compel the attendance of witnesses for hearing at any place within the Reservation, to administer oaths and to require testimony under oath. Any process or notice may be served in the manner provided for service of process and notices in civil actions. The Review Board and the Commissioner may pay such transportation and other expenses of witnesses as it may deem reasonable and proper. Any licensee failing to comply with any subpoena shall be subject to immediate revocation of their gaming license.

Section 3.22 Confidentiality of Information. Each member of the Viejas Independent Review Board and each employee of the Tribal Gaming Commission shall be required to sign a confidentiality agreement, and will be responsible for ensuring the strictest standards of confidentiality with respect to all information. All information provided to the Viejas Independent Review Board and Gaming Commission and all information obtained by the Review Board and Tribal Gaming Commission in the performance of its duties, shall be kept confidential and shall not be disclosed to any person or organization without the written consent of the Viejas Tribal Council. The Review Board and the Commissioner may refuse to reveal, in any court proceeding the identify of any informant, or the information obtained from the informant, or both the identity and the information.

Section 3.23 Powers of Delegation. The Viejas Tribal Gaming Commission may organize itself into a functional division as it may deem necessary and from time to time alter such plan of organization as it may deem expedient. The Tribal Commission shall establish its own budget for operations, and acquire such furnishings, equipment, supplies, stationery, books, motor vehicles, and other things as it may deem necessary or desirable in carrying out its functions, and incur such other expenses within the limit of funds available to it, as it may deem necessary. Within the limits of a

Council approved budget, the Gaming Commission shall employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Gaming Commission may require. At the Council's discretion, said budget may be reviewed and modified by the Council every six (6) months. Upon the end of the budget year, any surplus which might exist shall revert to the Tribal Government. The Commissioner shall keep and maintain a file of all applications for licenses under this chapter, together with a record of all actions taken with respect to such applications. The Commissioner shall keep and maintain such other files and records as he/she may deem desirable.

Section 3.24 Sanctions. Any person who engages in activities on property subject to the provisions of this Gaming Ordinance without a license, in violation of any license or terms imposed thereon, in violation of terms of suspension, or in violation of the Ordinance, including any person who unlawfully trespasses upon any premises licensed by this Ordinance without the consent of the licensee and/or the Gaming Office shall be in violation of this Ordinance and be subject to sanctions in accordance with the provisions of Section 3.26 hereinafter.

Section 3.25 Limitations Period. No fine shall be assessed nor any action taken for any violation under the preceding section unless the action is initiated within two (2) years of the commission of the offense.

Section 3.26 Violations of Ordinance – Punishment. Any violation of this Ordinance may be punished by a fine of no more than Five Thousand Dollars (\$5,000.00) for each separate count or violation. Each day of violation shall constitute a separate count or violation under this Ordinance. A violator may also be required to pay costs, storage fees, and auction or sales fees. All property used or which may be used in activities in each and every separate violation of this Ordinance may become the property of the Tribe; persons may be prohibited from trespassing on premises licensed

under this Ordinance, licenses may be suspended, revoked, or limited and gaming establishments may be closed. All such action shall be taken at the discretion of the Gaming Commission, subject to the right of appeal to the Viejas Independent Review Board. Winnings found to have been received in violation of this Ordinance shall be forfeited and become the property of the Tribe.

Section 3.27 Due Process Regarding Enforcement Actions. The Gaming Commission shall promulgate regulations protecting due process rights of all individuals subject to the enforcement of this Ordinance. Such regulations shall, at a minimum:

- (a) provide standards for emergency or summary suspension of license;
- (b) provide fair notice and opportunity for hearing before the Gaming Commission regarding any revocation or suspension of license, and regarding any enforcement action taken pursuant to this Ordinance; and
- (c) provide the right to appeal, de novo, any Gaming Commission disciplinary or enforcement action to the Viejas Independent Review Board.

Section 3.28 Patron Disputes.

(a) Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings or machine credits to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron, and the dispute involves:

- 1) At least five hundred dollars (\$500), the Gaming Facility Operator shall immediately notify the Tribal Gaming Commission. The Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

2) Less than five hundred dollars (\$500) and the patron and operator do not come to an agreement, the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Commission conduct an investigation. Upon request of the patron, the Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice to Patrons. The Tribal Gaming Commission shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of the decision resolving the dispute within thirty (30) days after the date that the Tribal Gaming Commission first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron. Such notice shall include an explanation of the decision.

(c) Effective Date of Decision. The decision of the Tribal Gaming Commission is effective on the date it is received by the aggrieved party as reflected on the return receipt.

(d) Review of Decision. Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Viejas Independent Review Board. Upon receipt of the petition the chairperson of the Review Board shall immediately forward a copy of the petition to the Gaming Commissioner. The Review Board shall promulgate procedures to determine whether patron disputes are eligible for a hearing and for the conduct of any hearing. The Review Board shall take into consideration the prior decision and other documentation provided to it by the patron, the Gaming Commission, and the Gaming Facility Operator. The chairperson of the Review Board shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in Section 3.28 (b). The decision of the Viejas Independent Review Board shall be final and binding upon the patron and the Gaming Facility Operator and shall not be subject to judicial review, dispute resolution or other legal action.

Section 3.29 Independence of Gaming Office. The Commissioner, Commission Employees, members of the Council and their immediate families shall receive no personal compensation, gift, reimbursement or payment of any kind from any person doing or wishing to do business with the Tribe relating to gaming nor with any person wishing to obtain an unfair advantage in any authorized wager on gaming. Any property received in violation of this provision, including cash payments, shall be immediately forfeited to the Tribe and the offending persons shall be prosecuted to the fullest extent possible. The Gaming Commission shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution under applicable Federal or State law.

Chapter IV

Licensing

Section 4.01 Issuance of Tribal Gaming Licenses. The Gaming Office shall consult with appropriate law enforcement officials concerning any gaming licenses it may issue. If, after issuance of a gaming license by the Gaming Commission Office, reliable information is received that a licensed employee does not meet the standard established under Section 2.11 of this Ordinance, the Gaming Office shall suspend such license.

Section 4.02 Non – Transferability of License. Any license issued pursuant to the provision of this Ordinance is valid only for the person or entity at the place of business shown on the face thereof. It is not assignable or otherwise transferable to any other person or entity for any other location without approval of the Commissioner.

Section 4.03 Granting of License. The Commission, upon completion of appropriate background investigation and suitability determination shall either grant or deny a license. The issuance of a license shall be done only provided that,

- (a) A completed license application has been received;
- (b) All applicable licensing fees have been paid;
- (c) No objection has been raised by Federal or State Gaming Officials.

Section 4.04 Suitability Determination, License Denial. The Commissioner may not grant a license to any applicant who has been convicted of any felony or gaming offense. The Commissioner may deny a license to any applicant (employee or vendor), or may suspend or revoke the license of any employee or vendor who:

(a) has knowingly and willfully provided false statements or information or omitted material information on his or her license application or background questionnaire; or

(b) is determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto, or jeopardizes the integrity or reputation of the Tribe or its Gaming Operation; or

(c) has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of this ordinance, the Compact, or any provision of any Federal, State, or Tribal Gaming Regulations, or when any such violation has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(d) knowingly causes, aids, abets, or conspires with another to cause any person or entity to violate any of the laws of this State or the applicable rules of the State or Tribal Gaming Office, or the provisions of the Compact;

(e) has obtained a State Gaming license or certification or Tribal license by fraud, misrepresentation, concealment or through inadvertence or mistake;

(f) has been convicted of, or forfeited bond upon a charge of, or plead guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payment or reports to any Government, whether Tribal, State, or the United States; or U.S. Government Agency at any level, or filed false reports therewith, or of any similar offense(s), or of bribing or otherwise

unlawfully influencing a public official or employee of a Tribe, a State, or the U.S. Government, or of any crime, whether a felony or misdemeanor, involving any gaming activity, misappropriation of funds or physical harm to individuals or moral turpitude;

(g) makes a misrepresentation of, or fails to disclose a material fact to the Federal, State, or the Tribal Gaming Regulatory authorities;

(h) is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (f) of this Section; provided that the Gaming Commission may defer decision upon the application during the pendency of such prosecution or appeal;

(i) has had a gaming license issued by any State or Tribe in the United States revoked or denied;

(j) has demonstrated a willful disregard for compliance with Gaming Regulatory authority in any jurisdiction, including suspension, revocation, denial of application or forfeiture of license;

(k) has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of any state if such pursuit creates probable cause to believe that the participation of such person in gaming or related activities would be detrimental to the proper operation of an authorized gaming or related activity in this State. For the purposes of this paragraph, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(l) is a career offender or a member of a career offender organization or an associate of a career offender or career offender organization in such a manner which creates probable cause to believe that the association is of such a nature as to be detrimental to the proper operation of the authorized gaming or related activities in this State. For the purpose of this paragraph, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purposes of economic gain utilizing such methods as are deemed criminal violations of Tribal law, Federal law or the laws and the public policy of this State. A career offender organization shall be defined as any group of persons who operate together as career offenders;

(m) is a person whose prior activities, criminal record, if any reputation, habits and associations pose a threat to the public interest of the Tribe or to the effective regulation and control of Gaming, or creates or enhances 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 thereto; or

(n) fails to provide any information requested by Tribal Gaming Office within fourteen (14) days of the request for the information.

Section 4.05 Licenses and Regulation of Class III Gaming Activities; Tribal – State Compact Compliance. The Gaming Office shall follow each, every, and all of the requirements for licensing and regulation of Class III gaming pursuant to the terms and conditions of any compact between the Tribe and the State of California.

Section 4.06 Failure of Applicant to Disclose Material Information. An applicant for licensing shall make true and full disclosure of all information to the Gaming Commission necessary or appropriate to carry out the policies of this Tribe relating to licensing and control of the gaming operation. It is the duty of the applicant to disclose all information material to whether the applicant's involvement with gaming would jeopardize or compromise the Tribal interest, whether or not the applicant has been specifically requested to provide that information. It shall constitute a violation of this Ordinance to fail to disclose, to mislead or to misstate any such material information to the Commission.

Section 4.07 Temporary Employment Licenses. The Gaming Commission may issue a temporary license to any person or entity applying for a license to work in or do business with a licensed gaming establishment which shall be valid pending the completion of a background investigation of the applicant. In no event shall such temporary license be valid for longer than 180 days.

Section 4.08 Parameters of Licenses. Violation of any material provision of this Ordinance or any of the Gaming Office's regulations by a licensee, its agent, or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Viejas Tribe and the inhabitants of the Viejas Reservation, and shall be deemed grounds for refusing to grant or renew a license, suspension or revocation of a license, or shall constitute grounds for the imposition of sanctions by the Gaming Office or Commissioner. If the Commission elects to resolve disputes in a manner other than revocation of a license, such agreement shall be made in writing and supersede any conflicting provisions of this section, so long as the agreement provides a reasonable avenue for the Tribe to ensure a licensee's compliance with all other aspects of this Gaming Ordinance. Acceptance of a gaming license or renewal on the part of the licensee shall constitute the licensee's

agreement to be bound by all regulations and conditions of the Commission or Gaming Office and by the provisions of this Ordinance as the same are now, or may hereafter be amended or promulgated, and to cooperate fully with the Commissioner and Gaming Office. It is the responsibility of the licensee to keep informed of the contents of such regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations. All licenses shall have not more than a two year duration and will require renewal thereafter in accordance with procedures set forth by the Commission.

Section 4.09 Licensing of Vendors. The Gaming Office may authorize, require, and issue such licenses as the Gaming Office by regulation may provide, to any person or entity to engage in the selling, distributing, or otherwise supplying of gambling equipment or paraphernalia, gaming services, and any other equipment, supplies, materials, etc. for use in connection with the licensed Gaming Facility or operation.

Section 4.10 Licensing of Gaming Facility. Each Tribal Gaming Facility shall be licensed by the Tribal Gaming Commission. Prior to the issuance of a facility license the Gaming Commissioner shall:

- (a) determine that the facility is constructed in conformance with all applicable building codes;
- (b) ensure that Security and Surveillance systems are in place to adequately provide for the safety and security of employees and patrons and for the protection of Tribal assets;
- (c) ensure that all employees are properly licensed and that the facility is otherwise in compliance with all applicable gaming laws and regulations.

Section 4.11 License Fees. Licensing fees shall be established by the Commission and approved by the Tribal Council.

Section 4.12 Gaming Commissioner and Commission Employees. The Gaming Commissioner and employees shall not require licensing unless otherwise provided for by a Compact. However eligibility for employment will be at least as stringent as that for any licensing of a primary management official, including full background checks.

CHAPTER V
MANAGEMENT CONTRACTS

Section 5.01 *Gaming Commission Approval Required.*

(a) Any management contractor shall be licensed by the Tribal Gaming Office. Prior to licensing any management contract entered into by the Tribe for the operation and management of any class II and/or Class III gaming activity must be submitted to the Gaming Commission for approval, but before approving such contract, the Gaming Commission shall require and obtain the following information:

1) the name, address, and other additional pertinent background information on each person or entity (including all officers and management officials comprising such entity) having direct financial interest in, or management responsibility for such contract and in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 % or more of its issued and outstanding stock;

2) a description of any previous experience that each person listed pursuant to subsection (1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming.

3) Any further or additional information as may be required under a Tribal/State Compact entered into between the Tribe and the State;

4) Any further or additional information as may be required under existing rules and regulations for management contracts required pursuant to IGRA;

(b) Any person listed pursuant to subsection (a) (i) shall be required to respond to such written or oral questions that the Gaming Commission may propound in accordance with its responsibilities under this section.

(c) For purposes of this Ordinance, any reference to the management contract described in CFR 25 Section 5.01

1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(d) After the Gaming Commission has given its approval of a management contract, the Gaming Commission shall submit such contract to the National Indian Gaming Commission for its approval. Any such contract shall be void until the National Indian Gaming Commission has approved it.

Section 5.02 Approval of Management Contracts. The Gaming Commission may approve any management contract entered into by the Tribe pursuant to this Chapter only if it determines that such contract provides at least:

(a) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared for the Council on a monthly basis;

(b) for access to the daily operations of the gaming operation to appropriate Tribal officials who shall also have a right to verify the daily gross revenues and income made from any such Tribal gaming activity;

(c) for a minimum guaranteed payment to the Tribe that has preference over the retirement of development and constructions costs;

(d) for an agreed ceiling for repayment of development construction costs;

(e) for a contract term not to exceed five years, except that, upon the request of the Tribe, the gaming Commission may authorize a contract term that exceeds five years but does not exceed

seven years if the Gaming Commission is satisfied that the capital investment required, and the income projections, for the particular gaming activity require additional time;

(f) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the National Indian Gaming Commission;

(g) for preference to Tribal members and non-member Indians in hiring of employees for the gaming establishment.

(h) for all which may be required by the IGRA.

Section 5.03 Percentage of Net Revenue Fees.

(a) A management contract providing for a fee base upon a percentage of the net revenues of a Tribal gaming activity may be approved by the Gaming Commission if such percentage fee is reasonable in light of surrounding circumstances. Except as provided in this Section, such fee shall not exceed 30% of the net revenue;

(b) Upon request of the Council, the Gaming Commission may approve a management contract providing for a fee upon a percentage of the net revenue of a Tribal gaming activity that exceeds 30% but not more than 40% of the net revenues if the Gaming Commission and Council are satisfied that the capital investment required, and income projections, for such Tribal gaming activity require the additional fee.

Section 5.04 Contract Disapproval. The Gaming Commission shall not approve any contract if it determines that:

(a) Any person listed pursuant to CFR 25 Section 5.01 (a) (i):

- 1) is an elected member of the council;
- 2) has been or subsequently is convicted of any felony or gaming offense;
- 3) has knowingly and willfully provided materially important false statements of

information to the Gaming Commission or the Tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to CFR 25 Section 5.01 (b); or

4) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest 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 incidents thereto;

(b) The management contractor has, or has attempted to unduly interfere or to influence for its gain or advantage any decision or process of Tribal government relating to gaming activity;

(c) The management contractor has deliberately or substantially failed to comply with the terms of this management contract or the provisions of this Ordinance or any regulations adopted pursuant to this Ordinance or the Indian Gaming Regulatory Act.

Section 5.05 *Modifying or Voiding Contract.* The Gaming Commission, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if it subsequently determines that any of the provisions of this Chapter have been violated. If the Tribe elects to contractually agree to resolve disputes in a manner other than the revocation of a license, such contractual agreement shall supersede any conflicting provisions of this section, so long as the agreement provides a reasonable avenue for the Tribe to ensure a licensee's compliance with all other aspects of this Gaming Ordinance.

Section 5.06 *Conveying Interest in Land.* No management contract for the operation of a gaming activity regulated by this Ordinance shall transfer or, in any other manner, convey any interest in Tribal land or other real property.

Section 5.07 Fee for Investigation Cost. The Gaming Commission shall require a potential Contractor to pay a fee to cover the actual cost of the investigation necessary to reach a determination required in Section 5.04 of this Chapter.

Section 5.08 Dispute Resolution. If any dispute arises as to the proper compliance with or interpretation of the foregoing Sections of this chapter and appendices, the procedures set forth in this Section shall apply.

(a) Notice. The party asserting noncompliance or seeking an interpretation shall serve written notice on the other party or parties. The notice shall identify the specific Ordinance provision alleged to have been violated or in dispute and shall specify in detail the factual basis for the alleged noncompliance or the proffered interpretation of the Ordinance provision for which interpretation is sought.

(b) Voluntary Resolution. Representatives of the Tribe and the other party or parties shall meet within ten (10) days following receipt of the notice in an effort to resolve the dispute.

(c) Arbitration Procedures. If the dispute is not resolved to the satisfaction of the parties within thirty (30) days after service of the notice set forth above, the dispute shall be adjudicated through arbitration in California or such other place as the parties may agree as follows:

1) The parties shall attempt to agree upon one arbitrator with expertise in the subject matter of the dispute.

2) If the parties are unable to agree on an arbitrator, each party shall select an arbitrator within ten (10) days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If the two (2) arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator shall be appointed by the American Arbitration Association.

3) The arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submission only.

(d) Arbitration Costs. The cost of arbitration shall be borne equally by the parties, with one half of the expenses charged to the Tribe and one-half charged to the other party or parties. The parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.

(e) Arbitration Decision. The decision of the majority of the arbitrator(s) shall be final, binding and unappealable. Failure to comply with judgement upon the award entered in such arbitration proceeding shall be deemed a breach of the Ordinance.

Chapter VI

Auditing, Fiscal Oversight, and Internal Controls

Section 6.01 Minimum Procedures for Control of Internal Fiscal Affairs. The Gaming Commission shall promulgate regulations for internal controls and fiscal audits of all gaming operations. At a minimum, those regulations shall:

(a) Prescribe minimum procedures for safeguarding the gaming operation's assets and revenues, including recording of cash and evidences of indebtedness and mandatory count procedures. Such procedures shall establish a control environment, accounting system, and control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, and encourage adherence to prescribed policies;

(b) Prescribe minimum reporting requirements to the Gaming Commission;

(c) Provide for the adoption and use of internal audits by Commission auditors and Certified Public Accountants licensed to practice accounting in the State of California.

(d) Ensure that a uniform code of accounts and accounting classifications are formulated to assure consistency, comparability and effective disclosure of financial information. Such Code shall require that records be retained that reflect statistical drop (amount of cash wagered by patrons), statistical win (amount of cash won by the gaming operation) and the percentage of statistical win to statistical drop, or provide similar information, for each type of game or each gaming device.

(e) Prescribe the intervals at which such information shall be furnished;

(f) Provide for the maintenance of documentation (i.e., checklists, transaction forms, programs, reports, etc.) to evidence all internal work performed as it relates to the requirements of this section; and

(g) Provide that all financial statements and documentation referred to in section (f) be maintained for minimum of five (5) years.

Section 6.02 Gaming Commission Oversight of Internal Fiscal Affairs. The Gaming Commission shall, by regulation ensure the conduct of audits of the financial statements of all gaming operations at least annually. Such audits must:

(a) be made by outside independent Certified Public Accountants holding a permit issued by the State of California to practice public accounting, such accountants shall be selected by and contracted with the Gaming Commission;

(b) include an opinion that the financial statement fairly and accurately present the financial condition of the gaming operation in accordance with generally accepted accounting principals (GAAP) and in accordance with the Governmental standards of accounting and the gaming auditing standards established by the American Institute of Certified Public Accountants;

(c) disclose whether the accounts, records and control procedures maintained by the gaming operation are as required by the regulations promulgated by the Gaming Commission; and

(d) provide for preliminary review of the internal control structure upon adoption of the policies and procedures by the entity, provide an opinion regarding the adequacy of controls, to disclose any deviation from prescribed rules and regulations, and report such findings to the Gaming Commission and management.

Section 6.03 Gaming Commission's Right to Conduct Audit. The Gaming Commission shall be able to retain its own staff auditors and accountants, or contract an accountant(s), to conduct its own audits of any gaming operation.

Section 6.04 Prohibition Against Embezzlement. Any delay, maneuver or action of any kind which in the opinion of the Commissioner is effectuated by any licensee to unlawfully divert gaming or other proceeds properly belonging to the Tribe shall constitute grounds for taking sanctions against that licensee. If the Gaming Commission finds an unlawful diversion was conducted or attempted, it shall sanction the licensee. Sanctions may include fining, revoking, suspending, limiting or refusing to renew the license, or prosecution.

CHAPTER VII

AUTHORIZATION OF GAMING

Section 7.01 Prohibition Against Gaming. No person licensed by the Gaming Commission shall engage, conduct or condone any game unless such game is approved by the Gaming Commission and regulations for rules governing such game have been duly promulgated by the Gaming Commission and approved by the Viejas Independent Review Board.

Section 7.02 Grace Period. The prohibition contained in Section 7.01 shall not apply to those games already being played as of the date of enactment of this Ordinance, provided however, that the licensee conform to the rules promulgated hereunder within five (5) days of such promulgation.

Section 7.03 Authorization of Gaming. The Gaming Commission may authorize the playing of any Class II game not prohibited by the laws of the State of California. The Gaming Commission shall promulgate regulations for rules governing all authorized games, including regulations governing the equipment (chips, dice, cards, tiles, devices, etc.) used in such game. Any provision in the Tribe's Compact with the State of California providing for testing, notice to, and comment from the State, shall be complied with before any game is authorized by the Gaming Commission. When there is reasonable cause to question the classification of a game (i.e. Class II or Class III) the Tribal Gaming Commission shall authorize such games to be conducted as Class II, unless or until the National Indian Gaming Commission rules otherwise or until a court of competent jurisdiction has ruled otherwise.

Section 7.04 Approval of Gaming Equipment. The Gaming Commission shall have the discretion to review and approve all gaming equipment and other devices used in the gaming operation as to quality, design, integrity, fairness, honesty, and suitability.

(a) The Gaming Commission may require a prototype or sample of any model of gaming equipment or other device used in the gaming operation to be placed in the custody of the Commissioner and retained as a control for comparison purposes.

(b) The Gaming Commission may contract with any outside independent Gaming Test Laboratory or other professional expertise it deems necessary or appropriate to ensure the integrity of gaming devices, equipment, supplies, etc.

(c) Any evidence that gaming equipment or other devices used in the gaming operation have been tampered with or altered in any way, which would affect the integrity, fairness, honesty or suitability of the equipment or device shall be immediately reported to the Gaming Commission.

Section 7.05 Posting of Rules. The Rules of each authorized game offered at any duly licensed establishment shall be posted in a conspicuous location and shall be clearly legible.

Section 7.06 Gaming Related Activity of the Tribe. The Tribal Gaming Commission shall have full jurisdiction for regulatory compliance and enforcement of any other gaming related activity that the Tribe may elect to conduct. The Gaming Commission shall promulgate such regulations as it deems necessary to ensure the integrity of such activity and to ensure compliance with all applicable Federal laws and regulations. Gaming Commission approval with regard to compliance with applicable gaming laws and regulations, shall be required for any contracts related to any such gaming related activities. For the purposes of this section, such gaming related activities shall include but not be limited to:

- 1) manufacture, development, assembly, sales, or distribution of any gaming machines, devices, equipment, software, or components thereof;
- 2) joint ventures with other tribes, entities, persons, etc., related to gaming activity;
- 3) management or service contracts with any other Tribes, entities, persons, etc., related to gaming activities.
- 4) any financial loans, grants or other relationship with any Tribe, entity, person etc., related to gaming activity.

Chapter VIII

Exclusion or Ejection of Individuals

Section 8.01 *List of Undesirables.* The Gaming Commission may, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any duly licensed gaming operation. The list may include any person whose presence in the gaming establishment is determined by the Gaming Commission to pose a threat to the interests of the Tribe, the gaming public, or to licensed gaming.

Section 8.02 *Prohibition Against Listed Individuals.* It shall be violation of this Ordinance for any licensed employee to knowingly fail to exclude or eject from the gaming establishment any person(s) placed on the list referred to in Section 8.01. It shall be a violation of this Ordinance for any person whose name appears on the list referred to in Section 8.01 to enter into or engage in any game at a duly licensed gaming establishment, and any such presence shall be considered trespassing.

Section 8.03 *Prohibition Against Certain Individuals.* It shall be a violation of this Ordinance for any licensee who knowingly fails to exclude or eject from the gaming establishment any individual who is under the age of eighteen years and engaging in gaming activity.

Chapter IX

Unlawful Acts

Section 9.01 *It is Unlawful for any Person:*

- (a) to alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;
 - (b) to place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or knowledge of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager;
 - (c) to aid anyone in acquiring such knowledge as set forth in subparagraph (b), for the purpose of increasing or decreasing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome;
 - (d) to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
 - (e) knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in that gambling game;
 - (f) to place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past –posting and pressing bets;
 - (g) to reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- and

(h) to manipulate with intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, with knowledge or hope that the manipulation affects the outcome of the game or prize or with knowledge of any event that affects the outcome of the game or prize;

(i) to solicit funds or anything of value from any patron or employee;

(j) to unlawfully take or attempt to take any chips, coin(s), token(s) machine credits currency, or anything of value from any patron or employee on the premise;

(k) to refuse to leave the gaming establishment when appropriately advised to do so by a member of management, security, or the Tribal Gaming Commission;

(l) to damage or attempt to damage either intentionally or negligently any property, gaming device or equipment, or any article belonging to the Tribe, patron, employee, or Tribal corporation;

(m) under the 18 years of age to make any wager either directly or indirectly in any Class II or Class III gaming activity;

(o) to either intentionally or negligently cause injury or harm to any patron, or employee or threaten to do so;

(p) to possess any chips, tokens, cards, device, paraphernalia, ect., that could reasonably be concluded as useful in cheating, defrauding, manipulating, or altering any game, gaming device equipment, machine, computer, or supplies;

(q) for any employee to aid, conspire, collude or assist in any way any other employee or patron to win or have any unfair advantage to win or otherwise acquire anything of value unfairly.

Section 9.02 Prohibition Against Electronic Aids. Except as specifically permitted by the Commissioner, no person shall possess with the intent to use, or actually use, at any table game, either by himself or in concert with others any calculator, computer or other electronic, electrical, or electromechanical device to assist in projecting an outcome at any table game, to keep track of or analyze the cards having been dealt, to change the probabilities of any table game or the playing strategies to be utilized.

Section 9.03 Violations and Sanctions. Any patron or employee who commits any violation of this Chapter shall be deemed to have committed a violation of this Ordinance. If the Commission should have reasonable cause to believe any such violation was committed, it may impose licensing sanctions, fines, prosecution and exclusion.

CHAPTER X
NATIONAL INDIAN GAMING COMMISSION
AND TRIBAL – STATE COMPACTS

Section 10.01 *National Indian Gaming Commission – Regulations.* Notwithstanding any provision in this Gaming Ordinance or any regulations promulgated thereunder, the Tribal Gaming Commission is fully empowered to comply with all regulations promulgated by the National Indian Gaming Commission, (NIGC), including but not limited to, all requirements to report ordinances, contracts, license applications, background checks, and other information to the National Indian Gaming Commission. The Viejas Tribal Gaming Commissioner shall also serve as the designated agent as required under the National Indian Gaming Commission regulations.

Section 10.02 *National Indian Gaming Commission – Assessment.* Notwithstanding any provisions in the Gaming Ordinance or any regulation promulgated thereunder, the Tribal Gaming Commission is fully empowered to ensure compliance with all assessments authorized by the National Indian Gaming Commission. Such assessments shall be directed to be paid by the Gaming operation.

Section 10.03 *Compact with the State of California.* Notwithstanding any provision in this Gaming Ordinance or any regulation promulgated thereunder, the Gaming Commission is fully empowered to comply with the provisions of any compact between the Tribe and the State of California.

CHAPTER XI

MISCELLANEOUS

Section 11.01 Security. Each licensed gaming establishment must provide for reasonable security. All security personnel must be licensed by the Gaming Commission.

Section 11.02 Surveillance. The Gaming facility shall provide all surveillance equipment, supplies, and space as deemed necessary by the Tribal Gaming Commission for the reasonable protection of patrons, employees, and Tribal assets. All surveillance systems, equipment, rooms, ect., shall be under the control and jurisdiction of the Tribal Gaming Commission. All surveillance staff shall be employees of and report only to the Tribal Gaming Commission.

Section 11.03 Maintenance of Ordinance and Regulations. Each licensee shall obtain, maintain and keep current a copy of the Gaming Ordinance and regulations promulgated thereunder, which shall be located at the premises used for the conduct of any licensed gaming activity. The Ordinance and regulations shall be produced by the licensee and shown to any authorized person upon demand. That a licensee may not have a current copy of the Ordinance, or each of the regulations of the Gaming Commission, shall not in way diminish the licensee's obligation to abide by the Ordinance and regulations.

Section 11.04 Compliance with Other Laws. The construction, maintenance and operation of any facility in which gaming and related activities are to take place shall be in a manner which adequately protects the environment and the public health and safety and shall comply with any otherwise applicable Tribal and Federal laws relating to environmental protection and public health and safety.

Section 11.05 Amendments. All provisions of this Gaming Ordinance are subject to amendment by the Viejas Tribal Council. All regulations promulgated by the Gaming Commission are subject to proper revision, repeal or amendment by the Gaming Commission and Review Board.

Section 11.06 Severability. If any provision of this Ordinance, or its application to any purpose or circumstance, is held invalid by a court of competent jurisdiction, the full remainder of the provision, or the application of the provision through another person or circumstances, shall not be affected. If any provision of this Ordinance is determined to be in conflict with any Federal or State Gaming laws or regulations, or future Tribal – State Compact, the applicable Federal or State laws and regulations or compact provisions shall prevail as applicable to that conflicting provision of this Ordinance only. The remainder of this Ordinance shall remain valid and in effect.

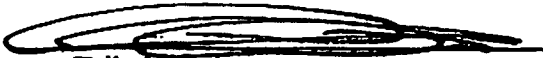
Section 11.07 Designated Agent. The designated agent for notice of any official determination, order, or notice of violation by the NIGC as required by 25 C.F.R. §519.1 is the Commissioner of the Tribal Gaming Commission;

Section 11.08 Law Enforcement. The designated law enforcement agency as required by IGRA is the San Diego County Sheriff Department. The procedures set forth in Section 2.09 above describe the steps taken for a complete investigation. Criminal history checks shall be processed both on a State and Federal level.

Section 11.09 Effective Date and Supercedure. This Tribal Gaming Ordinance shall take effect when signed by the Tribal Chairman and upon receipt of approval of the Chairman of the National Indian Gaming Commission. Upon receipt of approval of the Chairman of the NIGC, this Tribal Gaming Ordinance shall supercede and replace any and all other Tribal Gaming Ordinance, Ordinances, laws or resolutions previously adopted or enacted by the Council or Chairman of the Viejas Band of Kumeyaay Indians.

END OF THE TRIBAL GAMING CODE OF THE VIEJAS BAND OF KUMEYAAY INDIANS

DULY ADPOTED THIS 31 DAY OF JULY 1998



Tribal Chairman