



SEP 4 2001

Albert R. Apodaca, Executive Director  
Mescalero Apache Tribal Gaming Commission  
P.O. Box 329  
Mescalero, NM 88340

RE: Request for Approval of Mescalero Apache Tribal Gaming Ordinance

Dear Mr. Apodaca:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for the review and approval of Tribal Gaming Ordinance No. 01-04 (Ordinance) of the Mescalero Apache Tribe (Tribe). The Ordinance was adopted by the Tribal Council on August 8, 2001, and was received by the NIGC on August 17, 2001. Under the Indian Gaming Regulatory Act (IGRA) and the regulations promulgated by the NIGC, the Chairman has 90 days to review and either approve or disapprove the ordinance. 25 C.F.R. § 522.4. The Tribe's ordinance is hereby approved.

Thank you for submitting the Gaming Ordinance for review and approval. The NIGC staff and I look forward to working with you and the Tribe on future gaming issues.

Sincerely,

*15/ Montie R. Deer*

Montie R. Deer  
Chairman

bcc: NIGC RF: OGC RF: ORD RF: RHoma 4cc for distribution: Field Rep.  
08/30/01: Office of General Counsel: 632-7003  
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**MESCALERO APACHE TRIBE  
MESCALERO, NEW MEXICO  
ORDINANCE NO. 01- 04**

AUG 17 2001

**WHEREAS** the Mescalero Apache Tribe is a federally recognized Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 476) and governed by its Revised Constitution; and

**WHEREAS** the Mescalero Apache Tribal Council has the power to act for the Tribe and to represent the Tribe in all matters under the powers vested in it by Article XI of the Revised Constitution of the Mescalero Apache Tribe; and

**WHEREAS** the Mescalero Apache Tribal Council has the duty to regulate the conduct of trade and oversee the disposition of tribal property upon the reservation; and

**WHEREAS** the Mescalero Apache Tribal Council has the responsibility to protect and preserve tribal resources; and

**WHEREAS**, the Mescalero Apache Tribal Council now wishes to provide additional guidance to the Mescalero Apache Tribal Gaming Commission in order to assist them in the performance of their licensing and regulatory functions as specified in the following ordinance.

**NOW, THEREFORE, BE IT ORDAINED**, that the Mescalero Apache Tribal Council does hereby adopt the attached Mescalero Apache Gaming Ordinance.

# MESCALERO APACHE TRIBE GAMING ORDINANCE

## SECTION 1. NAME.

The name of this Ordinance shall be the "Mescalero Apache Gaming Ordinance".

## SECTION 2. DEFINITIONS.

The following words shall have the following meanings under this Ordinance, unless the context otherwise requires.

A. **"Bingo"** means:

1. The game of chance commonly known as "bingo" or lotto (whether or not electronic, computer, or other technologic aids are used in connection) when players:
  - a. Play for prizes with cards bearing numbers or other designations;
  - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  - c. Win the game by being the first person to cover a designated pattern on such cards; and,
2. If played in the same location as bingo, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo.

B. **"Class II gaming"** means:

1. Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:
  - a. Play for prizes with cards bearing numbers or other designations;
  - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  - c. Win the game by being the first person to cover a designated pattern on such cards.
2. If played in the same location as bingo or lotto, pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo.
3. Nonbanking card games that are:
  - a. Not explicitly prohibited by New Mexico law and are played legally anywhere in the state; and
  - b. Played in conformity with New Mexico laws and regulations concerning

hours, periods of operation and limitations on wagers and pot prizes.

C. **"Class III Gaming"** means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

1. Any house banking game, including but not limited to:
  - a. Card games such as baccarat, chemin de fer, blackjack (21) and pai gow (if played as house banking games);
  - b. Casino games such as roulette, craps and keno;
2. Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;
3. Lotteries, in any form.

D. **"Commission"** or **"Mescalero Apache Tribal Gaming Commission"** means the Mescalero Apache Tribal Gaming Commission established by this Ordinance.

E. **"Gaming Enterprise"** means the Mescalero Apache Gaming Enterprise, an unincorporated, wholly owned entity of the Tribe.

F. **"Games of Chance"** includes Class II and Class III gaming, but does not include social games played solely for prizes of minimal value, or traditional forms of Indian gaming authorized by the Mescalero Apache Tribal Council in connection with tribal ceremonies or celebrations.

G. **"Gaming Device"** or **"Gaming Equipment"** means any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine used remotely or directly in connection with gaming.

H. **"Gaming Employee"** means any natural person employed by a Gaming Enterprise or Management Contractor.

I. **"Gaming Facility"** means the building location or room in which Class II and/or Class III gaming is conducted on the Reservation.

J. **"Gaming Ordinance"** and **"Ordinance"** mean this Mescalero Apache Gaming Ordinance and any amendments thereto.

K. **"Gaming Services"** means the provision or sale of any gaming device, games of chance, cards, dice, coins, tokens, gaming related goods, poker tables, blackjack tables, equipment or any mechanical, electromechanical, electronic device, machine, including training and consulting services for table games, slots, cage, accounting, hard and soft count, surveillance, and management to the Tribe, Gaming Enterprise, or Management Contractor in connection with the operation of gaming in a Gaming Facility.

L. **"General Manager"** means the Manager of gaming for the Gaming Enterprise as appointed by the Mescalero Apache Tribal President or, if the Gaming Enterprise enters into a Management Contract, the chief Management Contractor shall be the General Manager.

M. **"Gross Receipts"** means receipts from the sale of shares, tickets, or rights in any manner

connected with participation or the right to participate in any game of chance, including but not limited to, any admission fee or charge, the sale of merchandise, refreshments, souvenirs, services, equipment, or supplies, interest earned on deposits, and all other miscellaneous receipts.

N. **"IGRA"** means the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168.

O. **"Joint Powers Agreement"** means an agreement related to gaming and games of chance on the Reservation entered into with the state of New Mexico or any other New Mexico governmental entity under the New Mexico Joint Powers Agreements Act, § 11-1-7, N.M.S.A. 1978 (1994 Repl.).

P. **"Key Employee"** means:

1. A person who performs one or more of the following functions: Bingo caller; Counting room supervisor; Chief of security; Custodian of gaming supplies or cash; Floor manager; Pit boss; Dealer; Croupier; Approver of credit; or Custodian of gambling devices including persons with access to cash and accounting records within such devices; and,
2. If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
3. If not otherwise included, the 4 most highly compensated persons in the gaming operation.

Q. **"License"** means a license duly issued by the Mescalero Apache Tribal Gaming Commission to principals, primary management officials and key employees of any gaming enterprise conducted on the Reservation and to others pursuant to this Gaming Ordinance.

R. **"Licensee"** means any entity or person who has been duly licensed by the Mescalero Apache Tribal Gaming Commission.

S. **"Management Contract"** means a contract within the meaning of IGRA, 25 U.S.C. §§ 2710(D) (9) and 2711, as defined in 25 C.F.R. Sec. 502.15: any contract, subcontract, or collateral agreement between the Tribe (or the Gaming Enterprise) 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.

T. **"Management Contractor"** means any person or entity that has entered into a Management Contract with the Gaming Enterprise Board.

U. **"Member of the Tribe"** or Tribal Member means an enrolled member of the Mescalero Apache Tribe.

V. **"National Indian Gaming Commission" and "NIGC"** mean the National Indian Gaming Commission established by the IGRA.

W. **"Net revenues"** means gross gaming revenues of an Indian gaming operation less -

1. Amounts paid out as, or paid for, prizes; and

2. Total gaming-related operating expenses excluding management fees.
- X. **"Occasion"** means a gathering at which a game of chance is played.
- Y. **"Person"** means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other legal entity whatsoever.
- Z. **"Premises"** means any room, hall, building, enclosure, or outdoor or other area used for the purpose of playing a game of chance.
- AA. **"Primary Management Official"** means:
1. The person having management responsibility for a management contract:
  2. Any person who has authority:
    - a. To hire and fire employees; or
    - b. To set up working policy for the gaming operation; or
  3. The chief financial officer or other person who has financial management responsibility.
- BB. **"President"** means the President of the Mescalero Apache Tribe
- CC. **"Tribe"** means the Mescalero Apache Tribe.
- DD. **"Reservation"** means the Mescalero Apache Indian Reservation and any lands title to which is held in trust by the United States for the benefit of the Mescalero Apache Tribe or held by the Mescalero Apache Tribe subject to a restriction by the United States against alienation, and lands the Mescalero Apache Tribe exercises governmental power.
- EE. **"Site License"** means a license duly issued by the Mescalero Apache Tribal Gaming Commission for each Gaming Facility at each location at which games of chance are permitted to be conducted on the Reservation.
- FF. **"State Gaming Representative"** means that person designated by New Mexico State law who will be responsible for actions of the state set out in the Tribal-State Compact.
- GG. **"Temporary License"** means a license for no longer than 90 days issued by the Mescalero Apache Tribal Gaming Commission to an applicant who has filed with the Mescalero Apache Tribal Gaming Commission a completed application, pending the results of background checks required by this ordinance. Such temporary licenses shall be issued only when needed to acquire necessary personnel for the conduct of games of chance on the Reservation and they shall not be issued if the background investigation undertaken discloses that the applicant has a criminal history or if other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and of no effect upon:
1. The issuance of a license;
  2. The issuance of a notice of denial; or
  3. 90 days after the temporary license is issued, whichever occurs earlier.

HH. **"Tribal Council"** means the Tribal Council of the Mescalero Apache Tribe, the legislative body of the Tribe.

II. **"Tribal Court"** means the Mescalero Apache Tribal Court.

JJ. **"Tribal-State Compact"** and **"Compact"** mean any compact entered into by the Tribe and the State of New Mexico under Section 11(d) of the IGRA. (25 U.S.C. 2710(d)).

### **SECTION 3. Purposes.**

The purposes of this Gaming Ordinance are:

1. To make lawful, and provide for the regulation of, all playing of games of chance on the Reservation;
2. To protect the integrity of all such gaming; and
3. To prevent improper or unlawful conduct in gaming.

### **SECTION 4. Interpretation.**

This Gaming Ordinance is an exercise of the sovereign power of the Tribe and shall be liberally construed for the accomplishment of its purposes and to comply with the Indian Gaming Regulatory Act.

### **SECTION 5. Gaming Policy.**

A. **Games of Chance Prohibited.** No person may operate or conduct any games of chance within the boundaries of the Reservation except as authorized by the Mescalero Apache Tribal Council.

B. **Ownership of Gaming Enterprise.** The Mescalero Apache Tribe shall have the sole proprietary interest in, and responsibility for, the operation and conduct of any games of chance operated or conducted on the Reservation.

C. **Protection of Environment; Public Health and Safety.** The construction and maintenance of any gaming facility, and the operation and conduct of any and all games of chance, shall be done in a manner that adequately protects the environment and the public health and safety, and must be done in a manner that meets the requirements of Section 13(C) of this ordinance.

D. **Age Restrictions.** No person under 21 years of age may participate in any Class III gaming on the Reservation, and no person under 21 years of age can be employed in any Class III gaming activities, or be a key employee or primary management official of any gaming enterprise on the Reservation.

E. **Persons Barred from Personal Participation in Gaming.** None of the following persons serving in the following categories of employment or office may personally engage in gaming, play any games of chance, or win any prizes awarded by the Gaming Enterprise in the Tribe until 90 days after the termination of such employment or office:

1. Members of the Mescalero Apache Tribal Gaming Commission,

2. General Manager of the Gaming Enterprise,
3. Primary Management officials,
4. Employees of the Gaming Enterprise and the Mescalero Apache Tribal Gaming Commission; however, the Mescalero Apache Tribal Gaming Commission is authorized to exempt classes of employees from the prohibition of this section.

**SECTION 6. Class II and Class III Games Authorized.**

- A. **Class II Games.** The Gaming Enterprise shall have authority to establish, equip, operate and maintain bingo and Class II card games on premises located at such places as the Tribal Council has designated or may designate.
- B. **Class III Games.** The Gaming Enterprise shall have authority to establish, equip, operate, and maintain a Class III gaming operation on premises located at such places on the Reservation as the Tribal Council has designated or may designate.
- C. **Designation of Manager in Charge.** The General Manager shall designate a primary management official to be the manager in charge for each occasion. The manager in charge shall be primarily responsible for the operation and/or conduct of Class II gaming and/or Class III gaming on that occasion. The manager in charge must have obtained a license from the Mescalero Apache Tribal Gaming Commission at least 5 days prior to the occasion. The manager in charge shall supervise all activities on the occasion and shall be present on the premises continuously during the playing of bingo games, Class II card games or Class III gaming and for a period of at least 1 hour after the last game of the occasion has been completed.
- D. **Premises Open to Mescalero Apache Tribal Gaming Commission.** Premises where any Class II or Class III gaming is being operated or conducted, or where it is intended that a Class II or Class III gaming will be operated or conducted, shall at all times be open to inspection by the Mescalero Apache Tribal Gaming Commission and its agents and employees.
- E. **Employees.** All persons who operate or conduct, or assist in operating or conducting, Class II or Class III gaming shall be employed by the Gaming Enterprise and shall wear a gaming license badge evidencing their names and the legend of the Gaming Commission.
- F. **Qualification For Employment; Testing.** Employees of the Gaming Enterprise shall be of good moral character and, as a condition of their employment, shall agree to any lawful means of testing for truthfulness, at any time without prior notice, concerning the handling, collection and/or disbursement of gross receipts. No person shall be employed by the Gaming Enterprise, whose prior activities, criminal record if any, reputation, habits, or 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 operation or conduct of gaming or the carrying on of business and financial arrangements incidental thereto.
- G. **Preference in Employment.** The Gaming Enterprise shall provide preference in employment and advancement to tribal members if they meet the qualifications for such employment with the Gaming Enterprise.



H. **Personnel Policies.** The Gaming Enterprise shall adopt written personnel policies that shall be provided to each employee. These Personnel Policies shall provide a formal grievance procedure, including appeal to persons of greater authority than the employee's immediate supervisor.

**SECTION 7. Mescalero Apache Tribal Gaming Commission.**

A. **Establishment of Mescalero Apache Tribal Gaming Commission.** There is hereby established the Mescalero Apache Tribal Gaming Commission for the purposes of regulating all games of chance within the Reservation and enforcing this Gaming Ordinance.

B. **Powers and Duties.** The Mescalero Apache Tribal Gaming Commission shall have the following powers and duties:

1. To recommend to the Tribal Council whether it should permit or refuse to permit the operation or conduct of any games of chance within the Reservation, and to specify the recommendations for the operation or conduct of any permitted games of chance within the Reservation.
2. To inspect and examine all premises within the Reservation at which games of chance are played to insure that all gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety as required by Sections 5(C) and 13(C).
3. To issue separate site licenses to each Gaming Facility or specific location on the Reservation where the Tribal Council authorizes gaming to occur.
4. To implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors and others connected with gaming activities, including the issuance of site licenses to gaming facilities, and the issuance of temporary licenses and licenses to individuals and entities and the verification of internal controls, as required under this Ordinance, IGRA, and any procedures prescribed by the Secretary of the Interior.
5. To conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified Gaming Enterprise Key Employees and Primary Management Officials under requirements at least as strict as those established in Section 9(E)(6) of this Ordinance; and grant, condition, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, conditioning, suspension, revocation, or renewal of licenses.
6. To promulgate rules for any Class II or Class III gaming activity on the Reservation in a manner consistent with federal regulations enacted to implement the federal IGRA.
7. To serve as the Tribal Gaming Agency for purposes of implementing the Tribal-State gaming compact entered into between the Tribe and the State of New Mexico to make such reports regarding Class III gaming to the State Gaming Representative as required by the Tribal-State Compact and to inspect and make copies of New Mexico

state records concerning all Class III gaming conducted under this Ordinance.

8. To inspect, examine, photocopy, and audit all papers, books, and records regarding gaming activities conducted within the Reservation and any other matters necessary to carry out the duties of the Tribal Gaming Commission under this Gaming Ordinance.
9. To investigate any suspicion of wrongdoing related to any gaming activity.
10. To conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law, including this Gaming Ordinance, or with any contracts or agreements related to gaming activities.
11. To hold such hearings, sit and act at such times and places, take testimony, and receive such evidence, as the Mescalero Apache Tribal Gaming Commission deems relevant in fulfilling its duties.
12. To require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation by the Mescalero Apache Tribal Gaming Commission, and to bring actions in the Tribal Court for the enforcement of such subpoenas.
13. To administer oaths and affirmations to witnesses appearing before the Mescalero Apache Tribal Gaming Commission.
14. To bring suit in the Tribal Court seeking temporary and permanent orders closing a game of chance in accordance with this Gaming Ordinance.
15. To enter into contracts and memoranda of understanding, as directed by Tribal Resolution of the Mescalero Apache Tribal Council, for activities necessary to the discharge of the duties of the Mescalero Apache Tribal Gaming Commission, provided that and to contract with the National Indian Gaming Commission for the enforcement of federal regulations governing gaming on Indian reservations, provided that the Mescalero Apache Tribal Gaming Commission may not employ any person who would be disqualified from being a Commissioner under one or more of the four prohibitions in Section 7(E) below.
16. The Mescalero Apache Tribal Gaming Commission shall submit an annual budget, with supporting documentation as directed, to the Tribal Council for its consideration and approval. The Mescalero Apache Tribal Gaming Commission shall submit quarterly financial reports to the President of the Mescalero Apache Tribe.
17. To establish and collect license, investigation and regulatory fees to cover or help cover the costs connected therewith.
18. To certify management contracts in accordance with this Gaming Ordinance.
19. To hear appeals in accordance with this Gaming Ordinance.
20. To keep minutes, records, and books in which shall be kept a true, faithful, and

correct record of all proceedings of the Mescalero Apache Tribal Gaming Commission.

21. To promulgate rules and regulations, in addition to those required by Section 7(B)(7) above, as it deems appropriate to implement the provisions of this Gaming Ordinance.
22. To recommend amendments to this Gaming Ordinance to the Tribal Council.
23. To submit an annual report to the Tribal Council and Tribal President on the activities of the Mescalero Apache Tribal Gaming Commission, such report must include information on the funding, income and expenses of the Mescalero Apache Tribal Gaming Commission.
24. To take action as may be reasonable and appropriate to enforce this Ordinance and the rules and regulations of the Mescalero Apache Tribal Gaming Commission.

**C. Duties Not Delegated to the Mescalero Apache Tribal Gaming Commission.**

1. The Commission shall have no involvement in the day-to-day operational decisions of the Gaming Enterprise except to the extent that such issues involve compliance with Presidential Executive Orders, Tribal Ordinances, Tribal Resolutions, the Indian Gaming Regulatory Act, National Indian Gaming Commission regulations, or other matters assigned to the Commission.
2. The Executive Director of the Mescalero Apache Tribal Gaming Commission shall be appointed by the President of the Mescalero Apache Tribe. The Executive Director shall report directly to the President of the Mescalero Apache Tribe and shall provide a written report on a regular basis, at least monthly, as directed.
3. The Executive Director shall (or caused to be) hire, fire, and manage all employees of the Gaming Commission under the direction of the Tribal President.

**D. Procedure for Promulgation of Regulations.** Where the Mescalero Apache Tribal Gaming Commission is authorized to promulgate regulations, the following procedure shall be followed.

1. First, the Mescalero Apache Tribal Gaming Commission shall hold an informal meeting with the Gaming Enterprise management to discuss the purpose of the proposed regulation and its substantive content. The Mescalero Apache Gaming Enterprise shall be given an opportunity to advise the Mescalero Apache Tribal Gaming Commission of any policy concerns.
2. After the Gaming Enterprise has had an opportunity to advise the Mescalero Apache Tribal Gaming Commission of its concerns, the Mescalero Apache Tribal Gaming Commission shall put the proposed regulation in a form for formal circulation and comment. At a minimum, the proposed regulation shall be posted in the tribal offices, and a copy should be mailed to the Gaming Enterprise and the General Manager. The Mescalero Apache Tribal Gaming Commission shall allow a minimum of 14 and a maximum of 30 days for comment.

3. The Mescalero Apache Tribal Gaming Commission may receive written comments from interested parties. After considering comments, the Mescalero Apache Tribal Gaming Commission shall publish the regulation in proposed final form by posting a copy of the final regulation in the tribal offices and by sending a copy of the final regulation to the Gaming Enterprise and to the General Manager.
4. The regulation shall become final 14 days after publication by posting and circulation as specified in Section 7(D)(3) above.
5. Copies of all regulations enacted by the Commission shall be kept in the Commission's offices. All Tribal Ordinances, Resolutions, Executive Orders and regulations involving gaming or which affect gaming shall be kept with documents in the Commission offices.
6. Nothing in this Ordinance shall infringe upon the power of the Tribal Council, prior or subsequent to the effective date of the regulation, to modify or rescind any regulation.

E. **Composition; Terms.** The Mescalero Apache Tribal Gaming Commission shall consist of no fewer than three, and no more than five, Part-Time Commissioners appointed by the Tribal President, subject to confirmation by the Tribal Council. Each Commissioner shall serve for a term of one year. A Commissioner may serve after the expiration of his or her term of office until a successor has been appointed, unless such Commissioner has been removed from office pursuant to Section 8(G). Commissioners may serve for more than one term.

F. **Qualifications of Commissioners.** Commissioners shall be Tribal Members. No person shall be eligible or qualified to serve, or continue to serve, as a Commissioner who:

1. Has been convicted of a felony or gaming offense;
2. Is an employee of any gaming enterprise;
3. Has any financial interest in, or responsibility for, any gaming activity, including any indirect interest arising from the interest of an immediate family member (husband, wife, son, daughter, brother, sister, father or mother); or,
4. Has any financial interest in, or responsibility for, any gaming-related contract, including any indirect interest arising from the interest of an immediate family member (husband, wife, son, daughter, brother, sister, father or mother).

G. **Removal of Commissioners.** A Commissioner may be involuntarily removed or suspended from office by the Tribal President, subject to the approval of the Tribal Council without cause.

H. **Resignations and Vacancies.** Any Commissioner may resign at any time by giving written notice of such resignation to the Executive Director of the Mescalero Apache Gaming Commission or giving such notice to President of the Mescalero Apache Tribe. The resignation shall become effective at the time specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Mescalero Apache Tribal Gaming Commission, howsoever caused, shall be filled for the unexpired portion of the vacated Commissioner's term by a

qualified person appointed by the President with the consent of the Tribal Council.

I. **Selection of Chairman.** The Tribal President shall select one Commissioner to serve as Chairman, one Commissioner to serve as Vice Chairman, and one Commissioner to serve as Secretary. The Vice Chairman shall serve as Chairman during meetings of the Mescalero Apache Tribal Gaming Commission at which the Chairman is absent.

J. **Motions and Resolutions; Meetings; Quorum.** The powers of the Mescalero Apache Tribal Gaming Commission are vested in the Commissioners. All official actions of the Mescalero Apache Tribal Gaming Commission shall be taken by motion or resolution approved by the affirmative vote of a majority of the Mescalero Apache Tribal Gaming Commission members present at a meeting with a quorum. The Mescalero Apache Tribal Gaming Commission shall meet at the call of the Executive Director, the Chairman, or a majority of its members. However, the Commission shall meet at least once every month. A simple majority of the members of the Mescalero Apache Tribal Gaming Commission shall comprise a quorum.

K. **Notice.**

1. Notice of meetings stating the time, date, and tentative agenda shall be given in writing to each Commissioner by letter mailed no fewer than five days before the meeting or personally delivered no fewer than 24 hours before the meeting, provided, however, that no written notice shall be required of regularly scheduled meetings or meetings scheduled at a previous meeting, so long as such schedule or setting is made known to all members.
2. Notice may be waived in a writing signed by all Commissioners entitled to such notices, whether before or after the meeting begins, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any Commissioner at a Mescalero Apache Tribal Gaming Commission meeting shall constitute his or her waiver of notice, except where a Commissioner attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

L. **Cooperation with Law Enforcement Agencies.** The Mescalero Apache Tribal Gaming Commission may cooperate with law enforcement officials the Bureau of Indian Affairs, the Federal Bureau of Investigation, and other law enforcement agencies, when such cooperation is in the best interests of the Tribe and will help to insure that fair, honest, and efficient games of chance are operated and conducted within the Reservation.

M. **Compensation for Service; Reimbursement of Expenses.** Commissioners shall be compensated for serving on the Mescalero Apache Tribal Gaming Commission in accordance with the budget approved by the Mescalero Apache Tribal Council. In accordance with the budget approved by the Tribal Council, Commissioners shall additionally be reimbursed for reasonable expenses incurred in connection with the performance of their Mescalero Apache Tribal Gaming Commission duties at the rate at which such expenses are customarily reimbursed.

**SECTION 8. Mescalero Apache Tribal Gaming Commission's  
Relationship to Tribal Government.**

A. **Agency of Tribal Government.** The Mescalero Apache Tribal Gaming Commission shall be an agency of the Tribal Government and as such shall adopt personnel and administrative policies. The Commission is the Tribal Gaming Agency for purposes of the Tribal-State Gaming Compact between the Tribe and the State of New Mexico.

B. **Independent Decision-Making Authority.** Notwithstanding the fact that the Mescalero Apache Tribal Gaming Commission is an agency of the Tribal Government, the decisions of the Mescalero Apache Tribal Gaming Commission regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the Mescalero Apache Tribal Gaming Commission; provided, that any person or entity adversely affected by a ruling of the Mescalero Apache Tribal Gaming Commission, including, but not limited to the Mescalero Apache Gaming Enterprise or any employee thereof, may petition the Tribal Court for review of such decision, in accordance with Section 14(H) below.

C. **Gaming Responsibilities.** The Commission will assure that the Gaming Enterprise:

1. Operates all Class III gaming pursuant to Tribe laws and regulations, the IGRA and other applicable federal law;
2. Provides for the physical safety of patrons in every gaming facility;
3. Provides for the physical safety of employees of the Mescalero Apache Gaming Enterprise;
4. Provides for the physical safeguarding of assets transported to and from the Gaming facility and the cashier's cage department;
5. Provides for the protection of the property of patrons and the Gaming Enterprise from illegal activities;
6. Participates in licensing of primary management officials and key employees of a Class III Gaming Enterprise;
7. Detains persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
8. Records and investigates any and all unusual occurrences related to Class III Gaming within the gaming facility.

**SECTION 9. Licenses for Operating and Conducting Games of Chance.**

A. **Licenses Required.**

1. **Gaming Enterprise.** The Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission.
2. **Gaming Facility.** Each Gaming Facility shall be licensed by the Mescalero Apache Tribal Gaming Commission.

3. **Gaming Employees.** All Gaming Employees shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to background investigations.
4. **Management Contractors.** All Management Contractors, including their principals, primary management officials, key employees and shareholders having in excess of 5% ownership or interest, shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to background investigations.
5. **Sales of Gaming Devices, equipment or services.** Any person proposing to sell or lease any Gaming Device, Gaming Equipment, or provide Gaming Services to a Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to a background investigation before being permitted to sell or lease any Gaming Device or Gaming Equipment or provide any Gaming Services to any Gaming Enterprise, Gaming Facility, or Management Contractor.
6. **Lenders, Investors and Providers of Financial Services.** Lenders, investors and providers of financial services, and such agents, employees and major shareholders of such person as required by the Mescalero Apache Tribal Gaming Commission, shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to background investigation.

**B. License Application.** Each applicant for a license shall file with the Mescalero Apache Tribal Gaming Commission a written application in the form prescribed by the Mescalero Apache Tribal Gaming Commission, duly executed and verified, along with the applicant's fingerprint card, current photograph and any fees required by the Mescalero Apache Tribal Gaming Commission. At a minimum, the application form shall contain all of the following information and requests for information:

1. The following notice ("Privacy Act Notice") shall be provided to the applicant with the application form, with instructions to the applicant to read and sign the Privacy Act Notice before the application is executed and returned:

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 members and staff of the Mescalero Apache Tribal Gaming Commission, and of the National Indian Gaming Commission ("NIGC") who have need for the information in performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when, pursuant to a requirement by a Tribe or the NIGC, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Tribe's being unable to hire you as a primary management official or in a key employee

position.

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

2. Any existing persons or entities that are required to be notified in writing that they shall either:
  - a. Complete a new application that contains a Privacy Act Notice; or
  - b. Sign a statement that contains the Privacy Act Notice and consent to the routine uses of information described in that Notice.
3. The following notice ("False Statement Notice") shall be placed on the application form before that form is filled out by any applicant:

A false statement on any part be licensed by Section 9(A) above shall be of your application may be grounds for not hiring you, denying you any license or for firing you after you begin work, or revoking any license previously issued. Also, you may be punished by fine or imprisonment. See 18 U.S. Code, §1001.
4. The Mescalero Apache Tribal Gaming Commission shall notify in writing any persons or entities required to be licensed that they shall either:
  - a. Complete a new application form that contains a False Statement Notice; or
  - b. Sign a statement that contains the Notice.
5. The Mescalero Apache Tribal Gaming Commission shall request from each person or entity required by Section 9(A) above to be licensed all of the following information:
  - a. Full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
  - b. Currently and for the previous 10 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; provided, that any applicant who is a primary management official, key employee, management contractor, manufacturer or supplier of gaming devices and/or a person providing gaming services, must provide such information from the age of 18;
  - c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Section 10(B) (5) (b) above;
  - d. Current business and residence telephone numbers;
  - e. A description of existing or previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between the businesses and Indian



tribes;

- f. A description of any existing and previous business relationships with the gaming industry, including, but not limited to, ownership interests in those businesses;
- g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
- i. For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations) since age 18 years, the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;
- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge occurred since age 18 years and is not otherwise listed pursuant to Section 9(B) (5) (h) or Section 9(B)(5)(i), the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;
- k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;
- l. A current photograph;
- m. Fingerprints shall be taken by the Commission or any other qualified Law Enforcement Agency. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, a designated agency shall forward the fingerprint cards directly to the NIGC.
- n. The fee required by the Mescalero Apache Tribal Gaming Commission; and
- o. Any other information that the Mescalero Apache Tribal Gaming Commission deems relevant.

**C. Background Investigations to Determine Eligibility to Work in Gaming Enterprises.**

- 1. Upon receipt of a completed application and required fee for licensing, the Mescalero Apache Tribal Gaming Commission shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.
- 2. Background checks of applicants will be performed pursuant to the following procedures:

- a. The Mescalero Apache Tribal Gaming Commission will provide applications to applicants upon request, and shall collect and maintain the applications;
  - b. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, a designated agency or the Bureau of Indian Affairs Officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the NIGC. The NIGC will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Mescalero Apache Tribal Gaming Commission.
  - c. The Mescalero Apache Tribal Gaming Commission shall investigate the information provided in the applications. This investigation will include:
    - i. Contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;
    - ii. Interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Mescalero Apache Tribal Gaming Commission to make a determination concerning whether the applicant meets applicable eligibility requirements;
    - iii. Reviewing relevant financial records of the applicant for the 3 years preceding the application; and
    - iv. Contacting any state, federal, or other government agency that is referred to in the application.
  - d. The Mescalero Apache Tribal Gaming Commission shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under this Ordinance. The Mescalero Apache Tribal Gaming Commission shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
  - e. The Mescalero Apache Tribal Gaming Commission will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Mescalero Apache Tribal Gaming Commission will perform additional investigations.
3. In conducting a background investigation, the Mescalero Apache Tribal Gaming Commission and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.
  4. The Mescalero Apache Tribal Gaming Commission shall retain the right to conduct additional background investigations of any person required to be licensed at any

time while the license is valid.

5. With respect to principals, key employees and primary management officials, the Mescalero Apache Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigations for no less than 6 years from the date of termination of employment.
6. Once the investigation is complete, the Mescalero Apache Tribal Gaming Commission will decide whether the applicant meets the eligibility criteria under this ordinance.
7. All background investigations and reports shall remain confidential.

**D. Procedures for Forwarding Applications and Reports.**

1. When a key employee or primary management official begins work at a gaming enterprise authorized by the Tribal-State Compact and this Ordinance, the Mescalero Apache Tribal Gaming Commission shall forward to the NIGC a completed suitability of employment report.
2. The Mescalero Apache Tribal Gaming Commission shall forward the report referred to in Section 9(D) (4) to the NIGC and the State Gaming Representative within 60 days after an employee begins work.
3. A key employee or primary management official who does not have a license shall not be employed after 90 days.
4. The Mescalero Apache Tribal Gaming Commission shall prepare and forward to the NIGC and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
  - a. Steps taken in conducting the background investigation;
  - b. Results obtained;
  - c. Conclusions reached; and
  - d. The basis for those conclusions.
5. The Mescalero Apache Tribal Gaming Commission shall submit with the report a copy of the eligibility determination made under Section 9(C)(6).
6. If a license is not issued to an applicant, the Mescalero Apache Tribal Gaming Commission shall notify the NIGC and the State Gaming Representative.

**E. Granting a Gaming License; Standards.**

1. **Temporary License.** Within 20 days of the receipt of a completed application for licensing, and upon request of an applicant, the Mescalero Apache Tribal Gaming Commission may issue a Temporary License to the applicant, unless the background investigation undertaken discloses that the applicant has a criminal history, or unless

other grounds sufficient to disqualify the applicant are apparent on the face of the application.

2. Temporary License Renewal. A temporary license may be renewed for good cause.
3. Temporary License - limited validity. The temporary license shall become void and be of no effect upon either:
  - a. The issuance of the license;
  - b. The issuance of a notice of denial; or
  - c. 90 days after the temporary license is issued, whichever occurs first.
4. If within 30 days after it receives an Investigative Report, neither the NIGC nor the State Gaming Representative has notified the Mescalero Apache Tribal Gaming Commission that it has an objection to the issuance of a license pursuant to a license application filed by a principal, key employee or a primary management official, the Mescalero Apache Tribal Gaming Commission may issue a license to such applicant.
5. The Mescalero Apache Tribal Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Mescalero Apache Tribal Gaming Commission shall either issue a license or deny the application. If the Mescalero Apache Tribal Gaming Commission determines that employment or involvement of the applicant poses a threat to the public interest, or to the effective regulation of gaming or creates or enhances the danger of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, the Mescalero Apache Tribal Gaming Commission shall deny the application.
6. The Mescalero Apache Tribal Gaming Commission may issue a license to any person or entity who:
  - a. Has provided a complete and accurate application and complied fully with any and all requests by the Mescalero Apache Tribal Gaming Commission for information concerning the background and activities of the applicant;
  - b. If a natural person, has attained the age of 21 years;
  - c. Is not a person whose prior activities, criminal record, if any, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the danger 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; and
  - d. Has not attempted to interfere or to influence, and has not interfered or influenced, unduly for its gain or advantage, any decision or process relating

to gaming or the government of the Tribe.

7. The Mescalero Apache Tribal Gaming Commission shall respond to any request for additional information from the NIGC or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the 30 day period under Section 9(E)(4) until the NIGC or the State Gaming Representative receives the additional information. However, in no event shall a request for additional information by the State Gaming representative extend the 30 day period under Section 9(E)(4) of this Ordinance for a total period of more than 60 days from the date the State Gaming representative received the Investigative Report.
8. If, within the 30 day period described above, the NIGC or the State Gaming Representative provides the Mescalero Apache Gaming Commission with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Mescalero Apache Tribal Gaming Commission has provided an application and Investigative Report, the Mescalero Apache Tribal Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. **Fees for Licensing.** The fees for gaming licenses and background investigations shall be set by the Mescalero Apache Tribal Gaming Commission from time to time and made available at any time upon request.

G. **Duration and Renewal of Licenses.** All employee gaming licenses issued by the Mescalero Apache Tribal Gaming Commission shall be valid for 3 years from the date of issuance. Any employee applying for renewal of a license that has submitted the required application and any other information required by the Mescalero Apache Tribal Gaming Commission at least 60 days before the expiration of the license may continue to be employed under the expired license until the Mescalero Apache Tribal Gaming Commission or NIGC, if required by the IGRA, takes final action on the renewal application. Any person renewing a gaming license shall provide updated material and information as requested on the renewal application form, but shall not be required to resubmit historical data already provided to the Mescalero Apache Tribal Gaming Commission.

#### **SECTION 10. Management Contract.**

The Mescalero Apache Tribal Council does not intend to authorize the use of any management contractor in regards to its gaming operations. The Mescalero Apache Tribal Gaming Commission is not authorized to license any management contractor.

#### **SECTION 11. Providers of Class III Gaming Equipment or Supplies.**

A. **Standards.** Within 30 days after the effective date of this Ordinance, the Mescalero Apache Tribal Gaming Commission will adopt standards for any and all Class III gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Gaming Enterprise after the effective date of this Ordinance for use in any Class III gaming, which standards shall be at least as strict as

the comparable standards applicable to Class III gaming equipment, devices or supplies within the State of Nevada. Any and all Class III gaming equipment, devices or supplies acquired by the Gaming Enterprise after the effective date of the Compact shall meet or exceed the standards thereby adopted, and any and all Class III gaming equipment, devices, or supplies utilized by the Gaming Enterprise in its gaming activities as of the effective date of the Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than 1 year after the effective date of the Compact.

B. **License Required.** Prior to entering into any future lease or purchase agreement for Class III gaming equipment, the Gaming Enterprise shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Mescalero Apache Tribal Gaming Commission to license those persons in accordance with Section 10 above.

C. **Installation.** The seller, lessor, manufacturer, or distributor shall provide, assemble and install all Class III gaming equipment, devices and supplies in a manner approved and licensed by the Mescalero Apache Tribal Gaming Commission.

#### **SECTION 12. Financial Practices and Reporting.**

A. **Monthly Reports.** On or before the 20th day of each month, the Gaming Enterprise shall complete a financial report for the preceding calendar month showing the amount of gross receipts derived from games of chance, the operating expenses incurred or paid and the net revenues derived from games of chance. It is the duty of the Gaming Enterprise to maintain and keep such books and records as may be necessary to substantiate the particulars of each report. If the Gaming Enterprise fails to complete such report within the time allowed, or if a report is not accurate and fully completed, the Mescalero Apache Tribal Gaming Commission shall notify the Tribal President of such deficiency within seven calendar days.

B. **Maintenance of Books and Records; Mescalero Apache Tribal Gaming Commission Access.** Full and accurate books of account, in accordance with generally accepted accounting principles shall be kept at the places of business of the Mescalero Apache Gaming Enterprise, showing the condition of the business and all transactions. The Gaming Enterprise is authorized to open and maintain bank accounts pursuant to written instructions from the Tribal President or Tribal Council Resolution. All books and records shall be maintained for at least five years, including:

1. Revenues, expenses, assets, liabilities and equity for each Gaming Facility;
2. Daily cash transactions for each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;
3. Returned checks, hold check or other similar credit instruments;
4. Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

5. Contracts, correspondence, and other transaction documents relating to all vendors and contractors;
6. Records of all tribal gaming enforcement activities;
7. Audits prepared by or on behalf of the Tribe; and
8. Personnel information on all Gaming Enterprise employees or agents, hours worked, employee profiles, and background checks.

C. **Allowable Operating Expenses.** No item of expense shall be incurred or paid in connection with operating or conducting any game of chance except a bona fide expense, which is related and necessary for the operation of the Gaming Enterprise.

D. **Deposit of Gross Receipts; Payment of Operating Expenses.** All gross receipts shall be deposited in an operating account of the Gaming Enterprise. Withdrawals from such account shall be made by consecutively numbered checks with two signatures duly signed; by wire transfer, or automated clearing house (ACH) with Tribal approval, or by an officer of the Mescalero Apache Tribe or other representatives duly authorized by the Gaming Enterprise Board, payable to a specific person or organization. No check shall be drawn to "cash" or a fictitious payee.

E. **Audits.** The Mescalero Apache Tribal Executive Committee shall retain a certified public accountant as the independent auditor of the Gaming Enterprise. The auditor shall not less frequently than annually (but more frequently as the Gaming Enterprise may require) report to the Executive Committee on the auditor's examination of the books and records of the Gaming Enterprise, and on the auditor's recommendations with respect to management of the Gaming Enterprise and any failure to comply with applicable law or contractual obligations. Copies of all audits shall be promptly provided to the Tribal President and the Mescalero Apache Tribal Gaming Commission. The Commission shall provide copies of all audits to the National Indian Gaming Commission and the State Gaming Representative (to the extent required by law).

F. **Audit of Contracts.** Any contract for supplies, services (except contracts for professional legal or accounting services as provided by 25 USC 2710(b)(2)(D)), or merchandise in an amount greater than \$25,000 annually, which contract relates to gaming activities, shall be subject to annual outside independent certified audits.

G. **Disposition of Net Revenues.** The net revenues derived from games of chance, less operating reserves, shall be deposited on a monthly basis into the general fund of the Tribe and such other accounts as designated by the Tribe. Net revenues deposited into the general fund of the Tribe shall be used for purposes in accordance with the IGRA.

H. **Compliance with Bank Secrecy Act and Internal Revenue Service.** The Gaming Enterprise shall take all steps necessary to comply with the applicable provisions of the Bank Secrecy Act, P.L. 91-508, Act of October 26, 1970, 31 U.S.C. §§ 5311-314 and all record-keeping and reporting requirements of the Internal Revenue Service.

### **SECTION 13. Protection of Patrons.**

A. **Liability to Patrons.** The Tribe or the Gaming Enterprise shall at all times maintain in effect

policies of liability insurance insuring the Tribe, the Gaming Enterprise, the Mescalero Apache Tribal Gaming Commission, and their agents and employees against any claims, demands or liability for bodily injury and property damages, made by a visitor, which claims were proximately caused by the conduct of the Gaming Enterprise and

1. Occurring at a gaming facility, other premises, structures, on grounds or involving vehicles and mobile equipment used by a gaming enterprise;
2. Arising out of a condition at the Gaming facility or on premises or roads and passageways immediately adjoining it;
3. Occurring outside the gaming facility but arising from the activities of the Gaming Enterprise;
4. As the result of a written contract that directly relates to the ownership, maintenance or use of a gaming facility or when the liability of others is assumed by the gaming enterprise; or
5. On a road or other passageway on Indian lands while the visitor is traveling to or from the Gaming facility.

The policies shall provide bodily injury and property damage coverage in an amount of at least \$1,000,000 per person and \$10,000,000 aggregate. The Tribe or Gaming Enterprise shall provide the Mescalero Apache Tribal Gaming Commission annually a Certificate of Insurance showing that the Tribe, and its agents and employees are insured to the extent and in the circumstances described in this section. The Commission shall provide the State Gaming Representative a copy of each Certificate of Insurance. If the State Gaming Representative so requests in writing, the Certificate of Insurance may be furnished directly to the State Gaming Representative from the insurance carrier or the insuring agency.

**B. Specific Waiver of Immunity.**

Nothing in this Ordinance shall serve to diminish the governmental powers or waive the sovereign immunity of the Mescalero Apache Tribe.

**C. Public Health and Safety.** The Mescalero Apache Tribal Gaming Commission shall establish for its Gaming Facilities health, safety, and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical code, the Uniform Fire Code, and the Uniform Plumbing Code, and any and all gaming facilities or additions thereto constructed by the Gaming Enterprise hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted by the Mescalero Apache Tribal Gaming Commission with respect to these standards at least annually. The Gaming Enterprise shall correct any deficiencies noted in such inspections within a reasonable period of time.

**D. Patron Dispute Resolution Procedures.** The Policy of the Tribe is to encourage resolution of disputes at the lowest possible level, and as quickly as possible. These provisions should only be followed when the dispute cannot be resolved “on the floor” or by the General Manager.



1. Whenever a patron of the gaming facility disputes the resolution of a conflict by the General Manager of the gaming facility or its employees, whether such dispute concerns payment of alleged winnings to a patron or other matters, and the General Manager and the patron are unable to resolve the dispute to the satisfaction of the patron, the General Manager shall inform the patron of his/her right to request that the Mescalero Apache Tribal Gaming Commission conduct an investigation.
2. Upon request of the patron, the Mescalero Apache Tribal Gaming Commission, through an agent, shall conduct whatever investigation it deems necessary and shall determine its recommendation for resolution of the dispute.
3. Within 30 days after the date that the Mescalero Apache Tribal Gaming Commission first receives notification from the General Manager or a request to conduct an investigation from the patron, the Mescalero Apache Tribal Gaming Commission shall make a recommendation to resolve the dispute. If the recommendation concerns law enforcement action, then the Mescalero Apache Tribal Gaming Commission shall take action to initiate the enforcement action by appropriate authority. If the recommendation concerns action to be taken by management, the Mescalero Apache Tribal Gaming Commission shall transmit its recommendation to the General Manager with a copy to the patron.
4. The Gaming Commission shall then issue a written decision and mail it to the parties. The decision of the Mescalero Apache Gaming Commission shall be final and binding upon the patron and the General Manager and shall not be subject to judicial review or to other legal action in federal, state or tribal court.

#### **SECTION 14. Suspension or Revocation of Licenses.**

##### **A. Grounds.**

1. NIGC Information.
  - a. If, after the issuance of a gaming license, the Mescalero Apache Tribal Gaming Commission receives from the NIGC reliable information indicating that a key employee or a primary management official is not eligible for employment under Section 9(E)(6) above, the Mescalero Apache Tribal Gaming Commission shall suspend such license under the provisions of Section 14(B) below and follow the procedures in Section 14(B) through (H) as applicable.
  - b. After a revocation hearing, the Mescalero Apache Tribal Gaming Commission shall decide to revoke or to reinstate a gaming license, and the Mescalero Apache Tribal Gaming Commission shall notify the NIGC of its decision.
2. Other grounds. If a licensee makes a false statement in any application for a license, in any statement annexed thereto, or in any response to a request by the Mescalero Apache Tribal Gaming Commission for information; if a licensee is determined to

have engaged in any prior activity unknown to the Commission at the time of licensing which, if known, would have been grounds for disapproval of a license; fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance; falsifies any books or records relating to any transaction connected with the operation or conduct of any game of chance; is convicted of any felony or gaming offense; interferes with, unduly influences, or attempts to interfere or unduly influence any decision or process of the government of the Tribe relating to gaming; or deliberately or substantially fails to provide information to or answer relevant questions of the Mescalero Apache Tribal Gaming Commission or otherwise fails to comply with this Gaming Ordinance or the terms of any license granted pursuant hereto; his or her license may be suspended and, after notice and a hearing before the Mescalero Apache Tribal Gaming Commission pursuant to this Section, such license may be revoked. This sanction is in addition to any other sanction that may be imposed under this Gaming Ordinance.

**B. Notice; Immediate Suspension.** Proceedings to suspend or revoke a license shall be initiated by the Mescalero Apache Tribal Gaming Commission by serving a complaint upon the licensee. If, in the Mescalero Apache Tribal Gaming Commission's judgment, the public interest; the effective regulation and control of gaming; or the safe, fair and honest operation and conduct of games of chance so require, the Mescalero Apache Tribal Gaming Commission may suspend a license immediately, pending the holding of a hearing. Such an immediate suspension shall take effect upon service of the complaint upon the licensee.

**C. Contents of Complaint; Service.** The complaint shall set forth the violations of this Gaming Ordinance that the Mescalero Apache Tribal Gaming Commission has reasonable cause to believe the licensee has committed. The Mescalero Apache Tribal Gaming Commission shall cause the complaint and notice of hearing to be served personally upon the licensee or any agent of the licensee, or to be sent by certified mail or overnight delivery to the licensee at the address shown upon the license. The complaint shall notify the licensee of the place and date of a hearing, such date to be not less than 20 days after the licensee receives a copy of the complaint.

**D. Answer; Subpoenas.** Upon receipt of a complaint and notice of hearing, the licensee shall answer the complaint and shall inform the Mescalero Apache Tribal Gaming Commission whether the licensee desires to present evidence. At the request of the licensee for good cause shown, or on its own motion, the Mescalero Apache Tribal Gaming Commission shall issue subpoenas for the attendance of witnesses and for the production of papers, books, records and documents.

**E. Hearing; Written Decision; Notification to NIGC.** The hearing shall be held and concluded without unreasonable delay. The Mescalero Apache Tribal Gaming Commission shall hear the matter and make a decision in writing, including findings of fact in support of its decision. The Mescalero Apache Tribal Gaming Commission shall issue its decision within 30 days of the hearing. The licensee shall be informed immediately of the decision and, in the event of a suspension or revocation of his/ her license, of the effective date of the suspension or revocation.

**F. Surrender of License.** When the Mescalero Apache Tribal Gaming Commission suspends or revokes a license, the licensee shall surrender the license to the Mescalero Apache Tribal Gaming

Commission on or before the effective date of the suspension or revocation. No license shall be valid as of the effective date of the suspension or revocation, whether surrendered or not.

G. **Additional Sanctions.** Upon a determination to suspend or revoke a license, the Mescalero Apache Tribal Gaming Commission, in addition to any other penalties that may be imposed, may declare the licensee ineligible to operate or conduct games of chance, to participate, directly or indirectly, in the operation or conduct of games of chance, or to apply for a license for a period not exceeding 12 months. Such declaration of ineligibility may be extended to include any primary management officials, key employees, owners, officers, or directors of the licensee, and any of its subsidiary organizations, parent organizations, or affiliates.

H. **Appeal to Tribal Court.** Any licensee aggrieved by a decision of the Mescalero Apache Tribal Gaming Commission, may appeal the order to the Tribal Court, and the Tribal Court shall have jurisdiction to consider and resolve such appeal. The Tribal Court shall affirm the order of the Mescalero Apache Tribal Gaming Commission unless such order was entered in violation of due process, was arbitrary or capricious, or was otherwise in contravention of applicable law. The Tribal Court may reverse, vacate, or modify the order of the Mescalero Apache Tribal Gaming Commission if the Tribal Court determines that the order was unlawful. In reaching its decision, the Tribal Court shall consider only such evidence relating to the order from which appeal is taken as appears in the records of the Mescalero Apache Tribal Gaming Commission and was available to the Mescalero Apache Tribal Gaming Commission at the time of its decision. Any reversal or modification of the Mescalero Apache Tribal Gaming Commission's prior determination shall be reported to the NIGC.

#### **SECTION 15. Prohibited Acts.**

In addition to the acts prohibited above, it shall be a violation of this Ordinance for any person to:

A. Conduct or participate in any gambling on the Reservation other than at an authorized and licensed Gaming Facility, or traditional Class I or Class II gaming when conducted by a nonprofit organization as permitted by the Tribal Council.

B. Receive, distribute, apply or divert any property, funds, proceeds, or other assets of the Gaming Enterprise to the benefit of any person except as authorized by this Ordinance, the Tribal-State Compact, NIGC Regulations or IGRA.

C. Tamper with any Gaming Device or Gaming Equipment used in the conduct of any gaming activity with the intent to cause any person to win or lose any wager other than in accordance with the publicly announced rules of the Gaming Enterprise.

D. Do any other act in connection with the conduct of any Gaming Enterprise with the intent to affect the outcome of any wager other than in accordance with the publicly-announced rules of such Gaming Enterprise.

E. Alter or misrepresent the outcome of any other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

F. 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 any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose

of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

G. Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Device or Gaming Equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.

H. Place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including past-posting and pressing bets.

I. Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets.

J. Manipulate, with the intent to cheat, any component of an electronic Game of Chance or Gaming Device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to manipulating a Gaming Device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

K. Knowingly use other than coins or tokens approved by the Mescalero Apache Tribal Gaming Commission or other lawful coin or legal tender of the United States of America, or to use a coin not of the same denomination as the coin intended to be used in the Gaming Device.

L. Possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game.

M. Use any device or means to cheat, or to possess any such device while at the Gaming Facility.

N. Knowingly entice or induce another to go to any place where gaming is being conducted or operated in violation of the provisions of this Ordinance, IGRA, the Compact, or other applicable law and regulation with the intent that the other person play or participate in that gaming.

O. Willful obstruction of any Commission investigation.

#### **SECTION 16. Civil Penalties.**

Any person who violates any provision of this ordinance shall be subject to civil penalties, termination of employment by the Gaming Enterprise, denial or revocation of a gaming license, exclusion from attendance at any Gaming Facility, or exclusion from the Reservation if a non-member of the Tribe. The Mescalero Apache Tribal Gaming Commission may impose a fine and may require restitution. The Mescalero Apache Tribal Gaming Commission shall have the jurisdiction to impose any penalties on any person within the jurisdiction of the Tribe. Civil penalties may include requiring any person who violates this ordinance to pay the expenses and fees incurred by the Gaming Enterprise, the Commission or the Tribe in enforcement activities of any kind connected to the person found to have violated any provision of this Ordinance.

#### **SECTION 17. Enforcement; Jurisdiction; Subpoenas.**

A. **Civil Remedies in Court.** The Mescalero Apache Tribal Gaming Commission may bring a civil action in the Tribal Court against any person who violates this Gaming Ordinance or engages in

an activity or activities prohibited herein and recover monetary damages, attorney fees, injunctive relief, and/or any other relief that is just and equitable under the circumstances. The Tribal Court may order a person who commits an intentional or willful violation to pay punitive damages, which shall be assessed in an amount not to exceed 3 times the actual damages or \$1,000.00, whichever is greater. The Tribal Court may order a civil penalty not to exceed \$5,000.00 for each day that a violation occurs and for each separate violation. Any person who violates this Gaming Ordinance, or whose employees or agents in the course of their employment or agency violate this Gaming Ordinance, may have the right to engage in business on the Reservation suspended or terminated. Nothing in this Gaming Ordinance shall be construed to authorize or require the exercise of criminal jurisdiction over non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

**B. Tribal Court Jurisdiction.** Except as otherwise provided in this Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Gaming Ordinance; provided, however, that the Tribal Court shall defer the exercise of its jurisdiction until any applicable administrative remedies have been exhausted, and provided further that nothing in this Gaming Ordinance is intended nor shall it be interpreted to preclude prosecution in federal court pursuant to the IGRA, as it may be amended from time to time, any regulations promulgated thereunder, any other applicable federal or tribal law, or prosecution in state court pursuant to an effective memorandum of understanding with the District Attorney for the Twelfth Judicial District as approved by the Mescalero Apache Tribal Council.

Tribal Court jurisdiction shall be concurrent with State courts and arbitration, to the extent permitted by law.

**C. Enforcement of Mescalero Apache Tribal Gaming Commission Subpoenas.** If a person subpoenaed to attend or to produce books, accounts, records, or other documents in any investigation or hearing conducted by the Mescalero Apache Tribal Gaming Commission fails to obey the command of the subpoena without reasonable cause, or if a person in attendance at any hearing or investigation refuses, without lawful cause, to be examined, to answer a legal and pertinent question, or to exhibit any book, account, record, or other document when ordered to do so by the representative of the Mescalero Apache Tribal Gaming Commission conducting such investigation or hearing, the Mescalero Apache Tribal Gaming Commission may apply to the Tribal Court for an order directing the person to show cause why he should not comply with such subpoena. For purposes of this Ordinance, if granted immunity by the Commission or the Tribal Court in writing no person shall be excused from testifying or producing any books, accounts, records, or other documents in any investigation or hearing on the ground that such testimony or documentary evidence may tend to incriminate him or her. "Immunity" means that a person shall not be prosecuted, punished, or subjected to any penalty or forfeiture resulting from such testimony or production, provided that no person shall be exempt from prosecution or punishment for committing perjury under a grant of immunity.

#### **SECTION 18. Severability.**

In the event any section or provision of this ordinance or its application to any particular activity is held to be invalid, the remaining sections and provisions of this ordinance and the remaining

applications of such section or provision shall continue in full force and effect.

**SECTION 19. Sovereign Immunity.**

The Tribe does not in any way waive its sovereign immunity from suit in any court to contest the validity of this ordinance or in any other matter. Nothing in this Ordinance is intended to waive the sovereign immunity of the Tribe.

**SECTION 20. Amendments.**

This Ordinance may be amended by official action of the Tribal Council.

**SECTION 21. Repeal of Prior Laws.**

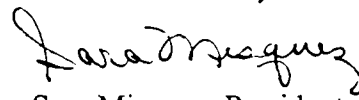
This Gaming Ordinance, upon becoming effective, and only then, shall operate to repeal all prior inconsistent laws.

**SECTION 22. Effective Date.**

This Ordinance shall be effective as of the date of its approval by the National Indian Gaming Commission.


**CERTIFICATION**

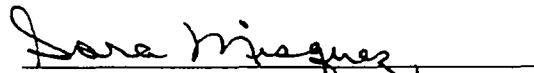
The foregoing Mescalero Apache Gaming Ordinance was adopted at a duly called meeting of the Mescalero Apache Tribal Council held on the 17 day of April, 2001 at which time a quorum was present, by a vote of six in favor and no opposed or abstaining.

  
Sara Misque, President  
Mescalero Apache Tribe

## CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 8th day of August, 2001, at legally called session of the Mescalero Apache Tribal Council, at which a quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.

  
Sandra Platero, Secretary

  
Sara Miguez, President