

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

NOV - 8 1993

Payne & Jones, Chartered  
Attn: Mr. Kip Kubin, Esq.  
11000 King  
Overland Park, Kansas 66228

Dear Mr. Kubin:

This letter responds to your request to review and approve the tribal gaming ordinance submitted on August 30, 1993, for the Modoc Tribe of Oklahoma (the Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

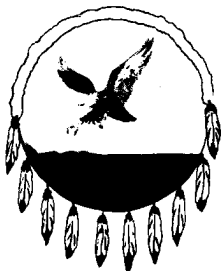
Thank you for submitting the ordinance of the Modoc Tribe of Oklahoma for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Anthony J. Hope

Anthony J. Hope  
Chairman

cc: Chief Bill Follis  
Edward J. Matukewicz



**THE MODOC TRIBE OF OKLAHOMA**

515 G Southeast

Miami, Oklahoma 74354-8224

(918) 542-1190

RESOLUTION NO: 93-11

RESOLUTION TO ADOPT AN ACT RELATING TO  
MODOC TRIBE OF OKLAHOMA  
REGARDING REGULATION AND LICENSING OF GAMING ON INDIAN LANDS

WHEREAS, the Modoc Tribe of Oklahoma is a federally recognized Indian Tribe, organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution and By-Laws approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS, the Elected Council of the Modoc Tribe of Oklahoma is empowered to act on behalf of the tribe under the Constitution and By-Laws, and

WHEREAS, in certain treaties entered into between the Modoc Tribe and the United States, the Modoc Tribe undertook to provide protection to businesses which were located within its jurisdiction and retained all of its inherent rights of self government, and

WHEREAS, the Modoc Tribe of Oklahoma is desirous of providing a basis under tribal law to authorize and regulate the conduct of gaming on Indian lands of the Modoc Tribe including entering into tribal-state compacts with the states where Modoc Indian lands are located and entering into appropriate management contracts with management agents to provide for the establishment and operation of Class II and Class III gaming operations as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Modoc Tribe desires to approve the attached "MODOC TRIBE GAMING ACT" in order to authorize and regulate gaming on the Indian lands of the Modoc Tribe as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Constitution and By-laws of the Modoc Tribe provides that enactments are to be passed by a majority of the Business Committee members present, and

NOW THEREFORE BE IT ENACTED BY THE MODOC TRIBE OF OKLAHOMA:

**APPROVED**

MODOC TRIBE OF OKLAHOMA

AN ACT RELATING TO  
MODOC TRIBE OF OKLAHOMA  
REGARDING REGULATION AND LICENSING OF GAMING ON INDIAN LANDS

**Chapter 1**

**General Provisions**

Section 1-1

**Title**

This enactment shall be known as the "Modoc Tribe Gaming Act".

Section 1-2

**Purpose**

The purpose of this Act is:

1. To regulate the conduct of gaming owned and operated by the Modoc Tribe of Oklahoma or its officially licensed agents, on Indian lands of the Modoc Tribe of Oklahoma, (hereafter referred to as "Modoc Tribe") in compliance with Public Law 100-497, October 17, 1988, 102 Stat. 2467, the Indian Gaming Regulatory Act ("IGRA").
2. To provide a basis under tribal law for the operation of gaming on Indian lands as a means for promoting tribal economic development, self-sufficiency, and a strong tribal government.
3. To provide a basis under tribal law for the regulation of gaming by the Modoc Tribe of Oklahoma adequate to shield it from organized crime and other corrupting influences, and to insure that the Modoc Tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by the Modoc Tribe, its agents and players.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 1-3

**Definitions**

1. "Act" means this Modoc Tribe Gaming Act.
2. "Business Committee" means the Modoc Tribe Business Committee.
3. "Chairman" means the Chairman of the Modoc Tribe Gaming Commission established pursuant to this Ordinance.
4. "Class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection, with tribal ceremonies or celebrations.
5. "Class II gaming" means the game commonly known as bingo (whether or not electronic, computer or other technology are used in connection therewith) and which is played with prizes including monetary prizes with cards bearing numbers of other designations, and in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, or drawn or are electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. This class of gaming also includes card games that are explicitly authorized by state laws or are not explicitly prohibited by state laws and are played at any location in the state.

Class II gaming does not include any banking card games, including baccarat, chemindefer, or black jack (21) or electronic or electromechanical facsimiles of any games of chance or slot machines of any kind.

6. "Class III gaming" means all forms of gaming that are not Class I gaming or Class II gaming.
7. "Commission" means the Modoc Tribe Gaming Commission established by this Ordinance.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

8. "Compact" means the agreement between the Modoc Tribe and any State of the United States, pursuant to 25 U.S.C. S2710(b)(iv), as further approved in accordance with the Indian Gaming Regulatory Act, as the procedures under which Class III gaming may be conducted on Indian lands over which the Modoc Tribe has jurisdiction.
9. "Executive Director" means the Executive Director of the Modoc Tribe Gaming Commission established pursuant to this ordinance.
10. "IGRA" means the Indian Gaming Regulatory Act of 1988, P.L. 100-497.
11. "Indian land" means any land the title to which is either held in trust by the United States for the benefit of the Modoc Tribe of Oklahoma or its members or is held by the Modoc Tribe of Oklahoma, or its members subject to restriction by the United States against all alienation and over which the Modoc Tribe of Oklahoma exercises governmental power; as defined by IGRA.
12. "State" means any State of the United States.
13. "Tribe" means the Modoc Tribe of Oklahoma.

MODOC TRIBE OF OKLAHOMA

**Chapter 2**

**Administration and Enforcement**

Section 2-1

**Establishment of the Modoc Tribe gaming office and commission.**

There is hereby established the Modoc Tribe Gaming Office and the Modoc Tribe Gaming Commission which shall have the duties and powers as hereinafter described.

The Commission shall constitute no less than three (3) nor more than five (5) members to be appointed by the Chief acting as the Chairman of the Modoc Business Committee. Commission members will serve for a period of two (2) years. However, for the first appointments, the names shall be placed in a receptacle with the first name drawn serving a term of two (2) years. The second name drawn shall serve a term of one (1) year, and terms shall alternate accordingly with each subsequent name drawn. The Commission shall elect from among its members a Chairman. The Commission shall have the power to generally oversee the Chairman and the tribal gaming office and review its actions for approval or ensure compliance with this Act and any regulations adopted and orders issued by the Commission. The Commission members shall submit to a conflict of interest provision to disclose potential unethical situations.

Section 2-2

**Powers and Duties of the Commission**

**Duties of the Commission**

It shall be the responsibility of the Commission to promulgate regulations necessary to administer the provisions of this Act. The duties shall include, but not be limited to the following:

1. Printing and making available application forms for initial and renewal licenses, as well as other licenses or tax return forms.
2. Supervise the collection of all fees and taxes prescribed by this Act.
3. Processing all license applications and tax returns which will be submitted under oath.
4. Issuance of licenses.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

5. Determining applicable license fees.
6. Auditing all returns.
7. Reviewing all records, documents and anything else necessary and pertinent to the financial accountabilities of licensees or enforcement of any provision of this ordinance.
8. Review for approval or denial any application or licensee, and to limit conditions to suspend or restrict any license.
9. Propose fines and penalties as needed.
10. Preparing and monitoring a plan for the protection of public safety and the physical security of patrons utilizing security and law enforcement personnel.
11. Review and approve floor plans and surveillance systems for each gaming facility and shall confer with the State regarding the adequacy of such plans and systems.
12. Maintain a list of persons barred from the gaming facilities because their criminal history or associations pose a threat to the integrity of the gaming activities of the Modoc Tribe.
13. Approve the rules of each game of chance operated pursuant to this Act.
14. Commencement of any civil or criminal action necessary to enforce the provisions of this Act.
15. Retain legal counsel or other professional services, including investigative services, to assist the Commission with respect to any of the issues over which the Commission exercised jurisdiction.
16. Hire appropriate staff, subject to the approval of the Business Committee, necessary to carry out its duties.
17. Prepare and submit to the Business Committee an annual operating budget.
18. Establish policy and take all actions necessary to complete all tasks and procedures defined and required by the Modoc Tribe Class II Gaming Ordinance.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

19. Establish policy and take all actions necessary to complete all tasks and procedures defined and required by the Modoc Tribe Class III Gaming Ordinance.
20. Establish policy and take all actions necessary to complete all tasks and procedures defined and required by the Modoc Tribe Class II Gaming Regulations.
21. Establish policy and take all actions necessary to complete all tasks and procedures defined and required by the Modoc Tribe Class III Gaming Regulations.

**Powers of the Commission**

In order to adequately perform its duties, the Commission is hereby vested with the following powers:

1. To employ non-uniformed, licensed inspectors who shall be present in all gaming facilities during all hours of operation who shall be responsible solely to the Commission and not to any management employees of the gaming operations. Such inspectors shall have unfettered access to all areas of the gaming facility at all times, including locked and secure areas.
2. To investigate on its own initiative any aspect of the gaming operations in order to protect the public interest in the integrity of the gaming activities and to prevent improper or unlawful conduct in said gaming activities.
3. To compel any person employed by and doing business with any gaming operation to appear before it under oath and to provide such information, documents or other material as required in writing by the Commission.
4. To impose penalties and sanctions for violations of this Modoc Tribe Gaming Act, any applicable Compact, or other rules of procedure adopted by the Commission.
5. To establish policy and take all actions necessary to carry out the provisions of this Act in compliance with IGRA.



RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 2-3

**Chairman of the Commission**

The Chairman or any other member of the Commission acting in the absence of the Chairman may, whenever he deems it necessary to protect the public interest in the integrity of the Modoc Tribe's gaming operations, issue in the name of the Commission, any order which the Commission has the power to issue, to the gaming operations or to any employee or contractor thereof or to any person within the jurisdiction of the Modoc Tribe, to take any action or to cease and desist from taking any action as may be required to protect the public interest; provided, that any such order shall be subject to subsequent review by the Commission at its earliest opportunity, whereupon said order may be confirmed or vacated by the Commission.

Section 2-4

**Executive Director**

The Commission shall appoint an individual to serve as a full time Executive Director of the Commission to administer its responsibilities on a day to day basis and to oversee inspectors appointed by the Commission as well as such other staff as the Commission may from time to time employ. The Executive Director shall be responsible for coordination of the functions of the Commission with the State Police and the State gaming agency. The Chairman may request the Executive Director to conduct a preliminary investigation and render a recommendation to the Commission with respect to the grant or denial of any license, the imposition of any penalty, the investigation of any complaint, or any other action within the jurisdiction of the Commission.

The Executive Director shall have the power, in the name of the Commission, to conduct any hearing, investigation or inquiry, compel the production of any information or documents, and otherwise exercise the investigatory powers of the Commission, which the Commission may exercise under this Ordinance.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 2-5

**Commission Meetings**

Regular meetings of the Commission may be held upon such notice, or without notice, and at such time and place as shall from time to time be fixed by the Commission. Unless otherwise specified by the Commission, no notice of such regular meetings shall be necessary.

Special meetings of the Commission may be called by the Chairman or the Executive Director. The person or persons calling the special meeting shall fix the time and place thereof. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Commission need to be specified in the notice of the meeting.

At any meeting of the Commission, a majority of the members then in office shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission. The Chairman shall preside at all meetings of the Commission unless the Chairman designates another member to preside in his absence.

Any action required or permitted to be taken at a meeting of the Commission may be taken without a meeting if all of the members sign written consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of the Commission, and shall have the same effect as a unanimous vote or resolution of the Commission at a legal meeting thereof. Any such action taken by unanimous written consents may, but need not be, set forth in such consents in the form of resolutions or votes.

Members of the Commission may participate in a meeting of the Commission by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting by any member who does not object at the beginning of such meeting shall constitute presence in person at such meeting.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 2-6

**Procedures**

The Commission shall afford an applicant for a license an opportunity for hearing prior to final action denying such application and shall afford a licensee or any other person subject to this ordinance the opportunity for a hearing prior to taking final action resulting in denying, terminating, revoking, suspending, or limiting a license or any other adverse action the Commission deems appropriate; provided, the Executive Director may summarily temporarily suspend or extend suspension of licenses for sixty (60) days in those cases where such action is deemed appropriate by the Executive Director. In cases where a license is suspended prior to hearing, an opportunity for a hearing shall be provided.

Section 2-7

**Background Investigation**

The Commission shall request from each primary management official and from each key employee information defined in the gaming ordinances to include a minimum of the following information:

1. Full name, other names used (oral and written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
2. Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
3. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1)(b) 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;

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

6. A description of any existing and previous business relationships with the gaming industry generally Indian tribes, including ownership interests in those businesses;
7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
8. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name, and address of the court involved, and the date and disposition if any;
9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this 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, 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).

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 2-8

**Preliminary Determination**

Whenever, upon preliminary factual finding, the Commission determines that any person has failed to comply with the provisions of this Act or any regulations promulgated hereunder, the Commission shall make a certification of findings with a copy thereof to the subject or subjects of that determination. After five (5) day notice, and within thirty (30) days thereof, the Commission shall hold a hearing at which time the subject shall have an opportunity to be heard and present evidence. The Commission shall have the specific right to enjoin and restrain illegal activities.

Section 2-9

**Hearing**

At such hearing it shall be the obligation of the subject to show cause why the preliminary determination is incorrect, why the application in question shall not be revoked or suspended, why the period of suspension should not be extended, or to show cause why special conditions or limitations upon a license should not be imposed, or to show cause why any other action regarding any other person or persons subject to any action should not be taken.

Section 2-10

**Final Determination**

Following such hearing, the Commission shall, within thirty (30) days, reach a final determination concerning the accuracy of the preliminary certification of facts, and whether the license in question should be granted, continued, suspended, revoked, conditioned or limited, and whether or not any other action recommended to or by the Commission (including but not limited to forfeitures or fines) should be taken. The action of the Commission will be the final action of the Modoc Tribe.

Within (30) days following this determination the Executive Director shall inform the subject in writing of that determination.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 2-11

**Sanctions**

Any person who engages in activities on property subject to the provisions of this Act without a license, in violation of the license or terms imposed thereon, in violation of terms of suspension, or in violation of any other provision of this Act, any Compact with the State, the Indian Gaming Regulatory Act of 1988, regulations promulgated thereunder, or amendments thereto, shall be in violation of this Act, including any person who unlawfully trespasses upon any premises licensed by this Act without the consent of the committee or the Executive Director. Separate violations shall be prosecuted as separate offenses. Each day of violation shall constitute a separate count or violation of this Act. Each violation shall carry a potential fine of Five Hundred (\$500.00) to Five Thousand Dollars (\$5,000.00) to be determined at the discretion of the Commission. Any property used in the furtherance of any violation of this Act may become the property of the Modoc Tribe of Oklahoma. All winnings found to have been received in violation of this Act are subject to seizure and forfeiture and become the property of the Modoc Tribe of Oklahoma.

Section 2-12

**Reports**

The Commission will make an annual comprehensive report to the Modoc Tribe Business Committee.

MODOC TRIBE OF OKLAHOMA

**Chapter 3**

**Licensing**

Section 3-1

**License Required**

Any agent of the Modoc Tribe of Oklahoma conducting public gaming operations for the benefit of the Modoc Tribe on Indian lands of the Modoc Tribe shall be required to have and display prominently an appropriate, valid and current public gaming license issued pursuant to the provisions of this Act. Any form of public gaming operations conducted within the jurisdiction of the Modoc Tribe without the lawful written approval of the Modoc Tribe Gaming Commission are prohibited. Furthermore, it shall be unlawful for any person to conduct gaming activities on Indian lands of the Modoc Tribe which are not under license by and for the benefit of the Modoc Tribe or which mislead the general public in believing the gaming operation is owned or under control and operated by the Modoc Tribe. The Commission shall have the right to enjoin and restrain illegal activities.

Section 3-2

**Classes and Fees**

There shall be three (3) different classes of gaming, each characterized by its separate requirements and fees. These classes are created in compliance with the Indian Gaming Regulatory Act, Public Law 100-497, October 17, 1988.

Section 3-3

**Class I Gaming**

No license required.

Section 3-4

**Class II Gaming**

Only a wholly owned the Modoc Tribe enterprise or its designated and approved agent or employee may apply for and receive a Class II gaming license. Also, gaming must be conducted in facilities of the Modoc Tribe. A separate license must be issued by the Commission for each place, facility or located on Indian lands at which Class II gaming is conducted. The Modoc Tribe will have the sole proprietary interest and

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

responsibility for the conduct of any gaming activity under a Class II license and all net revenues from any said gaming are to be used for tribal purposes including:

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Modoc Tribe and its members;
- (iii) to promote tribal economic development.

The Modoc Tribe will cause annual audits of all gaming activity under a Class II license to be conducted within the existing independent tribal audit system and will provide all audit information to the National Indian Gaming Commission. The management and operation of any Class II gaming facility shall be subject to all applicable provisions of the Indian Gaming Regulatory Act. An annual fee of \$1,000.00 will be charged for any Class II gaming license.

Section 3-5

**Class III Gaming**

Class III gaming is hereby authorized to be conducted only by an enterprise which is owned solely by the Modoc Tribe and a license may be issued to its designated and approved agents and employees. The Modoc Tribe will have the sole proprietary interest and responsibility for the conduct of any Class III gaming activity and the net revenues from any Class III gaming are to be used for no purposes other than:

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Modoc Tribe and its members;
- (iii) to promote tribal economic development.

A separate license shall be required for each place, facility or location on Indian lands at which Class III gaming is conducted. An annual fee for a Class III gaming license will be \$2,500.00.



RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 3-6

**Tribal-State Compact**

The Chairman is hereby authorized by the Business Committee to approve a tribal state compact governing Class III gaming activities. Said compact shall be approved by the Secretary of the Interior or the Chairman of the National Indian Gaming Commission, as required, and published in the Federal Register as provided by Indian Gaming Regulatory Act. The compact may include provisions relating to the application of criminal and civil laws and regulations of the Modoc Tribe or the state to the Class III gaming activity, an allocation of criminal and civil jurisdiction between the Modoc Tribe and the state where necessary for the enforcement of laws and regulations, taxation, where appropriate, by the Modoc Tribe of such activity in amounts comparable to the amounts assessed by the state for comparable activities, remedies for breach of contract, standards for operation of such activity and maintenance of the gaming facility including licensing and any other subjects directly related to the operation of gaming activities. The Modoc Tribe Business Committee is hereby authorized to negotiate said compact on behalf of the Modoc Tribe.

Section 3-7

**Jurisdiction**

Any cause of action initiated by the Modoc Tribe arising from the failure of the State to enter into negotiations with the Modoc Tribe for purposes of entering into a tribal-state compact or to conduct said negotiations in good faith will be filed in the United States District Court.

Section 3-8

**Management Contracts**

The Modoc Tribe Business Committee, on behalf of the Modoc Tribe is authorized to enter into and approve management contracts for the management of any Class II and/or Class III gaming facility owned and operated by the Modoc Tribe. Said management contract shall in all respects be in compliance with the Indian Gaming Regulatory Act. All management contracts shall be approved by the Chairman of the National Indian Gaming Commission or as designated by IGRA. No person holding a management contract with the Modoc Tribe for the management of any Class II or Class III gaming facility shall be an elected

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

member of the Modoc Tribe, or have been convicted of any felony or gaming offense, or have knowingly or willingly provided any material reporting false statements to the National Indian Gaming Commission or Modoc Tribe Gaming Commission pursuant to this Act or the Indian Gaming Regulatory Act or whose prior activities, criminal record, if any, or reputation, habits, and association pose a threat to the effective regulation and control of the gaming activity subject to the management contract or who has attempted in any way to unduly influence or interfere with the decision process relating to any management contract or license.

Section 3-9

**Termination**

The Commissioner shall have the duty to bring before the Commission any charge of any unfair or illegal practice of any licensee or manager which shall constitute grounds for temporary suspension by the Commissioner or termination by the Commission of any license or management contract. The same procedure as provided herein under Section 2-6. et seq., will be followed here.

Section 3-10

**Violation of Act by licensee**

Any violation of any provisions of this Act or of any of the Commission's rules by a licensee, his agent, or employee, shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Modoc Tribe and the inhabitants of the Modoc Tribe and grounds for refusing to grant or renew a license or management contract, suspension or revocation of a license or management contract or grounds for the filing of a complaint with the National Indian Gaming Commission.

## **Chapter 4**

### **Rules of Operation and General Accountability**

#### **Section 4-1**

##### **Records, Returns and Audits**

It shall be the responsibility of the Modoc Tribe Gaming Commission to promulgate regulations establishing proper accounting procedures and methods of operations for all licensees of Class II and Class III gaming activities so that all monies or things of value received and paid out may be properly monitored and accounted for. All licensees under this Act shall be required to keep an approved accounting system which shall comply with, but not be limited to, all applicable provisions of this Act or regulations of the Commission. Said accounting system shall reflect all business and financial transactions involved or connected in any manner with the operation and conducting of activities authorized by this Act. The Commission shall have the right to subpoena records or to secure a court order to seize records for property not surrendered.

No applicant, license or employee thereof shall neglect or refuse to produce records or evidence or to give information upon proper and lawful demand by the Commissioner or Commission, or shall otherwise interfere or attempt to interfere, with any proper and lawful efforts by the Executive Director or the committee to produce such information. The Commission may conduct such hearings as deemed necessary to insure compliance with the provisions of this Act and accountability for all monies received and spent. Failure to comply with the provisions of this Act shall constitute grounds for complaint with the National Indian Gaming Commission and summary suspension or revocation of any license or management contract.

#### **Section 4-2**

##### **Rules of the game**

It shall be the responsibility of the Modoc Tribe Gaming Commission to promulgate regulations establishing the particular rules of any given Class II or Class III gaming in order that said gaming will be conducted with fairness and uniformity.

RESOLUTION NO: 93-11

MODOC TRIBE OF OKLAHOMA

Section 4-3

**Age limit for all gaming**

No person who is under the age of 18 shall operate or be allowed to participate in any manner in the operation of any Class II or Class III gaming activities. It shall be the responsibility of any manager or licensed agent of the Modoc Tribe to insure compliance with this age limit requirement.

Section 4-4

**Inherent sovereignty of the Modoc Tribe of Oklahoma.**

With the passage of this legislative act notwithstanding any other law or ordinance, this ordinance does not limit the inherent sovereignty of the Modoc Tribe of Oklahoma.

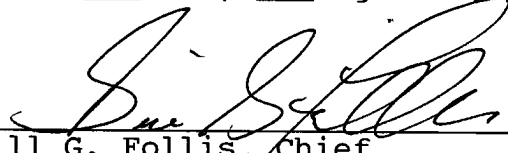
Section 4-5

**Repeal**

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

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

The foregoing resolution was passed by the Modoc Elected Council on August 23, 1993, with a vote of 4 for, 0 against, 0 abstaining.

  
\_\_\_\_\_  
Bill G. Follis, Chief

Attest:

  
\_\_\_\_\_  
Patricia Trolinger

Filed with:

Bureau of Indian Affairs - Miami Agency

Chairman, National Indian Gaming Commission



**THE MODOC TRIBE OF OKLAHOMA**

515 G Southeast  
Miami, Oklahoma 74354-8224  
(918) 542-1190

RESOLUTION NO: 93-12

RESOLUTION TO ADOPT AN ACT RELATING TO  
MODOC TRIBE OF OKLAHOMA  
REGARDING TERMS OF CLASS II GAMING OPERATIONS ON TRIBAL LANDS

WHEREAS, the Modoc Tribe of Oklahoma is a federally recognized Indian Tribe, organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution and By-Laws approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS, the Elected Council of the Modoc Tribe of Oklahoma is empowered to act on behalf of the tribe under the Constitution and By-Laws, and

WHEREAS, in certain treaties entered into between the Modoc Tribe and the United States, the Modoc Tribe undertook to provide protection to businesses which were located within its jurisdiction and retained all of its inherent rights of self government, and

WHEREAS, the Modoc Tribe of Oklahoma is desirous of defining and setting forth the terms of Class II gaming operations on Modoc Tribe Indian lands as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Modoc Tribe desires to approve the attached "CLASS II GAMING ORDINANCE" in order to set the terms for Class II gaming on the Indian lands of the Modoc Tribe as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Constitution and By-laws of the Modoc Tribe provides that enactments are to be passed by a majority of the Business Committee members present, and

NOW THEREFORE BE IT ENACTED BY THE MODOC TRIBE OF OKLAHOMA:

**APPROVED**

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

AN ACT RELATING TO MODOC TRIBE OF OKLAHOMA  
REGARDING TERMS OF CLASS II GAMING OPERATIONS ON TRIBAL LANDS

**I. Purpose**

The Modoc Elected Council of the Modoc Tribe of Oklahoma (hereinafter referred to as the "Tribe"), empowered by the Constitution and By-laws of the Modoc Tribe of Oklahoma to enact ordinances, hereby enacts this ordinance in order to set the terms for class II gaming operations on tribal lands.

**II. Gaming Authorized**

Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. Section 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, 1992) is hereby authorized.

**III. 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.

**IV. Use of Gaming Revenue**

A. Net revenues from class II 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).

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

**V. 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.

**VI. Protection of the Environment and Public Health and Safety**

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

**VII. Licenses for Key Employees and Primary Management Officials**

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class II gaming enterprise operated on Indian lands:

**A. Definitions**

For the purposes 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;
  - (2) Counting room supervisor
  - (3) Chief of security;
  - (4) Custodian or gaming supplies or cash;
  - (5) Floor manager;
  - (6) Pit boss;
  - (7) Dealer;
  - (8) Croupier;
  - (9) Approver of credit; or
  - (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

- (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:
  - (i) To hire and fire employees; or
  - (ii) To set up working policy for the gaming operation; or
- (c) The chief financial officer or other person who has financial management responsibility.

B. Application Forms

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

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



RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

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

- a. Complete a new application form that contains a Privacy Act notice; or
- b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

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

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

- a. Complete a new application form that contains a notice regarding false statements; or
- b. Sign a statement that contains the notice regarding false statements.

C. Background Investigations

1. The Tribe shall request from each primary management official and from each key employee all of the following information:

- a. Full name, other names used (oral and written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- b. Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

- 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 paragraph (1)(b) of this section;
- d. Current business and residence telephone numbers;
- e. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- f. A description of any existing and previous business relationships with the gaming industry generally Indian tribes, including 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 on-going 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 conviction or on-going 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;
- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- 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, whether or not such license or permit was granted;
- l. A current photograph;

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

- m. Any other information the Tribe deems relevant;  
and
- n. Fingerprints consistent with procedures adopted by  
the Tribe according to 25 C.F.R. § 522.2(h).

2. The Tribe shall conduct an investigation sufficient to make a determination under subsection D, 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.

D. Eligibility Determination

The Tribe 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 key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

E. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section 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.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

F. Report to the National Indian Gaming Commission

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- a. Steps taken in conducting a background investigation;
- b. Results obtained;
- c. Conclusions reached; and
- d. The bases for those conclusions.

2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.

3. If a license is not issued to an applicant, the Tribe:

- a. Shall notify the National Indian Gaming Commission; and
- b. 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.

4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

G. Granting a Gaming License

1. 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.

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

2. 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 G.1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. 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.

**H. License Suspension**

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

2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

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

**VIII. License Locations**

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

**IX. Repeal**

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

**X. Agent for Service**

All notices and other legal service related to activities under this ordinance should be delivered by certified mail to:

PAYNE & JONES Chartered  
Attn: Mr. Kip Kubin, Esq  
11000 King  
Overland Park, Kansas 66228

Telephone 913-469-4100

**XI. Procedures for Background Investigations of Key Employees and Primary Management Officials**

The Modoc Tribe Gaming Commission (sometimes referred to as the "MTGC") is responsible for conducting all background investigations and suitability determination. The members of the MTGC are appointed by the Chief of the Modoc Tribe. The MTGC will:

- A. Designate an agent to conduct the background investigations.
- B. Review and approve all investigative work done by an agent of the Commission.
- C. Report the results of the background investigations to the National Indian Gaming Commission.
- D. Make arrangements with a local law enforcement agency approved to take fingerprints and to forward these prints directly to the National Indian Gaming Commission for processing through the Federal Bureau of Investigation. All resulting reports will sent to the MTGC.
- E. Make suitability determination of background characteristics based upon the results of the background investigation.
- F. Verify by written and/or documented oral communication the following items concerning a prospective employee:
  1. Prior activities.
  2. Criminal record and reputation.
  3. Interviews of former employers, personal references and other applicable individuals in reference to the applicant.

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

4. Document the disposition of all potential problem areas noted and disqualifying information obtained.
- G. Prepare an investigative report setting forth the following:
1. Steps taken in conducting the background investigation.
  2. Results obtained.
  3. Conclusions reached and the bases for those conclusions.

**XII. Procedures for Dispute Resolution with the Gaming Public**

The Modoc Tribe Gaming Commission is responsible for the resolution of disputes between the gaming public (the patrons) and the Tribe and/or the Tribe's management contractor. The following procedures shall apply to the various types of disputes:

- A. Refusal to Pay Winners Whenever the gaming enterprise refuses payment of alleged winnings to patron, and the enterprise and the patron are unable to resolve the dispute to the satisfaction of the patron and dispute involves:
1. At least five hundred dollars (\$500), the enterprise shall immediately notify the MTGC for investigative action; or
  2. Less than five hundred dollars (\$500), the enterprise shall inform the patron of his or her right to request that the MTGC conduct an investigation. The MTGC, through an inspector, shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.
- B. Notice to Patrons The MTGC inspector shall mail written notice by certified mail, return receipt requested, to the enterprise and the patron of his or her decision resolving the dispute within thirty (30) days after the date that the MTGC first receives notification from the enterprise or a request to conduct an investigation from the patron.

RESOLUTION NO: 93-12

MODOC TRIBE OF OKLAHOMA

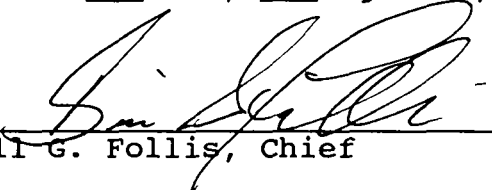
- C. Inspector Decision The decision of the inspector is effective on the date it is received by the aggrieved party as reflected on the return receipt.
- D. Review of Decision Within thirty (30) days after the date of receipt of the written decision of the inspector, the aggrieved party may file a petition with the MTGC requesting a review of the decision. The MTGC may set a hearing on the matter or may make a decision based solely upon the inspector's decision and other documentation provided to it by the patron and the enterprise. The MTGC shall then issue a written decision and mail it to the parties pursuant to the procedures et forth in Section XII.B. The decision of the MTGC shall be final and binding upon the patron and the enterprise and shall not be subject to judicial review or other legal action in the courts of the state where the enterprise is located.

**XIII. Inherent sovereignty of the Modoc Tribe of Oklahoma.**

With the passage of this legislative act notwithstanding any other law or ordinance, this ordinance does not limit the inherent sovereignty of the Modoc Tribe of Oklahoma.

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

The foregoing resolution was passed by the Modoc Elected Council on August 23, 1993, with a vote of 4 for, 0 against, 0 abstaining.

  
\_\_\_\_\_  
Bill G. Follis, Chief

Attest:

  
\_\_\_\_\_  
Patricia Trolinger

Filed with:

Bureau of Indian Affairs - Miami Agency  
Chairman, National Indian Gaming Commission