

NATIONAL
INDIAN
GAMING
COMMISSION

NOV 10 1993

Mr. Allan Olson
Tribal Attorney
Swinomish Tribal Community
P.O. Box 817
950 Morage Way
Lacconner, Washington 98257

Dear Mr. Olson:

This letter responds to your request to review and approve the tribal gaming ordinance submitted on October 18, 1993, and amended on November 4, 1993, for the Swinomish Tribal Community (the Community). 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 Community's gaming ordinance, the Community 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 Swinomish Tribal Community for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA.

Sincerely yours,

Anthony J. Hope
Anthony J. Hope
Chairman

ORDINANCE 118

AMENDMENTS TO SWINOMISH GAMING ORDINANCE
(Ordinance 103 as previously amended by Ordinance 104)

BE IT ENACTED by the Swinomish Indian Senate that Ordinance No. 103, as previously amended by Ordinance No. 104, is hereby amended as indicated herein. This amending ordinance is hereby adopted pursuant to Article VI, Sections 1(a), (k), (l), (m), and (s) of the Swinomish Constitution and Bylaws, as amended on October 22, 1985.

(1) Add, and number appropriately, a new subsection to 2.020 as follows:

(_) "Gaming Business Committee" or "Business Committee" means the body, established pursuant to Section 6.020 of this Ordinance, with responsibility for the management of the Gaming Enterprise.

(2) Amend 2.020(e) to read as follows:

(e) "Compact" means the Tribal - State Compact for Class III Gaming between the Swinomish Indian Tribal Community and State of Washington, entered into on December 21, 1992, and approved by the Secretary of the Interior on February 11, 1993, in accordance with the Act, and any duly approved amendments to such Compact.

(3) Strike subsection (f) of 2.020.

(4) Renumber the subsections of 2.020 to reflect the foregoing addition and deletion.

(5) Strike subsection (b)(2)(iii) of 4.010.

(6) Amend the text of 5.010 to read as follows:

There is hereby established a Swinomish Gaming Commission which shall be made up of at least five members who shall be appointed by the Tribal Senate.

(7) In subsection (h) of 5.020, delete the words "Section IV" and insert the words "Sections IV and VII"

ORIGINAL

(8) Amend subsection (1) of 5.020 to read as follows:

(1) The Commission may impose penalties for violations of this Ordinance, the Compact, Commission rules and regulations, or the Standards of Operation and Management in accordance with Sections VII through XII of this Ordinance.

(9) Amend the text of 6.010 to read as follows:

The Swinomish Gaming Enterprise is hereby established as a subordinate economic enterprise and subdivision of the Swinomish Indian Tribal Community tribal government.

(10) Amend the title and the text of the first paragraph of 6.020 to read as follows:

6.020 Gaming Business Committee

There is hereby established a Gaming Business Committee, which shall be made up of at least four members who shall be appointed by the Senate. A majority of the members shall constitute a quorum. Action shall be taken by a majority vote of the Business Committee members present and voting. The Business Committee shall have the following powers and duties:

(11) Amend subsection (f) of 6.020 to read as follows:

(f) **Books.** To inspect, examine, and copy all books and records related to any gaming activities conducted by the Gaming Enterprise. Such inspection may be carried out by a Business Committee member or by an agent, tribal employee, attorney, or independent certified public accountant acting on behalf of the Business Committee.

(12) Strike subsection (g) of 6.020.

(13) Strike 6.030 in its entirety.

(14) Renumber 6.040 (mistakenly numbered 5.040 in Ordinance 103) as 6.030 and amend its text to read as follows:

All official records of the Swinomish Gaming Enterprise and the Gaming Business Committee shall be kept in the offices of the Gaming Enterprise and the Swinomish Indian Tribal Community.

- (15) Amend the text of 8.020 to read as follows:

Any premises within the Swinomish Indian Reservation where gaming is conducted shall be subject to inspection by the Commission and its investigators.

- (16) Amend the text of 8.030 to read as follows:

Failure to cooperate with the Commission or a Commission investigator who is engaged in the enforcement of this Ordinance shall be a violation of this Ordinance and shall be grounds for revocation of any permit or license issued hereunder.

- (17) Insert in 8.040, after the word "Ordinance," the following:

, the Compact, or the rules and regulations of the Commission

- (18) Amend 8.060 to read as follows:

8.060 Permit and License Suspension and Revocation

(a) When a Commission investigator has probable cause to believe that a violation of this Ordinance, the Compact, or the rules and regulations of the Commission is taking place or has taken place, and the violation poses an immediate threat to public safety, the integrity of gaming, or the assets of the Gaming Enterprise, the Tribe or a member of the public, the investigator may immediately suspend any Commission license or permit issued to the person responsible for the violation.

(b) The Commission may, after notice to the person involved and an opportunity for a hearing, revoke, suspend, or impose conditions upon any Commission license or permit whenever necessary to enforce the provisions of the Act, the Compact, this Ordinance, or Commission rules and regulations.

- (19) Amend 9.010 to read as follows:

9.010 Criminal Offenses

Any person, operator, player, permittee or employee of the Tribe who violates any provision of this Ordinance or any regulation adopted hereunder, and who is subject to the criminal jurisdiction of the Swinomish Tribal Court, shall be guilty of a criminal offense and shall be subject to a fine of up to five thousand dollars

(\$5,000.00) or imprisonment of not to exceed twelve (12) months, or both, as well as cost of prosecution.

- (20) Amend the text of 9.030 to read as follows:

If the Swinomish Tribal Court finds that a permittee or licensee has violated any part of this Ordinance, the Court shall order that any then valid permits or licenses be revoked.

- (21) Amend the text of Section X to read as follows:

The Swinomish Gaming Commission and the Swinomish Tribal Court shall have exclusive jurisdiction over any controversies arising under this Ordinance. The Tribal Court shall have exclusive jurisdiction to enforce Section IX.

- (22) Amend the text of Section XI to read as follows:

Any person who violates any provision of this Ordinance, including any provision of the Compact incorporated herein, or any Commission rule or regulation adopted pursuant to this Ordinance, shall be subject to civil penalties including exclusion from employment by any Tribal gaming enterprise, exclusion from attendance at any Tribal gaming facility, exclusion from the Reservation, the payment of restitution, and a monetary penalty of up to \$5,000.00 for each such violation. Each day that a violation continues shall be considered a separate violation for the purposes of this section. The Gaming Commission shall have the jurisdiction to impose such penalties on any person within the civil jurisdiction of the Tribe. The Commission is hereby authorized to pursue civil remedies against violators in Tribal, state, and federal court.

- (23) Amend subsection (a) of Section XII to read as follows:

(a) Conduct or participate in any Class II or Class III gaming operation on the Reservation except as authorized by this Ordinance.

- (24) Amend subsection (b) of Section XII to read as follows:

(b) Receive, distribute, apply, or divert any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person except as authorized by this Ordinance and approved by

the Business Committee in the ordinary course of business.

(25) Amend subsection (e) of Section XII to read as follows:

(e) To participate as a player in any regular public bingo game, any lottery, any pari-mutuel wager, or game of chance authorized pursuant to Section VII, conducted by the Tribe, while such person is a member of the Gaming Commission or the Business Committee, or an employee of the Gaming Commission, or, except to the extent that such participation is authorized by the rules and regulations of the Gaming Commission, while such person is an employee of the Gaming Enterprise.

Effective date of this Amending Ordinance. This Ordinance shall be effective as of the date of its adoption by the Swinomish Indian Senate.

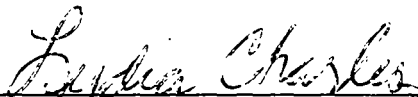


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Robert Joe, Sr., Chairman
Swinomish Indian Senate

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

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing ordinance was approved at a Regular Meeting of the Swinomish Indian Senate held on May 7, 1996, at which time a quorum was present and the ordinance was passed by a vote of 10 FOR, 0 AGAINST, and 0 ABSTENTIONS.



Lydia Charles, Secretary
Swinomish Indian Senate

ORDINANCE 103

SWINOMISH GAMING ORDINANCE

(COMPARE VERSION)

**Providing for the Operation and
Regulation of Gaming Activities within
the Swinomish Indian Reservation**

BE IT ENACTED by the Swinomish Indian Senate that Ordinance No. 50 is hereby repealed and superseded by the following **Ordinance** which is hereby adopted pursuant to Article VI (Powers of the Senate), Sections 1(a), (k), (l), (m) and (s) of the Swinomish Constitution and Bylaws, as amended on October 22, 1985.

Section I FINDINGS, POLICY AND PURPOSE

1.010 Findings

The Swinomish Indian Senate makes the following findings:

- (a) The Tribe is in need of developing ways and means of increasing Tribal income and revenue in order to promote the public welfare, provide for public protection through Law Enforcement, and provide needed social, health and educational services to protect the general welfare of its members;
- (b) The generation of revenues through gaming activities for the promotion of Tribal governmental and social programs is in the Tribal public interest as is participation in such activities and social pastimes as are hereinafter authorized;
- (c) Tribally owned and regulated bingo games, pulltabs, punchboards, and other authorized gaming activities operated under the direction of the Tribe will not lead to a proliferation of undesired gaming, or to the influx of organized crime or other desirable persons, but will serve the economic needs of the Tribe;
- (d) The exercise of tribal power through this ordinance is necessary to protect the right of Tribal self-government and to regulate its internal relations so as to protect its political and economic security;

1.020 Policy

It is the policy of the Swinomish Indian Tribal Community to regulate and oversee the operation of authorized gaming activities to the end that the Tribe is better able to provide its members with community and social services; while at the same to insure that widespread gaming is not allowed within the Swinomish Indian Reservation, and safeguard the public against the influx of organized crime and other undesirable persons.

1.030 Purposes

The purposes of this Ordinance are found to be as follows:

(a) To provide a new, and continuous source of income and revenues to the Tribe in order to provide social, cultural, and law enforcement services to members and other residents of the Swinomish Indian Reservation.

(b) To create a control mechanism to insure the proper regulation of bingo, pulltabs, punchboards, and other authorized gaming activities.

(c) To provide members and guests an opportunity to participate in social games as provided herein.

(d) To provide for the social welfare and protection of Tribal members and all others who reside within or pass through the reservation.

(e) Except as specifically provided herein, the Swinomish Indian Tribal Community by enactment of this Ordinance does not intend to authorize any form of gaming, gambling or other wagering activity within the Swinomish Indian Reservation.

Section II DEFINITIONS

2.010 Rules of Construction

Unless otherwise specifically provided;

- (a) The masculine includes the feminine;
- (b) The singular includes the plural;
- (c) "Includes" and "including" are not limiting; and
- (d) "Or" is not exclusive.

2.020 Definitions

For purposes of this Ordinance, unless otherwise expressly provided, the following definitions shall apply:

(a) "Act" means the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. §2701 et seq.

~~(b) "Bingo" means a game in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which persons are charged some consideration for the opportunity to win such prize or prizes.~~

~~(c) "Bingo Equipment" includes all equipment which is actually used, or made or sold for the purposes of use, in bingo games for which consideration is charged persons to play, and in connection with which prizes are awarded. Unless otherwise specified, the term shall include, but not be limited to, machines or other devices from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called, those balls or items themselves, bingo cards, and any other device commonly used in the direct operation of the game.~~

~~Bingo games sets commonly manufactured and sold as children's games for a retail price of twenty five (25) dollars or less shall be presumed not to be bingo equipment for purposes of this Ordinance unless the set, or portion thereof, is actually used in a bingo game defined in subsection (a) above.~~

~~(d)~~ "Class II gaming" means Class II gaming as defined in accordance with the Act, 25 U.S.C. §2703(7)(A).

~~(e)~~(c) "Class III gaming" means Class III gaming as defined in accordance with the Act, 25 U.S.C. §2703(8).

~~(f)~~(d) "Commission" means the Swinomish Gaming Commission.

~~(g)~~(e) "Compact means the Swinomish Indian Tribal Community and State of Washington Compact entered into on December 21, 1992, and approved by the Secretary of Interior on February 11, 1993 in accordance with the Act, 25 U.S.C. § 2710(d)(8).

~~(h)~~(f) "Director" means one of the two co-directors, or alternate director acting in the absence of one of the co-directors, selected by the Senate to manage the Gaming Enterprise.

~~(i)~~**(g)** "Gaming" - a person engages in gaming if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome, but shall not include bona fide business transactions valid under the law of contracts such as contracts for the purchase of commodities or other items at a future date or contracts for insurance, indemnity or guarantee to compensate unforeseeable loss, nor include traditional Indian games played by tribal members and their guests.

~~(j)~~**(h)** "Gaming Enterprise" means the Swinomish Gaming Enterprise established by the Tribe to conduct all gaming operations of the Tribe on the Reservation.

~~(k)~~**(i)** "Gaming facilities" means any room or rooms in which Class II or Class III gaming is conducted on the reservation.

~~(l)~~**(j)** "National Indian Gaming Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. §2704.

~~(m)~~**(k)** "Net revenues" means gross revenues of a ~~Class III~~ gaming activity less amounts paid out as, or paid for, prizes and total operating expenses including debt service but excluding management fees paid to a management contractor within the meaning of 25 U.S.C. §2711 (c).

~~(n)~~**(l)** "Ordinance" means this Swinomish Indian Tribal Community Gaming Ordinance.

~~(o)~~**(m)** "Reservation" means the Swinomish Indian Reservation including all Indian lands as defined in 25 U.S.C. § 2703(4)(B).

~~(p)~~**(n)** "Senate" or "Tribal Senate" means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.

~~(q)~~**(o)** "State" means the State of Washington.

~~(r)~~**(p)** "State gaming agency" means the Washington State Gambling Commission or such other agency as the State may establish to carry out the regulatory responsibilities of the State under the Compact.

~~(s)~~**(q)** "Tribe" means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to section sixteen of the Indian Reorganization Act of 1934 (25 U.S.C. §476).

Section III FEDERAL ACT (IGRA)

3.010 Construction To Be Consistent With The IGRA.

This Ordinance shall be construed in a manner which conforms to the Act in all respects, and if inconsistent with the Act in any manner, the provisions of the Act shall govern.

(a) 3.020 Limitation on gaming operations.

In compliance with 25 U.S.C. §2710(b)(2)(A), the Tribe shall have sole proprietary interest and responsibility for the conduct of any gaming activity on the reservation; provided, however, that nothing herein shall interfere with the exercise by any secured party of its rights under any collateral lease, leasehold, mortgage or other financing agreement with the Tribe to enforce its security interest in the premises on which such gaming activities may be conducted, or to enforce its rights against gross revenues of the Tribe from its gaming activities for the purpose of repayment of the debt obligations of the Tribe to such secured party in accordance with the provisions of such agreements.

(b) 3.030 Application of ~~net revenues~~ Of Net Revenues.

In compliance with 25 U.S.C. §2710(b)(2)(B), net revenues from any gaming activity are not be used for purposes other than:

- (1) to fund tribal government operations or programs;
- (2) to provide for the general welfare of the Tribe and its members;
- (3) to promote tribal economic development;
- (4) to donate to charitable organizations;
- (5) to help fund operations of local government agencies; or,
- (6) to provide per capita payments to tribal members, but only upon approval of a plan by the Secretary of Interior in accordance with 225 U.S.C. § 2710(b)(3).

(c) 3.040 Annual audit Audit.

In compliance with 25 U.S.C. §2710(b)(2)(C) and (D) and Section X.B(3) of the Compact, all gaming activities shall be subject to an audit by independent certified public accountants, not less than annually, and copies of the annual audit shall be provided to the National Indian Gaming Commission. All contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to Class II or Class III gaming shall be subject to such audits.

(d) 3.050 Public safety ~~standards~~ Safety Standards.

In compliance with 25 U.S.C. §2710(b)(2)(E), the construction and maintenance of any gaming facilities, and the operation of gaming activities, shall be conducted in manner which

adequately protects the environment and the public health and safety and for that purpose shall comply with the requirements of Section XIII of the Compact and all other applicable health, safety and environmental standards enacted by the Tribe.

(e) 3.060 Background investigations Investigations.

In compliance with 25 U.S.C. §2710(b)(2)(F):

~~(1)~~**(a)** all Class III gaming employees, as defined in the Compact, including all primary management officials and key employees of any Class III gaming enterprise, together with such Class II gaming employees as are required by the Gaming Enterprise to secure a tribal license and state certification, shall be subject to the state certification requirements of the Compact as set forth in Section V of the Compact, which include requirements for background investigations and ongoing review including annual renewal of such tribal licenses and state certification for all gaming employees. The Tribe shall notify the National Indian Gaming Commission of the results of the state certification process for its primary management officials and key employees **which shall be** in accordance with the regulations and procedures established by the National Indian Gaming Commission 25 C.F.R. Parts 537, 556 and 558.

~~(2)~~**(b)** all Class II gaming employees who are not certified by the state as gaming employees pursuant to the Compact shall be required to obtain a license from the Commission established pursuant to this Ordinance, and for that purpose the Commission shall conduct background investigations of all such employees and shall deny or revoke such licenses for any employee whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interests or to the effective regulation of gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming. The Commission shall notify the National Indian Gaming Commission of the results of its background investigation for the primary management officials and key employees of its Class II gaming operations who are not certified by the state as gaming employees pursuant to the Compact **which shall be conducted** in accordance with the regulations and procedures established by the National Indian Gaming Commission, 25 C.F.R. Parts 537, 556 and 558.

3.070 Separate License.

In compliance with 25 U.S.C. §2710(b)(1), a separate license shall be required for each gaming place, facility or location on the Reservation.

**Section IV 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:~~

4.010 Definitions

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

(a) Key employee means:

- (1) A person who performs one or more of the following functions
 - (i) Bingo caller;
 - (ii) Counting room supervisor;
 - (iii) Chief of security;
 - (iv) Custodian of gaming supplies or cash;
 - (v) Floor manager;
 - (vi) Pit Boss;
 - (vii) Dealer;
 - (viii) Croupier;
 - (ix) Approver of credit; or
 - (x) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- (2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
- (3) If not otherwise included, the four most highly compensated persons in the gaming operation.

(b) Primary management official means:

- (1) The person having management responsibility for a management contract;
- (2) Any person who has authority:
 - (i) to hire and fire employees; or
 - (ii) to set up working policy for the gaming operation; or
 - (iii) the chief financial officer or other person who has financial management responsibility.
- (3) The chief financial officer or other person who has financial management responsibility.

4.020 Application Forms

(a) 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 activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

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

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

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

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

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

(18 U.S.C. §1001.)

(d) The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

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

4.030 Background Investigations

- (a) The Tribe shall request from each primary management official and from each key employee all of the following information:
- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
 - (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Section 4.030(a)(2);
 - (4) Current business and residence telephone numbers;
 - (5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership 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 Section 4.030(a)(9), the criminal charge, the name and address of the court involved and the date and disposition;

- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A current photograph;
- (13) Any other information the Tribe deems relevant; and
- (14) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. §522.2(h).

(b) The Tribe shall conduct an investigation sufficient to make a determination under Section 4.040 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.

4.040 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.

4.050 Procedures

Procedures for forwarding applications and reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

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

(b) The Tribe shall forward the report referred to in Section 4.060 to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

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

4.060 Report to the National Indian Gaming Commission

(a) Pursuant to the procedures set out in Section 4.050, the Tribe shall prepare and forward to the National Indian Gaming Commission and investigative report on each background investigation. An investigative report shall include all of the following:

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

(b) The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection **D 4.040** of this section.

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

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

(d) With respect to 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.

4.070 Granting a Gaming License

(a) If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

(b) 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 Section 4.070(a) until the Chairman of the National Indian Gaming Commission receives the additional information.

(c) If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission.

4.080 License Suspension

(a) 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 Section 4.040, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and proposed revocation.

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

(c) 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.

Section V SWINOMISH GAMING COMMISSION

5.010 Establishment

There is hereby established a Swinomish Gaming Commission. The members of the Swinomish Tribal Senate shall serve as the Swinomish Gaming Commission.

5.020 Powers

The Swinomish Gaming Commission shall exercise the following powers:

(a) Administer this Ordinance, by exercising general control over all games and activities authorized or prohibited by the this Ordinance, as well as all powers necessary to accomplish the purposes of this Ordinance; and

(b) Adopt and enforce rules and regulations in furtherance of the purposes of this Ordinance and the performance of its administrative functions.

(c) The Commission may investigate any aspect of the operations of the Enterprise in order to protect the public interest in the integrity of such gaming activities and to prevent improper or unlawful conduct in the course of such gaming activities, and shall investigate

any report of a failure of the Enterprise to comply with the provisions of the Compact or this Ordinance and may require the Enterprise to take any corrective action deemed necessary by the Commission upon such terms and conditions as the Commission may determine appropriate. The Commission may compel any person employed by or doing business with the Gaming Enterprise to appear before it and to provide such information, documents or other materials as may be in their possession to assist in any investigation.

(d) The Commission shall carry out each of the responsibilities and duties set forth for the Tribal gaming agency in the Compact and in the Standards of Operation and Management.

(e) The Commission shall prepare a plan for the protection of public safety and the physical security of patrons in each of its gaming facilities setting forth the respective responsibilities of the commission, the security department of the Gaming Enterprise, the Tribal Police Department and any other local law enforcement agency.

(f) The Commission shall review and approve floor plans and surveillance systems for each gaming facility and shall confer with the State gaming agency regarding the adequacy of such plans and systems.

(g) The Commission shall establish and revise Standards of Operation and Management for Class III gaming activities in accordance with the Compact.

(h) The Commission may issue and revoke licenses for Class II and Class III gaming employees in accordance with Section IV of this Ordinance.

(i) The Commission may issue and revoke licenses to any person providing gaming equipment to the Class II or Class III operations of the Gaming Enterprise who is not otherwise certified as a gaming service supplier or manufacturer by the State pursuant to the Compact and who transacts business with the Enterprise with a value in excess of \$50,000 in any two-year period. No person shall transact such business without a valid license from the Commission. The Commission may conduct such investigation into such enterprises as it deems necessary or appropriate to satisfy the standards set forth in the Compact.

(j) The Commission shall establish a list of persons barred from the gaming facilities because their criminal history or association with career offenders or career offenders organizations poses a threat to the integrity of the gaming activities of the Tribe.

(k) The Commission shall approve the rules of each game of chance operated by the Tribe pursuant to Section III of the Compact and shall in accordance with the provisions of the Compact notify the State Gaming agency of such rules and of any change in such rules.

(l) The Commission may impose penalties for violations of this Ordinance, the Compact or the Standards of Operation and Management in accordance with Section IX of this Ordinance.

(m) The Commission may in the name of the Tribe bring any civil action or criminal complaint in the courts of the Tribe, the State or the United States to enforce the provisions of this Ordinance or to enjoin or otherwise prevent any violation of this Ordinance, the Act or the Compact, occurring on the Reservation.

(n) The Commission may receive any complaint from an employee of the Gaming Enterprise or any member of the public who is or claims to be adversely affected by an act or omission of the Enterprise which is asserted to violate this Ordinance, the Compact, or the Standards of Management and Operation adopted pursuant to this Ordinance, and may upon consideration of such complaint order such remedial action as it deems appropriate to bring the Gaming Enterprise into compliance with such provisions. The Commission may for this purpose, in its sole discretion, conduct a hearing and receive evidence with regard to such complaint if it deems an evidentiary proceeding useful in the resolution of such complaint.

(o) The Commission may adopt an annual operating budget which shall be subject to the approval of the Tribal Council and may in accordance with said budget employ such staff from time to time as it deems necessary to fulfill its responsibilities under this Ordinance, and may retain legal counsel and other professional services including investigative services to assist the Commission with respect to any issues over which the Commission exercises jurisdiction. The expenses of the Commission in accordance with such budget shall be assessed against the Gaming Enterprise and the Enterprise shall pay such assessments to the Tribe.

Section VI SWINOMISH GAMING ENTERPRISE

6.010 Establishment

The Swinomish Gaming Enterprise is hereby established as an administrative department of the Swinomish Indian Tribal Community.

6.020 Co-Directors

The Senate shall select two co-directors, and one alternate to serve in the absence of one of the directors. The co-directors shall have the following powers and duties:

(a) **Management.** To manage the Swinomish Gaming Enterprise for the benefit of the Tribe and to be responsible directly to the Senate.

(b) **Reports.** To oversee the operation of all gaming activities regulated by this Ordinance and to make regular reports to the Senate at least once every two months on the operation and financial status of each separate activity.

(c) **Bank Accounts.** To maintain, under the supervision and subject to the authority of the Tribal Treasurer, a separate account for each bingo operation, and at least one other separate account for revenues from all other gaming activities authorized by this Ordinance.

(d) **Records.** To keep written records accounting for all monies received from and expended upon the operation of all gaming activities conducted by the Gaming Enterprise. The Senate may require the Gaming Enterprise to produce these records for inspection without prior notice.

(e) **Inspection.** To inspect during business hours all premises at which any activity authorized by the Ordinance takes place including vehicles used in connection therewith.

(f) **Books.** To inspect, examine, and copy all books and records related to any gaming activities conducted by the Gaming Enterprise. Such inspection may be carried out by a director or conducted by an agent, tribal employee, attorney, or independent certified public accountant acting on behalf of the director. The consent and agreement of the directors shall not be required to carry out the provisions of this subsection.

(g) **Agreement.** Unless otherwise specifically provided, the directors shall make decisions and take action only when complete agreement has been reached between the two directors. Any matters that cannot be fully agreed upon shall be referred to the Senate for determination.

6.030 Bingo Managers

The Senate shall select a manager for each tribal bingo operation on the Swinomish Indian Reservation. The manager shall perform such duties as described under the terms of a management contract written and approved by the Senate which contract shall include provisions for participation by the co-directors of the Swinomish Gaming Enterprise in the affairs of each of said enterprises. Each bingo manager shall have the following powers and duties.

(a) **Premises.** To establish, furnish, equip, operate and maintain a bingo operation of premises owned by the United States in trust for the Swinomish Indian Tribal Community and designated as the responsibility of that particular manager by the Senate.

(b) **Games.** To hold, operate, manage, promote and conduct tribal bingo games in accordance with the provisions of this Ordinance.

(c) **Equipment.** To purchase, use, and maintain bingo equipment, punchboards, pulltabs and related prizes in the name of the Tribe, and to provide for overhead expenditures.

(d) **Food and Beverages.** To purchase and sell food and non-alcoholic beverages, and, subject to the prior approval of the Senate and applicable laws and ordinances, beer, liquor and other alcoholic beverages to patrons and other persons on premises where a bingo operation and/or other gaming activities have been authorized by this Ordinance.

(e) **Personnel.** To hire, fire, train, direct, and supervise additional personnel as the manager deems necessary to the success of the bingo operation.

(f) **Insurance.** To obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Senate. The policy shall contain the stipulation that the Swinomish Indian Tribal Community shall be given at least ten (10) days notice of the proposed cancellation or expiration of such policy. The manager shall submit to the Senate a certificate of insurance from such policy and shall have available for inspection a complete copy of such policy.

(g) **Bonding.** The manager shall obtain and maintain bonding for all individuals on the premises that handle bingo operation funds/proceeds in sufficient amounts appropriate to the financial responsibility involved.

(h) **Proceeds.** To collect, receive and receipt all gross sales, revenues and any other proceeds arising from the bingo operation and the premises on which it is located. All funds shall be deposited daily into a special separate account set up for the specific Tribal bingo operations.

(i) **Expenses.** To expend bingo operation revenues for the necessary and proper maintenance and operations of buildings and facilities on the premises, for salaries and wages of employees, and for other overhead expenses of the bingo operation and premises.

(j) **Other.** To do such other things and perform such other acts necessary or advisable for the purpose of carrying into effect the provisions of this Ordinance.

(k) **Daily Reporting.** To prepare and provide to the Gaming Enterprise directors daily accounting reports for each day's activities on all receipts and cash prize disbursements.

(l) **Statements.** To prepare and provide to the Senate monthly, quarterly and annual statements of all sales, revenues and all other amounts collected and received, and all disbursements made therefrom in connection with the bingo operation and premises.

(m) **Bingo Operation Records.** All bingo operation records shall be kept at the premises where the bingo operation is conducted.

5.040 Records

All records maintained by the directors of the Swinomish Gaming Enterprise shall be kept in the offices of the Swinomish Indian Tribal Community.

Section VII AUTHORIZED ACTIVITIES

7.010 Tribe

(a) The Swinomish Indian Tribal Community may ~~operate bingo, raffles, punchboards, and pulltabs~~ conduct any Class II gaming activity authorized by the Commission consistent with the provisions of this Ordinance. ~~The Tribe may also operate the following Class III games: blackjack, money wheel, roulette, baccarat, chuck a luck, pai gow, red dog, chemin de fer, craps, 4-5-6, ship captain crew, horses (stop dice), beat the dealer, over/under seven, beat my shake, horse race, sweet sixteen, sic bo, and sports pools~~ and the Act.

(b) The Swinomish Indian Tribal Community may conduct any Class III gaming activity authorized by the Commission consistent with the provisions of this Ordinance, the Act and the Compact.

7.020 Organizations

The Senate may authorize Tribal departments, political subdivisions or subordinate charitable organizations of the Swinomish Tribe to operate raffles. Such operation shall be consistent with this Ordinance, and any special conditions imposed by the Senate. The Senate by resolution shall determine what Tribal agencies, departments or political subdivisions qualify under this Section.

7.030 Prohibited Activities

Except as stated herein, no person is authorized by this Ordinance to operate any gaming activity within the Swinomish Indian Reservation.

7.040 Traditional Games

Traditional Indian games played by Tribal members and their guests shall not constitute gaming within the meaning of this Ordinance.

Section VIII ENFORCEMENT

8.010 Commission Investigators

All provisions of this Ordinance, and any regulations that may be promulgated pursuant thereto shall be enforced by investigators commissioned by the Swinomish Gaming Commission.

8.020 Inspection

Any premises where a pulltab or punchboard is located shall be subject to inspection by Commission investigators.

8.030 Failure to Cooperate

Failure to cooperate with a Commission investigator who is engaged in the enforcement of this Ordinance shall be a violation of this Ordinance and shall be grounds for the revocation of any permit issued hereunder.

8.040 Citations

When a Commission investigator has probable cause to believe that a violation of this Ordinance is taking place or has taken place the investigator shall issue the person or persons involved a citation. If the person found to be in violation is not present, the citation shall be served on the operator or employee present. All citations shall be referred to Tribal Court, and a duplicate copy delivered to the Swinomish Gaming Commission.

8.050 Removal

A Commission investigator may remove any person subject to citation pursuant to Section 8.040 from a gaming facility whenever the circumstances of the violation lead the investigator to believe that continuation of the activity will affect the public peace or the honesty of the activity.

8.060 Permit Suspension

The Commission upon receipt of any citation may suspend a permittee pending final action by the Swinomish Tribal Court.

Section IX PENALTIES

9.010 Penalty

Any person, operator, player, permittee or employee of the Tribe who violates any provision of this Ordinance or regulation adopted hereunder, shall be subject to a fine of Five Hundred

Dollars (\$500.00) or imprisonment of not to exceed six (6) months, or both as well as cost of prosecution.

9.020 Separate Offenses

Each day that a violation continues shall be considered a separate offense for the purposes of this section.

9.030 Permit

If the Swinomish Tribal Court finds that a permittee has violated any part of this Ordinance, the Court shall order that any then valid permits be terminated.

Section X TRIBAL COURT

The Swinomish Tribal Court shall have exclusive jurisdiction over any controversies arising under this Ordinance, and shall have exclusive jurisdiction to enforce Section IX.

Section XI CIVIL REMEDIES

Any person who violates any provision of this Ordinance, including any provision of the Compact incorporated herein, shall be subject to civil penalties including exclusion from employment by any Tribal gaming enterprise, exclusion from attendance at any Tribal gaming facility, exclusion from the Reservation and a monetary penalty of up to \$500.00 for each such violation. The Commission established pursuant to this Ordinance shall have the jurisdiction to impose such penalties on any person within the jurisdiction of the Tribe. The Commission is hereby authorized to pursue civil remedies against violators in state and federal court.

Section XII VIOLATIONS

It shall be a violation of this Ordinance for any person to:

(a) Conduct or participate in any Class II or Class III gaming operation on the Reservation other than the Gaming Enterprise.

(b) Receive, distribute, apply, divert any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person except as authorized by this Ordinance and the Resolution of the Tribe establishing the Gaming Enterprise.

(c) Tamper with any equipment used in conduct of tribal gaming operations with the intent to cause any person to win or lose any wager other than in accord with the publicly announced rules of such gaming operations.

(d) Do any other act in connection with the conduct of the tribal gaming operations with the intent to affect the outcome of any wager other than in accord with the publicly announced rules of such gaming operations.

(e) To participate as a player in any regular public bingo game, any lottery, any pari-mutual wager, or game of chance authorized pursuant to Section VII, conducted by the Tribe, while such person is a member of the Tribal Senate or a Director or employee of the Gaming Enterprise.


Section XIII SEVERABILITY

Invalidation of any clause, paragraph, or part of this Ordinance or any application thereof shall in no way affect any other clause, paragraph or part thereof, nor their application to other persons or circumstances, but such other clauses, paragraphs and parts shall remain in full force and affect.

Section XIV EFFECTIVE DATE

This ordinance shall be effective as of the date of its adoption by the Swinomish Senate on October 5, 1993

**Approved and Adopted this
5th day of October, 1993**



Wa-Walton
Robert Joe, Sr., Chairman
Swinomish Indian Senate

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

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing Ordinance was approved at a Regular Meeting of the Swinomish Indian Senate held on **October 5, 1993** at which time a quorum was present and the Ordinance was passed by a vote of

____ FOR, ____ AGAINST, and ____ ABSTENTIONS.

1/5

Liddie Grossglass, Secretary
Swinomish Indian Senate

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ORDINANCE NO. 104

AMENDMENTS TO SWINOMISH GAMING ORDINANCE

**Making Technical Corrections
And Clarifying That Ordinance Applies
To Class II and Class III Gaming**

BE IT ENACTED by the Swinomish Indian Senate that Ordinance No. 103 is hereby amended to include the following changes to the sections of Ordinance No. 103 indicated below. This amending ordinance is hereby adopted pursuant to Article VI (Powers of the Senate), Sections 1(a), (k), (l), (m) and (s) of the Swinomish Constitution and Bylaws, as amended on October 22, 1985.

Section II DEFINITIONS

Strike (b) and (c) of section 2.020.

Strike "Class III" in section 2.020(m)

Add "under the" between State and Compact in section 2.020(r)

Reletter sections (b) through (s) consistent with the above amendments.

Section III Federal Act

add 3.010 **Construction To Be Consistent With The IGRA**
leave narrative as written

strike (a) substitute 3.020

strike (b) substitute 3.030

strike (c) substitute 3.040

strike (d) substitute 3.050

strike (e) substitute 3.060

strike e(1) and substitute (a) and in the last sentence insert "which shall be conducted" between employees and in

strike e(2) and substitute (b) and in the last sentence insert "which shall be conducted" between compact and in

add 3.070 **Separate license.** In compliance with 25 U.S.C. § 2710(b)(1) a separate license shall be required for each gaming place, facility or location on the Reservation

Section IV

strike introductory paragraph thereby making it applicable to Class III as well

4.060(b) strike "subsection D" and substitute 4.040

Section VII

7.010 delete current paragraph and add:

(a) The Swinomish Indian Tribal Community may conduct any Class II gaming activity authorized by the Commission consistent with the provisions of this Ordinance and the Act.

(b) The Swinomish Indian Tribal Community may conduct any Class III gaming activity authorized by the Commission consistent with the provisions of this Ordinance, the Act and the Compact.

Effective Date of this Amending Ordinance. This ordinance shall be effective as of the date of its adoption by the Swinomish Senate on November 3, 1993.

Approved and Adopted this
3rd day of November 1993



Wa-Walton
Robert Joe, Sr., Chairman
Swinomish Indian Senate

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

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing Ordinance was approved at a Regular Meeting of the Swinomish Indian Senate held on **November 3, 1993** at which time a quorum was present and the Ordinance was passed by a vote of 6 FOR, 0 AGAINST, and 0 ABSTENTIONS.



Liddie Grossglass, Secretary
Swinomish Indian Senate