

Summary of the Wabanaki Tribes' Amendment to LD554 "An Act To Create Gaming Equity and Fairness for the Native American Tribes in Maine"

LD554 provides a framework for the Wabanaki Tribal Nations in Maine to engage in gaming activities like all other federally recognized tribes across the country, addressing existing inequities. If the bill passes, the tribes will not be able to immediately establish casinos or other types of gaming operations that the state currently prohibits. However, they will have a path forward to make this happen and to supplement their budgets, reducing reliance on the State. All tribal gaming operations must comply with the robust regulatory framework set forth in the Indian Gaming Regulatory Act ("IGRA") and by the National Indian Gaming Commission ("NIGC"), which in many ways is more complex and far-reaching than existing state regulation of commercial gaming operations.¹ The NIGC also published a model gaming ordinance, which is attached to this memorandum as an example of what a tribal gaming ordinance could look like.

Class III gaming (casinos) would additionally be governed by a state-tribal compact that would be negotiated with the Governor and, as outlined in the amendment, could include revenue sharing with the State. As explained further below, tribal gaming operations would also be governed by tribal laws and ordinances that would be no less rigorous than state laws on issues concerning public health and safety. State law would fill any gaps. The bill recognizes that Tribal Nations are sovereign governments, and will allow these governments to create revenues to support their governmental operations, serve tribal members, and support State and local governments. Under the parameters of IGRA, all revenues from tribal gaming operations must be used for federally-approved tribal governmental purposes and to defray the impact of gaming on local, non-tribal governments. As a result, all tribal gaming revenue will remain in the State of Maine unlike revenues obtained by out-of-state private corporations through existing commercial gaming operations.

The proposed amendment addresses legal and regulatory issues that commonly arise during the establishment and administration of gaming under IGRA and is intended to provide more clarity for the implementation of the bill.

Subsection A expressly authorizes the Governor of Maine to enter into a tribal-state compact to regulate class III gaming upon request of the respective tribe. This section also specifies that IGRA governs the process by which a compact is executed and takes effect. This paragraph was added in response to a very specific legal issue that has come up in other states. Many legislatures will preemptively authorize their executive/Governor to negotiate entry into a compact by including this language in statute. Without this language, tribal-state gaming negotiations and compacts have been vulnerable to legal challenge because of an argument that the Governor lacks the specific authority to take this action. The language in this amendment does not mandate any particular outcome for a compact negotiation, but rather allows it to take place pursuant to state and federal law.

Subsection B provides that with respect to tribal gaming activities, the laws to be applied to tribal gaming operations would be federal law, tribal law, and state law as outlined in the

¹ See compilation of applicable federal laws and regulations at <https://www.nigc.gov/general-counsel/laws-and-regulations>.

amendment. For gaming operations that would not be covered by a tribal-state compact, the amendment provides a baseline for various issues that can come up in tribal gaming operation. Health and safety laws (food safety, sanitation, etc.) adopted by a tribal government will be no less rigorous than state law. Unless and until the tribal government adopts such laws and ordinances, state law will apply. In terms of alcohol sales, federal law already dictates that tribes must follow state law. The amendment does not circumvent state liquor laws but rather ensures that Tribal Nations will be able to secure the same liquor licenses as other gaming operations in the State. To the extent state law requires local approvals for liquor licenses, those approvals would be secured by the tribal government, which is the governing body on tribal lands.

Subsection C ensures compliance with a specific provision in federal law, which is that tribal gaming operations operated pursuant to IGRA cannot be subject to taxation. Tribal gaming facilities can, however, share revenue from their operations with state and local governments. State revenue sharing is often included directly in the state-tribal compact but revenue sharing with local governments could occur outside of that framework. Revenue sharing will not be considered an impermissible tax under IGRA so long as tribal gaming revenue is contributed to the State in exchange for quantifiable economic benefits. The extent to which revenue sharing levels may change over the life of the compact would be negotiated with the Governor. In some states, compacts include graduated levels of revenue sharing over time as the business grows, for example. In some states, revenue sharing is directly tied to the size of the gaming operation.

Subsection D adds a new section for definitions. The definition for Class III gaming cross-references federal law. “Tribal members” are members of the tribes referenced in this legislation, and the definition of a “tribal entity” mirrors the definition used in other states. “Gaming operations” are defined to ensure that a business or service directly related to gaming facility would be regulated in a manner consistent with state law as required under subsection B. The definition of a “gaming facility” identifies the footprint of such a facility and where, geographically, the provisions in these subsections would apply. This would include the exact place where gaming is conducted on tribal lands – the floor where gaming occurs, back room areas, and other areas providing support services to the casino, for example. Gaming operations would include adjacent areas with amenities that support and complement the facility.

Section 2 (contingent effective date) references the fact that each tribal government must go through its own rulemaking process to approve and accept the amendments to the Settlement Act prior to engaging in gaming activity, in addition to receiving all required federal approvals.

Bulletin No. 2018-1

Date: January 10, 2018

Subject: Revised Model Gaming Ordinance

This Bulletin provides guidance for tribal governments on the development and updating of a tribal gaming ordinance. It revises and supersedes the guidance previously provided and published by the NIGC in Bulletin No. 2014-2 (May 5, 2014), Bulletin 05-05 (August 24, 2005) and Bulletin 93-1 (June 10, 1993). The Commission offers this revised Model Gaming Ordinance (“Model Ordinance”) to assist tribes with meeting the ordinance requirements of IGRA and the NIGC’s regulations, and with crafting effective ordinances that address each tribe’s unique regulatory needs.

The Model Ordinance not only contains provisions that are required by IGRA and NIGC regulations, but also provisions that are recommended but are not required. Many section and provisions of this Model Ordinance were taken from a variety of tribal gaming ordinances so that tribes could benefit from the collective knowledge and experience of the more than 250 gaming tribes. Some sections of the Model Ordinance present different options so that tribes may adopt and use language and provisions that will work best for them.

Explanatory footnotes and matters that appear in italics in the text of the Model Ordinance are for reference only and should not be included in a tribe’s gaming ordinance. Shaded areas are included for a tribe to insert its specific information.

In addition to the revised Model Ordinance, the NIGC is also posting the checklist used by the Office of General Counsel when performing the review of an ordinance. The checklist includes all the provisions required by IGRA and the NIGC’s regulations.

For any questions about the revised Model Ordinance or the checklist, please contact the Office of General Counsel at (202) 632-7003.

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Revised Model Gaming Ordinance¹

Section 1. Purpose

The [Tribal Council or other authorized Tribal governing body] of the [name of Tribe] ("Tribe"), empowered by the [Tribe's Constitution and/or other governing authority] to enact ordinances, hereby enacts this ordinance in order to govern and regulate the operation of [class II and/or class III] gaming operations on the Tribe's Indian lands.

OR

The [Tribal Council or other authorized government body] of the [name of Tribe] ("Tribe"), empowered by the [Tribe's Constitution and/or other governing authority] to enact ordinances, hereby enacts this ordinance to promote tribal economic development, self-sufficiency and sovereignty; to shield the operation of gaming from organized crime and other corrupting influences; and to ensure that gaming is conducted fairly and honestly by both the operator and players.

[25 U.S.C. § 2702(1)-(3)]

Section 2. Applicability

Unless specifically indicated otherwise, all provisions of this ordinance shall apply to [class II and/or class III] gaming on the Tribe's Indian lands.

Section 3. Definitions²

¹ Provisions, or text, in black are recommended for a tribal gaming ordinance, but are not required by IGRA or the NIGC's regulations. Provisions, or text, in green are not required to be included in a tribal gaming ordinance, but, if included, must be consistent with the language used in IGRA and/or the NIGC's regulations. Provisions, or text in blue are required by IGRA and/or NIGC's regulations to be included in a tribal gaming ordinance. Provisions, or text, in red are required to be submitted to the NIGC with a tribe's request for approval of its gaming ordinance, but may instead be included in the ordinance itself. For ease of reference, a color key is included at the bottom of each page.

² A tribe may expand on its "Definitions" section by including definitions which reflect features unique to the tribe and the structure, size, and regulation of its gaming operation. If a tribe chooses to include

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Green:	Not required, but, if included, must be consistent with IGRA and the NIGC regulations
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The following terms shall have the same meaning and effect as those same terms as defined in the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701 *et seq.*, and the National Indian Gaming Commission (“NIGC”) regulations, 25 C.F.R. §§ 500 *et seq.*, if they are defined in IGRA and the NIGC’s regulations.

A. Class I gaming.

1. Social games played solely for prizes of minimal value; or
2. Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

[25 U.S.C. § 2703(6); 25 C.F.R. § 502.2]

B. Class II gaming.

1. Bingo or lotto (whether or not electronic, computer or other technologic aids are used) when players:
 - a. Play for prizes with cards bearing numbers or other designations;
 - b. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
 - c. Win the game by being the first person to cover a designated pattern on such cards;
2. Pull-tabs, punch boards, tip jars, instant bingo and other games similar to bingo, if played in the same location as bingo or lotto;
3. Non-banking card games that:
 - a. State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and
 - b. Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;

definitions in its ordinance, it may, alternatively, cite directly to IGRA or the NIGC’s regulations and forego repeating language from IGRA or the NIGC’s regulations. For instance, a definition could read: “Class I gaming’ means those gaming activities as defined as class I gaming in IGRA at 25 U.S.C. § 2703(6), and the NIGC’s regulations at 25 C.F.R. § 502.2.”

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4. Card games played in the states of Michigan, North Dakota, South Dakota or Washington, if:
 - a. A tribe actually operates the same card games as played on or before May 1, 1988, as determined by the NIGC Chair; and
 - b. The pot and wager limits remain the same as on or before May 1, 1988, as determined by the NIGC Chair;
5. Individually owned class II gaming operations –
 - a. That were operating on September 1, 1986;
 - b. That meet the requirements of 25 U.S.C. § 2710(b)(4)(B);
 - c. Where the nature and scope of the game remains as it was on October 17, 1988; and
 - d. Where the ownership interest or interests are the same as on October 17, 1988.

[25 U.S.C. § 2703(7); 25 C.F.R. § 502.3]

C. Class III gaming. All forms of gaming that are not class I or class II gaming, including, but not limited to:

1. Any house banking game, including but not limited to –
 - a. Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house-banking games); and
 - b. Casino games such as roulette, craps, and keno;
2. Any slot machines, as defined in 15 U.S.C. § 1711(a)(1), and electronic or electromechanical facsimiles of any game of chance;
3. Any sports betting and pari-mutuel wagering, including but not limited to, wagering on horse racing, dog racing or jai alai; or
4. Lotteries.

[25 U.S.C. § 2703(8); 25 C.F.R. § 502.4]

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- D. **Commission.** The Tribal Gaming Commission established to perform regulatory oversight and to monitor compliance with tribal, federal and applicable state regulations.
- E. **Commissioner.** A Tribal Gaming Commissioner.
- F. **Directly related to.** A spouse, child, parent, grandparent, grandchild, aunt, uncle, or first cousin.
- G. **Director.** A member of the Tribal Gaming Board of Directors.
- H. **Facility License.** A separate license issued by the Tribe to each place, facility or location on Indian lands where the Tribe elects to allow class II or III gaming;
- [25 C.F.R. § 502.23]
- I. **Gaming Operation.** Each economic entity that is licensed by the Tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by the Tribe directly; by a management contractor; or, under certain conditions, by another person or entity.
- [25 C.F.R. § 502.10]
- J. **Indian lands.**
1. Land within the limits of an Indian reservation; or
 2. Land over which an Indian tribe exercises governmental power and that is either;
 - a. Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - b. Held by an Indian tribe or individual subject to restriction by the United States against alienation.

[25 U.S.C. § 2703(4); 25 C.F.R. § 502.12;
See also 25 U.S.C. § 2719; 25 C.F.R. § 292]

K. Key Employee.

Black: Recommended, but not required
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1. A person who performs one or more of the following function:
 - a. Bingo caller;
 - b. Counting room supervisor;
 - c. Chief of Security;
 - d. Custodian of gaming supplies or cash;
 - e. Floor manager;
 - f. Pit boss
 - g. Dealer;
 - h. Croupier;
 - i. Approver of credit; or
 - j. 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;
3. If not otherwise included, the four most highly compensated persons in the gaming operation; or
4. Any other person designated by the tribe as a key employee.³

[25 C.F.R. § 502.14]

- L. **Licensee.** A tribally owned class II or class III gaming operation or a person licensed by the Tribal Gaming Commission as a primary management official, key employee or other gaming employee under the provisions of this ordinance.
- M. **Management Contract.** Any contract, subcontract or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

[25 C.F.R. § 502.15]

- N. **Net Revenues.** Gross gaming revenues of an Indian gaming operation less:

³ A tribe may consider expanding the definition of “key employee,” but may not limit it.

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1. Amounts paid out as, or paid for, prizes; and
2. Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

[25 U.S.C. § 2703(9); 25 C.F.R. § 502.16]

O. Primary Management Official.

1. The person(s) having management responsibility for a management contract.
2. Any person who has authority:
 - a. To hire and fire employees; or
 - b. To set up working policy for the gaming operation; or
 - c. The chief financial officer or other person who has financial management responsibility.
3. Any other person designated by the Tribe as a primary management official.⁴

[25 C.F.R. § 502.19]

P. Tribal-State Compact. An agreement between a tribe and state about class III gaming under 25 U.S.C. § 2710(d).

Q. Tribe. The [name of the Tribe].

Section 4. Gaming Authorized

[Class II and/or class III] gaming are authorized to be conducted on the Tribe's Indian lands, if such gaming is conducted in accordance with this ordinance, the Indian Gaming Regulatory Act, the NIGC's regulations, and any other applicable laws or regulations.

⁴ A tribe may consider expanding the definition of "primary management official," but may not limit it.

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Section 5. Ownership of Gaming

- A. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Ordinance, except as expressly provided in this Ordinance.

**[25 U.S.C. § 2710(b)(2)(A);
25 C.F.R. §§ 522.4(b)(1), 522.6(c)]**

- B. No person or entity, other than the Tribe, shall conduct gaming without obtaining a license from the Tribal Gaming Commission.⁵
- C. The Tribal Gaming Commission may issue a license for individually-owned gaming so long as:
1. The individually owned gaming operation is licensed and regulated pursuant to this Ordinance;
 2. The income to the Tribe from an individually owned gaming operation is used only for the purposes listed in this Ordinance;
 3. Not less than 60 percent of the net revenues of the individually-owned gaming operation is income to the Tribe;
 4. The owner of the individually owned gaming pays an annual assessment to NIGC pursuant to 25 C.F.R. § 514.1; and
 5. The Tribal Gaming Commission applies licensing standards that are at least as restrictive as those established by State law governing similar gaming;⁶

⁵ A tribe is not required to allow individually owned gaming, but if it does, it must include these provisions in its ordinance.

⁶ If a tribe is going to permit individually owned gaming, it develop or reference these standards either in its ordinance or its individually owned gaming policies. *See* 25 U.S.C. § 2710(b)(4) and 25 C.F.R. § 522.10

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6. The Tribal Gaming Commission determines that the owner of the individually owned gaming would be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State.⁷

[25 U.S.C § 2710(b)(4)(A)-(B);
25 C.F.R. §§ 502.3(e), 522.4(b)(1), 522.6(c), 522.10, 522.11]

Section 6. Use of Net Gaming Revenues

A. Net revenues from Tribal gaming shall be used only for the following purposes:

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; or
5. To help fund operations of local government agencies.⁸

[25 U.S.C. § 2710(b)(2)(B);
25 C.F.R. §§ 522.4(b)(2), 522.6(b)]

Section 7. Per Capita Payments

- A. Net revenues from any [class II and/or class III] gaming activities conducted or licensed by the Tribe may be used to make per capita payments to Tribal members if:

⁷ This requirement shall not bar the continued operation of an individually owned gaming operation that was operating on September 1, 1986, if the gaming activity remains within the same nature and scope as it was on October 17, 1988; and the ownership interests are the same as on October 17, 1988.

⁸ It is not necessary to include all five of the permissible uses in the ordinance, but a tribe may not include any additional uses.

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1. The Tribe has prepared a plan⁹ to allocate revenues to one or more of the five uses authorized by section 6(A) of this ordinance;
2. The plan is approved by the Secretary of the Interior as adequate, particularly with respect to the uses described in sections 6(A)(1) and 6(A)(3) of this ordinance;
3. The interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved, and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person; and
4. The per capita payments are subject to Federal taxation and the Tribe notifies its members of such tax liability when payments are made.

[25 U.S.C. § 2710(b)(3);
25 C.F.R. §§ 522.4(b)(2)(ii), 522.6(b)]

Section 8. Gaming Commission¹⁰

- A. The Tribe hereby establishes a Tribal Gaming Commission (“Commission”) to regulate the Tribe’s gaming operations. The Commission shall consist of [insert chosen number] members, including a Chair, Vice-Chair and at least one additional Commissioner.
- B. The Commission will conduct oversight to ensure compliance with Tribal, federal and, if applicable, state laws and regulations. It will serve as the licensing authority for individuals employed in the gaming operation and will

⁹ A tribal revenue allocation plan (“RAP”) must satisfy the BIA regulations in 25 C.F.R. part 290 for approval by the Secretary of the Interior. Any questions about RAP requirements or approvals should be directed to the U.S. Department of Interior, Office of Indian Gaming.

¹⁰ This provision is recommended, but not required by IGRA or the NIGC’s regulations. Usually a tribal gaming commission is the entity that acts on behalf of a tribe to regulate its gaming operation. If a tribe opts to establish a gaming commission, it may wish to include more details in this section, such as how many commissioners should be enrolled tribal members; the length of their appointments; any additional restrictions on commissioners’ activities, relationships and holdings; how often written reports will be required of the commission; and how complaints will be processed by the commission.

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administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the gaming operation's internal controls and in tracking gaming revenues. In order to carry out its regulatory duties, the Commission shall have unrestricted access to all areas of the gaming operation and to all of its records. The Commission shall have authority to take enforcement actions, including suspension or revocation of an individual gaming license, when appropriate.

C. Commissioner positions shall be filled in the following manner:

Through appointment by the [Tribe's general voting body] pursuant to an election.

OR

Through appointment by the [Tribal governing body].

OR

[Insert the Tribe's chosen method].

D. Terms of office for Commissioners shall be as follows: the Chair shall serve an initial term of one (1) year, with subsequent Chairs serving 3-year terms; and the Vice-Chair and Commissioner(s) shall serve an initial term of two (2) years, with subsequent Vice-Chairs and Commissioners serving 3-year terms.

E. The following persons are not eligible to serve as Commissioners: [Tribal governing body] members, while serving as such; current employees of the gaming operation; gaming contractors (including any principal of a management, or other contracting company); persons directly related to, or sharing a residence with, any of the above; and persons ineligible to be key employees or primary management officials. Non-tribal members previously convicted of any felony or misdemeanor offense of embezzlement, theft or any other money-related or honesty-related misdemeanor offense, such as fraud, cannot serve as Commissioner. Tribal members previously convicted of any felony or misdemeanor offense of embezzlement, theft or any other offense related to money or honesty, such as fraud, will only be allowed to serve as a Commissioner if the [Tribal governing body] specifically finds that a significant amount of time has passed and the person is now of trustworthy character.

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- F. The [Tribal governing body] shall require a criminal history check with appropriate law enforcement agencies for each Commissioner candidate; shall review the candidate's criminal history check results; and shall make an appropriate eligibility determination before appointing an individual to the position of Commissioner.
- G. The Tribe recognizes the importance of an independent Tribal Gaming Commission in maintaining a well-regulated gaming operation. The Commission shall be independent of, and act independently and autonomously from, the [Tribal governing body] in all matters within its purview. No prior, or subsequent, review by the [Tribal governing body] of any actions of the Commission shall be required or permitted except as otherwise explicitly provided in this ordinance. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribe requires that, at a minimum:
1. No member of the [Tribal governing body] or Tribal Gaming Board of Directors may serve on the Tribal Gaming Commission;
 2. No member directly related to, or living with, any [Tribal governing body] member or Tribal Gaming Board of Directors member may serve on the Tribal Gaming Commission;
 3. Members of the Commission are prohibited from gambling in the facility;
 4. Commissioners are prohibited from accepting complimentary items from the gaming operation, excepting food and beverages valued under [] dollars (\$.00); and
 5. Commissioners may only be removed from office by the [Tribal governing body], prior to the expiration of their respective terms, for neglect of duty, misconduct, malfeasance or other acts that would render a Commissioner unqualified for the position.
- H. Nominees for Commissioner positions must satisfy the eligibility standards set forth for primary management officials and key employees found in Section 21 of this ordinance. All requisite background investigations shall be performed under the direction of [office or entity that will conduct the background investigations].

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I. The Tribal Gaming Commission shall:

1. Conduct background investigations, or cause such investigations to be conducted, for primary management officials and key employees;
2. Review and approve all investigative work conducted in connection with the background investigations of primary management officials and key employees;
3. Create and maintain investigative reports based on the background investigations of primary management officials and key employees;
4. Designate a law enforcement agency to obtain and process fingerprints and conduct a criminal history check that shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.;
5. Make licensing eligibility determinations, which shall be signed by the Chair of the Commission;
6. Submit a notice of results to the NIGC of the background investigations done for each primary management official and key employee applicant;
7. Issue gaming licenses to primary management officials and key employees of the operation, if warranted by the eligibility determination;
8. Establish standards for licensing Tribal gaming facilities;
9. Issue gaming licenses to Tribal gaming facilities;
10. Inspect, examine and monitor all of the Tribe's gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of the gaming facilities and operations;
11. Ensure compliance with all Tribal, federal and applicable state laws, rules and regulations regarding Indian gaming;
12. Investigate any suspicion of wrongdoing associated with any gaming activities;

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13. Hold hearings on patron complaints, in accordance with procedures established in this ordinance and the Tribal gaming regulations;
14. Comply with any and all reporting requirements under IGRA, the NIGC's regulations and any tribal-state compact to which the Tribe is a party, and any other applicable law;
15. Promulgate and issue regulations necessary to comply with applicable internal control standards;
16. Promulgate and issue regulations on the levying of fees and/or taxes associated with gaming license applications;
17. Promulgate and issue regulations on the levying of fines and/or the suspension or revocation of gaming licenses for violations of this ordinance or any Tribal, federal or applicable state gaming regulations;
18. Establish a list of persons not allowed to game in the Tribe's gaming facilities in order to maintain the integrity of the gaming operation;
19. Establish a list of persons who have voluntarily agreed to be excluded from the Tribal gaming facilities, and create regulations for enforcing the exclusions;
20. Provide referrals and information to the appropriate law enforcement officials when such information indicates a violation of Tribal, federal or state statutes, ordinances, regulations, codes or resolutions;
21. Create a list of regulatory authorities that conduct background investigations of, and licenses, vendors who are recognized as trustworthy;
22. Draft regulations exempting vendors from the licensing and/or background investigation requirements if they have received a license from a recognized regulatory authority;
23. Perform such other duties the Commission deems appropriate for the proper regulation of the Tribal gaming operation; and

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24. Promulgate such regulations and guidelines as deemed appropriate to implement the provisions of this ordinance, so long as they are in furtherance of, and not in conflict with, any provisions of this ordinance.
- J. Before adopting, amending and repealing regulations, the Commission shall give notice of any such proposed action to the [Tribal governing body], the gaming operation(s) and all other persons whom the Commission has reason to believe have a legitimate interest in the proposed action. The notice shall invite comments and describe the general nature of the proposed action and the manner in which comments on the proposed action shall be received by the Commission.
 - K. The Commission shall ensure that all records and information obtained as a result of an employee background investigation, including but not limited to, the identity of each person interviewed in the course of an investigation, shall remain confidential and shall not be disclosed to any persons who are not directly involved in the licensing and employment processes. Information obtained during the course of an employee background investigation shall be disclosed to members of management, human resource personnel and/or others employed by the Tribal gaming operation on a need-to-know basis, for actions taken in their official capacities.
 - L. The confidentiality requirements in Section 8(J), above, do not apply to requests for such records or information from any Tribal, federal or state law enforcement or regulatory agency, or for the use of such records or information by the Commission and staff in the performance of their official duties.
 - M. A majority of the Commission shall constitute a quorum. The concurrence of a majority of the Commissioners shall be required for any final determination by the Commission. The Commission may act in its official capacity, even if there are vacancies on the Commission.
 - N. Commissioners shall be compensated at a level determined by the [tribal governing authority]. In order to ensure the Commission is not improperly influenced, a Commissioner's compensation shall not be based on a percentage of gaming revenue.
 - O. The Commission shall keep a written record of all its meetings.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

Section 9. Audits

- A. The Tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the NIGC.

[25 U.S.C. § 2710(b)(2)(C);
25 C.F.R. § 522.4(b)(3)]

- B. Annual audits shall conform to generally accepted auditing standards.

[25 C.F.R. § 571.12(b)]

- C. All gaming-related contracts that result in the purchase of supplies, services or concessions for more than \$25,000 in any year¹¹ (except contracts for professional legal and accounting services) shall be specifically included within the scope of the audit conducted under Section 9(A) of this ordinance.

[25 U.S.C. § 2710(b)(2)(D);
25 C.F.R. §§ 522.4(b)(4), 522.6(b)]

- D. Copies of the annual audit of each licensed gaming operation, and each audit for supplies, services or concessions of each gaming operation, shall be furnished to the NIGC within 120 days after the end of each fiscal year of the gaming operation.

[25 C.F.R. § 571.13]

Section 10. Environment and Public Health and Safety

- A. Each gaming facility shall be constructed, maintained, and operated in a manner that adequately protects the environment and the health and safety of the public.

[25 U.S.C. § 2710(b)(2)(E);
25 C.F.R. §§ 522.4(b)(7), 522.6(b), and 559.4]

¹¹ The amount may exceed, but not be less than, \$25,000.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- B. [Tribal official or group] shall identify and enforce laws, resolutions, codes, policies, standards, or procedures, which are applicable to each gaming place, facility or location, to ensure adequate protection of the environment and the health and safety of the public.

[25 C.F.R. § 559.4]

Section 11. Patron Dispute Resolution¹²

Patrons with complaints against the gaming establishment shall have as their sole remedy the right to file a petition for relief with the Tribal Gaming Commission. Complaints shall be submitted in writing. The Commission shall hold a hearing within 30 days of receipt of the petitioner's complaint. The petitioner may have counsel present at the hearing. The petitioner may be allowed to present evidence, at the discretion of the Commission. After the hearing, the Commission shall render a decision in a timely fashion. All such decisions will be final when issued. Any patron complaint must be submitted to the Commission within thirty (30) days of the incident giving rise to the complaint. All claims by patrons shall be limited to a maximum recovery of [enter dollar amount] per occurrence, and a cumulative limit of [enter dollar amount] per patron in any 12-month period, except disputes relating to a patron's entitlement to a game prize, which shall be limited to the amount of such prize. The Commission's decision shall constitute the complainant's final remedy.

[25 C.F.R. § 522.2(f)]

Section 12. Facility Licenses

- A. The Tribe shall issue a separate license to each place, facility or location on Indian lands where [class II and/or class III] gaming is conducted under this ordinance.

[25 U.S.C. § 2710(b)(1);
25 C.F.R. §§ 522.4(b)(6), 522.6(b) and 559]

¹² 25 C.F.R. § 522(f) requires a tribe to include in its ordinance a description of the procedures in place for resolving disputes between the gaming public and a tribe or the gaming public and a tribe's management contractor. This section provides an example of a dispute resolution process used by tribes with gaming operations.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- B. The Tribal Gaming Commission is responsible for issuing new or renewed facility licenses to each place, facility or location.
- C. The Tribal Gaming Commission shall require that a facility license application be completed by the chief management official of the gaming facility for each gaming place, facility or location.
- D. The Tribal Gaming Commission shall identify the environmental, health and public safety standards with which the place, facility or location must comply, and specify the form, conditions and content of a facility license application. The application shall include:
- E. A legal description of the lands upon which the facility is located, and a certification that the site constitutes “Indian lands,” as defined in IGRA, the NIGC’s regulations, the NIGC Office of General Counsel and DOI Solicitor Offices’ Indian lands legal opinions, judicial decisions and any other applicable law.
- F. The Tribal Gaming Commission shall only issue a facility license if the application includes the required information and documentation, and sufficiently satisfies any additional conditions deemed necessary by the Tribe.
- G. The Tribe or Tribal Gaming Commission shall submit to the NIGC Chair a notice that issuance of a facility license is under consideration by the Tribal Gaming Commission.¹³ This notice must be submitted at least 120 days before the opening of any new place, facility or location on Indian lands where [class II and/or class III] gaming will occur.¹⁴

[25 C.F.R. § 559.2(a)]

¹³ The facility license notice shall contain the information and documentation set out in 25 C.F.R. § 559.2(b).

¹⁴ The NIGC does not notify the tribe that a facility complies with the requirements for gaming on Indian land unless the tribe specifically requests such notice.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- H. The Tribal Gaming Commission shall submit a copy of each newly issued or renewed facility license to the NIGC Chair within 30 days of issuance, along with any other required documentation.¹⁵

[25 C.F.R. § 559.3]

- I. The Tribe shall notify the NIGC Chair within 30 days if a facility license is terminated or expires, or if a gaming place, facility, or location closes or reopens.

[25 C.F.R. § 559.5]

Section 13. Agent for Service of Process

The Tribe designates [identity of an official position]¹⁶ as the agent for service of any official determination, order or notice of violation.

[25 C.F.R. §§ 519.1, 522.2(g), 522.6(a)]

Section 14. Tribal Access to Financial Information

A copy of the Tribal gaming operation's annual audit will be made available for review, upon request, to:

[the Tribe's Business Committee]

OR

[enrolled Tribal member]

¹⁵ Under 25 C.F.R. § 559.4, a tribe is required to submit an attestation certifying that by issuing the facility licenses, the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety.

¹⁶ The NIGC recommends identifying an official position rather than naming a specific person as the agent for service of process.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

OR

[desired Tribal group]

Section 15. License Application Forms¹⁷

- A. The following notice shall be placed on the Tribe's license application form for a key employee or a primary management official before it 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 granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the 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 by the Tribe or the NIGC to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the NIGC in connection with the issuance, denial, 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 being unable to license you for 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.

[25 C.F.R. § 556.2(a)]

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

¹⁷ The provisions related to the Privacy Act and False Statement notifications must be included in the ordinance exactly as written in the NIGC's regulations.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

[25 C.F.R. § 556.3(a)]

Section 16. License Fees

The Tribe may charge a license fee, to be set by the Tribal Gaming Commission, to cover its expenses in investigating and licensing key employees and primary management officials of the gaming operation.

Section 17. Background Investigations¹⁸

- A. The Tribe shall perform a background investigation for each primary management official and key employee in its gaming operation.¹⁹ The investigation must be sufficient to allow the Tribal Gaming Commission to make an eligibility determination under Section 20 of this ordinance.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.4(b)(5), 556.4]**

- B. The Tribal Gaming Commission is responsible for conducting the background investigations of primary management officials and key employees. The background investigation shall include a check of criminal history records information maintained by the Federal Bureau of Investigations.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.2(h), 522.6(a)]**

¹⁸ Unless a tribal-state compact provides that a state has exclusive jurisdiction over conducting background investigations and issuing licenses for class III gaming operations, the background investigation provisions apply to both class II and class III gaming.

¹⁹ Background investigations, and the related procedures and standards in 25 C.F.R. part 556, are required for primary management officials and key employees of a tribe's gaming operation. A tribe may, however, wish to require all employees of its gaming operation to undergo background investigations.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- C. The Tribe shall request fingerprints from each primary management official and key employee. The law enforcement agency designated to take fingerprints is [name of responsible law enforcement agency].²⁰

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.2(h), 522.6(a), 556.4(a)(14)]**

- D. The Tribal Gaming Commission shall request from each primary management official and key employee all of the following information:
1. Full name, other names used (oral or written), social security number, birth date, place of birth, citizenship, gender and all languages (spoken and/or written);
 2. Currently, and for the previous five (5) years; business and employment positions held, ownership interests in those businesses, business and residential addresses, and driver's license numbers;
 3. The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph (C)(2) of this section;
 4. Current business and residential telephone numbers, and all cell phone numbers;
 5. A description of any existing and previous business relationships with other tribes, including any 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;

²⁰ A tribe is required to submit the name of the law enforcement agency that will take fingerprints and provide a description of the procedures for conducting a criminal history check by a law enforcement agency; however, it is not required to include such information in the ordinance. *See* 25 C.F.R. §§ 522.2(h), 522.6(a).

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

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 of 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 of disposition, if any;
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 paragraphs (C)(8) or (C)(9) of this Section, the criminal charge, the name and address of the court involved, and the date of disposition, if any;
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 photograph;²¹
13. Any other information the Tribe deems relevant; and
14. Fingerprints obtained in accordance with procedures adopted by the Tribe

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.2(h), 522.4(b)(5), 522.6(a), 556.4(a)(1)-(14)]**

- E. When a primary management official or key employee is employed by the Tribe, a complete application file, containing all of the information listed in Section 18(C), shall be maintained.

[25 U.S.C. § 2710(b)(2)(F);

²¹ A *current* photograph is recommended.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

25 C.F.R. §§ 522.4(b)(5), 556.6(a)]

- F. The Tribal Gaming Commission, and its investigators, shall keep confidential the identity of each person interviewed in the course of conducting a background investigation.

[25 C.F.R. §§ 522.4(b)(5), 556.4(c)]

Section 18. Procedures for Conducting Background Investigations²²

- A. The Tribal Gaming Commission, or its agent, shall employ or engage an investigator to conduct a background investigation of each applicant for a primary management official or key employee position. The investigator shall:
1. Verify the applicant's identity through items such as a social security card, driver's license, birth certificate or passport;
 2. Contact each personal and business reference provided in the license application, when possible;
 3. Conduct a personal credit check;
 4. Conduct a civil history check;²³
 5. Conduct a criminal history records check;^{24 25}

²² Most of the actions recommended in this provision are not required to be included in the ordinance. However, an ordinance must require that a background investigation be sufficient for a tribe to make an eligibility determination for licensing purposes. Additionally, an authorized tribal official must be able to review a person's prior activities, criminal record (if any), and reputation, habits and associations to make an eligibility finding for licensing purposes. *See* 25 U.S.C. § 2710(b)(2)(F)(II); 25 C.F.R. § 556.5.

²³ A tribe should look for items of concern including past or outstanding judgments, current liens, past or pending lawsuits, and any other information deemed to be relevant.

²⁴ A tribe should check federal, state and tribal court records for any criminal activity or any other information deemed to be relevant.

²⁵ A tribe may want to perform a check of tribal criminal history also. Tribal criminal records are not reflected in federal or state databases.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

6. Based on the results of the criminal history records check, as well as information acquired from an applicant's self-reporting or from any other source, obtain information from the appropriate court regarding any past felony and/or misdemeanor convictions or ongoing prosecutions within the past 10 years;²⁶
7. Inquire into any previous or existing business relationships with the gaming industry, including with any tribes with gaming operations, by contacting the entities or tribes;
8. Verify the applicant's history and current status with any licensing agency by contacting the agency; and
9. Take other appropriate steps to verify the accuracy of the information, focusing on any problem areas noted.

[25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. §§ 522.4(b)(5), 556.5]

Section 19. Investigative Reports

- A. A Tribe shall create and maintain an investigative report for each background investigation of a primary management official or key employee.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.4(b)(5), 556.6(b)(1)]**

- B. Investigative reports shall include all of the following information:
 - a. Steps taken in conducting the investigation;
 - b. Results obtained;
 - c. Conclusions reached; and
 - d. The basis for those conclusions.

²⁶ A tribe may want to perform a check of tribal criminal history also. Tribal criminal records are not reflected in federal or state databases.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.4(b)(5), 556.6(b)(1)]

Section 20. Eligibility Determinations

- A. Before a license is issued to a primary management official or key employee, an authorized Tribal official shall make a finding concerning the eligibility of that person for receiving a gaming license by reviewing the applicant's prior activities, criminal record, if any, and reputation, habits and associations.

[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. §§ 522.4(b)(5), 556.5(a)]

- B. If the authorized Tribal official, in applying the standards adopted in this ordinance, determines that licensing the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming, he or she shall not license that person in a key employee or primary management official position.

[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 556.5(b)]

- C. Copies of the eligibility determination shall be included with the notice of results that must be submitted to the NIGC before the licensing of a primary management official or key employee.

[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 556.6(b)(2)]

Section 21. Notice of Results of Background Investigations

- A. Before issuing a license to a primary management official or key employee, the Tribal Gaming Commission shall prepare a notice of results of the applicant's background investigation to submit to the NIGC.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- B. The notice of results must be submitted to the NIGC no later than 60 days after the applicant begins working for the Tribe.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 556.6(b)(2)]**

- C. The notice of results shall include the following information:

1. The applicant's name, date of birth and social security number;
2. The date on which the applicant began, or will begin, working as a primary management official or key employee;
3. A summary of the information presented in the investigative report, including:
 - a. licenses that have previously been denied;
 - b. gaming licenses that have been revoked, even if subsequently reinstated;
 - c. every known criminal charge brought against the applicant within the last 10 years of the date of the application; and
 - d. every felony offense of which the applicant has been convicted or any ongoing prosecution; and
4. A copy of the eligibility determination made in accordance with Section 21.

[25 C.F.R. § 556.6(b)(2)(i)-(iv)]

Section 22. Granting Gaming Licenses²⁷

- A. All primary management officials and key employees of the gaming operation must have a gaming license issued by the Tribe.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 558.3(c)]**

²⁷ The procedures and standards of 25 U.S.C. part 558 apply only to licenses for primary management officials and key employees. *See* 25 C.F.R. § 558.1.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- B. The Tribal Gaming Commission²⁸ is responsible for granting and issuing gaming licenses to primary management officials and key employees.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 558.1]**

- C. The Tribal Gaming Commission may license a primary management official or key employee applicant after submitting a notice of results of the applicant's background investigation to the NIGC, as required by Section 22.

[25 C.F.R. § 558.3(a)]

- D. The Tribal Gaming Commission shall notify the NIGC of the issuance of a license to a primary management official or key employee within 30 days of issuance.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 558.3(b)]**

- E. The Tribe shall not employ an individual in a primary management official or key employee position who does not have a license after 90 days of beginning work at the gaming operation.

[25 C.F.R. § 558.3(c)]

- F. The Tribal Gaming Commission must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within 30 days of the NIGC receiving a notice of results of the applicant's background investigation.

[25 C.F.R. § 558.2(c)]

- G. The Tribal Gaming Commission shall take the NIGC's objections into account when reconsidering a license application.

[25 C.F.R. § 558.2(c)]

²⁸ Unless a tribal-state compact assigns responsibility to an entity other than a tribe, the licensing authority for class II or class III gaming is a tribal authority. *See* 25 C.F.R. § 558.1.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- H. The Tribe will make the final decision whether to issue a license to an applicant for a primary management official or key employee position.

[25 C.F.R. § 558.2(c)]

- I. If the Tribal Gaming Commission has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, notice and a hearing shall be provided to the licensee, as required by Section 25.

[25 C.F.R. § 558.2(d)]

Section 23. Denying Gaming Licenses

- A. The tribal Gaming Commission shall not license a primary management official or key employee if an authorized Tribal official determines, in applying the standards in Section 21 for making a license eligibility determination, that licensing the person:

1. Poses a threat to the public interest;
2. Poses a threat to the effective regulation of gaming; or
3. Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.

**[25 U.S.C. § 2710(b)(2)(F);
25 C.F.R. § 556.5(b)]**

- B. When the Tribal Gaming Commission does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued licenses after reconsideration, it shall:

1. Notify the NIGC; and
2. Forward copies of its eligibility determination and notice of results of the applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System.

[25 C.F.R. § 558.3(d)]

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

Section 24. Gaming License Suspensions and Revocations

- A. If, after a license is issued to a primary management official or a key employee, the Tribe receives notice from the NIGC that the primary management official or key employee is not eligible for employment, the Tribal Gaming Commission shall do the following:
1. Immediately suspend the license;
 2. Provide the licensee with written notice of the suspension and proposed revocation; and
 3. Provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license.²⁹

[25 C.F.R. § 558.4(a)-(c)]

- B. Following a revocation hearing, the Tribe shall decide whether to revoke or reinstate the license at issue.

[25 C.F.R. § 558.4(e)]

- C. The Tribe shall notify the NIGC of its decision to revoke or reinstate a license within 45 days of receiving notification from the NIGC that a primary management official or key employee is not eligible for employment.

[25 CFR § 558.4(e)]

Section 25. Records Retention

- A. The Tribal Gaming Commission shall retain, for no less than three years from the date a primary management official or key employee is terminated from employment with the Tribe, the following documentation:

²⁹ Upon granting a permanent license under an ordinance approved by the Chair of the NIGC, a tribe must provide the right to a revocation hearing pursuant to 25 C.F.R. § 558. This section does not limit or prohibit a tribe from providing a hearing in other circumstances as well.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

1. Application for licensing;
2. Investigative Reports; and
3. Eligibility Determinations.

[25 C.F.R. § 558.3(e)]

Section 26. Licenses for Vendors³⁰

Vendors of gaming services or supplies, with a value of \$25,000³¹ or more annually, must have a vendor license from the Tribal Gaming Commission in order to transact business with the Tribal gaming operation. Contracts for professional legal and accounting services are excluded from this Section.

Section 27. Submission of a Vendor License Application

In order to obtain a gaming vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include those officers, directors, managers, owners, partners, and non-institutional stockholders that either own 10% or more of the business' stock or are the 10 largest stockholders, as well as the on-site supervisors or managers designated in an agreement with the Tribe, if applicable.

Section 28. Contents of the Vendor License Application

A. Applications for gaming vendor licenses must include the following:

1. Name of business, business address, business telephone number(s), federal tax identification number (or social security number, if a sole proprietorship), main office address (if different from business address),

³⁰ This provision is recommended, but not required by IGRA or the NIGC's regulations. A tribe may leave this optional section in its ordinance or may create a separate vendor licensing regulation.

³¹ A tribe may wish to evaluate the \$25,000 minimum based on the size of the operation and the average amount of its contracts.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

any other names used by the applicant in business, and type of service(s) applicant will provide;

2. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship or other entity;
3. If the applicant is a corporation, the state of incorporation and the qualification to do business in the State of [insert State name], if the gaming operation is in a different state then the state of incorporation.
4. Trade name, other names ever used and names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;
5. General description of the business and its activities;
6. Whether the applicant will be investing in, or loaning money to, the gaming operation, and if so, how much;
7. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
8. A list of Indian tribes with which the vendor has an existing or previous business relationship, including ownership, financial or management interests in any non-gaming activity;³²
9. Names, addresses and telephone numbers of three (3) business references with whom the company has regularly done business for the last five (5) years;
10. The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
11. If the business has ever had a license revoked for any reason, the circumstances involved;

³² If a vendor has extensive interaction with Indian tribes, a tribe may want to limit this list to the ten (10) biggest contracts.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

12. A list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition, if any;
 13. A list of the business' funding sources and any liabilities of \$50,000 or more;³³
 14. A list of the principals of the business, their social security numbers, addresses, telephone numbers, titles and percentage of ownership in the company; and
 15. Any further information the Tribe deems relevant.
- B. The following notice shall be placed on the application form for a vendor and its principals:
- Inclusion of false or misleading information in the vendor application may be grounds for denial or revocation of the Tribe's vendor license.
- C. A vendor may submit to the Tribal Gaming Commission a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit, in writing, any changes in the information since the other license application was filed, and any information requested by the Tribe not contained in the other application.

Section 29. Vendor Background Investigations

The Tribal Gaming Commission shall employ or otherwise engage an investigator to complete an investigation of a gaming vendor. This investigation shall include, at a minimum, the following steps:

- A. Verification of the vendor's business' incorporation status and qualifications to do business in the state where the gaming operation is located;
- B. Obtaining a business credit report, if available, and conducting a Better Business Bureau check on the vendor;

³³ A tribe may want to consider naming a higher amount for larger or publicly traded companies.

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

- C. Conducting a check of the vendor's business' credit history;
- D. Calling and questioning each of the references listed in the vendor application; and
- E. Conducting an investigation of the principals of the vendor's business, including facilitating a criminal history check, obtaining criminal history check results, obtaining a credit report, and interviewing the personal references listed.

Section 30. Vendor License Fees

The Tribe may charge a license fee, to be set by the Tribal Gaming Commission, to cover its expenses in investigating and licensing vendors of the gaming operation.

Section 31. Vendor Background Investigation Reports

The investigator shall complete an investigative report covering each of the steps taken in the background investigation of the gaming vendor and its principals, and present it to the Tribal Gaming Commission.

Section 32. Vendors Licensed by Recognized Regulatory Authorities

The Tribal Gaming Commission may adopt regulations naming specific licensing authorities that it recognizes and may authorize exemptions to the vendor licensing process for vendors who have received a license from one of the named regulatory authorities.

Section 33. Compliance with Federal Law

The Tribe shall comply with all applicable federal laws, including the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*

Section 34. Repeal

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

Black: Recommended, but not required
 Green: Not required, but, if included, must be consistent with IGRA and the NIGC regulations
 Blue: Must be included
 Red: Must be included in ordinance or submitted separately

Section 35. Effective Date

This ordinance shall take effect immediately upon its approval by the NIGC Chair.

Black: Recommended, but not required
Green: Not required, but, if included, must
be consistent with IGRA and the
NIGC regulations
Blue: Must be included
Red: Must be included in ordinance
or submitted separately

REVIEWS OF ORDINANCES, RESOLUTIONS, AND ORDINANCE AMENDMENTS

A CHECKLIST OF STATUTORY & REGULATORY REQUIREMENTS

Tribe: _____ Classes of Gaming: _____ Internal Due Date: _____ (45 days from receipt) Date of Review: _____ Date(s) of Previous Ordinance and/or Amendment Approval(s), if any: _____	Ordinance or Resolution #: _____ Amendment? YES ☐ NO ☐ Date Received: _____ Due Date: (90 days from receipt) Reviewer: _____
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I. Submission Requirements

- Some of this information may be included within the ordinance, but can also be submitted separately. In the case of an ordinance amendment, some of this information may have been previously submitted.
- For most amendments, only verification of authority is needed; however, the hard file of the previously approved ordinance should be reviewed.

Yes	N o	N/A	Cite and/or Comments
			1. Copy of an ordinance, resolution, or ordinance amendment certified as authentic by an authorized tribal official. (§ 522.2(a)) To verify authenticity, the following is required:
			A copy of the tribe's Constitution or other governing document.
			- Is the signatory to the tribal gaming ordinance recognized by the BIA? - BIA employee called and date:
			- Does the body adopting the ordinance have authority under the tribe's governing document? - Name of body:
			What is the quorum requirement?
			- Did the governing body have a quorum to pass the ordinance or resolution? - Quorum when passed:
			2. Copies of all tribal gaming regulations. (§ 522.2(d)) (If missing, please obtain.)

			3. Copies of all tribal-state compacts, or Secretarial procedures, when an ordinance or resolution concerns class III gaming. (§ 522.2(e)) (If missing, please obtain.)
			4. A description of procedures for resolving disputes between the gaming public and the tribe and/or the management contractor. (§ 522.2(f))
			5. Designation of an agent for service of any official determination, order, or notice of violation, as required by § 519.1. (§ 522.2(g))
			6. Identification of a law enforcement agency that will take fingerprints. (§ 522.2(h))
			7. A description of procedures for conducting a criminal history check by a law enforcement agency, including a check of criminal history records information maintained by the FBI. (§ 522.2(h))
II. General Content Requirements • An asterisk (*) after any item indicates that the language in the ordinance should generally mimic the language in either IGRA or NIGC regulations. • Ordinance amendments need only be reviewed if the amended provisions fall within the scope of IGRA or NIGC regulations. If so, check off the sections being amended, but you should also review the ordinance provisions related to any recently revised NIGC regulations. • If you can answer “yes” to any of the following three questions, please notify your supervisor immediately: • Is the ordinance, or amendment thereof, site-specific? • Aside from the games already classified in IGRA or NIGC regulations, does the ordinance or amendment thereof, define a specific game as a class II or class III game? • Does the ordinance, or amendment thereof, authorize the tribe to conduct internet gaming?			
Yes	No	N/A	Cite and/or Comments
			1. While an ordinance is not required to define terms, if it does define any terms, are the definitions of said terms consistent with those contained in IGRA or NIGC regulations? (If not, please note them.)
§ 522.4 Requirements			
			2. Does the ordinance provide that the tribe will retain the sole proprietary interest in, and responsibility for, the conduct of the gaming operation? (§ 522.4(b)(1))
			3. If the tribe authorizes individually-owned gaming, does the ordinance meet the requirements of §§ 522.10 or 522.11? (§ 522.4(b)(1))
			4. Does the ordinance require that net gaming revenues be used only for one or more of the following purposes:

			• to fund tribal government operations or programs;	
			• to provide for the general welfare of the tribe and its members;	
			• to promote tribal economic development;	
			• to donate to charitable organizations; or	
			• to help fund operations of local government agencies? (§ 522.4(b)(2)) * If the ordinance provides for the use of net revenues for any other purpose, please note and list the additional purposes.	
			5. Does the ordinance specify that per capita payments will only be made pursuant to an approved revenue allocation plan? (§ 522.4(b)(2)(ii))	
			6. Does the ordinance require that annual, independent audits be conducted and the results submitted to the NIGC, including the independent audits of all gaming-related contracts resulting in purchases of supplies, services or concessions amounting to more than \$25,000 in any year (except contracts for professional legal or accounting services)? (§ 522.4(b)(3)-(b)(4))	
			7. Does the ordinance require the tribe to perform background investigations of PMOs and key employees according to requirements that are as stringent as those in parts 556 and 558? (§ 522.4(b)(5))	
			8. Does the ordinance require the tribe to issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II or class III gaming? (§ 522.4(b)(6); § 522.6(b); 25 USC 2710(b)(1)) (If the ordinance includes any specific facility license provisions, please review for, and note, any inconsistencies with 25 CFR part 559.)	
			9. Does the ordinance require the tribe to construct, maintain, and operate a gaming facility in a manner that adequately protects the environment and the public health and safety? (§ 522.4(b)(7))	
Part 556 Requirements				

			10. Does the ordinance require that the application form for a PMO or key employee contain a Privacy Act notice that incorporates the specific language set out in 25 CFR § 556.2(a)?
			11. Does the ordinance require that the application form for a PMO or key employee contain a false statement notice that incorporates the specific language set out in 25 CFR § 556.3(a)?
			12. Does the ordinance require the tribe, as part of the background investigation of each PMO and each key employee, to request all of the following information?
			a) full name, other names used (oral or written), SSN(s), birth date, place of birth, citizenship, gender, and all languages spoken or written;
			b) currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residential addresses, and driver's license number(s);
			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 above;
			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, 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 ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
			i) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic charges) 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, 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 photograph;	
			m) any other information a tribe deems relevant; and	
			n) fingerprints consistent with procedures adopted by a tribe according to § 522.2(h). § 556.4(a)(1)-(14) *	
			13. Does the ordinance require that the tribe keep confidential the identity of each person interviewed in the course of conducting a background investigation? (§ 556.4(c))	
			14. Does the ordinance require that, in order to make a finding concerning the eligibility of a PMO or key employee for the granting of a gaming license, an authorized tribal official shall review a person's: • prior activities; • criminal record, if any; and • reputation, habits, and associations. (§ 556.5(a)) *	
			15. Does the ordinance require that if, in applying the standards adopted in the ordinance, the authorized tribal official determines that licensing of the person poses a threat to the public interest or to the effective regulation of the gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming, the authorized tribal official shall not license that person in a PMO or key employee position? (§ 556.5(b)) *	
			16. Does the ordinance require the tribe to maintain an individual's complete application file containing all of the information listed in § 556.4(a)(1)-(a)(14) when it employs the individual in a PMO or a key employee position? (§ 556.6(a))	

			17. Does the ordinance require the tribe, before issuing a license to a PMO or to a key employee, to create and maintain an investigative report on each background investigation that includes all of the following:
			• steps taken in conducting a background investigation;
			• results obtained;
			• conclusions reached; and
			• the basis for those conclusions. (§ 556.6(b)(1)) *
			18. Does the ordinance require the tribe, before issuing a license to a PMO or to a key employee, to submit a notice of results of the applicant's background investigation to the Commission no later than 60 days after the applicant begins work, that includes:
			• the applicant's name, date of birth, and SSN;
			• date on which the applicant began or will begin work as a PMO or key employee;
			• a summary of the information presented in the investigative report, including:
			• license(s) that have previously been denied;
			• gaming licenses that have been revoked, even if subsequently reinstated;
			• every known criminal charge brought against the applicant within the last 10 years of the date of the application; and
			• every felony of which the applicant has been convicted or any ongoing prosecution.
			• a copy of the eligibility determination made under § 556.5. (§556.6(b)(2)) *
Part 558 Requirements			
			19. Does the ordinance require the tribe to reconsider a license application for a PMO or key employee if, within 30 days of the NIGC receiving a notice of results, the NIGC provides the tribe with a statement itemizing objections to the issuance of such license? (§ 558.2(c))
			20. Does the ordinance require the tribe to take NIGC objections into account when reconsidering a license application? (§ 558.2(c))

		21. Does the ordinance provide that, if the tribe has issued the license before receiving the NIGC's statement of objection(s), a notice and hearing shall be provided to the licensee as required by § 558.4? (§ 558.2(d))
		22. Does the ordinance provide that the tribe may license a PMO or key employee after it has submitted a notice of results to the NIGC? (§ 558.3(a))
		23. Does the ordinance require the tribe to notify the NIGC of the issuance of a license to a PMO or key employee within 30 days of its issuance? (§ 558.3(b))
		24. Does the ordinance prohibit the tribe from employing an individual in a PMO or key employee position who does not have a license after 90 days? (§ 558.3(c))
		25. Does the ordinance require a tribe that does not license an applicant to: • notify the NIGC; and • forward copies of its eligibility determination and notice of results to the NIGC for inclusion in the Indian Gaming Individuals Record System? (§ 558.3(d))
		26. Does the ordinance require the tribe to retain the following documentation for no less than three years from the date of a PMO's or key employee's termination of employment: • applications for licensing; • investigative reports; and • eligibility determinations? (§ 558.3(e)) *
		27. Does the ordinance require the tribe, upon receipt of notification from the NIGC that a PMO or a key employee is not eligible for employment, to immediately suspend the license and provide the licensee with written notice of suspension and proposed revocation, including notifying the licensee of a time and a place for a hearing on the proposed revocation of the license? (§ 558.4(b)-(c)).
		28. Does the ordinance provide that the right to a revocation hearing vests only upon receipt of a license granted under an ordinance approved by the NIGC Chair?(§ 558.4(d)).

			29. Does the ordinance require the tribe to decide to revoke or reinstate a license after a revocation hearing? (§ 558.4(e))
			30. Does the ordinance require the tribe to notify the NIGC of its decision to revoke or to reinstate a license within 45 days of receiving notification from the NIGC that a PMO or key employee is not eligible for employment? (§ 558.4(e)).