



March 1, 2017

Via First Class Mail

E. Austin Green, Jr., Chairman
The Confederated Tribes of the Warm
Springs Reservation of Oregon
P.O. Box 1299
Warm Springs, OR 97761

Re: Gaming Ordinance Amendment

Dear Chairman Green:

This letter responds to your request for the National Indian Gaming Commission to review and approve amendments to the Confederated Tribes of the Warm Springs Reservation of Oregon's Gaming Ordinance. The Warm Springs Tribal Council approved Resolution No. 12,243 on October 25, 2016, and Resolution No. 12,287 on February 13, 2017. The amendments revise provisions relating to the Tribal Gaming Regulatory Authority and amend the Privacy Act statement.

Thank you for bringing this amendment to our attention and providing us with copies. The amendment is approved as it is consistent with the Indian Gaming Regulatory Act and NIGC regulations. While reviewing the amendments, we noticed what appears to be two scrivener's errors. The first instance is found in § 260.007(7)(C), which refers to 25 C.F.R. § 558.3(a), but should reference 25 C.F.R. § 558.2(a). The second instance is found in § 260.007(7)(D), which refers to 25 C.F.R. § 588.4, but should reference 25 C.F.R. § 558.4. The Tribe may wish to revise the references next time it amends its gaming ordinance.

If you have any questions, please feel free to contact Staff Attorney Esther Dittler at 202-420-9229.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonodev O. Chaudhuri".

Jonodev O. Chaudhuri
Chairman

cc: Howard Arnett, Esq.

WARM SPRINGS TRIBAL CODE

CHAPTER 260

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AMENDED AND RESTATED CLASS II AND CLASS III GAMING ORDINANCE

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WARM SPRINGS TRIBAL CODE

CHAPTER 260¹

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AMENDED AND RESTATED CLASS II AND CLASS III GAMING ORDINANCE

260.001 Purpose. The Tribal Council, pursuant to the authority contained in Article V, Section 1(i) and (l) of the Constitution and Bylaws, as amended, of the Tribe, hereby enacts this Ordinance in order to set the terms for Class II and Class III gaming operations on tribal lands.

260.002 Gaming Authorized. Class II gaming and Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §2703 (“IGRA”), and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992, as amended from time to time) is hereby authorized.

260.003 Ownership of Gaming. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

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

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

260.005 Audit.

- (1) The Tribe shall cause to be conducted not less often than annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.
- (2) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specially included within the scope of the audit that is described in subsection 260.005(1) above.

¹ WSTC Chapter 260 was amended and restated in its entirety by Tribal Council Resolution 11,889(A), adopted on May 19, 2014 and certified on June 30, 2014.

260.006 Protection of the Environment and Public Health and Safety. Class II and Class III gaming facilities shall be constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety.

260.007 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 and Class III gaming enterprise operated on Indian lands:

(1) Definitions. For the purposes of this section, the following definitions apply:

(A) “Key employee” means:

(a) 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;

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

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

(B) “Primary management official” means:

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

(b) Any person who has authority:

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

(2) 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 granted a gaming license. The information will be used by National Indian Gaming Commission (NIGC) 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’s 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.”

- (B)** Existing key employees and primary management officials shall be notified in writing that they shall either:
- (a) Complete a new application form that contains a Privacy Act notice; or
 - (b) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.
- (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 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)”

- (D) The Tribe shall notify in writing existing key employees and primary management officials that they shall either:
 - (a) Complete a new application form that contains a notice regarding false statements; or
 - (b) Sign a statement that contains the notice regarding false statements.
- (3) **Background Investigations.** The Tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.
 - (A) The Tribe shall request from each primary management official and from each key employee all of the following information:
 - (a) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, 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 residence addresses, and driver’s license numbers;
 - (c) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (3)(A)(b) of this section;
 - (d) Current business and residence telephone numbers;
 - (e) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - (f) A description of any existing and previous business relationships with the gaming industry generally, 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 violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
 - (j) For each criminal charge (excluding minor traffic charges); whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (3)(A)(h) or (3)(A)(i) of the section, the criminal charge, the name and address of the court involved and the date and disposition;
 - (k) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 - (l) A current photograph;
 - (m) Any other information the Tribe deems relevant; and
 - (n) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. §522.2(h).
- (B) If, in the course of a background investigation, the Tribe discovers that the applicant has a notice of results on file with the NIGC from a prior investigation and the Tribe has access to the earlier investigative materials (either through the NIGC or the previous tribal investigative body) the Tribe may rely on these materials and update the investigation and investigative report under 25 C.F.R. Sec. 556.6(b)(1).
- (C) In conducting a background investigation, the Tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- (4) **Tribal Eligibility determination.** The Tribe shall conduct an investigation sufficient to make an eligibility determination.
- (A) To make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license, an authorized tribal official shall review a person's:
 - (a) Prior activities;

- (b) Criminal record, if any; and
 - (c) Reputation, habits and associations.
- (B) If the authorized tribal official, in applying the standards adopted in this Gaming Ordinance, determines that license of 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 and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position.

(5) Report to the National Indian Gaming Commission.

- (A) When the Tribe employs a key employee or primary management official, the Tribe shall maintain a complete application file containing the information listed under 25 C.F.R. Section 556.4(a)(1) through (14).

Before issuing a license to a primary management official or to a key employee, the Tribe shall:

- (a) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:
 - (i) Steps taken in conducting a background investigation;
 - (ii) Results obtained;
 - (iii) Conclusions reached; and
 - (iv) The basis for those conclusions.
- (b) Submit a notice of the results of the applicant's background investigation to the NIGC no later than sixty (60) days after the applicant begins work. The notice of results shall contain:
 - (i) Applicant's name, date of birth, and social security number;
 - (ii) Date on which the applicant began or will begin work as a key employee or primary management official;
 - (iii) A summary of the information presented in the investigative report, which shall at a minimum include a listing of:
 - 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 applicant: and
 - D. Every felony of which the applicant has been convicted or any ongoing prosecution.
- (iv) A copy of the eligibility determination made under 25 C.F.R. Section 556.5.
- (6) **Notice.** All notices under required to be proved under this Gaming Ordinance shall be provided to the NIGC through the appropriate NIGC Regional Office.
- (7) **Review of Notice of Results for A Key Employee or Primary Management Official.**
 - (A) Upon receipt of a complete notice of results for a key employee or primary management official as required by 25 C.F.R. Section 556.6(b)(2), the NIGC Chair has 30 days to request additional information from the Tribe concerning the applicant or licensee and to object.
 - (B) If the NIGC has no objection to issuance of a license, it shall notify the Tribe within thirty (30) days of receiving notice of results pursuant to 25 C.F.R. Section 556.6(b)(2).
 - (C) If, within the 30-day period described in 25 C.F.R. Section 558.3(a), the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official applicant for whom the Tribe has provided a notice of results, the Tribe shall reconsider the application, taking into account the objections itemized by the NIGC. The Tribe shall make the final decision whether to issue a license to such applicant.
 - (D) If the Tribe has issued the license before receiving the NIGC's statement of objections, notice and hearing shall be provided to the licensee as provided by 25 C.F.R. Section 588.4.
- (8) **Notification to NIGC of License Decisions and Retention Obligations.**
 - (A) After the Tribe has provided a notice of results of the background check to the NIGC, the Tribe may license a primary management official or key employee.

- (B) Within thirty (30) days after the issuance of the license, the Tribe shall notify the NIGC of its issuance.
 - (C) The gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.
 - (D) If the Tribe does not license an applicant---
 - (a) The Tribe shall notify the NIGC; and
 - (b) Shall forward copies of its eligibility determination and notice of results, under 25 C.F.R. Section 566.6(b)(2) to NIGC for inclusion the Indian Gaming Individuals Record System.
 - (E) **The Tribe shall retain the following for inspection by the Chair of the NIGC or his or her designee for no less than three years from the date of termination of employment:**
 - (a) Applications for licensing:
 - (b) Investigative reports: and
 - (c) Eligibility determinations
- (9) **Suspension and Revocation of Gaming Licenses: Notice of Information Impacting Eligibility and Licensee's Right to a Hearing; Appeals.**
- (A) If, after the issuance of a gaming license, the NIGC receives reliable information indicating that a key employee or a primary management official is not eligible for employment under 25 C.F.R. Section 556.5, the NIGC shall notify the Tribe of the information.
 - (B) Upon receipt of such notification under paragraph (A) from NIGC, or upon receipt of such information from another reliable source that a key employee or a primary management official is not eligible for employment under 25 C.F.R. Section 556.5, the Tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.
 - (C) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.
 - (D) A right to a hearing under this section shall vest only upon receipt of a license granted under the Gaming Ordinance approved by the Chair of the NIGC.

- (E) After a revocation hearing, of which the licensee has been afforded due process and given at least ten (10) days written notice, which notice fairly and fully informs them of the grounds for their license suspension and proposed license revocation, and at which hearing they shall have the opportunity to present relevant oral and written evidence, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall weigh the evidence, testimony and exhibits and make its decision on the basis of a preponderance of the evidence and credibility of the evidence and witnesses. The Tribe's decision shall be issued in writing within thirty (30) days of the hearing, and such decision shall include a statement of facts and a statement of legal authority on which the decision is based. Decisions shall be delivered to the party for whom the hearing was held and shall include information and instructions for appealing the decisions pursuant to WSTC 260.007(9)(F). The Tribe shall notify the NIGC of its decision within 45 days of receiving notification from the NIGC pursuant to paragraph (A) of this sub-section (9).

(F) Appeals from the Tribal Gaming Regulatory Authority Decisions

The Warm Springs Court of Appeals ("Court of Appeals"), established pursuant to WSTC Chapter 203, shall act as the final reviewing body for a decision of the Tribal Gaming Regulatory Authority to deny a license or to revoke or suspend the license of any licensee.

Any appeal of the Tribal Gaming Regulatory Authority decision to the Warm Springs Court of Appeals must be filed within thirty (30) days after receiving notice of the decision of the Tribal Gaming Regulatory Authority, unless a different time frame is otherwise specified or required by the Compact, this Ordinance, or applicable regulations. Upon the filing of a Notice of Appeal, pursuant to the Rules of the Court of Appeals, the Tribal Gaming Regulatory Authority shall prepare and submit to the Court of Appeals within fifteen (15) days the Administrative Record of the Tribal Gaming Regulatory Authority's denial, revocation or suspension proceedings. Both parties to the appeal, the person appealing the decision of the Tribal Gaming Regulatory Authority and the respondent Tribal Gaming Regulatory Authority, shall have the opportunity to submit written arguments on the issues presented by the appeal and, in the discretion of the Court of Appeals, participate in oral argument before the Court of Appeals.

The Court of Appeals shall review the Tribal Gaming Regulatory Authority's decisions *de novo* on questions of law and for clear error on questions of fact. The Court of Appeals is authorized to reverse a decision made by the Tribal Gaming Regulatory Authority only where the Court of Appeals finds the Tribal Gaming Regulatory Authority's decision was

unreasonable, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable Tribal, federal or state laws;

(a) The Tribal Gaming Regulatory Authority exceeded its jurisdiction, authority, or limitations, under applicable tribal laws;

(b) The Tribal Gaming Regulatory Authority's decision is unsupported by substantial evidence or unwarranted by the facts presented, either orally or substantively.

The rulings of the Warm Springs Court of Appeals on matter brought pursuant to this Gaming Ordinance shall be final.

- (10) **Submission of Notices.** All notices under this section shall be provided to the NIGC through the appropriate Regional Office.

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

260.009 Tribal Gaming Regulatory Authority².

- (1) **Establishment of Tribal Gaming Regulatory Authority.** There is hereby established by the Tribe a Tribal Gaming Regulatory Authority to be known as the Warm Springs Tribal Gaming Regulatory Authority (hereafter "The TGRA"). The TGRA shall be comprised of three (3) persons, who shall be designated as "TGRA Commissioners." TGRA Commissioners may be members or non-members of the Tribe, provided that not less than one TGRA Commissioner shall be a tribal member.
- (2) **Qualifications and Licensing of TGRA Commissioners.** Members of the TGRA shall be chosen from individuals who have expertise and knowledge in the fields of Indian gaming, accounting, finance, law enforcement or such other fields and knowledge that would, in the opinion of the Tribal Council, be of special benefit to service on the TGRA Commission.
- (3) **Selection of TGRA Commissioners.** The Tribal Council shall by motion appoint a five-member TGRA Commissioner Selection Committee (hereafter "The Selection Committee") composed of two members of the Tribal Council, the Secretary-Treasurer of the Tribal Council and two members at large. Members of the Selection Committee may be either members or non-members of the Tribe. The Selection Committee shall establish procedures for notice of vacancies on the TGRA, recruitment of qualified applicants, interview, and selection processes. The Selection Committee shall submit their nominee(s) for any vacancy on the

² WSTC Chapter 260 Section 260.009 (8), (11), (12), (13), and (15) were amended and restated in their entirety by Tribal Council Resolution 12,243, adopted and certified on October 25, 2016.

TGRA to the Tribal Council for confirmation and appointment by Tribal Council resolution.

- (4) **Disqualifications for Office.** The following persons may not serve as TGRA Commissioners:
- (A) Members of the Tribal Council;
 - (B) Members of the board of directors of any tribal gaming enterprise;
 - (C) Employees of any tribal gaming enterprise;
 - (D) The immediate family of any gaming contractor (including any principal thereof or closely associated independent contractor). For the purpose of this section, immediate family members are defined as: husband, wife, son, daughter, mother, father, brother, sister, grandfather, grandmother, legal guardian, or other totally dependent relative of the individual;
 - (E) Persons who would not be eligible to receive a gaming license from the Tribes; or
 - (F) Persons having any interest in or responsibility for, either directly or indirectly, any gaming related contract with the Tribe or any gaming enterprise on the Reservation.
- (5) **Terms of the Office.** The TGRA Commissioners shall serve for three-year terms. The respective term for each TGRA Commissioner shall be designated in their appointment. TGRA Commissioners shall serve until a successor is appointed and may serve for more than one term.
- (6) **Removal from Office.** TGRA Commissioners may only be removed from office before the expiration of their terms by the Tribal Council for neglect of duty, malfeasance, misfeasance, nonfeasance, or other good cause shown, in the same manner as members of the Tribal Council may be impeached.
- (7) **Quorum.** Two (2) TGRA Commissioners shall constitute a quorum of the TGRA, provided at least one of such TGRA Commissioner shall be a tribal member.
- (8) **Officers and Duties of TGRA Commissioners.** The Tribal Council shall designate from among the Commissioners of the TGRA a Chair, Vice-Chair, and Secretary of the TGRA. The Chair shall preside over meetings of the TGRA and the Vice-Chair shall preside in absence of the Chair. The Secretary shall record in writing the minutes of all TGRA meetings and all official actions taken by the TGRA. The Commissioners shall be considered employees of the TGRA, and shall assist with and ensure fulfillment of duties as outlined in Section 260.009(13). The prescribed hours and compensation for Commissioners shall be approved by the Tribal Council.

- (9) **Executive Director of the TGRA.** The Tribal Council shall designate an Executive Director of the TGRA, who shall not be a Commissioner of the TGRA. The Executive Director shall be a full-time employee of the TGRA with compensation established by the Tribal Council. The Executive Director shall be responsible for carrying out the day-to-day regulatory authority functions along with TGRA staff to ensure compliance is adhered to by the gaming operation and its employees.
- (10) **Voting.** All actions of the TGRA shall be taken by majority vote. The TGRA Chair may vote on any issue.
- (11) **Meetings.** TGRA Commissioners will meet and conduct business as necessary and appropriate to carry out their duties under this Ordinance, federal law and regulations, and the Tribal-State Compact. Notice of Special meetings shall be given in writing to each TGRA Commissioner, served by first class mail for delivery at least five (5) business days prior to such Special meeting.
- (12) **Compensation for Serving as TGRA Commissioners; Reimbursement of Expenses.** TGRA Commissioners shall be compensated for serving on the TGRA Commission at the rate set by the Tribal Council. Compensation for TGRA Commissioners shall be based upon salaries or pay rates commensurate with industry standards, as recommended by the CTWS Personnel Department and approved by the Tribal Council. Commissioners shall be reimbursed reasonable and necessary expenses (mileage) incurred at the government rate in connection with the performance of their official TGRA roles and duties.
- (13) **TGRA Authority.** The TGRA shall have the authority to:
- (A) Inspect, examine and monitor gaming activities, including the power to demand access to and inspect, examine, photocopy and audit all papers, books and records respecting such gaming activities;
 - (B) Investigate any suspicion of wrongdoing in connection with any gaming activity;
 - (C) Conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law or this Ordinance or any contracts, agreement, goods, services, events, incidents, or other matters related to gaming activities;
 - (D) Establish and collect license, investigation, and regulatory fees to cover the costs connected therewith;
 - (E) Conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified gaming enterprise key employee and primary management officials under requirements at least as stringent as those

established in 25 CFR Parts 556 and 558; and grant, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, suspension, revocation, or renewal of licenses;

- (F) Hold such hearings, sit and act at such times and places, summon persons on the reservation to attend and testify at such hearings, take such testimony, and receive such evidence as the TGRA Commissioners deem relevant in fulfilling their duties;
 - (G) Administer oaths or affirmations to witnesses appearing before the TGRA Commissioners;
 - (H) Implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors, and others connected with gaming activities, as described in Section 260.007 of this Ordinance, including the issuance of licenses to gaming facilities, individuals and entities and the verification of internal controls, as required under this Ordinance, IGRA, and any Tribal-State compact or equivalent procedures prescribed by the Secretary of the Interior;
 - (I) Promulgate rules for any Class II or Class III gaming activity on Tribal Lands, except that rules for Class III activities shall not be in conflict with rules if any, adopted under any Tribal-State compact;
 - (J) Issue such other regulations and take such other regulatory actions as it deems appropriate in order to implement the provisions of this Ordinance and to comply with the Tribal-State Class III Gaming Compact, and applicable federal law and regulations; and,
 - (K) Carry out such other regulatory duties with respect to gaming activities as the Tribal Council shall direct.
- (14) **Monthly and Annual Reports.** On or before the tenth day of each month, the TGRA shall provide to the Tribal Council a Monthly Report summarizing its activities during the prior month and accounting for all receipts and disbursements. On or before the last day of the third month after the close of the Tribes' fiscal year of each year, the TGRA shall provide to the Tribal Council an Annual Report, summarizing its activities during the prior fiscal year and accounting for all receipts and disbursements.
- (15) **Funding.** All funding of the TGRA shall be pursuant to a Budget to be proposed to the Tribal Council and approved, funded, and modified, if necessary, in accordance with the Tribe's procedures for approving and funding budgets for other departments and agencies of the tribal government. In preparing the Budget, all actual and anticipated surplus funds of the TGRA shall be taken into account. Expenditures by the TGRA shall be in accordance with the approved

Budget. Changes in the approved Budget and requests for additional funds shall be by petition to the Tribal Council, in accordance with such procedures, if any, for other tribal government departments and agencies. As required by the Tribal-State Compact and by applicable federal law and regulations, the Budget shall be sufficient each year for the TGRA to carry out and fulfill its duties under this Ordinance.

(16) TGRA's Relationship to Tribal Government; Supervision of Administration.

(A) Agency of Tribal Government. The TGRA shall be deemed to be an agency of the tribal government and as such shall be subject to personnel and other tribal governmental administrative policies, subject to oversight by the Secretary-Treasurer of the Tribal Council. The administration of all such policies shall be under the supervision of the Tribal Council. In the absence of applicable tribal personnel or other administrative policies, the TGRA shall promulgate its own policies, subject to approval of the Tribal Council.

(B) Independent Decision-Making Authority. Notwithstanding the fact that the TGRA is an agency of tribal government, the decisions of the TGRA regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the TGRA; provided, however, in the event of appeals of TGRA decisions to the Warm Springs Court of Appeals pursuant to WSTC Sec. 260.7(9)(F) the rulings of the Warm Springs Court of Appeals shall be final.

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

260.011 Service of Process. The Tribal Council designates the Chair of the TGRA as the Agent of TGRA and the Tribe for any and all service, including but not limited to notices of official determinations, orders or notices of violation in accordance with 25 CFR Part 519.

RESOLUTION NO. 12,243

WHEREAS, Pursuant to Tribal Council Resolution No. 11,889A, (May 19, 2014), the Warm Spring Tribal Council amended the Warm Springs Gaming Ordinance (WSTC Chapter 260, Ordinance No. 76), which amendments were approved by the National Indian Gaming Commission on September 26, 2014 ("2014 Amendments"); and,

WHEREAS, Among the 2014 Amendments to the Gaming Ordinance approved by Resolution No. 11,889A were several amendments to WSTC Section 260.900 concerning the composition, responsibilities, and compensation of the members of the Tribal Gaming Commission, now called the Tribal Gaming Regulatory Authority; and,

WHEREAS, Pursuant to the 2014 Amendments regarding the Tribal Gaming Regulatory Authority, the three Gaming Commissioner (now called Tribal Gaming Regulatory Authority Commissioners) positions were changed from full time to part-time positions with compensation based on a set amount stipend established by WSTC Section 260.009(11) and 260.009(12) for each of the Commission's required two meetings per month; and,

WHEREAS, Subsequent to 2014 Amendments making changes to the Gaming Commissioners positions, the Tribal Council approved an additional gaming development as part of the Madras Travel Center project, which will be regulated by the Warm Springs Tribal Gaming Regulatory Authority and thereby increase the work load of the Warm Spring Tribal Gaming Regulatory Authority and its three Gaming Commissioners; and,

WHEREAS, The Warm Springs Tribal Gaming Regulatory Authority requests that the Tribal Council approve proposed amendments to WSTC Section 260.009 (8), (11), (12), (13), and (15), as set out in Exhibit "A" attached to this Resolution, which would provide Tribal Council with authority to set the work hours and compensation for Gaming Commissioners by Resolution without having to amend the Gaming Ordinance each time there is a change in the hours and compensation of Gaming Commissioners, and would also clarify the duties, responsibilities and authority of the Gaming Commissioners; and,

WHEREAS, The Warm Spring Tribal Gaming Regulatory Authority has submitted to the Tribal Council a proposed 2017 budget in support of the proposed amendments to the Gaming Ordinance attached as Exhibit "A" to this Resolution; now, therefore,

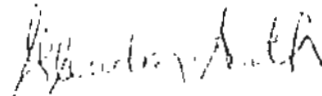
BE IT RESOLVED, By the (27TH) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(1) and (u) of the Tribal Constitution and Bylaws that the Tribal Council hereby adopts and approves the proposed amendments to Ordinance No. 76, WSTC Section 260.009 (8), (11), (12), (13) and (15) of the Gaming Ordinance as set out in Exhibit "A", attached to this Resolution; and,

BE IT FURTHER RESOLVED, By the Tribal Council that the 2017 budget submitted by the Warm Springs Tribal Gaming Authority in support of the proposed amendments to the Gaming Ordinance is approved; and,

BE IT FURTHER RESOLVED, That the Tribal Council hereby directs the Tribal Attorney to submit the Gaming Ordinance, as amended by this Resolution, to the National Indian Gaming Commission for its review and approval.

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon hereby certifies that the Tribal Council is composed of 11 members, of whom 9 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 25th day of October, 2016 ; and the foregoing resolution was passed by the affirmative vote of 5 members, 1 member voting No, 2 members abstained (1 out of the room), the Chairman not voting; and that the said resolution has not been rescinded or amended in any way.



Glendon N. Smith
Secretary-Treasurer/CEO

NOTED:



Floy L. Anderson
Acting Superintendent

Attachment: Exhibit "A"

cc: Secretary-Treasurer/CEO
Superintendent
Administrative Services Center

Exhibit A

Proposed Amendments are shown in redline/strikeout

260.009 Tribal Gaming Regulatory Authority.

- (1) **Establishment of Tribal Gaming Regulatory Authority.** There is hereby established by the Tribe a Tribal Gaming Regulatory Authority to be known as the Warm Springs Tribal Gaming Regulatory Authority (hereafter "The TGRA"). The TGRA shall be comprised of three (3) persons, who shall be designated as "TGRA Commissioners." TGRA Commissioners may be members or non-members of the Tribe, provided that not less than one TGRA Commissioner shall be a tribal member.
- (2) **Qualifications and Licensing of TGRA Commissioners.** Members of the TGRA shall be chosen from individuals who have expertise and knowledge in the fields of Indian gaming, accounting, finance, law enforcement or such other fields and knowledge that would, in the opinion of the Tribal Council, be of special benefit to service on the TGRA Commission.
- (3) **Selection of TGRA Commissioners.** The Tribal Council shall by motion appoint a five-member TGRA Commissioner Selection Committee (hereafter "The Selection Committee") composed of two members of the Tribal Council, the Secretary-Treasurer of the Tribal Council and two members at large. Members of the Selection Committee may be either members or non-members of the Tribe. The Selection Committee shall establish procedures for notice of vacancies on the TGRA, recruitment of qualified applicants, interview, and selection processes. The Selection Committee shall submit their nominee(s) for any vacancy on the TGRA to the Tribal Council for confirmation and appointment by Tribal Council resolution.
- (4) **Disqualifications for Office.** The following persons may not serve as TGRA Commissioners:

 - (A) Members of the Tribal Council;
 - (B) Members of the board of directors of any tribal gaming enterprise;
 - (C) Employees of any tribal gaming enterprise;
 - (D) The immediate family of any gaming contractor (including any principal thereof or closely associated independent contractor). For the purpose of this section, immediate family members are defined as: husband, wife, son, daughter, mother, father, brother, sister, grandfather, grandmother, legal guardian, or other totally dependent relative of the individual;
 - (E) Persons who would not be eligible to receive a gaming license from the Tribes; or

- (F) Persons having any interest in or responsibility for, either directly or indirectly, any gaming related contract with the Tribe or any having gaming enterprise on the Reservation.
- (5) **Terms of the Office.** The TGRA Commissioners shall serve for three-year terms. The respective term for each TGRA Commissioner shall be designated in their appointment. TGRA Commissioners shall serve until a successor is appointed and may serve for more than one term.
- (6) **Removal from Office.** TGRA Commissioners may only be removed from office before the expiration of their terms by the Tribal Council for neglect of duty, malfeasance, misfeasance, nonfeasance, or other good cause shown, in the same manner as members of the Tribal Council may be impeached.
- (7) **Quorum.** Two (2) TGRA Commissioners shall constitute a quorum of the TGRA, provided at least one of such TGRA Commissioner shall be a tribal member.
- (8) **Officers and Duties of TGRA Commissioners.** The Tribal Council shall designate from among the Commissioners of the TGRA a Chair, Vice-Chair, and Secretary of the TGRA. The Chair shall preside over meetings of the TGRA and the Vice-Chair shall preside in absence of the Chair. The Secretary shall record in writing the minutes of all TGRA meetings and all official actions taken by the TGRA. The Commissioners shall be considered employees of the TGRA, and shall assist with and ensure fulfillment of duties as outlined in Section 260.900(13). The prescribed hours and compensation for Commissioners shall be approved by the Tribal Council.
- (9) **Executive Director of the TGRA.** The Tribal Council shall designate an Executive Director of the TGRA, who shall not be a Commissioner of the TGRA. The Executive Director shall be a full-time employee of the TGRA with compensation established by the Tribal Council. The Executive Director shall be responsible for carrying out the day-to-day regulatory authority functions along with TGRA staff to ensure compliance is adhered to by the gaming operation and its employees.
- (10) **Voting.** All actions of the TGRA shall be taken by majority vote. The TGRA Chair may vote on any issue.
- (11) **Meetings.** TGRA Commissioners will meet ~~two (2) times per month on regularly scheduled days approved by the TGRA Commissioners (e.g., first Tuesday, third Thursday).~~ Special meetings (no more than 6 meetings annually) when necessary shall be called by the TGRA Chair or two (2) TGRA Commissioners and conduct business as necessary and appropriate to carry out their duties under this Ordinance, federal law and regulations, and the Tribal-State Compact. Notice of Special meetings shall be given in writing to each TGRA Commissioner, served by first class mail for delivery at least five (5) business days prior to such Special meeting.

(12) **Compensation for Serving as TGRA Commissioners; Reimbursement of Expenses.** TGRA Commissioners shall be compensated for serving on the TGRA Commission at the rate set by the Tribal Council, ~~in the amount of \$100 for half day (4 hours) and \$200 full day (8 hours) per meeting and for~~ Compensation for TGRA Commissioners shall be based upon salaries or pay rates commensurate with industry standards, as recommended by the CTWS Personnel Department and approved by the Tribal Council. Commissioners shall be reimbursed reasonable and necessary expenses (mileage) incurred at the government rate in connection with the performance of their official TGRA roles and duties.

(13) **TGRA Authority.** The TGRA shall have the authority to:

- (A) Inspect, examine and monitor gaming activities, including the power to demand access to and inspect, examine, photocopy and audit all papers, books and records respecting such gaming activities;
- (B) Investigate any suspicion of wrongdoing in connection with any gaming activity;
- (C) Conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law or this Ordinance or any contracts, agreement, goods, services, events, incidents, or other matters related to gaming activities;
- (D) Establish and collect license, investigation, and regulatory fees to cover the costs connected therewith;
- (E) Conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified gaming enterprise key employee and primary management officials under requirements at least as stringent as those established in 25 CFR Parts 556 and 558; and grant, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, suspension, revocation, or renewal of licenses;
- (F) Hold such hearings, sit and act at such times and places, summon persons on the reservation to attend and testify at such hearings, take such testimony, and receive such evidence as the TGRA Commissioners deems relevant in fulfilling their duties;
- (G) Administer oaths or affirmations to witnesses appearing before the TGRA Commissioners;
- (H) Implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors, and others connected with gaming activities, as described in Section 260.007 of this Ordinance, including the issuance of licenses to gaming facilities, individuals and entities and the verification

of internal controls, as required under this Ordinance, IGRA, and any Tribal-State compact or equivalent procedures prescribed by the Secretary of the Interior;

- (I) Promulgate rules for any Class II or Class III gaming activity on Tribal Lands, except that rules for Class III activities shall not be in conflict with rules if any, adopted under any Tribal-State compact.
 - (J) Issue such other regulations and take such other regulatory actions as it deems appropriate in order to implement the provisions of this Ordinance and to comply with the Tribal-State Class III Gaming Compact, and applicable federal law and regulations; and,
 - (K) Carry out such other regulatory duties with respect to gaming activities as the Tribal Council shall direct.
- (14) **Monthly and Annual Reports.** On or before the tenth day of each month, the TGRA shall provide to the Tribal Council a Monthly Report summarizing its activities during the prior month and accounting for all receipts and disbursements. On or before the last day of the third month after the close of the Tribes' fiscal year of each year, the TGRA shall provide to the Tribal Council an Annual Report, summarizing its activities during the prior fiscal year and accounting for all receipts and disbursements.
- (15) **Funding.** All funding of the TGRA shall be pursuant to a Budget to be proposed to the Tribal Council and approved, funded, and modified, if necessary, in accordance with the Tribe's procedures for approving and funding budgets for other departments and agencies of the tribal government. In preparing the Budget, all actual and anticipated surplus funds of the TGRA shall be taken into account. Expenditures by the TGRA shall be in accordance with the approved Budget. Changes in the approved Budget and requests for additional funds shall be by petition to the Tribal Council, in accordance with such procedures, if any, for other tribal government departments and agencies. As required by the Tribal-state Compact and by applicable federal law and regulations, the Budget shall be sufficient each year for the TGRA to carry out and fulfill its duties under this Ordinance.
- (16) **TGRA's Relationship to Tribal Government; Supervision of Administration.**
- (A) **Agency of Tribal Government.** The TGRA shall be deemed to be an agency of the tribal government and as such shall be subject to personnel and other tribal governmental administrative policies, subject to oversight by the Secretary-Treasurer of the Tribal Council. The administration of all such policies shall be under the supervision of the Tribal Council. In the absence of applicable tribal personnel or other administrative policies, the TGRA shall promulgate its own policies, subject to approval of the Tribal Council.

- (B) **Independent Decision-Making Authority.** Notwithstanding the fact that the TGRA is an agency of tribal government, the decisions of the TGRA regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the TGRA; provided, however, in the event of appeals of TGRA decisions to the Warm Springs Court of Appeals pursuant to WSTC Sec. 260.7(9)(F) the rulings of the Warm Springs Court of Appeals shall be final.

RESOLUTION NO. 12,287

WHEREAS, By Tribal Council Resolution No. 12,243 (October 25, 2016) Tribal Council adopted certain amendments to the Warm Springs Gaming Ordinance (Warm Springs Tribal Code Chapter 260, Ordinance No. 76); and,

WHEREAS, By letter dated November 28, 2016, the Warm Springs Gaming Ordinance, as amended by Resolution No. 12,243, was submitted to the National Indian Gaming Commission ("NIGC") for NIGC's review and approval pursuant to 25 CFR § 522.3(a); and,

WHEREAS, During the course of NIGC's review pursuant to 25 CFR § 522.6, of the amendments to the Warm Springs Gaming Ordinance approved by Resolution No. 12,243, NIGC staff determined that certain language required by 25 CFR § 556.2(a) in the Privacy Act notice to applicants for key employee and primary management official positions was omitted from the amended Warm Springs Gaming Ordinance; and,

WHEREAS, In order to obtain NIGC's approval of the amendments to the Gaming Ordinance adopted by Resolution No. 12,243, it is necessary for Tribal Council to adopt a supplemental amendment to the Gaming Ordinance to add the omitted language required by 25 CFR § 556.2(a); and,

WHEREAS, Pursuant to this Resolution, this supplemental amendment to the Gaming Ordinance to satisfy the requirements of 25 CFR § 556.1(a) adds the following language to the Gaming Ordinance at WSTC § 260.007(2)(A) "...by the Tribal gaming regulatory authorities and...", so that WSTC § 260.007(2)(A) will now read (supplemental amendment language underlined):

"(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 granted a gaming license. The information will be used by the Tribal Gaming

regulatory authorities and by National Indian Gaming Commission (NIGC) 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's 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."; and,

WHEREAS, The amended Gaming Ordinance containing the amendments adopted by Resolution No. 12,243 and the supplemental amendment adopted pursuant to this Resolution is attached to this Resolution and marked Exhibit "A"; now, therefore,

BE IT RESOLVED, By the 27th Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V , § 1(1) and (u), of the Tribal Constitution and By-Laws, that the Tribal Council hereby adopts and approves the supplemental amendment to Warm Springs Tribal Code (Gaming ordinance) § 260.007(2)(A) set out above; and,

BE IT FURTHER RESOLVED, By the Tribal Council that the Tribal Attorney is hereby directed to submit the Gaming Ordinance, as amended by Resolution No. 12,243 and as amended with respect to WSTC § 260.007(2)(A) by this Resolution, to NIGC for its review and approval.

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon hereby certifies that the Tribal Council is composed of 11 members, of whom 7 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 10th day of February, 2017 ; and the foregoing

resolution was passed by the affirmative vote of 6 members, the Chairman not voting; and that the said resolution has not been rescinded or amended in any way.

Michele Stacona 2/13/17

Michele Stacona

Secretary-Treasurer/CEO

NOTED:

Floy L. Anderson 2-13-17
Floy L. Anderson
Acting BIA Superintendent

Attachment: Exhibit "A"

cc: Secretary-Treasurer
Superintendent
Administrative Services Center

Exhibit A

WARM SPRINGS TRIBAL CODE

CHAPTER 260

**CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
AMENDED AND RESTATED CLASS II AND CLASS III GAMING ORDINANCE**

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WARM SPRINGS TRIBAL CODE

CHAPTER 260¹

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AMENDED AND RESTATED CLASS II AND CLASS III GAMING ORDINANCE

- 260.001 Purpose.** The Tribal Council, pursuant to the authority contained in Article V, Section 1(i) and (l) of the Constitution and Bylaws, as amended, of the Tribe, hereby enacts this Ordinance in order to set the terms for Class II and Class III gaming operations on tribal lands.
- 260.002 Gaming Authorized.** Class II gaming and Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §2703 ("IGRA"), and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992, as amended from time to time) is hereby authorized.
- 260.003 Ownership of Gaming.** The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.
- 260.004 Use of Gaming Revenue.** Net revenues from Class II and Class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.
- (1) If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. §2710(b)(3).
- 260.005 Audit.**
- (1) The Tribe shall cause to be conducted not less often than annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.
- (2) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specially included within the scope of the audit that is described in subsection 260.005(1) above.

¹ WSTC Chapter 260 was amended and restated in its entirety by Tribal Council Resolution 11,889(A), adopted on May 19, 2014 and certified on June 30, 2014.

260.006 Protection of the Environment and Public Health and Safety. Class II and Class III gaming facilities shall be constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety.

260.007 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 and Class III gaming enterprise operated on Indian lands:

(1) **Definitions.** For the purposes of this section, the following definitions apply:

(A) **"Key employee" means:**

(a) 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;

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

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

(B) **"Primary management official" means:**

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

(b) Any person who has authority:

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

(2) 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 granted a gaming license. The information will be used by the Tribal Gaming regulatory authorities and by National Indian Gaming Commission (NIGC) 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's 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."

- (B) Existing key employees and primary management officials shall be notified in writing that they shall either:
- (a) Complete a new application form that contains a Privacy Act notice; or
 - (b) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.
- (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 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)"

- (D) The Tribe shall notify in writing existing key employees and primary management officials that they shall either:
 - (a) Complete a new application form that contains a notice regarding false statements; or
 - (b) Sign a statement that contains the notice regarding false statements.

(3) **Background Investigations.** The Tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

- (A) The Tribe shall request from each primary management official and from each key employee all of the following information:
 - (a) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, 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 residence addresses, and driver's license numbers;
 - (c) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (3)(A)(b) of this section;
 - (d) Current business and residence telephone numbers;
 - (e) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - (f) A description of any existing and previous business relationships with the gaming industry generally, 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 violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
 - (j) For each criminal charge (excluding minor traffic charges); whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (3)(A)(h) or (3)(A)(i) of the section, the criminal charge, the name and address of the court involved and the date and disposition;
 - (k) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 - (l) A current photograph;
 - (m) Any other information the Tribe deems relevant; and
 - (n) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. §522.2(h).
- (B) If, in the course of a background investigation, the Tribe discovers that the applicant has a notice of results on file with the NIGC from a prior investigation and the Tribe has access to the earlier investigative materials (either through the NIGC or the previous tribal investigative body) the Tribe may rely on these materials and update the investigation and investigative report under 25 C.F.R. Sec. 556.6(b)(1).
- (C) In conducting a background investigation, the Tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- (4) **Tribal Eligibility determination.** The Tribe shall conduct an investigation sufficient to make an eligibility determination.
- (A) To make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license, an authorized tribal official shall review a person's:
 - (a) Prior activities;

- (b) Criminal record, if any; and
 - (c) Reputation, habits and associations.
- (B) If the authorized tribal official, in applying the standards adopted in this Gaming Ordinance, determines that license of 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 and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position.

(5) Report to the National Indian Gaming Commission.

- (A) When the Tribe employs a key employee or primary management official, the Tribe shall maintain a complete application file containing the information listed under 25 C.F.R. Section 556.4(a)(1) through (14).

Before issuing a license to a primary management official or to a key employee, the Tribe shall:

- (a) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:
 - (i) Steps taken in conducting a background investigation;
 - (ii) Results obtained;
 - (iii) Conclusions reached; and
 - (iv) The basis for those conclusions.
- (b) Submit a notice of the results of the applicant's background investigation to the NIGC no later than sixty (60) days after the applicant begins work. The notice of results shall contain:
 - (i) Applicant's name, date of birth, and social security number;
 - (ii) Date on which the applicant began or will begin work as a key employee or primary management official;
 - (iii) A summary of the information presented in the investigative report, which shall at a minimum include a listing of:
 - 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 applicant: and
 - D. Every felony of which the applicant has been convicted or any ongoing prosecution.
- (iv) A copy of the eligibility determination made under 25 C.F.R. Section 556.5.
- (6) **Notice.** All notices under required to be proved under this Gaming Ordinance shall be provided to the NIGC through the appropriate NIGC Regional Office.
- (7) **Review of Notice of Results for A Key Employee or Primary Management Official.**
 - (A) Upon receipt of a complete notice of results for a key employee or primary management official as required by 25 C.F.R. Section 556.6(b)(2), the NIGC Chair has 30 days to request additional information from the Tribe concerning the applicant or licensee and to object.
 - (B) If the NIGC has no objection to issuance of a license, it shall notify the Tribe within thirty (30) days of receiving notice of results pursuant to 25 C.F.R. Section 556.6(b)(2).
 - (C) If, within the 30-day period described in 25 C.F.R. Section 558.3(a), the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official applicant for whom the Tribe has provided a notice of results, the Tribe shall reconsider the application, taking into account the objections itemized by the NIGC. The Tribe shall make the final decision whether to issue a license to such applicant.
 - (D) If the Tribe has issued the license before receiving the NIGC's statement of objections, notice and hearing shall be provided to the licensee as provided by 25 C.F.R. Section 588.4.
- (8) **Notification to NIGC of License Decisions and Retention Obligations.**
 - (A) After the Tribe has provided a notice of results of the background check to the NIGC, the Tribe may license a primary management official or key employee.

- (B) Within thirty (30) days after the issuance of the license, the Tribe shall notify the NIGC of its issuance.
 - (C) The gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.
 - (D) If the Tribe does not license an applicant---
 - (a) The Tribe shall notify the NIGC; and
 - (b) Shall forward copies of its eligibility determination and notice of results, under 25 C.F.R. Section 566.6(b)(2) to NIGC for inclusion the Indian Gaming Individuals Record System.
 - (E) **The Tribe shall retain the following for inspection by the Chair of the NIGC or his or her designee for no less than three years from the date of termination of employment:**
 - (a) Applications for licensing;
 - (b) Investigative reports; and
 - (c) Eligibility determinations
- (9) Suspension and Revocation of Gaming Licenses: Notice of Information Impacting Eligibility and Licensee's Right to a Hearing; Appeals.**
- (A) If, after the issuance of a gaming license, the NIGC receives reliable information indicating that a key employee or a primary management official is not eligible for employment under 25 C.F.R. Section 556.5, the NIGC shall notify the Tribe of the information.
 - (B) Upon receipt of such notification under paragraph (A) from NIGC, or upon receipt of such information from another reliable source that a key employee or a primary management official is not eligible for employment under 25 C.F.R. Section 556.5, the Tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.
 - (C) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.
 - (D) A right to a hearing under this section shall vest only upon receipt of a license granted under the Gaming Ordinance approved by the Chair of the NIGC.

(E) After a revocation hearing, of which the licensee has been afforded due process and given at least ten (10) days written notice, which notice fairly and fully informs them of the grounds for their license suspension and proposed license revocation, and at which hearing they shall have the opportunity to present relevant oral and written evidence, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall weigh the evidence, testimony and exhibits and make its decision on the basis of a preponderance of the evidence and credibility of the evidence and witnesses. The Tribe's decision shall be issued in writing within thirty (30) days of the hearing, and such decision shall include a statement of facts and a statement of legal authority on which the decision is based. Decisions shall be delivered to the party for whom the hearing was held and shall include information and instructions for appealing the decisions pursuant to WSTC 260.007(9)(F). The Tribe shall notify the NIGC of its decision within 45 days of receiving notification from the NIGC pursuant to paragraph (A) of this sub-section (9).

(F) Appeals from the Tribal Gaming Regulatory Authority Decisions

The Warm Springs Court of Appeals ("Court of Appeals"), established pursuant to WSTC Chapter 203, shall act as the final reviewing body for a decision of the Tribal Gaming Regulatory Authority to deny a license or to revoke or suspend the license of any licensee.

Any appeal of the Tribal Gaming Regulatory Authority decision to the Warm Springs Court of Appeals must be filed within thirty (30) days after receiving notice of the decision of the Tribal Gaming Regulatory Authority, unless a different time frame is otherwise specified or required by the Compact, this Ordinance, or applicable regulations. Upon the filing of a Notice of Appeal, pursuant to the Rules of the Court of Appeals, the Tribal Gaming Regulatory Authority shall prepare and submit to the Court of Appeals within fifteen (15) days the Administrative Record of the Tribal Gaming Regulatory Authority's denial, revocation or suspension proceedings. Both parties to the appeal, the person appealing the decision of the Tribal Gaming Regulatory Authority and the respondent Tribal Gaming Regulatory Authority, shall have the opportunity to submit written arguments on the issues presented by the appeal and, in the discretion of the Court of Appeals, participate in oral argument before the Court of Appeals.

The Court of Appeals shall review the Tribal Gaming Regulatory Authority's decisions *de novo* on questions of law and for clear error on questions of fact. The Court of Appeals is authorized to reverse a decision made by the Tribal Gaming Regulatory Authority only where the Court of Appeals finds the Tribal Gaming Regulatory Authority's decision was

unreasonable, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable Tribal, federal or state laws;

(a) The Tribal Gaming Regulatory Authority exceeded its jurisdiction, authority, or limitations, under applicable tribal laws;

(b) The Tribal Gaming Regulatory Authority's decision is unsupported by substantial evidence or unwarranted by the facts presented, either orally or substantively.

The rulings of the Warm Springs Court of Appeals on matter brought pursuant to this Gaming Ordinance shall be final.

- (10) **Submission of Notices.** All notices under this section shall be provided to the NIGC through the appropriate Regional Office.

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

260.009 Tribal Gaming Regulatory Authority².

- (1) **Establishment of Tribal Gaming Regulatory Authority.** There is hereby established by the Tribe a Tribal Gaming Regulatory Authority to be known as the Warm Springs Tribal Gaming Regulatory Authority (hereafter "The TGRA"). The TGRA shall be comprised of three (3) persons, who shall be designated as "TGRA Commissioners." TGRA Commissioners may be members or non-members of the Tribe, provided that not less than one TGRA Commissioner shall be a tribal member.
- (2) **Qualifications and Licensing of TGRA Commissioners.** Members of the TGRA shall be chosen from individuals who have expertise and knowledge in the fields of Indian gaming, accounting, finance, law enforcement or such other fields and knowledge that would, in the opinion of the Tribal Council, be of special benefit to service on the TGRA Commission.
- (3) **Selection of TGRA Commissioners.** The Tribal Council shall by motion appoint a five-member TGRA Commissioner Selection Committee (hereafter "The Selection Committee") composed of two members of the Tribal Council, the Secretary-Treasurer of the Tribal Council and two members at large. Members of the Selection Committee may be either members or non-members of the Tribe. The Selection Committee shall establish procedures for notice of vacancies on the TGRA, recruitment of qualified applicants, interview, and selection processes. The Selection Committee shall submit their nominee(s) for any vacancy on the

² WSTC Chapter 260 Section 260.009 (8), (11), (12), (13), and (15) were amended and restated in their entirety by Tribal Council Resolution 12,243, adopted and certified on October 25, 2016.

TGRA to the Tribal Council for confirmation and appointment by Tribal Council resolution.

- (4) **Disqualifications for Office.** The following persons may not serve as TGRA Commissioners:
- (A) Members of the Tribal Council;
 - (B) Members of the board of directors of any tribal gaming enterprise;
 - (C) Employees of any tribal gaming enterprise;
 - (D) The immediate family of any gaming contractor (including any principal thereof or closely associated independent contractor). For the purpose of this section, immediate family members are defined as: husband, wife, son, daughter, mother, father, brother, sister, grandfather, grandmother, legal guardian, or other totally dependent relative of the individual;
 - (E) Persons who would not be eligible to receive a gaming license from the Tribes; or
 - (F) Persons having any interest in or responsibility for, either directly or indirectly, any gaming related contract with the Tribe or any gaming enterprise on the Reservation.
- (5) **Terms of the Office.** The TGRA Commissioners shall serve for three-year terms. The respective term for each TGRA Commissioner shall be designated in their appointment. TGRA Commissioners shall serve until a successor is appointed and may serve for more than one term.
- (6) **Removal from Office.** TGRA Commissioners may only be removed from office before the expiration of their terms by the Tribal Council for neglect of duty, malfeasance, misfeasance, nonfeasance, or other good cause shown, in the same manner as members of the Tribal Council may be impeached.
- (7) **Quorum.** Two (2) TGRA Commissioners shall constitute a quorum of the TGRA, provided at least one of such TGRA Commissioner shall be a tribal member.
- (8) **Officers and Duties of TGRA Commissioners.** The Tribal Council shall designate from among the Commissioners of the TGRA a Chair, Vice-Chair, and Secretary of the TGRA. The Chair shall preside over meetings of the TGRA and the Vice-Chair shall preside in absence of the Chair. The Secretary shall record in writing the minutes of all TGRA meetings and all official actions taken by the TGRA. The Commissioners shall be considered employees of the TGRA, and shall assist with and ensure fulfillment of duties as outlined in Section 260.009(13). The prescribed hours and compensation for Commissioners shall be approved by the Tribal Council.

- (9) **Executive Director of the TGRA.** The Tribal Council shall designate an Executive Director of the TGRA, who shall not be a Commissioner of the TGRA. The Executive Director shall be a full-time employee of the TGRA with compensation established by the Tribal Council. The Executive Director shall be responsible for carrying out the day-to-day regulatory authority functions along with TGRA staff to ensure compliance is adhered to by the gaming operation and its employees.
- (10) **Voting.** All actions of the TGRA shall be taken by majority vote. The TGRA Chair may vote on any issue.
- (11) **Meetings.** TGRA Commissioners will meet and conduct business as necessary and appropriate to carry out their duties under this Ordinance, federal law and regulations, and the Tribal-State Compact. Notice of Special meetings shall be given in writing to each TGRA Commissioner, served by first class mail for delivery at least five (5) business days prior to such Special meeting.
- (12) **Compensation for Serving as TGRA Commissioners; Reimbursement of Expenses.** TGRA Commissioners shall be compensated for serving on the TGRA Commission at the rate set by the Tribal Council. Compensation for TGRA Commissioners shall be based upon salaries or pay rates commensurate with industry standards, as recommended by the CTWS Personnel Department and approved by the Tribal Council. Commissioners shall be reimbursed reasonable and necessary expenses (mileage) incurred at the government rate in connection with the performance of their official TGRA roles and duties.
- (13) **TGRA Authority.** The TGRA shall have the authority to:
- (A) Inspect, examine and monitor gaming activities, including the power to demand access to and inspect, examine, photocopy and audit all papers, books and records respecting such gaming activities;
 - (B) Investigate any suspicion of wrongdoing in connection with any gaming activity;
 - (C) Conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law or this Ordinance or any contracts, agreement, goods, services, events, incidents, or other matters related to gaming activities;
 - (D) Establish and collect license, investigation, and regulatory fees to cover the costs connected therewith;
 - (E) Conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified gaming enterprise key employee and primary management officials under requirements at least as stringent as those

established in 25 CFR Parts 556 and 558; and grant, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, suspension, revocation, or renewal of licenses;

- (F) Hold such hearings, sit and act at such times and places, summon persons on the reservation to attend and testify at such hearings, take such testimony, and receive such evidence as the TGRA Commissioners deem relevant in fulfilling their duties;
 - (G) Administer oaths or affirmations to witnesses appearing before the TGRA Commissioners;
 - (H) Implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors, and others connected with gaming activities, as described in Section 260.007 of this Ordinance, including the issuance of licenses to gaming facilities, individuals and entities and the verification of internal controls, as required under this Ordinance, IGRA, and any Tribal-State compact or equivalent procedures prescribed by the Secretary of the Interior;
 - (I) Promulgate rules for any Class II or Class III gaming activity on Tribal Lands, except that rules for Class III activities shall not be in conflict with rules if any, adopted under any Tribal-State compact;
 - (J) Issue such other regulations and take such other regulatory actions as it deems appropriate in order to implement the provisions of this Ordinance and to comply with the Tribal-State Class III Gaming Compact, and applicable federal law and regulations; and,
 - (K) Carry out such other regulatory duties with respect to gaming activities as the Tribal Council shall direct.
- (14) **Monthly and Annual Reports.** On or before the tenth day of each month, the TGRA shall provide to the Tribal Council a Monthly Report summarizing its activities during the prior month and accounting for all receipts and disbursements. On or before the last day of the third month after the close of the Tribes' fiscal year of each year, the TGRA shall provide to the Tribal Council an Annual Report, summarizing its activities during the prior fiscal year and accounting for all receipts and disbursements.
- (15) **Funding.** All funding of the TGRA shall be pursuant to a Budget to be proposed to the Tribal Council and approved, funded, and modified, if necessary, in accordance with the Tribe's procedures for approving and funding budgets for other departments and agencies of the tribal government. In preparing the Budget, all actual and anticipated surplus funds of the TGRA shall be taken into account. Expenditures by the TGRA shall be in accordance with the approved

Budget. Changes in the approved Budget and requests for additional funds shall be by petition to the Tribal Council, in accordance with such procedures, if any, for other tribal government departments and agencies. As required by the Tribal-State Compact and by applicable federal law and regulations, the Budget shall be sufficient each year for the TGRA to carry out and fulfill its duties under this Ordinance.

(16) TGRA's Relationship to Tribal Government; Supervision of Administration.

(A) **Agency of Tribal Government.** The TGRA shall be deemed to be an agency of the tribal government and as such shall be subject to personnel and other tribal governmental administrative policies, subject to oversight by the Secretary-Treasurer of the Tribal Council. The administration of all such policies shall be under the supervision of the Tribal Council. In the absence of applicable tribal personnel or other administrative policies, the TGRA shall promulgate its own policies, subject to approval of the Tribal Council.

(B) **Independent Decision-Making Authority.** Notwithstanding the fact that the TGRA is an agency of tribal government, the decisions of the TGRA regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the TGRA; provided, however, in the event of appeals of TGRA decisions to the Warm Springs Court of Appeals pursuant to WSTC Sec. 260.7(9)(F) the rulings of the Warm Springs Court of Appeals shall be final.

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

260.011 Service of Process. The Tribal Council designates the Chair of the TGRA as the Agent of TGRA and the Tribe for any and all service, including but not limited to notices of official determinations, orders or notices of violation in accordance with 25 CFR Part 519.