



May 26, 2020

VIA EMAIL

Anthony Ortiz, Governor
Office of the Governor
Pueblo of San Felipe
P.O. Box 4339
San Felipe Pueblo, NM 87001

Re: Fifth Amended and Restated Gaming Ordinance

Dear Governor Ortiz:

I hope this letter finds you and the Pueblo of San Felipe well during this difficult time. I know your community has been hit hard especially in recent weeks and I am praying for you and your community.

On behalf of the Pueblo, you requested the National Indian Gaming Commission to review and approve the Pueblo's Fifth Amended and Restated Gaming Ordinance. The Tribal Council adopted this Ordinance on December 4, 2019. The NIGC identified one section that required correction to conform to the Indian Gaming Regulatory Act and NIGC regulations. The adopting resolution authorized yourself and the Lt. Governor, together with the Pueblo's Gaming Commission, to make minor modifications necessary for approval without the requirement for a Tribal Council vote. You accomplished this by letter dated February 24, 2020, and submitted the corrected Ordinance.

I approve the Amended and Restated Ordinance as it is consistent with the IGRA and NIGC regulatory requirements. If you have any questions, please feel free to contact Maria Getoff, Senior Attorney, at 202-632-7003.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Sequoyah Simermeyer".

E. Sequoyah Simermeyer
Chairman

**SAN FELIPE PUEBLO FIFTH AMENDED AND RESTATED GAMING
ORDINANCE**

Reviewed and Ratified
At a Duly Called San Felipe Pueblo Tribal Council
Meeting
On
December 4, 2019

Tribal Council Resolution No. SFP-2019-148

TABLE OF CONTENTS

SECTION 1. Name.	2
SECTION 2. Definitions.	2
SECTION 3. Purposes.	9
SECTION 4. Interpretation	9
A. In General	9
B. Specific Provisions	9
SECTION 5. San Felipe Pueblo Gaming Enterprise.....	11
SECTION 6. Gaming Policy	11
A. Games of Chance Prohibited.....	11
B. Ownership of Gaming Enterprise.....	11
C. Protection of Environment.	11
D. Age Restrictions.	11
E. Persons Barred from Personal Participation in Gaming.....	12
SECTION 7. Class II and Class III Games Authorized	12
A. Class II Games	12
B. Class III Games; Tribal-State Compact Required.....	12
C. Premises Open to Commission	12
D. Gaming Employees	12
E. Qualification for Employment; Drug and Alcohol Testing	13
F. Preference in Employment	13
G. Personnel Policies	13
H. Hiring and Training of Employees.....	13
SECTION 8. San Felipe Pueblo Gaming Regulatory Commission	14
A. Establishment of San Felipe Pueblo Gaming Regulatory Commission.	14
B. Powers and Duties.....	14
C. Procedure for the Promulgation of Regulations.....	19
D. Composition	21
E. Qualifications of Commissioners.....	21
F. Licensing of Commissioners.....	22
G. Termination of Commissioners.....	22
H. Resignations and Vacancies.....	23
I. Selection of Officers.....	23

J.	Motions and Resolutions; Meetings; Quorum.	24
K.	Cooperation with Other Law Enforcement Agencies.	24
L.	Compensation for Service; Reimbursement of Expenses.	24
SECTION 9. Executive Director.....		24
A.	Appointment.....	24
B.	Qualifications.	25
C.	Salary.....	25
D.	Staff.	25
E.	Powers and Duties.	25
F.	Conflict of Interest.	25
SECTION 10. San Felipe Pueblo Gaming Regulatory Commission’s Relationship to Tribal Government.....		26
A.	Agency of Tribal Government.	26
B.	Independent Decision-Making Authority.....	26
SECTION 11. Licensing		27
A.	Licenses Required.	27
B.	License Application.....	29
C.	Background Investigations to Determine Licensing Eligibility.....	32
D.	Procedures for Preparing and Forwarding Applications and Reports.....	34
E.	Granting a Gaming License; Standards.....	35
F.	Fees for Licensing.	38
G.	Duration and Renewal of Licenses.....	38
H.	Notification of Current Address.....	38
I.	Nature of Licenses; Pueblo Jurisdiction.....	38
SECTION 12. Management Contracts.....		38
A.	License Required for Approval of Management Contract.....	38
B.	Contract Requirements.....	39
C.	Standards for Disapproval.....	41
D.	Action by the Commission and the Tribal Council.....	42
E.	Submission to the NIGC	42
F.	Modification and Revocation of Management Contract	42
G.	Appeal of Decision of the Commission	42
H.	Amendment	42
I.	Assignment.....	42
SECTION 13. Providers of Class II and Class III Gaming Machines or Supplies		42
A.	Standards.	42

B.	License Required.....	43
C.	Installation.....	43
SECTION 14.	Gaming Enterprise Financial Practices and Reporting.....	43
A.	Monthly Reports.....	43
B.	Maintenance of Books and Records.....	43
C.	Allowable Operating Expenses.....	44
D.	Audits.....	44
E.	Audit of Contracts.....	45
F.	Disposition of Net Revenues.....	45
SECTION 15.	Protection of Visitors.....	46
A.	Liability to Visitors.....	46
B.	Specific and Limited Waiver of Immunity.....	46
C.	Public Health and Safety.....	47
D.	Patron Dispute Resolution Procedures.....	47
SECTION 16.	Suspension or Revocation of Licenses.....	47
A.	Grounds.....	47
B.	Notice; Immediate Suspension.....	48
C.	Contents of Notice of Recommended Action; Service.....	49
D.	Procedure.....	49
E.	Effective Date.....	49
F.	Surrender of License.....	49
G.	Additional Sanctions.....	49
H.	Appeal to Tribal Court.....	49
SECTION 17.	Prohibited Acts.....	49
SECTION 18.	Civil Penalties.....	51
SECTION 19.	Enforcement; Jurisdiction; Subpoenas.....	52
A.	Civil Remedies in Court.....	52
B.	Criminal Penalties.....	52
C.	Tribal Court Jurisdiction.....	52
D.	Enforcement of Commission Subpoenas.....	53
SECTION 20.	Proceedings Before the Commission; Appeals.....	53
A.	Proceedings Before the Commission.....	53
B.	Appeal to Tribal Court.....	54
SECTION 21.	Sovereign Immunity.....	55
SECTION 22.	Severability.....	55
SECTION 23.	Amendments.....	56

SECTION 24. Repeal of Prior Laws.....	56
SECTION 25. Effective Date.....	56
SECTION 26. Compact Compliance – Additional Requirements.....	56
SECTION 27. Notice and Service.....	64

**SAN FELIPE PUEBLO FIFTH AMENDED AND RESTATED GAMING
ORDINANCE**

WHEREAS, The San Felipe Pueblo (“the Pueblo”) is a duly recognized sovereign Indian tribe whose traditional law empowers the Tribal Council to enact ordinances; and

WHEREAS, the San Felipe Pueblo Gaming Ordinance adopted July 21, 1994 contained the minimum requirements under federal law for a tribal gaming ordinance, which Ordinance was approved by the National Indian Gaming Commission on November 17, 1994; and

WHEREAS, the Pueblo adopted the San Felipe Pueblo Amended and Restated Gaming Ordinance, dated July 20, 1999, amending the San Felipe Pueblo Gaming Ordinance, adopted July 21, 1994; and

WHEREAS, the San Felipe Pueblo Amended and Restated Gaming Ordinance adopted July 20, 1999 was disapproved by the National Indian Gaming Commission on January 21, 2000; and

WHEREAS, the Pueblo of San Felipe entered into a Tribal-State Compact with the State of New Mexico on October 12, 2001 (“2001 Compact”), which Compact became effective on December 14, 2001 (66 Fed. Reg. 64856); and

WHEREAS, to incorporate the National Indian Gaming Commission requirements, the 2001 Compact provisions, and the Pueblo’s experience with gaming, the Pueblo of San Felipe approved its Second Amended and Restated Gaming Ordinance on November 27, 2002, which Ordinance was approved by the National Indian Gaming Commission on January 14, 2003; and

WHEREAS, to effect limited amendments relating to the San Felipe Pueblo Gaming Regulatory Commission, the Pueblo of San Felipe approved its Third Amended and Restated Gaming Ordinance on February 12, 2004, which Ordinance was approved by the National Indian Gaming Commission on April 29, 2004; and

WHEREAS, the Pueblo of San Felipe entered into an amended Tribal-State Compact with the State of New Mexico on April 24, 2007 (“2007 Compact”), which Compact took effect on June 18, 2007 (72 Fed. Reg. 36717); and

WHEREAS, in part to incorporate changes required by the 2007 Compact, the Pueblo of San Felipe approved its Fourth Amended and Restated Gaming Ordinance on August 26, 2009 by Resolution No. 2009-91, which Ordinance was approved by the National Indian Gaming Commission on October 9, 2009; and

WHEREAS, the Pueblo of San Felipe entered into an amended Tribal-State Compact with the State of New Mexico on December 29, 2015 (“2015 Compact”), which Compact took effect on April 4, 2016 (81 *Fed. Reg.* 19236); and

WHEREAS, the new Compact is referred to as the “2015 Compact” because a number of tribes in New Mexico, most of which had been operating under the 2001 Compact’s terms, finished negotiating the new compact’s terms in 2015; and

WHEREAS, in 2019, the Tribal Council identified as a priority the need to transfer the operation of surveillance from the Gaming Enterprise to the Commission, and accordingly enacted focused amendments on July 17, 2019 by Resolution No. 2019-23, which was submitted to the National Indian Gaming Commission for approval and later withdrawn on December 2, 2019 to allow for the submission of this version to the NIGC.

WHEREAS, the Pueblo now wishes to amend the Gaming Ordinance to reflect the 2015 Compact provisions and NIGC regulation changes since 2009, and to make modifications based on the Pueblo’s continued experience with the operation and regulation of gaming.

NOW THEREFORE THE TRIBAL COUNCIL OF THE SAN FELIPE PUEBLO HEREBY ADOPTS THE FOLLOWING SAN FELIPE PUEBLO FIFTH AMENDED AND RESTATED GAMING ORDINANCE:

SECTION 1. Name.

The name of this Ordinance shall be the “San Felipe Pueblo Fifth Amended and Restated Gaming Ordinance.”

SECTION 2. Definitions.

The following words shall have the following meanings under this Ordinance, unless the context, applicable law, or the Tribal-State Compact otherwise requires.

A. **“Adjusted Net Win”** means Net Win with certain deductions for purposes of calculating revenue sharing as set forth in the Compact.

B. **“Bingo”** means:

1. The Game of Chance commonly known as “bingo” or lotto (whether or not electronic, computer, or other technologic aids are used in connection therewith) 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 previously designated pattern on such cards.

2. If played in the same location as bingo, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo.

C. **“Card Minder”** means a technological aid for a bingo game that serves as an electronic substitute for bingo cards and is used by a player to monitor bingo cards and called bingo numbers. Card Minder does not include a device which permits a player to cover or daub a bingo card other than through overt action after numbers are released.

D. **“Class II gaming”** means:

1. “Bingo,” as defined inclusively above;

2. Nonbanking card games that:

- a. New Mexico law explicitly authorizes, or does not explicitly prohibit and are played legally anywhere in the State; and
- b. Players play in conformity with New Mexico laws and regulations (if any) concerning hours, periods of operation, and limitations on wagers and pot sizes.

3. Individually owned Class II Gaming Operations that were operating on September 1, 1986, and

- a. That meet the requirements of 25 U.S.C. 2710(b)(4)(B);
- b. Where the nature and scope of the game remains as it was on October 17, 1988; and
- c. Where the ownership interest or interests are the same as on October 17, 1988.

E. **“Class III gaming”** means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

1. Any house banking game, including but not limited to:

- a. Card games such as baccarat, chemin de fer, blackjack (21) and pai gow (if played as house banking games);
- b. Casino games such as roulette, craps and keno;

2. Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance as lawfully defined by the NIGC;

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, in any form.

F. “Commission” means the San Felipe Pueblo Gaming Regulatory Commission authorized and governed by this Ordinance.

G. “Compliance Report” means the report submitted annually to the State Gaming Representative by the Commission according to the requirements set forth in the Appendix attached to the 2015 Compact.

H. “Discretionary Complimentaries” means food or lodging provided by the Gaming Enterprise or the Pueblo for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game. “Discretionary Complimentaries” does not include food or lodging received by patrons as rewards in exchange for points or credits accrued under any form of a players’ club program.

I. “Domestic Partnership,” for purposes of this Ordinance only, shall have the meaning established by the Commission by regulation.

J. “Facility License” means a License duly issued by the Commission for each Gaming Facility.

K. “Free Play,” unless another definition is required in a particular situation by GAAP or applicable law, means play on a Class III Gaming Machine initiated by points or credits provided to patrons without monetary consideration and which have no cash redemption value.

L. “Gaming Activity” means all forms of Class II Gaming and Class III Gaming conducted under this Ordinance in a Gaming Facility.

M. “Game(s) of Chance” includes both (1) Class II Gaming Activity conducted in conformance with IGRA and its implementing regulations, and (2) Class III Gaming Activity permitted under the Compact or by a good faith argument that it is permitted under the Compact, but does not include social games played solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

N. “Gaming Device” means any gambling device as defined in 15 U.S.C. § 1171(a).

O. “Gaming Employee” means an employee of a Gaming Operation or Gaming Enterprise whose employment is connected directly with the conduct or management of Gaming Activity, handling Gaming Revenues, access to Sensitive Areas, or handling any Gaming Machine or Gaming System.

P. “Gaming Enterprise” means San Felipe Enterprises, a separately-chartered tribal enterprise created by Charter dated July 21, 1994, as amended from time to time, or any other tribal enterprise the Tribal Council may in the future designate to conduct Gaming Activity on behalf of San Felipe Pueblo. In this Ordinance, “Gaming Enterprise” generally includes a “Gaming Operation” created by the Gaming Enterprise to conduct Gaming Activity unless the context dictates otherwise.

Q. “Gaming Enterprise Board” means the Board of Directors of San Felipe Enterprises and the managing body of any other tribal enterprise the Tribal Council may in the future designate to conduct Gaming Activity on behalf of San Felipe Pueblo.

R. “Gaming Facility” means, for the purposes of this Ordinance and unless the Tribal-State Compact or NIGC definition differs and specifically must be applied in a particular circumstance, a separate building or structure in which Class II and/or Class III gaming is conducted by a Gaming Operation, or the specific place or location where such gaming is conducted within a separate building or structure in which non-gaming activities are primarily conducted.

S. “Gaming Machine” means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration in any manner, is available to play or operate a Game of Chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but unless expressly stated or required by context, Gaming Machine does not include a Card Minder, a Table Game, any devices utilized in Table Games, or Class II devices or aids under IGRA.

T. “Gaming Operation” means a division, department, or unit of the Gaming Enterprise that is responsible for Gaming Activity. For purposes of this Ordinance, unless the context dictates otherwise, a Gaming Operation includes any Management Contractor having a Management Contract related to the Gaming Operation and that portion of a Gaming Enterprise having a management or operational role in Gaming Activity.

U. “Gaming Ordinance” and “Ordinance” means this San Felipe Pueblo Fifth Amended and Restated Gaming Ordinance and any amendments thereto.

V. “Gaming Revenues” means all revenues of a Gaming Operation from Gaming Activity. If a Gaming Operation, or a Gaming Enterprise, does not segregate clearly non-gaming revenue from Gaming Revenues for accounting purposes, all such undifferentiated revenue shall be considered Gaming Revenues.

W. “Gaming Services” means goods or services provided or sold to the Pueblo, the Gaming Enterprise, a Gaming Operation, or a Management Contractor, directly in connection with the operation of Gaming Activity, including but not limited to any Gaming Device, cards, dice, coins, tokens, gaming related goods, poker tables, blackjack tables, equipment, and any mechanical, electromechanical, or electronic device or machine, including training and

consulting services for table games, slots, cage, revenue count, accounting, hard and soft count, surveillance, Gaming Systems, and management in connection with the operation of gaming in a Gaming Facility.

X. “Gaming Systems” means computer hardware and software, including networking and communication components, used directly in the operation, monitoring, or surveillance of Gaming Activity, or the accounting or management of Gaming Revenues, excepting applications and data maintained by a government-regulated financial institution.

Y. “General Manager” means the Manager of gaming for a Gaming Enterprise or, if a Gaming Enterprise enters into a Management Contract, the chief operational manager of the Management Contractor shall be the General Manager.

Z. “Governor” means the Governor of San Felipe Pueblo.

AA. “IGRA” means the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, as amended at any point in time.

BB. “Joint Powers Agreement” means an agreement related to gaming or Games of Chance on the Reservation entered into with the State of New Mexico or any other New Mexico governmental entity under the New Mexico Joint Powers Agreements Act, § 11-1-1 to -7, N.M.S.A. 1978 (1994 Repl.).

CC. “Key Employee” means:

1. A Person who performs one or more of the following functions: Bingo caller; Counting room supervisor; Chief of security; Custodian of gaming supplies or cash; Floor manager; Pit boss; Dealer; Croupier; Approver of credit; or Custodian of gambling devices, including Persons with access to cash and accounting records within such devices; and,

2. If not otherwise included, any other natural Person whose total cash compensation is in excess of \$50,000 per year;

3. If not otherwise included, the four most highly compensated natural Persons in a Gaming Operation; or

4. Any other natural Person designated by the Commission as a key employee.

DD. “License” means a license duly issued by the Commission pursuant to Section 11 of this Gaming Ordinance.

DD. “Licensee” means any Person who has been duly licensed by the Commission.

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

between a contractor and a subcontractor, if such contract or agreement provides for the management of all or part of a Gaming Operation.

FF. “Management Contractor” means any Person(s) that have entered into a Management Contract with the Pueblo or the Gaming Enterprise.

HH. “Member of the Pueblo” and “Pueblo Member” mean an enrolled member of the San Felipe Pueblo.

II. “National Indian Gaming Commission” and “NIGC” mean the National Indian Gaming Commission established by IGRA.

JJ. “Net Revenues” means gross gaming revenues of a Gaming Operation less:

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 nonoperating expenses consistent with professional accounting pronouncements, excluding management fees.

KK. “Net Win,” unless another definition is required in a particular situation by GAAP or applicable law, has the definition set forth in the Compact.

LL. “Non-Gaming Employee” means an employee of a Gaming Operation – or an employee of the Gaming Enterprise who works in a Gaming Facility or in proximity to Gaming Revenues – who does not meet the definition of a Gaming Employee.

MM. “Person” means an individual, trust, firm, association, partnership, company, public or private corporation, municipality, industry, or any similar legal entity, including entities created by the Pueblo. If dictated by context, it is limited to a natural Person, even if not specified. Unless dictated by context, applicable law, or both, the Pueblo itself is not a Person.

NN. “Point Play” means play on a Class III Gaming Machine initiated by points earned or accrued by a player through previous Gaming Machine play or players’ clubs, and which have no cash redemption value.

OO. “Primary Management Official” means:

1. The Person having management responsibility for a Management Contract;
2. Any Person who has authority:
 - a. To hire and fire employees; or
 - b. To establish working policy for the Gaming Operation;

3. The chief financial officer or other Person who has financial management responsibility; or

4. Any other Person reasonably designated by the Commission as a Primary Management Official.

PP. “Principal” means with respect to any entity: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) if an LLC, each its members; (v) if a corporation, each of its shareholders who own more than ten percent (10%) of the shares of the corporation; (vi) each Person other than a regulated banking institution who has provided financing for the entity constituting more than ten percent (10%) of the total financing of the entity; and (vii) any other Person required by applicable law.

QQ. “Pueblo” means the sovereign Pueblo of San Felipe.

RR. “Reservation” means the San Felipe Indian Pueblo lands and includes any lands title to which is held in trust by the United States for the benefit of the Pueblo of San Felipe or held by the Pueblo of San Felipe subject to a restriction by the United States against alienation, and over which lands the Pueblo of San Felipe exercises governmental power.

SS. “Secretarial Procedures” means procedures adopted by the Secretary of the Interior as an alternative to a Tribal-State Compact, pursuant to 25 U.S.C. § 2710(d)(3)(B)(vii).

TT. “Sensitive Area” means an area in which Gaming Machines, Gaming Equipment, Gaming Systems, Gaming Revenues, and other potentially vulnerable Gaming Activity-related assets are located, including but not limited to cage, pit, drop and count room, poker room, card and dice room, surveillance, server rooms, players’ club room, and similar areas as designated by the Commission either temporarily or permanently. The gaming floor itself, administrative offices, shipping and receiving, and similar areas are generally not Sensitive Areas, although with respect to certain times (e.g., if an employee or other Person may be alone in the area) or certain activities (e.g., Gaming Machines are physically open, or cards or dice are being unloaded), such areas may be deemed Sensitive Areas by the Commission.

UU. “State Gaming Representative” means that Person designated by New Mexico State law who is responsible for actions of the state set out in the Tribal-State Compact.

VV. “Table Game” means a Class III Game of Chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes.

WW. “Temporary License” means a License of short duration issued by the Commission pursuant to Sections 11(E)(1) and (2) of this Gaming Ordinance.

XX. “Tribal Administration” means the Pueblo’s Governor, Lieutenant Governor, Fiscale, Lieutenant Fiscale, War Chief, and Lieutenant War Chief.

YY. “Tribal Council” means the Tribal Council of San Felipe Pueblo, the governing body of the Pueblo.

ZZ. “Tribal Court” means the Pueblo of San Felipe Contemporary Tribal Court.

AAA. “Tribal-State Compact” or “Compact” means any compact, including amendments thereto, entered into by the Pueblo and the State of New Mexico under Section 11(d) of IGRA (25 U.S.C. § 2710(d)), or alternatively, any Class III Secretarial Procedures prescribed by the Secretary of the Interior that are in effect.

SECTION 3. Purposes.

The purposes of this Gaming Ordinance are:

- A. To make lawful the operation, conduct, and playing of Games of Chance on the Reservation, and to provide for regulation so that Games of Chance are conducted in a fair and honest manner, affording patrons a fair chance to win in accordance with the nature of the games, and, for Class III gaming, in accordance with the Tribal-State Compact;
- B. To protect the integrity of all such gaming and the revenues therefrom;
- C. To prevent improper or unlawful conduct in gaming; and
- D. To generate revenue to fund tribal governmental operations and programs that promote the health, education, and welfare of the Pueblo of San Felipe and its members and to promote tribal economic development.

SECTION 4. Interpretation.

A. In General. This Ordinance is an exercise of the sovereign power of the Pueblo and shall be construed in a manner that accomplishes its purposes and promotes the integrity of gaming and complies with applicable law, generally including IGRA, lawful NIGC regulations, and as indicated by context this Ordinance, the Tribal-State Compact, and other applicable federal law.

B. Specific Provisions.

1. **Computing Time.** The following rules apply for procedural or regulatory purposes in computing any time period specified in this Ordinance or in any rules, regulations, or policies enacted by the Commission unless specifically stated otherwise. These rules and definitions for computing time do not apply

to employment or other matters internal to the Commission or Gaming Enterprise unless otherwise specified.

- a. Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.
 - b. Last Day. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the Tribal Court clerk's office is inaccessible.
 - c. "Legal Holiday" Defined. As used in this Ordinance, "legal holiday" means any day observed by the Pueblo through the closure of the Pueblo government office and all federal holidays, whether or not observed by the Pueblo.
 - d. "Calendar Day" means any and all days, subject to the "Last Day" rule above.
 - e. "Business Day" means days excluding Saturdays, Sundays, and legal holidays, subject to the "Last Day" rule above.
 - f. Time periods given in hours are to be strictly construed and are not subject to the "Last Day" rule above.
2. **Service.** In all situations in which the Commission is required to provide service upon a Person under this Ordinance or under any rules, regulations, or policies enacted by the Commission, unless otherwise specifically provided, service shall be deemed complete upon the final regular attempted delivery of the relevant notice by (a) hand delivery to the Person, (b) certified mail or overnight delivery service to the last address provided by the Person to the Commission, or if no address was provided directly to the Commission, provided to the Gaming Enterprise or the Pueblo. To accommodate changing technology, the Commission may also approve by regulation the use of electronic means for service if such means provide sufficient certainty and a record of attempted delivery and delivery, as appropriate.
 3. If the Pueblo executes a lawful Tribal-State Compact, or implements lawful Class III Secretarial Procedures, that amends or replaces the 2015 Compact while this Gaming Ordinance is in force, all provisions of this Ordinance shall be construed as necessary to comply with the new Compact or Secretarial Procedures until such time as conforming amendments are made to this Ordinance, and the Commission is expressly authorized to promulgate any necessary conforming regulations, notwithstanding this Ordinance, until a new Ordinance is enacted. Similarly, all provisions of this Ordinance are to be read

as conforming to and including relevant provisions of IGRA and lawful NIGC regulations, even if not referenced.

SECTION 5. San Felipe Pueblo Gaming Enterprise.

Unless otherwise provided herein, all gaming conducted on behalf of the San Felipe Pueblo shall be operated by the San Felipe Enterprises, a separately-chartered tribal enterprise created by Charter dated July 21, 1994, as amended from time to time, and including its subentities, or by any other tribal enterprise as the Tribal Council may in the future designate by duly adopted Resolution or Ordinance. The Gaming Enterprise shall conduct all gaming in compliance with this Gaming Ordinance, other applicable Pueblo law, IGRA, any applicable Tribal-State Compact, Secretarial Procedures, and any lawful regulations adopted pursuant to each. Unless otherwise directed by resolution of the Tribal Council, the Commission shall be responsible for operating the surveillance system of each Gaming Facility. The system shall be operated consistent with this Ordinance, Commission regulations, federal law, and any Tribal-State Compact.

SECTION 6. Gaming Policy.

A. **Games of Chance Prohibited.** No Person may operate or conduct any Game of Chance within the boundaries of the Reservation except in accordance with this Gaming Ordinance.

B. **Ownership of Gaming Enterprise.** The Pueblo of San Felipe, acting through the Tribal Council, shall have the sole proprietary interest in and responsibility for the conduct of Gaming Activity, whether operated by a Gaming Enterprise, an enterprise wholly owned by the Pueblo, a Gaming Operation of a Gaming Enterprise, or a Management Contractor pursuant to a Management Contract approved by the Pueblo and the NIGC under Section 12 and NIGC regulations.

C. **Protection of Environment.** Public Health and Safety. The Pueblo and Gaming Enterprise shall construct, maintain, and operate any Gaming Facility in a manner that adequately protects the environment and the public health and safety and in a manner that meets the requirements of Section 15(C) of this Ordinance.

D. **Age Restrictions.** No Person under twenty-one (21) years of age may participate in any Class III gaming on the Reservation, and no Person under twenty-one (21) years of age may be employed as a Gaming Employee, Key Employee, or Primary Management Official of any Gaming Enterprise on the Reservation if such employment is connected directly with the conduct or management of Class III Gaming. No Person under eighteen (18) years of age may participate in any Class II gaming on the Reservation, and no Person under eighteen (18) years of age may be employed as a Gaming Employee, Key Employee, or Primary Management Official of any Gaming Enterprise on the Reservation if such employment is connected directly with the conduct or management of Class II Gaming.

E. **Persons Barred from Personal Participation in Gaming.** No person serving in any of the following categories of employment or office may personally engage in Gaming Activity at any Gaming Facility or win any prizes awarded by the Gaming Enterprise or Gaming Operation until ninety (90) calendar days, or a lesser period if established by the Commission by regulation, after the termination of such employment or office:

1. Members of any Gaming Enterprise Board;
2. Members of the Commission;
3. General Manager of any Gaming Enterprise;
4. Primary Management Officials;
5. Gaming Employees and employees of the Commission;

SECTION 7. Class II and Class III Games Authorized.

A. **Class II Games.** The Gaming Enterprise shall have authority to establish, equip, operate and maintain Class II gaming at such places as the Tribal Council has designated or may designate in the future. The Gaming Enterprise may not conduct Class II gaming on the internet unless authorized by the Tribal Council based on a good faith argument that it is lawful under applicable law.

B. **Class III Games; Tribal-State Compact Required.** No Person may conduct Class III gaming on the Reservation unless either a Tribal-State Compact is in effect or Secretarial Procedures authorize such Class III gaming. When a Compact is in effect or the Secretary of the Interior has established procedures for Class III gaming on the Reservation in place of a Compact, the Gaming Enterprise shall have authority to establish, equip, operate, and maintain a Class III Gaming Operation in licensed Gaming Facilities located at such places on the Reservation as the Tribal Council has designated or may designate in the future. The Gaming Enterprise may not conduct Class III Gaming on the internet unless authorized by the Tribal Council based on a good faith argument that it is lawful under applicable law and is authorized by a Tribal-State Compact or Secretarial Procedures.

C. **Premises Open to Commission.** All areas of any building or other location where the Gaming Enterprise will be or is operating or conducting any Gaming Activity, where Gaming Revenues are kept, or where any records and data of any Gaming Operation or Gaming Facility are stored shall at all times be open to inspection by the Commission and its agents and employees, and, to the extent required by the terms of a Tribal-State Compact, shall be open to the State Gaming Representative and other inspectors.

D. **Gaming Employees.** Unless otherwise provided by a Management Contract, all Persons meeting the definition of a Gaming Employee shall be employed by the Gaming Enterprise. All Gaming Employees shall wear a gaming License badge evidencing their names and the legend of the Gaming Enterprise. Non-Gaming Employees shall also wear

identification badges denoting their employment by the Gaming Enterprise. The Gaming Enterprise may use independent contractors when lawful and appropriate, but such contractors are subject to the applicable vendor licensing requirements in this Ordinance and Commission regulations.

E. **Qualification for Employment; Drug and Alcohol Testing.** Gaming Employees shall be of good moral character and, as a condition of their employment, shall agree to any lawful means of testing for truthfulness, at any time without prior notice, concerning the handling, collection and/or disbursement of Gaming Revenues. The Gaming Enterprise shall not employ any Person whose prior activities, criminal record if any, reputation, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the operation or conduct of gaming or the carrying on of business and financial arrangements incidental thereto. All Gaming Employees must consent to lawful drug and alcohol testing consistent with the regulations, policies, and procedures of the Gaming Enterprise and the Commission. Agreement to undergo such testing is a condition of employment, and the Gaming Enterprise has the absolute right to refuse to employ, or to terminate existing employment, for refusal to agree to such testing. Non-Gaming Employees are subject to a background check and licensing by the Commission, shall be of sufficient moral character to not pose a danger to the integrity of gaming or to Gaming Revenues, and shall be subject to Gaming Enterprise policies and procedures sufficient to discover whether they pose such a danger during their employment.

F. **Preference in Employment.** Pueblo Members must receive preference in employment and advancement if they meet the qualifications for employment with the Gaming Enterprise. Entry-level Non-Gaming Employee positions shall not require a GED or high school diploma for employment.

G. **Personnel Policies.** The Gaming Enterprise shall adopt written personnel policies that shall be provided to each Gaming and Non-Gaming Employee, who shall certify receipt. These personnel policies shall provide a formal grievance procedure, including appeal to Persons of greater authority than the employee's immediate supervisor, and these policies shall provide for an employee's right to receive a written statement of reasons for dismissal in the event such employee is dismissed. Nothing in the personnel policies shall create or be deemed to create any vested right to continued employment.

H. **Hiring and Training of Employees.**

1. The Gaming Enterprise must provide sufficient training to all of its Gaming and Non-Gaming Employees to enable them to perform their jobs properly.

2. The Gaming Enterprise shall, in addition, provide special management training programs for employees who are Pueblo Members to enable Pueblo Members to become managers and supervisors in Class II and Class III gaming operated by the Gaming Enterprise. Such special management training programs shall include specific time lines indicating when a Pueblo Member who meets all training standards shall become eligible for a managerial or

supervisory position. The expense of providing such special management training to Pueblo Members shall be a separately budgeted operating expense of the Gaming Enterprise.

SECTION 8. San Felipe Pueblo Gaming Regulatory Commission.

A. **Establishment of San Felipe Pueblo Gaming Regulatory Commission.** There is hereby established the San Felipe Pueblo Gaming Regulatory Commission for the purposes of regulating all Games of Chance conducted by the Gaming Enterprise or any other Person within the Reservation and enforcing this Gaming Ordinance to protect the integrity of gaming and Gaming Revenues. All lawful acts of the Commission prior to the date of enactment of this Ordinance are ratified by the Tribal Council.

B. **Powers and Duties.** The Commission shall have the following powers and duties:

1. The following powers and duties are non-delegable and may be performed only by the Commission:

- a. To recommend to the Tribal Council whether the Tribal Council should, as a matter of policy, permit or refuse to permit the operation or conduct of any Game of Chance within the Reservation, and to regulate the operation or conduct of any Game of Chance conducted by the Gaming Enterprise or any other Person within the Reservation in a manner consistent with this Gaming Ordinance and other applicable tribal law, the Tribal-State Compact, and applicable federal law.
- b. To adopt by regulation internal control standards not less stringent than those lawfully required under this Gaming Ordinance and any regulations promulgated hereunder, under IGRA and its lawful implementing regulations, under the Tribal-State Compact, or under equivalent procedures lawfully prescribed by the Secretary of the Interior.
- c. Subject to final approval by the Tribal Council, to negotiate and enter into, on behalf of the Pueblo, Joint Powers Agreements related to Games of Chance on the Reservation, *provided* that the Commission may delegate to the Executive Director the authority to conduct such negotiations.
- d. To implement a system, including the promulgation of regulations, for investigating, licensing, permitting, backgrounding, and monitoring management, employees, Management Contractors, vendors, and others connected with Gaming Activities by the Gaming Enterprise and, if allowed, by other Persons, including the issuance of Gaming Facility Licenses, and the issuance of Temporary Licenses and Licenses to individuals and entities, and the verification of internal controls, as required under the Ordinance, IGRA, and any Tribal-State Compact or

equivalent procedures prescribed by the Secretary of the Interior. The Commission may use permits in situations in which it determines a full license regimen is neither necessary nor required by applicable law.

- e. To hear appeals regarding the Licensing decisions and recommendations made by the Executive Director.
- f. To implement a system, including the promulgation of regulations, for conducting background checks on Non-Gaming Employees sufficient to safeguard the integrity of gaming and Gaming Revenues but less onerous than that required for Gaming Employees and Gaming Vendors.
- g. To promulgate regulations for any Class II or Class III Gaming Activity conducted by the Gaming Enterprise on the Reservation consistent with this Ordinance and with IGRA and implementing federal regulations, *provided* that rules for Class III activities shall not conflict with relevant provisions, if any, adopted under any Tribal-State Compact.
- h. To hold such hearings, sit and act at such times and places, take testimony, and receive such evidence as the Commission deems relevant in fulfilling its duties.
- i. To require, by subpoena if necessary, the attendance and testimony of witnesses and the production of books, papers, documents, and data (regardless of medium) relating to any matter under consideration or investigation by the Commission, and to bring actions in the Tribal Court, or if appropriate in any other court, for the enforcement of such subpoenas.
- j. To administer oaths and affirmations to witnesses appearing before the Commission.
- k. To bring an action in the Tribal Court to enforce the provisions of this Gaming Ordinance.
- l. To suspend any Gaming Activity conducted by the Gaming Enterprise or any Person if, in the opinion of the Commission, the public health and safety is threatened or a violation of IGRA, a Tribal-State Compact, this Ordinance, Pueblo law, or applicable federal or tribal regulations warranting suspension is occurring or is reasonably likely to occur imminently. Any suspension of longer than twenty-four (24) hours shall be subject to review by the Tribal Court. Pending review, the suspension shall remain in effect until vacated or stayed by the Tribal Court.

- m. To enter into contracts and memoranda of understanding with tribal, federal, state, and private entities for activities necessary to the discharge of the duties of the Commission and to contract with the National Indian Gaming Commission for the enforcement of federal regulations governing gaming on Indian Reservations.
- n. Subject to the approval of the Tribal Council, to adopt the budget of the Commission at least annually and, also subject to the approval of the Tribal Council, to adopt modifications of such budget to ensure that the Commission has adequate funding to perform its functions.
- o. To approve or disapprove Management Contracts in accordance with this Gaming Ordinance, subject to final approval by the Tribal Council.
- p. To hear appeals in accordance with this Gaming Ordinance.
- q. To promulgate rules and regulations, in addition to those specifically stated herein, as it deems appropriate to protect the integrity and safety of Games of Chance on the Reservation conducted by the Gaming Enterprise or any Person, to protect Gaming Revenues, or to implement the provisions of this Gaming Ordinance, IGRA, lawful NIGC regulations, or any applicable Tribal-State Compact.
- r. To recommend amendments to this Gaming Ordinance to the Tribal Council.
- s. To take reasonable steps as needed to ensure that Gaming Revenues in the possession of the Gaming Enterprise or transferred to the Pueblo are used only in accordance with Section 14(G) of this Gaming Ordinance.
- t. To submit an annual report to the Tribal Council and Governor on the activities of the Commission. Such reports must include information on the funding, revenues, and expenses of, and licensing and disciplinary actions taken by, the Commission.
- u. To hire, manage, and terminate (when necessary) an individual to serve as Executive Director of the Commission to administer and execute the Commission's delegable duties and responsibilities under this Gaming Ordinance, and to delegate to the Executive Director duties of the Commission in a manner consistent with this Gaming Ordinance.
- v. To oversee and monitor the Executive Director in the competent and ethical operation of the Commission, including the authority to take any lawful employment action, up to and including termination, in the discretion of the Commission and subject to applicable policies and procedures.

- w. To establish License, investigation, and regulatory fees to cover or help cover the costs connected therewith.
- x. To any extent not covered elsewhere in this Ordinance to exercise its oversight that the annual Compliance Report required under the Tribal-State Compact is submitted each year, including the authority to access and copy any records, media, or data of the Gaming Enterprise necessary to do so. The preparation and submission of the Compliance Report may be delegated to the Executive Director, who shall prepare it in conjunction with the Commission staff.
- y. To exercise oversight of the operation of surveillance systems in each Gaming Facility so long as that responsibility remains with the Commission. If the Tribal Council subsequently assigns the operation of surveillance systems to the Gaming Enterprise, the Commission shall receive timely reports of all observations from the Gaming Enterprise relevant to the fulfillment of the Commission's duties under this Ordinance, Commission regulations, federal law, or any Tribal-State Compact.
- z. The Commission does not have the authority to award severance or similar payments to any Commissioner, Commission employee, or other Person upon separation of employment.

2. The following powers and duties are delegable and may be performed, or as appropriate overseen, by the Executive Director. All delegations listed below are presumed to be in force unless revoked or modified by the Commission by regulation or resolution.

- a. To inspect and examine all Gaming Facilities to ensure that they are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety as required by Sections 6(C) and 15(C) of this Ordinance.
- b. To enforce compliance with internal control standards not less stringent than those lawfully required under this Gaming Ordinance and any regulations promulgated hereunder, under a Tribal-State Compact, and under IGRA and its lawful implementing regulations.
- c. On the bases set forth in this Ordinance and other applicable law, the Executive Director may:
 - i. make the decision to grant or deny a License application (other than a Facility License) and to immediately suspend a License under Section 16(B)(2), which decisions are subject to appeal to and hearing by the Commission; *provided*, however, that a

license denial shall not be considered a final Commission action until any applicable federal requirements regarding an applicant's right to review and correct background investigation information have been satisfied;

- ii. recommend to the Commission that a License be suspended (beyond an immediate suspension under Section 16(B)(2)) or revoked;
 - iii. grant or revoke a temporary license, which decision is not subject to hearing and appeal.
- d. The Executive Director may in turn delegate the gathering of information necessary to the licensing process to Commission staff and may consider the recommendations of staff in making the ultimate decision, but the Executive Director may not delegate the licensing decision itself.
 - e. To conduct background investigations regarding any Person required to have a License or permit, or as otherwise authorized, by this Ordinance or applicable law.
 - f. To serve as the Tribal Gaming Agency for purposes of implementing any Tribal-State Compact, to make such reports regarding Class III gaming to the State Gaming Representative as required by the Tribal-State Compact, and to inspect and make copies of New Mexico state records concerning all Class III gaming conducted under this Gaming Ordinance.
 - g. To inspect, examine, photocopy, and audit all papers, books, and records regarding gaming activities conducted by the Gaming Enterprise or any Person within the Reservation and any other matters as necessary to carry out the duties of the Commission under this Gaming Ordinance, federal law, or the Tribal-State Compact.
 - h. To record and investigate any suspicion of wrongdoing or unusual circumstances related to any Gaming Activity.
 - i. To conduct or cause to be conducted such investigations into the activities of the Gaming Enterprise, Gaming Employee, vendor, or any Person as may be necessary to determine, in connection with any Gaming Activity, compliance with law, including this Gaming Ordinance, with the Tribal-State Compact, or with any contracts or agreements related to gaming activities.

- j. To collect License, investigation, background, and regulatory fees to cover or help cover the costs connected therewith.
- k. If a Commissioner is not keeping the record, to keep or cause to be kept minutes, records, and books in which shall be kept a true, faithful, and correct record of all proceedings of the Commission.
- l. To manage, hire, and fire all employees of the Commission consistent with applicable laws, regulations, policies, and procedures, *provided* that the Commission may not employ any Person who would be disqualified from being a Commissioner under one or more of the prohibitions in Section 8(E) below.
- m. To take action as may be reasonable and appropriate to enforce this Gaming Ordinance and the rules and regulations of the Commission, including the reasonable application of this Ordinance to any Class II and Class III Gaming Activities that may be authorized in the future.
- n. To fulfill the reporting requirements of federal law or the Tribal-State Compact.
- o. To monitor the Gaming Enterprise's compliance with the Tribal-State Compact.
- p. To impose civil penalties as permitted by this Gaming Ordinance.
- q. To submit quarterly and annual financial reports to the Tribal Council, with such oversight and approval by the Commission as deemed appropriate by the Commission.
- r. To submit an annual report to the Tribal Council and Governor on the activities of the Commission. Such reports must include information on the funding, revenues, and expenses of, and licensing and disciplinary actions taken by, the Commission. This delegation expressly is subject to such oversight and approval by the Commission as deemed appropriate by the Commission.
- s. To manage the operation of surveillance systems in each Gaming Facility so long as that responsibility remains with the Commission. If the Tribal Council subsequently assigns the operation of surveillance systems to the Gaming Enterprise, to manage the regulation of those surveillance systems and the processing of surveillance information and reports received from the Gaming Enterprise.

C. Procedure for the Promulgation of Regulations. Where the Commission is authorized to promulgate regulations, the following procedures shall be followed:

1. The Commission shall first hold an informational meeting with the Gaming Enterprise Board and General Manager (or their designated representatives) to discuss the purpose of the proposed regulation and its substantive content. The Gaming Enterprise Board and General Manager shall be given an opportunity to advise the Commission of any policy concerns. The Commission shall provide a timely written notification to the Tribal Administration of this meeting in advance and Pueblo representatives, including Tribal Council members, may attend.

2. After the Gaming Enterprise Board and General Manager have had an opportunity to advise the Commission of any concerns, the Commission shall take into consideration any concerns raised and shall put the proposed regulation in a form for formal circulation and comment. At a minimum, the proposed regulation shall be provided to the Gaming Enterprise, Gaming Enterprise Board, General Manager, Governor, and Tribal Council, and to each party known by the Commission to be directly affected by the proposed regulation (other than patrons and Gaming Enterprise employees and applicants for such employment), and copies of the proposed regulation shall be posted at the tribal administration offices, at the Gaming Enterprise Board's office, and at each Gaming Facility. The Commission shall allow a minimum of fourteen (14) calendar days for comment.

3. The Commission may receive comments from all interested parties. After considering all comments and making any revisions it deems appropriate, the Commission shall publish the regulation in final form by posting a copy of the final regulation in the tribal administration offices and by sending a copy of the final regulation to the Governor, the Gaming Enterprise Board, and the General Manager, and to each party known by the Commission to be directly interested in the subject of the proposed regulation (other than patrons and Gaming Enterprise employees and applicants for such employment).

4. The regulation shall become final on a date set by the Commission but not earlier than fourteen (14) calendar days after posting and circulation as specified in Section 8(C)(3) above.

5. Copies of all regulations enacted by the Commission shall be kept in the Commission's offices for public inspection and copying during normal office hours, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Actions by the Tribal Council, including copies of all resolutions involving gaming or which affect gaming, shall be kept with documents in the Commission offices showing tribal laws and regulations in effect. All regulations enacted by the Commission and gaming-related resolutions adopted by the Tribal Council shall be available to the public upon request and, if physical copies are requested, for a reasonable charge. Regulations adopted by the Commission in accordance with this Ordinance are, and shall have the force of, tribal law.

6. The Tribal Council, after consultation with the Commission, shall have the power, prior or subsequent to the effective date of the regulation, to modify or rescind any regulation in writing. If a regulation is already in effect, the Commission shall have a

reasonable time to promulgate an alternative provision before the Tribal Council's rescission shall take effect.

7. Notwithstanding the foregoing subsections, if the Commission determines that a regulation must be promulgated immediately to protect the public safety or to maintain the legality of gaming activities by the Gaming Enterprise, such regulation shall become effective upon posting in the locations listed in Section 8(C)(2). The Commission shall, within two (2) business days of promulgating an emergency regulation under this subsection, commence the normal promulgation procedures under subsections 1-6 for the proposed permanent regulation. An emergency regulation shall expire thirty (30) calendar days after the close of the comment period on the proposed permanent regulation under Section 8(C)(3) unless sooner withdrawn or replaced by the Commission.

D. **Composition.** The Commission shall consist of three (3) Commissioners appointed by the Tribal Council after consideration of the recommendation of a selection committee appointed by the Governor, who may also participate in the interview process. Commissioners shall serve staggered three (3) year terms unless a Commissioner earlier resigns or is terminated under Section 8(G). A Commissioner may be reappointed to multiple terms by the Tribal Council. A Commissioner whose term ends may continue to serve until reappointed by the Tribal Council or until the Tribal Council selects another Commissioner for that seat. A Commissioner who resigns may continue to serve until a new Commissioner is appointed by the Tribal Council. A Commissioner who is terminated under Section 8(G) shall serve until the effective date of termination agreed upon by the Tribal Council. The Tribal Council or, in an emergency situation the Governor, may appoint one or more interim Commissioners while the process of selecting permanent Commissioner(s) is conducted. To maintain staggered terms, to develop the requisite expertise, and to preserve continuity on the Board, any Commissioner appointed by the Tribal Council to fill a vacant seat with less than eighteen months remaining shall be appointed for the remainder of that term and the entirety of the next three-year term.

E. **Qualifications of Commissioners.** No Person shall be eligible or qualified to serve, or continue to serve, as a Commissioner who:

1. Has been convicted of any felony or of any crime involving gaming, dishonesty, or moral turpitude;
2. Is a member of the Tribal Council or would be a member of the Tribal Administration, a Tribal Administrator, a member of the Gaming Enterprise Board, or an employee of a Gaming Operation while serving as a Commissioner;
3. Has any financial interest in, or responsibility for, any Gaming Activity (except that marriage or domestic partnership to an individual who is an employee or Primary Management Official of the Gaming Enterprise may be permitted if disclosed to the Governor and Tribal Council);

4. Has any financial interest in, or responsibility for, any gaming-related contract between any Person and the Pueblo, Gaming Enterprise, or Commission;

5. Has engaged in any conduct that would be detrimental to the integrity, reputation, or best interests of the Pueblo, the Commission, or the Gaming Enterprise; or

6. Is an employee of the Commission while serving as a Commissioner.

F. Licensing of Commissioners. Each Commissioner appointed by the Tribal Council must submit a License application to the Commission as provided in Section 11. No Commissioner may begin service without a License, *provided* that a Commissioner may begin service upon the issuance of a temporary License. Upon conclusion of the required background investigation and after making its suitability determination, the Commission shall grant or deny a License. If a License application is denied, the selection committee shall select another Commissioner. The Governor, together with the other members of the Tribal Administration, may review the background investigation material gathered by the Commission, *provided* that each such Administration official shall first sign a confidentiality agreement (or any other agreement required by an applicable federal agency) expressly agreeing that he shall not disclose the background information to any other Person.

G. Termination of Commissioners. A Commissioner may be terminated only as follows:

1. **Termination Without Cause.** A Commissioner may be terminated by the Tribal Council at any time, without cause, upon written notice. Upon direction from the Tribal Council, the Governor shall provide written notice of the termination to the Commissioner and the Commission, which notice shall state the effective date of the termination.

2. **Termination for Cause.**

a. Termination of a Commissioner for cause shall be initiated by the Governor, with written notice to the Commissioner and the Commission, specifying the cause for termination.

b. Cause for termination shall be limited to:

i. conviction in any court of any felony or other crime involving gaming, dishonesty, or moral turpitude;

ii. conviction for a violation of the laws of the Pueblo, another tribe, any state, the United States, or any foreign sovereign in some respect that casts doubt on the Commissioner's fitness to continue in office;

iii. failure to meet or maintain the qualifications for Commissioners set forth in Section 8(E);

- iv. gross neglect of duty;
 - v. malfeasance in office, or conduct which amounts to intentional disregard of the laws and procedures applicable to the affairs of the Commission;
 - vi. conduct in or out of office detrimental to the integrity, reputation, or best interests of the Pueblo, the Commission, or the Gaming Enterprise; or
 - vii. other good cause shown.
- c. The Governor shall refer the proposed termination to the Tribal Council for final action. Before final action is taken by the Tribal Council, the Commissioner shall be given a full opportunity to appear before the Tribal Council to answer or otherwise respond to any and all allegations against him or her. A Commissioner may be suspended with pay by the Governor pending the meeting with the Tribal Council. The Tribal Council may reinstate or terminate the Commissioner. Under no circumstances may the Tribal Council authorize the payment to a Commissioner terminated for cause the value of the unearned stipend for the uncompleted balance of the Commissioner's term or any other monetary or other compensation unearned as of the date of final termination.
 - d. To terminate a Commissioner for cause, the affirmative action of a consensus of the members of the Tribal Council present at such meeting is required.

H. Resignations and Vacancies. Any Commissioner may resign at any time by giving written notice to the Commission and to the Governor on behalf of the Tribal Council. The resignation shall become effective at the time specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. A Commissioner who resigns may receive no form of severance payment, including payment of unearned stipend payments. Any vacancy on the Commission, howsoever caused, shall be filled in accordance with this Ordinance.

I. Selection of Officers. At the first meeting of the Commission after a new Commissioner is fully licensed, roughly annually thereafter, or at the request of any Commissioner, the Commission shall select by majority vote one of its members to serve as Chair, one of its members to serve as Vice Chair, and one of its members to serve as Secretary. By a majority vote, the Commission may change the officer selections for the remainder of the annual term, but each Commissioner must serve as an officer. The Vice Chair shall serve as Chair during meetings of the Commission at which the Chair is absent.

J. Motions and Resolutions; Meetings; Quorum.

1. Except as otherwise provided herein or as sound regulatory practice may require under the circumstances, all official actions required to be taken by the full Commission shall be taken by motion or resolution approved by the affirmative vote of a majority of the Commission members present at a meeting with a quorum.

2. Two members of the Commission shall comprise a quorum for all purposes under this Gaming Ordinance, including but not limited to hearings and public meetings conducted under this Ordinance.

3. The Commission shall hold at least one regular meeting each month. Regular meetings may be held upon such notice, or without notice, and at such time and place as shall from time to time be fixed by the Commission. Unless otherwise specified by the Commission, no notice of such regular meetings shall be necessary.

4. Special meetings of the Commission may be called by any Commissioner, who shall fix a time and place for the special meeting acceptable to all Commissioners not to exceed seven calendar days.

5. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Commission need be specified in the notice of the meeting.

6. When circumstances require, a resolution may be approved by polling the Commissioners without a meeting and shall be recorded in writing, including by electronic mail or similar means. Any such action shall be reviewed at the next meeting of the Commission, either confirmed or rescinded by majority vote, and incorporated into the meeting minutes.

K. Cooperation with Other Law Enforcement Agencies. The Commission may cooperate with law enforcement officials of the State of New Mexico, the Bureau of Indian Affairs, the Federal Bureau of Investigation, and other law enforcement agencies, when such cooperation is in the best interests of the Pueblo and will help to insure that fair, honest, and efficient Games of Chance are operated and conducted within the Reservation.

L. Compensation for Service; Reimbursement of Expenses. Commissioners shall be paid a stipend for serving on the Commission in an amount to be determined by the Tribal Council. The Tribal Council shall give three (3) months' advance written notice if the stipend is to be decreased. Commissioners shall additionally be reimbursed for reasonable expenses incurred in connection with the performance of their Commission duties at the rate at which such expenses are customarily reimbursed. Upon resignation, termination, or death, Commissioners are not entitled to any severance or other compensation.

SECTION 9. Executive Director

A. Appointment. The Commission shall hire an Executive Director, who shall serve at the will and pleasure of the Commission. The Executive Director may not also simultaneously

be a member of the Tribal Council, an officer or official of the Pueblo, or a Commissioner. Before appointing the Executive Director, the Commission shall conduct a background investigation of the proposed appointee using the standards in this Ordinance.

B. Qualifications. The Executive Director shall:

1. Have at least five (5) years of relevant education and/or experience, subject to exception for good cause, in public administration, business management, law, gaming, or a combination thereof;

2. Not have been convicted of any felony or of any crime involving gaming, dishonesty, or moral turpitude; and

3. Not have, directly or indirectly, a financial interest in, or a business relationship with, any Person licensed under this Ordinance (except that marriage or domestic partnership to an individual who is an employee or management official of the Gaming Enterprise may be permitted if disclosed to the Commission and the Gaming Enterprise).

C. Salary. The Executive Director shall be paid an annual salary in the amount specified by the Commission and approved in the Commission's budget or otherwise in writing by the Tribal Council.

D. Staff. The Executive Director shall employ Persons who possess training and experience in the fields of investigation, law enforcement, accounting, information technology, law, and gaming to assist in carrying out all powers and perform all duties assigned to the Executive Director under this Gaming Ordinance, *provided* that the Executive Director may not retain legal counsel or an outside accountant without the prior approval of the Commissioners.

E. Powers and Duties. Subject to the oversight of the Commission, the Executive Director shall manage the day-to-day activities of the Commission and, except as otherwise provided herein or in duly adopted resolutions of the Commission, exercise the powers and perform the duties of the Commission, and shall administer and enforce the Commission's duties and responsibilities under this Gaming Ordinance. The Executive Director shall oversee the Commission staff, conduct or direct investigations, and otherwise act on behalf of the Commission as authorized by the Commission. The Executive Director shall be responsible for coordinating the functions of the Commission and other federal, state, and local agencies as necessary.

F. Conflict of Interest. If the Commission determines that the Executive Director has a conflict of interest with respect to any duty delegated to the Executive Director, it may delegate that duty to another Commission employee.

**SECTION 10. San Felipe Pueblo Gaming Regulatory
Commission's Relationship to Tribal Government.**

A. Agency of Tribal Government.

1. The Commission shall be an independent agency of the Tribal Government. As such, the internal financial and human resources operations of the Commission shall be governed by policies and procedures approved by the Commission. To the greatest extent consistent with the Commission's mission and regulatory responsibilities, the Commission shall mirror the Pueblo policies approved by the Tribal Council, including approved amendments thereto. Once approved by the Commission, the Commission's policies shall be forwarded within seven days to the Tribal Council. The Tribal Council may rescind the Commission policies within sixty days of receipt and shall explain its reasons for rescission in writing to the Commission, at which point the policies shall cease to be effective. To conserve the resources of the Pueblo, to promote consistency within Tribal Government, and to minimize duplication of functions, the Commission may make use of the administrative resources of the Pueblo but shall retain all managerial and supervisory control over all matters for which Pueblo resources are used.
2. The Tribal Council is committed to ensuring that the Commission's regulatory activities, which are essential to the integrity of gaming, are free of political and personal considerations. Consistent with the Pueblo's traditional form of governance, the Tribal Council recognizes that the Governor may have occasion to consult with the Commission.
3. The Commission is the Tribal Gaming Agency for purposes of any Tribal-State Compact.

B. Independent Decision-Making Authority. Because the Commission is an independent regulatory agency of Tribal Government, the decisions of the Commission and/or its Executive Director regarding licensing, suitability, compliance with applicable law, and other regulatory matters shall be within the exclusive province of the Commission, *provided* that any Person or entity adversely affected by a final decision of the Commission and/or its Executive Director, including, but not limited to a patron, regulated vendors, the Gaming Enterprise, or any Gaming or Non-Gaming Employee of the Gaming Enterprise, may petition the Tribal Court for review of such decision as allowed by this Ordinance and in accordance with Section 20 below.

1. **Budget.** The Commission shall comply with the requirements of the Tribal Administration in the timing and method for preparing the budget for Tribal Council review. Within the annual budget approved by the Tribal Council, the Commission may transfer funds from one line item to another to meet changing or unanticipated needs. The Tribal Council shall determine the disposition of any surplus remaining at the end of a budget year.

2. **Human Resources.**

- a. Personnel Policies. The Commission's personnel policies shall mirror to the greatest extent consistent with the Commission's mission and regulatory responsibilities the policies applicable to all other Pueblo employees, provided that modifications shall be made to provisions specific to gaming regulatory personnel or activities, or otherwise required by tribal or federal law or the Compact. They shall also provide for an appeal to a body of greater authority than an immediate supervisor, and shall provide specifically that:
 - i. the Tribal Council shall direct the investigation and serve as the sole appellate body for any grievance or complaint against a Commissioner;
 - ii. the Commission shall investigate and serve as the primary appellate body for any employment action regarding Commission staff taken by the Executive Director or any grievance or complaint against the Executive Director;
 - iii. any grievance or complaint presented to the Pueblo or the Commission regarding a Commissioner be directed to the Tribal Council, with a copy to the Governor and the other Commissioners.
 - iv. any grievance or complaint presented to the Pueblo, including the Tribal Administration, regarding the Executive Director or other Commission staff, be directed to solely to the Commission.
 - v. the decision of the Tribal Council under subparagraph i and the decision by the Commission under subparagraph ii shall be final and nonappealable.
- b. Compensation. The salary and bonuses of the Executive Director and other Commission staff shall be established by the Commission in accordance with the annual budget.

SECTION 11. Licensing.

A. Licenses Required.

As detailed further in this subsection, Persons with a significant nexus to Gaming Activity, Gaming Revenues, or Gaming Systems must be licensed by the Commission.

1. **Gaming Commissioners and Commission Staff.** Each member of the Commission and its staff shall be licensed by the Commission, and be subject to a background

investigation. The licensing requirement for “Commission staff” shall not include persons employed by or detailed to the Commission who have neither a substantive role in licensing or in regulation of Gaming Activity, nor physical, electronic, or other access to sensitive gaming information, as determined by the Commission.

2. **Gaming Facility.** Each place, facility, or location within the Reservation where the Pueblo elects to allow Class II or Class III Gaming shall be licensed by the Commission. Prior to issuance of a License to a Gaming Facility, the Commission shall:

- a. Comply with the requirements of 25 C.F.R. Part 559.
- b. Determine that the facility is constructed in conformance with all applicable building and safety codes.
- c. Determine that security and surveillance systems are in place to adequately provide for the safety and security of employees and patrons and for the protection of Gaming Revenues and other tribal assets.
- d. Ensure that all Gaming Employees are properly licensed and that the facility is otherwise in compliance with all applicable gaming laws and regulations.

3. **Gaming Enterprise Board Members.** Each member of the Gaming Enterprise Board shall be licensed by the Commission and subject to a background investigation.

4. **Gaming Employees.** Each Gaming Employee shall be licensed by the Commission and subject to a background investigation, including follow-up background investigations at the discretion of the Commission or Executive Director.

5. **Management Contractors.** All Management Contractors, including their Principals, Primary Management Officials, Key Employees, shareholders having in excess of five percent (5%) ownership, Persons with management responsibility under a Management Contract as defined in 25 C.F.R. § 502.18, and Persons with a financial interest in the Management Contract as defined in 25 C.F.R. § 502.17 shall be licensed by the Commission and subject to background investigations; *provided however*, that with respect to the financial interest category, the Commission may provide an exemption to a national bank or an institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state, or may reduce the scope of the information to be furnished and the background investigation to be conducted of such an entity.

6. **Sales of Gaming Devices, Equipment or Services.** Any Person proposing to sell or lease any device or supplies used in Gaming Activity or to provide Gaming Services to the Gaming Enterprise or any other Person shall be licensed by the Commission and subject to a background investigation before being permitted to sell or lease any devices or supplies used in Class II or Class III gaming, or to provide any Gaming Services to the Gaming Enterprise, Gaming Facility, or Management Contractor.

7. **Sales of Non-Gaming Goods or Services.** Any Person proposing to provide any non-gaming goods or to provide non-gaming services to the Gaming Enterprise and to be paid from Gaming Revenues may be licensed or permitted by the Commission and subject to a background investigation before being allowed to provide those goods or services; *provided*, however, that the Commission shall by regulation establish the licensing and permitting requirements for such vendors and contractors in a manner calculated to balance the burdens, risks, and benefits of licensing or permitting. In those regulations, the Commission shall establish an exemption process for both licenses and permits based on factors designed to assess and reflect the potential threat to Gaming Revenues.

8. **Lenders, Investors, and Providers of Financial Services.** Lenders, investors, and providers of financial services, and such agents, employees and major shareholders of such Person as required by the Commission, shall be licensed by the Commission and subject to background investigation; *provided* that this provision shall not apply to the Pueblo, its officers, and the Tribal Council if the Pueblo serves as a lender, investor, or provider of financial services; *provided further* that the Commission may conclude that a lender, investor, or provider of financial services is sufficiently regulated by other governmental agencies such that licensing by the Commission would be duplicative and overly burdensome.

9. **Other Licenses.** The Commission may by regulation require that other categories of persons be licensed upon a written determination that the risk to any Gaming Activity or Gaming Revenues of not licensing such persons substantially outweighs the burdens of the licensing process on the Persons, the Gaming Enterprise, and the Commission.

10. No Person who must have a license may engage in any activity that requires a license until a license (including a temporary license when available) is approved by the Commission. Any Person who engages in unlicensed activity, or who contracts with or otherwise engages an unlicensed Person, is in violation of this Ordinance.

B. **License Application.** Each applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, along with (as applicable) the applicant's fingerprints, current photograph, and any fees required by the Commission. At a minimum, the application form shall contain all of the following information and requests for information:

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

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 (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, key employee, or other gaming-related position or service.

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

2. Any currently licensed Persons required to be licensed by Section 11(A) above whose licensing process did not include a required notice of the Privacy Act shall be notified in writing that they shall either:

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

3. A notice ("False Statement Notice") complying with NIGC regulations shall be placed on the application form before that form is filled out by any applicant, currently:

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).

4. The Commission shall notify in writing any Persons required to be licensed whose licensing process did not include a required False Statement Notice that they shall either:

a. Complete a new application form that contains a False Statement Notice;
or

- b. Sign a statement that contains the Notice.

5. The Commission shall require from each natural Person required by Section 11(A) above to be licensed all of the following information:

- a. Full legal name, other names used (oral or written), Social Security Number(s), birthdate, place of birth, citizenship, gender, all languages (spoken and written);

- b. Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s); *provided*, that any applicant who is a Primary Management Official, Key Employee, Management Contractor, manufacturer or supplier of Gaming Devices and/or a Person providing Gaming Services, must provide such information for the previous ten (10) years;
- c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Section 11(B)(5)(b) above;
- d. Current business and personal telephone numbers;
- e. A description of any existing or previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between the businesses and Indian tribes;
- f. A description of any existing and previous business relationships with the gaming industry, including 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, and whether or not such License or permit was granted (e.g., withdrawn, suspended, or revoked);
- h. For each felony, or any charge related to gaming, for which there is a conviction or an ongoing prosecution, the charge, the name and address of the court involved, and the date and disposition, if any;
- i. For each misdemeanor for which there is a conviction or an ongoing prosecution (excluding minor traffic violations) within a period determined by the Commission that is not less than that required by applicable law (*see* 25 C.F.R. § 556.4(a)(9)), the name and address of the court involved, and the date and disposition, if any;
- j. For each criminal charge (excluding only minor traffic charges but expressly including any alcohol-related traffic charge), whether or not there is a conviction, if such criminal charge occurred within a period determined by the Commission that is not less than that required by applicable law (*see* 25 C.F.R. § 556.4(a)(10)) and is not otherwise listed pursuant to Section 11(B)(5)(h) or Section 11(B)(5)(i), the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

- k. The name and address of any licensing or regulatory agency with which the Person has filed an application for an occupational license or permit and whether or not such application for a license or permit was withdrawn or granted, or whether a resulting license lapsed, was suspended, or was revoked;
- l. A current photograph;
- m. For natural Persons requiring a license under Section 11(A)(5), a complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and
- n. Fingerprints shall be taken by the Commission, consistent with 25 C.F.R. § 522.2(h), or by any other qualified law enforcement agency as may in the future be identified in writing by the Commission to the NIGC;
- o. The fee required by the Commission; and
- p. Any other information which the Commission deems relevant, including additional criminal, employment, or financial information beyond a time period or scope identified above as required to make a sound licensing decision.

6. For entities that are not natural Persons and that require a License under Section 11(A), the Commission reasonably shall determine the information the entity must provide in its application in order for the Commission to conduct a background investigation and make an eligibility determination, *provided however*, that for entities having a financial interest in a Management Contract, the information required shall comply with 25 C.F.R. § 537.1(c) unless modified by the Commission under the proviso in Section 11(A)(5).

C. Background Investigations to Determine Licensing Eligibility.

1. Upon receipt of a completed application and required fee for licensing, the Commission shall conduct or cause to be conducted a background investigation complying with NIGC regulations sufficient to make an eligibility determination for the applicant to qualify for licensing.

2. To make a finding concerning the eligibility for licensing, background checks of applicants will be performed on the applicant's prior activities, any criminal record, reputation, habits, finances, and associations pursuant to the following procedures:

- a. The Commission will provide applications to applicants upon request, and shall collect and maintain the complete application files as required by Section 11(C)(6).

- b. Fingerprints shall be taken pursuant to Section 11(B)(5)(n) above. The NIGC (or another designated agent accepted in writing) will obtain a criminal history record from the Federal Bureau of Investigation (if available) on each applicant and forward such information to the Commission.
- c. The Commission shall investigate the information provided in the applications. This investigation will include:
 - i. contacting Persons identified in the application and verifying by written or oral communication that the information contained in the application is accurate;
 - ii. interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Commission to make a determination concerning whether the applicant meets applicable eligibility requirements;
 - iii. reviewing relevant financial records of the applicant covering a time period commensurate with the nature of the application, as established by the Commission by regulation and policy, including the right to request additional information when warranted;
 - iv. contacting any state, federal, or other government agency that is referred to in the application; and
 - v. reviewing relevant, available criminal history information.
- d. The Commission shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under this Ordinance. The Commission shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
- e. The Commission will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Commission will perform additional investigation.

3. In conducting a background investigation, the Executive Director, Commission staff, the Commission, and the agents of each shall keep confidential the identity of each Person interviewed in the course of the investigation.

4. The Executive Director, on his or her own initiative or at the direction of the Commissioners, shall retain the right to conduct or have conducted additional background investigation of any Person required to be licensed at any time while the License is valid.

5. If, in the course of a background investigation, the Commission discovers that the applicant has a Notice of Results on file with the NIGC from a prior investigation and the Commission has access to the earlier investigative materials (either through the NIGC or the previous tribal investigative body), the Commission may rely on those materials and update the investigation and investigative report under 25 C.F.R. § 556.6(b)(1).

6. The Commission shall retain gaming license applications, eligibility determinations, and any background investigation reports for no less than five (5) years from the date of separation of employment, the termination of a relevant contract, or an adverse eligibility determination or license decision, which materials shall be available for inspection by the Chair of the NIGC or the Chair's designee.

7. Once the investigation is complete, the Executive Director, pursuant to delegation, will decide whether the applicant meets the eligibility criteria under this Ordinance and applicable law ("Eligibility Determination," see Subsection (E)).

8. All background investigations and reports shall remain confidential unless disclosure is otherwise required by applicable law.

D. Procedures for Preparing and Forwarding Applications and Reports.

1. When a Key Employee or Primary Management Official begins work at the Gaming Enterprise authorized by an applicable Tribal-State Compact, this Gaming Ordinance, and other Pueblo law, the Commission shall, if required by federal law, forward a completed application to the NIGC, and also to the State Gaming Representative, if required by a Tribal-State Compact.

2. If required by NIGC regulation or as the Commission otherwise deems appropriate, within sixty (60) calendar days after an employee begins work the Commission shall forward the Notice of Results referred to in Section 11(D)(5) to the NIGC, providing, if required by a Tribal-State Compact, a copy or notice thereof to the State Gaming Representative.

3. A Gaming Enterprise or Gaming Operation shall not employ a Key Employee or Primary Management Official who does not have a license after ninety (90) days.

4. The Commission shall prepare a report on each background investigation ("Investigative Report"). An Investigative Report shall include at least all of the following:

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

5. At a minimum for Key Employees and Primary Management Officials, the Commission shall prepare a “Notice of Results” in accordance with 25 C.F.R. § 556.6(b)(2), or in any subsequent form required by the NIGC, for submission to the NIGC, which shall include at least:

- a. Applicant’s name, date of birth, and social security number;
- b. Date on which applicant began or will begin work as key employee or primary management official;
- c. A summary of the information presented in the Investigative Report, which shall at a minimum include a listing of:
 - (i) Licenses that have previously been denied;
 - (ii) Gaming licenses that have been suspended or revoked, even if subsequently reinstated;
 - (iii) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and
 - (iv) Every felony of which the applicant has been convicted or any ongoing prosecution.
- d. A copy of the Eligibility Determination made under Section 11(E)(4)-(5).

6. If a License is not issued to an applicant, the Commission shall notify and forward a copy of the Eligibility Determination and Notice of Results to the NIGC, and will provide any notification required by a Tribal-State Compact to the State Gaming Representative.

E. Granting a Gaming License; Standards.

1. Temporary License. Within twenty (20) calendar days of the receipt of a completed application for licensing, and upon written request of an applicant, the Commission may issue a 90-day Temporary License to the applicant, unless the background investigation

undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application, *provided* that the Executive Director may grant a Temporary License upon receipt of a License application that does not require denial on its face, subject to confirmation of that grant by the Commission at its next meeting.

2. Temporary License – Limited Validity. The Temporary License shall become void and be of no effect upon either:

- a. The issuance of the License; or
- b. The issuance of a notice of denial; or
- c. The end of the Temporary Licensee's employment by the Gaming Enterprise; or
- d. Unless lawfully extended, ninety (90) calendar days after the Temporary License is issued;

whichever occurs first.

3. After the Commission prepares an Investigative Report under Section 11(D)(4) and provides a Notice of Results under 11(D)(5) to the NIGC when required, it may proceed to grant or deny a License under 11(E)(4)-(5).

4. The Commission shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility or suitability of an applicant, or a Principal, Key Employee or Primary Management Official of an applicant, for licensing or involvement in the Gaming Enterprise. The Commission shall consider any objections or other information already received from the NIGC or the State Gaming Representative, as appropriate, in making a final licensing determination. The Commission shall either issue a License or deny the application. If the Commission determines that employment or involvement of the applicant poses a threat to the public interest, or to the effective regulation of gaming, or creates or enhances the danger of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, the Commission shall deny the application.

5. The Commission may issue a License to any Person:

- a. Who has provided a complete and accurate application and complied fully with any and all requests by the Commission for information concerning the background and activities of the applicant;
- b. Who, if a natural Person,

- i. is connected directly with the conduct or management of Class III gaming, has attained the age of twenty-one (21) years;
 - ii. is connected directly with the conduct or management of Class II gaming only, has attained the age of eighteen (18) years;
- c. Who is not a Person whose prior activities, criminal record, if any, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the danger of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;
- d. Who has not attempted to interfere or to influence, and has not interfered or influenced, for personal or business gain or advantage, any decision or process relating to gaming or the government of the Pueblo;
- e. Who has not knowingly and willfully provided materially false statements or information to the Commission, the Gaming Enterprise, or the Pueblo; and
- f. Who, if a natural person with a direct or indirect financial interest in, or having management responsibility for, a Management Contract:
 - i. is not a member of the Tribal Council;
 - ii. has not been convicted of any felony or any misdemeanor gaming offense; or
 - iii. has not deliberately or substantially failed to follow the terms of a management contract or this Gaming Ordinance.

6. When the Commission issues a License to a Principal, Key Employee, or Primary Management Official, it shall notify the NIGC (and the State Gaming Representative, if applicable) within thirty (30) calendar days.

7. If within thirty (30) calendar days after the NIGC receives a Notice of Results referred to in Section 11(D)(5), the NIGC (or the State Gaming Representative, if applicable) has notified the Commission that it has one or more objections regarding a Principal, Key Employee or a Primary Management Official, the Commission shall reconsider any License already issued to such Person and initiate suspension or revocation proceedings if required by federal regulation or deemed appropriate by the Commission, but the Commission retains ultimate decision authority. If it receives such objections regarding a Licensee who is not a

Principal, Key Employee, or Primary Management Official, the Commission may reconsider the grant of a License to that Person and initiate revocation proceedings if deemed appropriate.

8. The Commission shall respond to any request for additional information from the NIGC or the State Gaming Representative concerning a Principal, Key Employee, or Primary Management Official, as required by applicable law and the Compact or as deemed appropriate by the Commission.

F. **Fees for Licensing.** The schedule of fees for gaming Licenses and background investigations shall be set by the Commission from time to time and made available to the public at any time upon request. Payment in full of any required fee is required before a License is processed.

G. **Duration and Renewal of Licenses.** Unless surrendered, suspended, or revoked, all Gaming Licenses issued by the Commission (other than Temporary Licenses) shall be valid for a period of one to three (3) years from the date of issuance. The Commission shall set the term of Licenses by regulation, *provided* that the term shall not vary by individual License but may vary by category of License. In the absence of a Commission regulation regarding the term of a category of Licenses, the term shall be three (3) years. Any employee applying for renewal of a License who has submitted the required application and any other information required by the Commission at least sixty (60) calendar days before the expiration of the License may continue to be employed under the expired License until the Commission or NIGC, if required by IGRA, takes final action on the renewal application. Any Person renewing a gaming License shall provide updated material and information as requested on the renewal application form but shall not be required to resubmit accurate and complete historical data already provided to the Commission.

H. **Notification of Current Address.** It is the responsibility of each Licensee to ensure that the Commission is informed of any change in his, her, or its current address. As provided in Section 4(B)(2), the Commission is entitled to rely on the last reported address for purposes of providing service or notice to a Licensee under this Ordinance and under regulations, policies, and rules of the Commission.

I. **Nature of Licenses; Pueblo Jurisdiction.** A License is a privilege and not a right. A Licensee holds no property interest in a License issued under this Ordinance. By submitting a License application or receiving a License, a person voluntarily enters into a consensual legal relationship with the Commission and Pueblo that necessarily entails an agreement to be bound by Pueblo law and to submit to the jurisdiction of the Pueblo and its Tribal Court.

SECTION 12. Management Contracts.

A. **License Required for Approval of Management Contract.** If the Pueblo or the Gaming Enterprise chooses to enter into any Management Contract(s), all Management Contractors, including their Principals, or shareholders having more than ten percent (10%) ownership, their officers, directors, Key Employees, and other Persons as required by applicable law or the Compact shall be licensed.

B. Contract Requirements. The Pueblo or Gaming Enterprise may enter into a Management Contract covering Class II and/or Class III Gaming Activity only if the Management Contract:

1. Provides that all gaming covered by the contract will be conducted in accordance with IGRA, applicable NIGC regulations, governing tribal law, and any applicable Tribal-State Compact.

2. Enumerates the responsibilities of each of the parties for each identifiable function, including:

- a. Maintaining and improving the Gaming Facility;
- b. Providing operating capital;
- c. Establishing operating days and hours;
- d. Hiring, firing, training, and promoting employees;
- e. Maintaining the Gaming Enterprise's books and records;
- f. Preparing the Gaming Enterprise's financial statements and reports;
- g. Paying for the services of the independent auditor engaged pursuant to Section 14(D) of this Gaming Ordinance and 25 C.F.R. § 571.12;
- h. Hiring and supervising security personnel;
- i. Providing fire protection services;
- j. Setting advertising budget and placing advertising;
- k. Paying bills and expenses;
- l. Establishing and administering employment practices;
- m. Obtaining and maintaining insurance coverage, including coverage for public liability and property loss or damage;
- n. Complying with all applicable provisions of the Internal Revenue Code and regulations;
- o. Paying the cost of public safety services; and

- p. If applicable, supplying the NIGC with all information necessary for the NIGC to comply with the National Environmental Policy Act.

3. Provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

- a. Include an adequate system of internal controls that are satisfactory to the Commission and that are no less stringent than those lawfully required by regulation of the NIGC;
- b. Require the preparation of financial statements in accordance with generally accepted accounting principles;
- c. Be susceptible to audit;
- d. Allow the Gaming Enterprise, the Pueblo, the Commission, and the NIGC to calculate the annual fee under 25 C.F.R. § 514.1;
- e. Permit the calculation and payment of the Management Contractor's fee; and
- f. Provide for the allocation of operating expenses or overhead expenses among the Enterprise, the Management Contractor, and any other user of shared Gaming Facilities, any other shared facilities, and services.

4. Requires the Management Contractor to provide the Gaming Enterprise and the Tribal Council, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports.

5. Requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate members of the Gaming Enterprise Board, the Commission, and the Pueblo Governor, Lieutenant Governor, and their designees, who shall have:

- a. The right to verify the daily gross revenues and income from the Gaming Enterprise; and
- b. Access to any other gaming-related information the Gaming Enterprise, Commission, or Pueblo deems appropriate.

6. Provides for a minimum guaranteed payment to the Pueblo in a sum certain that has preference over the retirement of development and construction costs.

7. Provides an agreed upon maximum dollar amount for the recoupment of development and construction costs.

8. Provides for a term not to exceed the period allowed by IGRA, including any extended period requested by the Pueblo and approved by the Chair of the NIGC.

9. Details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:

- a. Not more than thirty percent (30%) of the Net Revenues of the Gaming Operation if the Chairman of the NIGC determines that such percentage is reasonable considering the circumstances; or
- b. Not more than forty percent (40%) of the Net Revenues if the Chairman of the NIGC is satisfied that the capital investment required and income projections for the Gaming Enterprise require the additional fee.

10. Provides the grounds and mechanisms for modifying or terminating the Management Contract.

11. Contains a mechanism to resolve disputes between:

- a. The Management Contractor and customers, consistent with the procedures in this Gaming Ordinance and the Tribal-State Compact;
- b. The Management Contractor and the Gaming Enterprise; and
- c. The Management Contractor and Gaming Enterprise employees.

12. Indicates whether, to what extent, and how contract assignments and subcontracting are permissible; *provided*, that licensing requirements under this Ordinance and applicable law shall apply regardless.

13. Indicates whether, to what extent, and how changes in the ownership interest in the Management Contractor require advance approval by the Pueblo and Gaming Enterprise; *provided*, that licensing requirements under this Ordinance and applicable law shall apply regardless.

14. Includes a provision that there is no transfer or any type of conveyance of any interest in land or other real property, unless such transfer or conveyance is pursuant to specific statutory authority and clearly specified in writing in the Management Contract.

15. States that the Management Contract shall not be effective unless and until it is approved by the Commission, by the Tribal Council, and finally by the Chair of the NIGC, date of signature of the parties notwithstanding. The effective date shall be on (or after) the date of the NIGC Chair's approval, as evidenced by an NIGC document signed and dated by the Chair.

C. **Standards for Disapproval.** The Commission shall not approve any Management Contract if the Commission determines that:

1. The Management Contractor or any of its individuals required to be licensed by Section 12(A) above is not licensed or is ineligible to be licensed; or

2. The contract does not meet the requirements of this Section 12.

D. **Action by the Commission and the Tribal Council.** The Commission shall, subject to action by the Tribal Council, approve or disapprove a Management Contract within thirty (30) calendar days after it is submitted to the Commission for approval. The Executive Director may extend the 30-day period by not more than thirty (30) calendar days if he or she notifies the Gaming Enterprise, in writing, of the reason for the extension. The Commission shall forward any approved Management Contract to the Tribal Council for its approval.

E. **Submission to the NIGC.** A Management Contract approved by the Tribal Council shall be submitted to the NIGC for approval by the Chair within the time provided in 25 C.F.R. § 533.2 and in compliance with the requirements of 25 C.F.R. § 533.3.

F. **Modification and Revocation of Management Contract.** The Commission, after notice and hearing, shall have the authority to require appropriate contract modifications and, after a reasonable opportunity to cure if appropriate, may void any Management Contract if it determines that one or more provisions of IGRA, NIGC regulations, this Gaming Ordinance, the Compact, or the Management Contract have been violated.

G. **Appeal of Decision of the Commission.** Any person aggrieved by a decision of the Commission under this Section may appeal that decision pursuant to Section 20 of this Gaming Ordinance.

H. **Amendment.** A Management Contract may be amended by following the internal review and approval processes in this Section and through compliance with 25 C.F.R. § 535.1.

I. **Assignment.** A Management Contractor may assign its rights under a Management Contract only if assignment is permitted by the contract, the process specified in the contract is followed, and the assignment is approved by the Chair of the NIGC under 25 C.F.R. § 535.2.

SECTION 13. Providers of Class II and Class III Gaming Machines or Supplies.

A. **Standards.** Within thirty (30) calendar days after the effective date of this Ordinance, if it has not already done so, the Commission shall adopt standards for any and all Class II and Class III gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class II and Class III gaming equipment, devices or supplies within the State of Nevada. Any and all Class III gaming equipment, devices or supplies acquired by a Gaming Operation after the effective date of any applicable Tribal-State Compact shall meet or exceed the standards thereby adopted, and any and all Class III gaming equipment, devices, or supplies utilized by a Gaming Operation in its Gaming Activity as of the effective date of any applicable Tribal-State

Compact shall be upgraded or replaced, if necessary, to comply with such standards, by no later than one (1) year after the effective date of any applicable Tribal-State Compact.

B. **License Required.** Prior to entering into any future lease or purchase agreement for Class II or Class III gaming equipment, the Gaming Enterprise or Gaming Operation shall obtain sufficient information and identification from the proposed seller or lessor and all Persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Commission to License those Persons in accordance with Section 11 above.

C. **Installation.** The seller, lessor, manufacturer, or distributor shall provide, assemble and install all gaming equipment, devices, and supplies for use in any Gaming Activity in a manner approved and licensed by the Commission.

SECTION 14. Gaming Enterprise Financial Practices and Reporting.

A. **Monthly Reports.** On or before the twentieth (20th) day of each month (unless a later date is allowed by the Commission by regulation), the Gaming Enterprise Board (with detail for each Gaming Operation or Gaming Facility) shall file with the Commission and the Tribal Council a financial report for the preceding calendar month showing the amount of Gaming Revenues derived from Gaming Activity, the operating expenses incurred or paid, including the itemized expenses of the Gaming Enterprise Board, and the Net Revenues derived from Gaming Activity. It is the duty of the Gaming Enterprise Board and Gaming Operation to maintain and keep such books and records as may be necessary to substantiate the particulars of each report. If the Gaming Enterprise and/or each Gaming Facility fails to file a report within the time allowed or if a report is not materially accurate and complete, the Commission may impose an appropriate fine or fines. If non-compliance is ongoing, the License of the Gaming Facility may be suspended by the Commission until such time as the deficiency has been corrected.

B. **Maintenance of Books and Records.** Full and accurate books of account, in accordance with generally accepted accounting principles, shall be kept at the places of business of the Gaming Enterprise, showing the condition of the business and all transactions. The Gaming Enterprise Board is authorized to open and maintain bank accounts pursuant to authorized banking resolutions. All books and records shall be maintained for at least five (5) years from the date of creation by the Gaming Enterprise and any other tribal agency holding such records, including:

1. Revenues, expenses, assets, liabilities, and equity for each Gaming Facility, Gaming Operation, and the Gaming Enterprise;

2. Daily cash transactions for each Gaming Facility, including but not limited to transactions relating to each gaming table bank drop box, and gaming room bank;

3. Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

4. Contracts, correspondence, and other transaction documents relating to all vendors and contractors;

5. Records of all tribal, federal, and state gaming enforcement activities;

6. Audits prepared by or on behalf of the Pueblo;

7. Records documenting compliance with the terms of this Ordinance, Commission regulations, the Compact, and other applicable law, including specifically but not limited to all books and records relating to Class III Gaming, as required by 25 C.F.R. § 571.7(c); and

8. Personnel information on all Gaming Enterprise employees or agents, hours worked, employee profiles, and background checks.

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

D. **Audits.** Subject to the approval of the Commission, which approval shall not be unreasonably withheld, the Gaming Enterprise shall retain, at its expense, an outside independent auditor and shall define the scope of work consistent with this Ordinance, NIGC regulations, any other applicable law, and the Tribal-State Compact. The auditor shall be an independent certified public accountant licensed by the New Mexico Public Accountancy Board. The auditor shall prepare an audit and audit report of the financial statements covering at least all gaming-related financial activities of the Gaming Enterprise. The audit report shall include written verification by the independent certified public accountant of the accuracy of the quarterly Adjusted Net Win calculation as required by Section 11(C) of the Tribal-State Compact and shall specify the total amount of patron wagers and total amount of payouts made on winning wagers in Class III Gaming on all Gaming Machines at the Tribe's Gaming Facilities for purposes of calculating Adjusted Net Win. The financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP). The independent certified public accountant shall issue a report on audited financial statements of the Tribe's Gaming Enterprise. The independent certified public accountant shall perform the audit in accordance with generally accepted auditing standards published by the American Institute of Certified Public Accountants, and submit the audited financial statements, along with any reports or management letter(s) the accountant has prepared, to the Commission according to a schedule established by the Commission by regulation. No later than one hundred twenty (120) calendar days after the fiscal year ends, the Commission shall provide copies of the financial statement and audit report to the State Gaming Representative, along with copies of any and all documents the independent certified public

accountant has provided to the Pueblo or the Commission concerning the audit, including but not limited to copies of any and all reports and management letter(s). The auditor shall not less frequently than annually (but more frequently as the Commission may require) report to the Gaming Enterprise Board on the auditor's examination of the books and records of the Gaming Enterprise, including a separate report on spending for the Gaming Enterprise Board, and on the auditor's recommendations with respect to management of the Gaming Enterprise and any failure to comply with applicable law or contractual obligations. The Commission, the Gaming Enterprise Board, Tribal Administration representatives, and the General Manager may participate in the exit review for any audit. Copies of all audits shall be promptly provided to the Governor, the Tribal Council, the Commission, and the Gaming Enterprise Board. Unless no longer required by an applicable Tribal-State Compact or by federal law, the Commission shall provide copies of annual audits to the National Indian Gaming Commission and the State Gaming Representative within the time required.

E. **Audit of Contracts.** All contracts for supplies, services, or merchandise in an amount greater than twenty-five thousand dollars (\$25,000) annually (except contracts for professional legal or accounting services), which contracts relate to gaming activities, shall be subject to annual outside independent certified audits.

F. **Disposition of Net Revenues.** The Net Revenues derived from Games of Chance, after allocation by the Gaming Enterprise Board between surplus reserve of the Gaming Enterprise and dividends or taxes payable to the Pueblo, shall be deposited accordingly on a quarterly basis into the Gaming Enterprise's surplus reserve accounts and into appropriate fund or funds of the Pueblo.

1. Net Revenues, including those deposited into the general fund of the Pueblo, shall not be used for purposes other than:

- a. To fund Pueblo governmental operations and programs;
- b. To provide for the general welfare of the Pueblo and its members;
- c. To promote tribal economic development, including land acquisition;
- d. To donate to charitable organizations; or
- e. To help fund operations of local government agencies.

2. If the Pueblo elects to make per capita payments to Pueblo 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) and 25 C.F.R. Part 290.

SECTION 15. Protection of Visitors.

A. **Liability to Visitors.** The Pueblo or the Gaming Enterprise shall at all times maintain in effect policies of liability insurance insuring the Pueblo and the Gaming Enterprise and their agents and employees against any claims, demands or liability for bodily injury and property damages, made by a visitor, which claims were proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, the Pueblo concludes that the Tenth Circuit's decision in *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018), finally determined that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court. Accordingly, jurisdiction over such claims shall be exclusively in the Tribal Court, unless another court may lawfully exercise jurisdiction. If *Dalley* is overruled or it is otherwise authoritatively determined to be inapplicable, any such claims may be brought in either the Tribal Court, state court, or other court of competent jurisdiction, at the visitor's election, unless and until it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court. Unless no longer required by a Tribal-State Compact, such claims may, at the election of the visitor, be brought in an arbitration proceeding in compliance with the processes set forth in the Tribal-State Compact.

The policies shall provide bodily injury and property damage coverage in an amount specified in an applicable Tribal-State Compact. Such liability limits are subject to increase as set forth in Section 8(H) of the 2015 Compact. The Gaming Enterprise Board shall provide the Commission annually a Certificate of Insurance showing that the Pueblo and the Gaming Enterprise, and their agents and employees, are insured to the extent and in the circumstances required by this Section. The Commission shall provide the State Gaming Representative a copy of each Certificate of Insurance. If the State Gaming Representative so requests in writing, the Certificate of Insurance may be furnished directly to the State Gaming Representative by the insurance carrier or the insuring agency.

B. Specific and Limited Waiver of Immunity.

1. The Pueblo of San Felipe, by entering into a Tribal-State Gaming Compact with the State of New Mexico, waives its defense of sovereign immunity to any extent required by any Tribal-State Compact that is in effect in connection with any claims for compensatory damages to visitors up to the amount of insurance required in Section 15(A) above. This is a limited waiver, does not waive the Pueblo's immunity from suit for any other purpose, and the provision in this paragraph shall be effective only so long as required by a Compact that is in effect. The Pueblo shall ensure that a Policy of Insurance acquired to fulfill the requirements of this Section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured up to the limits of liability set forth in this Section. In any claim brought under the provisions of this Section, the Pueblo's law shall be applied in any Tribal Court action and New Mexico law shall govern the substantive rights of the claimant in any lawful state court action.

2. Nothing in this Ordinance shall be construed as an admission of liability as to any claim for damages or as an agreement or indication of willingness to pay any amount as

damages absent a judicial or arbitral determination of fault, and the Pueblo, the Commission, the Gaming Enterprise Board, the Gaming Enterprise, its insurer(s), or any of them, shall in every instance have the right to fully defend such claims.

C. **Public Health and Safety.** The Commission shall establish for every Gaming Facility on the San Felipe Reservation health, safety, and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code, and the Uniform Plumbing Code, and any and all Gaming Facilities or additions thereto constructed by the Gaming Enterprise or a Management Contractor hereafter shall be constructed and all facilities shall be maintained and operated so as to comply with such standards. Inspections shall be conducted by the Commission with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the Representative may be present during such inspection. The Gaming Enterprise or Management Contractor shall correct any deficiencies noted in such inspections within a reasonable period of time. The Commission shall provide copies of such inspection reports to the Tribal Council and, if requested to do so in writing, the State Gaming Representative.

D. **Patron Dispute Resolution Procedures.** The Policy of the Pueblo is to encourage the resolution of patron disputes at the lowest possible level, and as quickly as possible. Patron disputes are to be resolved in accordance with the procedures in any applicable Pueblo Ordinance or, if directed by resolution of the Tribal Council, in the Commission's regulations.

SECTION 16. Suspension or Revocation of Licenses.

A. Grounds.

1. NIGC Information.

- a. If, after the issuance of a gaming License, the Commission receives from the NIGC reliable information indicating that a Key Employee or a Primary Management Official is not eligible for licensing under Section 11(E)(4)-(5) above, the Commission shall immediately suspend such License and shall provide the licensee with a written notice of suspension and proposed revocation under the provisions of Section 16(B) below and follow the procedures in Section 16(B) through (H) as applicable.
- b. After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming License, and the Commission shall notify the NIGC of its decision within any time allowed by federal regulation.

2. Other Grounds.

- a. If a Licensee makes a false statement in any application for a License, in any statement annexed thereto, or in any response to a request by the

Commission for information; is determined to have engaged in any activity that had not yet occurred or was otherwise unknown to the Commission at the time of licensing which, if known, would have been grounds for disapproval of a License (regardless of whether the activity occurred before or after the licensing process); fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance; falsifies any books or records relating to any transaction connected with the operation or conduct of any Game of Chance; is convicted of any felony, offense relating to gaming, or other offense deemed relevant by the Commission (*provided* that conviction of a DWI offense shall not be a bar to licensing if the conviction occurred more than five (5) years before the license application, and *provided further* that no Licensee who has at any time been convicted of a DWI offense may hold or be licensed for any position requiring that the employee drive a vehicle as part of his or her employment); interferes with, unduly influences, or attempts to interfere or unduly influence any decision or process of the government of the Pueblo relating to gaming; fails to submit to lawful testing for truthfulness; or deliberately or substantially fails to provide information to or answer relevant questions of the Commission or otherwise fails to comply with this Gaming Ordinance or the terms of any License granted pursuant hereto; his or her License may be suspended and, after notice and a hearing before the Commission pursuant to this Section, such License may be revoked. This sanction is in addition to any other sanction which may be imposed under this Gaming Ordinance.

- b. If a Licensee is charged with any crime, whether a felony or misdemeanor, that reflects on the Licensee's honesty or integrity or poses a threat to the public safety (including but not limited to theft, embezzlement, and assault), the Commission immediately may suspend the Licensee's License pending resolution of the criminal charge. The Licensee shall be entitled to a hearing before the Commission regarding the suspension. After resolution of the criminal charge, the Licensee shall notify the Commission of the outcome and may seek to have the suspension lifted. If the charge is dropped or if the Licensee is acquitted, the Commission may lift the suspension without further review. Regardless of the outcome relating to the charge, the Commission may, upon notice, hold a hearing, after which it may lift the suspension, revoke the License, or take other authorized action as appropriate.

B. Notice; Immediate Suspension.

1. Proceedings to suspend or revoke a License shall be initiated by the Executive Director by serving a Notice of Recommended Action upon the Licensee, recommending that the Commission suspend or revoke the Licensee's License.

2. The Executive Director may suspend the License immediately, pending proceedings before the full Commission, if necessary to protect the public welfare. Such an immediate suspension shall take effect upon service of the Notice of Recommended Action upon the Licensee, but shall not exceed ten (10) business days. If the Commission agrees based on available information that the public welfare is at risk, the full Commission may extend the temporary suspension of a License pending its resolution of the Notice of Recommended Action under this Section for a period not to exceed sixty (60) calendar days total. If based on reliable information provided by the NIGC under Section 16(A)(1)(a), the suspension shall continue until the Commission makes a final decision on the proposed revocation.

C. **Contents of Notice of Recommended Action; Service.** The Notice of Recommended Action shall set forth the violations of this Gaming Ordinance or other applicable law that the Executive Director or the Commission has reasonable cause to believe the Licensee has committed, and/or the information known to the Commission that is grounds for suspension or revocation of the License. The Executive Director shall cause the Notice of Recommended Action to be served as provided in Section 4(B)(2). The Notice of Recommended Action shall notify the Licensee of the License suspension or revocation process, including the required Answer and the right to request a hearing.

D. **Procedure.** The procedure before the Commission shall be governed by Section 20 of this Gaming Ordinance.

E. **Effective Date.** The order of the Commission suspending or revoking a License shall state the effective date of the suspension or revocation.

F. **Surrender of License.** When the Commission suspends or revokes a License, the Licensee shall surrender the License to the Commission on or before the effective date of the suspension or revocation. No License shall be valid as of the effective date of the suspension or revocation, whether surrendered or not.

G. **Additional Sanctions.** Upon a determination to suspend or revoke a License, the Commission, in addition to any other penalties that may be imposed, may declare the Licensee ineligible to operate or conduct Games of Chance, to participate, directly or indirectly, in the operation or conduct of Games of Chance, or to apply for a License for a period not exceeding twelve (12) months. Such declarations of ineligibility may be extended to include any Primary Management Officials, Key Employees, owners, officers, or directors of the Licensee, and any of its subsidiary organizations, parent organizations, or affiliates.

H. **Appeal to Tribal Court.** Any Licensee aggrieved by a decision of the Commission may appeal the order pursuant to Section 20 of this Gaming Ordinance.

SECTION 17. Prohibited Acts.

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

- A. Conduct, promote, or participate in any Class II or Class III gaming on the Reservation in violation of this Ordinance.
- B. Receive, distribute, apply or divert any property, funds, proceeds, or other assets of the Gaming Enterprise to the benefit of any Person except as authorized by this Gaming Ordinance, the Tribal-State Compact, NIGC regulations, IGRA, or a lawful policy duly-adopted by the Gaming Enterprise Board.
- C. Take or attempt to take any chip(s), coin(s), token(s), or machine credits belonging to the Pueblo, the Gaming Enterprise, or another Person not properly received, won, earned, or given.
- D. Tamper with any Gaming Device or gaming equipment used in the conduct of any Gaming Activity with the intent to cause any Person to win or lose any wager other than in accordance with the publicly-announced rules of the Gaming Enterprise.
- E. Possess in a licensed Gaming Facility any chips, tokens, cards, device, or paraphernalia that could reasonably be used in cheating, defrauding, manipulating or altering any game, Gaming Device, equipment, machine, computer, or supplies.
- F. Do any other act in connection with the conduct of a Game of Chance with the intent to affect the outcome of any wager other than in accordance with the publicly-announced rules of the Gaming Enterprise.
- G. Alter or misrepresent the outcome of any other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.
- H. Place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet, or to aid anyone in acquiring such knowledge, for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome.
- I. Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Device or gaming equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.
- J. Place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets.
- K. Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets.
- L. Manipulate, with the intent to cheat, any component of an electronic Game of Chance or Gaming Device in a manner contrary to the designed and normal operational purpose for the component, including but not limited to manipulating a Gaming Device, with knowledge that

the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

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

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

O. Use any device or means to cheat, or to possess any such device while at a Gaming Facility.

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

Q. Commit any act or omission that endangers the security or integrity of any Game of Chance.

R. Intentionally damage or attempt to damage any property, Gaming Device or equipment, or any article belonging to the Pueblo, a patron, employee, or tribal entity.

S. Intentionally cause injury or harm to any patron, employee, or other Person, or threaten to do so.

T. Willfully obstruct any Commission investigation.

U. Violate any regulation or internal control validly promulgated by the Commission, including any regulation prohibiting or allowing damages to be assessed based on intentional, reckless, and negligent actions of any Person.

V. Violate any policy of the Gaming Enterprise that is directly related to the operation or integrity of any Game of Chance or the proper handling of revenues derived from any Gaming of Chance.

SECTION 18. Civil Penalties.

Any Person who violates any provision of this Gaming Ordinance shall be subject to civil penalties (including restitution and compensatory, consequential, and punitive damages), termination of employment by the Gaming Enterprise, denial, suspension, or revocation of a gaming License, and/or exclusion from attendance at any Gaming Facility, and/or exclusion from the Reservation if a non-member of the Pueblo. The Commission may impose a fine and

may require restitution. The Commission shall have the jurisdiction to impose any penalties on any Person within the jurisdiction of the Pueblo. Civil penalties may include requiring any Person who violates this Gaming Ordinance or validly promulgated regulations hereunder to pay the expenses and fees incurred by the Gaming Enterprise, the Commission, or the Pueblo in enforcement activities of any kind connected to the Person found to have committed such a violation. Proceedings under this Section shall be initiated by the Commission by serving a Notice of Violation upon the Person(s) alleged to be in violation. The Commission may take appropriate action, including but not limited to suspension of a License, during the pendency of any proceedings. Only the Tribal Council may exclude a person from the Reservation, but the Commission may recommend such action to the Tribal Council. Proceedings of the Commission under this Section are governed by Section 20 of this Gaming Ordinance. To ensure that each Gaming Enterprise and Gaming Operation complies with all access and reporting requirements in this Ordinance, the Tribal-State Compact, and federal law, a civil fine shall be imposed beginning on the calendar day after notice of a violation is delivered by the Commission of \$250 for the first day, \$500 for the second day, and \$1,000 for each day thereafter until the violation is remedied, unless the Commission prescribes a fine of a different amount.

SECTION 19. Enforcement; Jurisdiction; Subpoenas.

A. **Civil Remedies in Court.** Notwithstanding the Commission's authority to impose civil penalties under Section 18 above, the Commission may, in its sole discretion, elect to bring a civil action in the Tribal Court against any Person who violates this Gaming Ordinance or engages in an activity or activities prohibited herein and recover monetary damages, attorneys' fees, injunctive relief, and/or any other relief that is just and equitable under the circumstances. The Tribal Court may order a Person who commits an intentional or willful violation to pay punitive damages. The Tribal Court may order a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day that a violation occurs and for each separate violation. Any Person who violates this Gaming Ordinance, or whose employees or agents in the course of their employment or agency violate this Gaming Ordinance, may have the right to engage in business on the Reservation suspended or terminated.

B. **Criminal Penalties.** The Pueblo or the Commission may, in addition to other remedies, elect to bring a criminal proceeding in the Tribal Court against any Person who violates this Gaming Ordinance, the Pueblo's Criminal Code, 25 C.F.R. Part 11, or engages in an activity or activities prohibited herein, and over whom the Tribal Court may lawfully exercise criminal jurisdiction and. Nothing in this Gaming Ordinance shall be construed to authorize or require the exercise of criminal jurisdiction over non-Indians except to the extent allowed by any applicable or future Act of Congress or any applicable federal court decision.

C. **Tribal Court Jurisdiction.** Except as otherwise provided in this Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Gaming Ordinance; *provided*, however, that, subject to Section 19(A) above, the Tribal Court shall defer the exercise of its jurisdiction until any applicable administrative remedies have been waived by the Commission or exhausted by the parties, and *provided* further that nothing in this Gaming Ordinance is intended nor shall it be interpreted to

preclude prosecution in federal court pursuant to IGRA, as it may be amended from time to time, any regulations promulgated thereunder, any other applicable federal or tribal law, or prosecution in state court pursuant to an effective memorandum of understanding with the District Attorney for the Thirteenth Judicial District pursuant to the terms of the Tribal-State Compact.

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

SECTION 20. Proceedings Before the Commission; Appeals.

A. Proceedings Before the Commission.

1. **Applicability.** This Subsection applies to all hearings and other proceedings before the Commission under this Gaming Ordinance.
2. **Initiation of Proceedings.**
 - a. Proceedings before the Commission shall be initiated as provided in this Gaming Ordinance.
 - b. The Notice or other document initiating the proceeding shall be served by personal service, by certified mail, by overnight delivery, or otherwise as provided in Section 4(B)(2).
 - c. The Notice or other document initiating the proceeding shall specify the nature of the proceeding; the provision of this Gaming Ordinance or other law serving as the basis for the proceeding; the facts on which the proceeding is based; the action proposed to be taken; the civil penalty proposed to be imposed, if any; and a description of the process, including the requirement of an Answer and the right to request a hearing.

3. Answer; Subpoenas. Upon receipt of the Notice or other document initiating the proceeding, the Person receiving the Notice (“Respondent”) shall file an Answer with the Commission within ten (10) business days and shall inform the Commission whether the Respondent desires (i) to have a hearing, and (ii) to present evidence. If the Respondent does not request a hearing, the Executive Director may make such a request, or the Commission can require a hearing on its own initiative. At the request of a party (including the Executive Director) and for good cause shown, or on its own motion, the Commission shall issue subpoenas for the attendance of witnesses and for the production of papers, books, records, and documents of any kind.
4. Disclosure and Discovery. The parties shall disclose such information to each other and/or to the Commission, through discovery mechanisms similar to those used in the Tribal Court or otherwise as determined by the Commission pursuant to regulations promulgated by the Commission to govern proceedings before it.
5. Briefing; Hearing; Written Decision.
 - a. The Commission may order pre-and post-hearing briefing.
 - b. If a hearing is requested, it shall be held and concluded without unreasonable delay, taking into account witness availability, evidentiary issues, and any pre-hearing briefing ordered by the Commission.
 - c. The Respondent may be represented at any hearing by counsel or other representative of his or her choice, at his or her sole expense.
 - d. The Commission shall make a decision in writing, including findings of fact in support of its decision. Absent extraordinary circumstances, the Commission shall issue its decision within thirty (30) calendar days of the filing of the Answer, of the hearing, or of the conclusion of any briefing, whichever is later; *provided*, however, that a license decision under Section 16(A)(1) shall be made within 45 days of receipt of the NIGC information.
 - e. The Commission’s order shall advise the parties of the right to appeal the order to the Tribal Court.
 - f. All parties, including the Executive Director, shall be informed immediately of the Commission’s decision.

B. Appeal to Tribal Court.

1. From Decisions of the Commission.

- a. Any person aggrieved by a decision of the Commission may appeal the order to the Tribal Court.
 - b. The Tribal Court shall affirm the order of the Commission unless such order was entered in violation of due process, was arbitrary or capricious, or was otherwise in contravention of applicable law, in which event the Tribal Court may reverse, vacate, or modify the order of the commission.
 - c. In reaching its decision, the Tribal Court shall consider only such evidence relating to the order from which appeal is taken as appears in the records of the Commission and was available to the Commission at the time of its decision.
2. From Decisions of the Gaming Enterprise Board Resolving Patron Disputes.
 - a. Any person aggrieved by a decision of the Gaming Enterprise Board determining a patron dispute pursuant to Section 15(D) of this Gaming ordinance may appeal the decision to the Tribal Court.
3. The decision of the Tribal Court shall be final and unappealable to any other entity.

SECTION 21. Sovereign Immunity.

Neither the Pueblo generally nor the Commission specifically in any way waives its sovereign immunity from suit in any court to contest the validity of this Gaming Ordinance or in any other matter, except to the limited extent explicitly set out in Sections 8(B)(16) (suspension of Gaming Activity); 10(B); 12(F) (modification or revocation of Management Contract); 15 (protection of visitors and patron disputes); 16(H) (licensing decisions); 25(F) (appeal from insurers' decisions), and 20 (Appeals) of this Gaming Ordinance; in the Charter of the Gaming Enterprise; or in other applicable Pueblo law. As independent agencies or enterprises of the Pueblo government, the Commission and the Gaming Enterprise, including their respective Commissioners and Gaming Enterprise Board and staff expressly are authorized to assert the sovereign immunity of the Pueblo to the greatest extent possible consistent with this Ordinance and any applicable Tribal-State Compact.

SECTION 22. Severability.

In the event any section or provision of this Gaming Ordinance or its application to any particular activity is held to be invalid, the remaining sections and provisions of this Gaming Ordinance and the remaining applications of such section or provision shall continue in full force and effect.

SECTION 23. Amendments.

This Gaming Ordinance may be amended by duly enacted Resolution of the Tribal Council subject to any required approval by the Chair of the NIGC.

SECTION 24. Repeal of Prior Laws.

This Gaming Ordinance, upon becoming effective, and only then, shall operate to repeal all prior inconsistent laws, including but not limited to the San Felipe Pueblo Class II and Class III Gaming Ordinance, No. 94-22, adopted by the Tribal Council on July 21, 1994; the Amended and Restated Gaming Ordinance adopted by the Tribal Council on May 5, 1999, and the Amended and Restated Gaming Ordinance (Revised), adopted by the Tribal Council on July 20, 1999; the Second Amended and Restated Gaming Ordinance, adopted by the Tribal Council on November 27, 2002; the Third Amended and Restated Gaming Ordinance, adopted by the Tribal Council on February 12, 2004; and the Fourth Amended and Restated Gaming Ordinance, adopted by the Tribal Council on August 26, 2009. In the event of any inconsistency between this Gaming Ordinance and the San Felipe Pueblo Charter for the San Felipe Pueblo Gaming Enterprise, approved July 21, 1994 and as amended from time to time, the provisions of this Gaming Ordinance shall govern.

SECTION 25. Effective Date.

This Gaming Ordinance shall be effective as of the date of its approval by the Chairman of the NIGC or on the 91st day after its submittal to the Chairman of the NIGC if not denied, whichever occurs first.

SECTION 26. Compact Compliance – Additional Requirements.

This Section includes in the San Felipe Gaming Ordinance the following provisions required by the 2015 Compact. In the event that a Tribal-State Compact no longer requires a provision in this Section, such provision shall lapse sixty (60) calendar days later unless the Tribal Council by resolution or the Commission by regulation continues such provision in force. In the event a Tribal-State Compact is amended or replaced, the Commission is directed to interpret this Ordinance in a manner consistent with such amended or replaced Tribal-State Compact, or Class III Secretarial Procedures. To the extent of any inconsistency between such Compact or Procedures and this Ordinance, the Compact or Procedures shall govern to the extent consistent with federal law.

A. Participation in any Class III gaming is prohibited for any Person under the age of twenty-one (21).

B. Employment of any Person under the age of twenty-one (21) as a Class III Gaming Employee is prohibited, and employment of any Person in Class III gaming who is not licensed in accordance with Section 11 herein is prohibited.

C. The Pueblo is required to take all necessary action to impose on its Gaming Operations standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws of general applicability to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder. A federal law is “generally applicable to Indian tribes” if: (1) the law is not susceptible to a good faith argument that it does not apply to Indian tribes, or (2) the United States Court of Appeals for the Tenth Circuit or the United States Supreme Court has held in an opinion that has not been reversed or overruled that the law is generally applicable to Indian tribes, or (3) a court of competent jurisdiction has held that the law is applicable to the Gaming Operation specifically.

D. On any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers shall be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act.

E. The Pueblo, the Gaming Enterprise, and any Management Contractor are prohibited from discriminating in the employment of Persons to work for the Gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age, or handicap. However, Tribal and other Indian preference in employment is allowed.

F. Employees of a Gaming Operation shall be provided employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave or paid time off, and medical and dental insurance, as well as unemployment insurance and workers’ compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable State of New Mexico programs. Such programs shall afford the employee due process of law and shall permit an employee to appeal an adverse determination by the insurer to the Tribal Court, which appeal shall be decided in a timely manner. The insurer may not assert as a defense in any such proceeding the defense of tribal sovereign immunity. The Pueblo may elect to participate in the State’s program upon execution of an appropriate agreement with the State.

G. A grievance process must be provided for employees of a Gaming Enterprise in cases of disciplinary or punitive action taken against an employee, and that process shall provide for appeals to persons of greater authority than the immediate supervisor of the employee.

H. Indian Health Service inspectors shall be permitted to inspect Gaming Facilities’ food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the New Mexico Food Service Sanitation Act [Chapter 25, Article 1 N.M.S.A. 1978] are maintained. If such inspections have occurred, the Pueblo shall provide documentation of the inspections to the State Gaming Representative with the Compliance Report referenced in Section 4(E)(2) of the Tribal-State Compact. If the Indian Health Service does not conduct such inspections, the Commission may permit the State Department of Environment to conduct such inspections as required by the Compact.

I. The Gaming Enterprise, and the Pueblo in connection with gaming, is prohibited from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension, and other similar checks, for any patron.

J. The Gaming Enterprise and the Pueblo (in relation to any Gaming Activity) are prohibited from extending credit by accepting IOUs or markers from its patrons, except that short-term credit may be extended if authorized by and conducted in conformance with Commission and federal regulations, and the Tribal-State Compact,.

K. Any automatic teller machine on Gaming Facility premises shall be programmed so that the machine will not accept cards issued by the State to TANF recipients for access to TANF benefits.

L. Each Class III electronic or electromechanical Gaming Device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%). The Gaming Enterprise shall prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement.

M. All Class III Gaming Machines on the premises of a Gaming Facility must be connected to a central computerized monitoring and control system on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility. To the extent required by any applicable Tribal-State Compact, the wager and payment data of each machine, electronically captured by the Gaming Facility's central computer, shall be electronically accessible to and downloadable by the State Gaming Representative by a dedicated telecommunications connection, on a read-only basis, upon entry of appropriate security codes; but *provided* that in no event shall the State Gaming Representative be able to alter or affect the opening of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer. The Commission shall at all times designate persons as the primary contact and an alternate contact to address issues regarding these matters and shall ensure that the State Gaming Representative or designee is notified promptly either by electronic mail or telephone of any technical problems related to the generation, transfer, or access of the Class III Gaming Machine accounting data. The Commission shall also ensure that the State Gaming Representative has access to the Class III Gaming Machine accounting data on a periodic basis as determined from time to time by the State Gaming Representative, but in no event shall access be more often than once in a 24 hour period.

N. Regardless of whether the State exercises the option to use a direct electronic connection to obtain wager and payment data, at its expense, the Gaming Enterprise through the Commission if appropriate, shall make wager and payout data available to the State Gaming Representative on a monthly basis, by secure transmission through encrypted email communications, file transfer protocol, or other secure means provided by the State Gaming Representative. The method of secure transmission must meet industry standards for security sufficient to minimize the possibility of any third party intercepting data transmitted

to the State Gaming Representative. Such reports shall be generated to reflect monthly, quarterly, and annual activity, and shall identify, at a minimum:

1. coin-in;
2. coin-out;
3. Free Play and Point Play;
4. Net Win;
5. theoretical net win (including Free Play and Point Play);
6. actual floor hold percentage; and
7. theoretical floor hold percentage.

O. If Pueblo law permits the sale or consumption of alcohol in a Gaming Facility,

1. any Gaming Facility employees who dispense, sell, serve or deliver alcoholic beverages must attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act.
2. any and all employees of the Gaming Facility, including any franchise doing business within the Gaming Facility, are prohibited from selling, serving, giving or delivering an alcoholic beverage to an intoxicated Person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated Person at the Gaming Facility.
3. the sale, service, delivery, or consumption of alcoholic beverages in that part of a Gaming Facility where gaming is allowed is prohibited.

P. The Gaming Enterprise shall purchase and maintain a liquor liability insurance policy that will provide, at minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year; *provided* that if Pueblo law prohibits the sale and consumption of alcoholic beverages in or near its Gaming Facilities, this Tribal-State Compact requirement should be waived by the State, and the Pueblo, Commission, and Gaming Enterprise shall coordinate to secure such a waiver in that instance.

Q. The Gaming Enterprise and/or Pueblo shall spend an amount that is no less than one quarter of one percent (.25%) of its Adjusted Net Win as that term is defined herein or in Section 11(C) of the Tribal-State Compact to fund or support programs that the Pueblo selects for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico Gaming Facilities, and for the prevention of compulsive gambling in New Mexico. A substantial portion of such funds shall be distributed to an organization that has expertise in and provides counseling, intervention, or other services for compulsive gamblers in New

Mexico, and whose services are available to all Persons without regard to race or tribal membership. The Gaming Enterprise shall provide the Commission with documents sufficient to verify compliance with this requirement, including amounts spent for this purpose and the recipients of the payments. The Gaming Enterprise shall prepare a report for the Commission, which the Commission shall submit to the State Gaming Representative after review, any revision by the Gaming Enterprise or the Commission, and approval by the Commission. The report shall comply with the relevant provisions in the Tribal-State Compact Appendix. Any information existing as a result of this Section, excluding information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of the Tribal-State Compact and shall be made available for inspection and publication without restriction or limitation.

R. Any Management Contract regarding the Pueblo's Class III Gaming activity must conform to the requirements of tribal law and IGRA and the regulations issued thereunder.

S. The Gaming Enterprise and the Pueblo shall not provide, allow, contract to provide or arrange to provide food or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game ("Discretionary Complimentaries"), except that (i) this provision shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of a players' club program; and (ii) the Gaming Enterprise or Pueblo may provide Discretionary Complimentaries, provided that the cumulative market value of all Discretionary Complimentaries, on an annual basis, does not exceed three percent (3%) of the Gaming Enterprise's annual Adjusted Net Win for the same year. The Commission shall, on a quarterly basis, report to the State the total amount of the Discretionary Complimentaries during the previous quarter in dollars and as a percentage of Adjusted Net Win for such quarter. Any such Complimentaries shall be issued subject to the minimum internal control standards, policies and procedures, and other provisions set forth in the Appendix to the Compact, and shall comply with all applicable federal law.

1. Tribal Internal Control Standard. If the Gaming Enterprise elects to provide Discretionary Complimentaries, all such Complimentaries shall comply with any and all applicable federal law and also be provided in accordance with the minimum internal control standard set forth in 25 C.F.R. § 542.17 (as of the effective date of the 2015 Compact and any lawful subsequent amendments, and notwithstanding its 2018 suspension by the NIGC) or with the regulations promulgated by the Commission in compliance with this Ordinance, the Compact, and federal law (including 25 C.F.R. § 542.17) (§ 542.17 (with the same caveats) and the Commission's regulations, if any, are the "Tribal Complimentaries MICS"). If the Commission promulgates such regulations, the Commission shall provide a copy of the regulations referenced in the Appendix to the State for review and comment prior to implementation. The Commission may amend or add to the Tribal Complimentaries MICS in order to continue efficient regulation and address future circumstances; provided that: (i) any amendments or additional standards shall be at least as stringent as the 25 C.F.R. § 542.17 in its form current as of the Effective Date of the Compact; and (ii) the Commission provides a copy

of the amendments and/or additional standards to the State for review and comment prior to implementation. The Gaming Enterprise shall offer any Discretionary Complimentaries pursuant to written internal policies and procedures. The internal policies and procedures shall implement the minimum internal control standard.

2. Calculation of Complimentaries. The “cumulative market value” shall be calculated based on the average daily rate (ADR) for lodging and the menu pricing for food.

- a. Compliance and Reporting. The Commission shall audit compliance annually of policies and procedures for Discretionary Complimentaries consistent with the MICS Audit Checklist – Complimentary Services and Items promulgated by the National Indian Gaming Commission, a copy of which shall be provided to the State Gaming Representative. In addition, on a quarterly basis, the Commission shall report the following to the State Gaming Representative for the previous quarter: the total amount of the Discretionary Complimentaries during the previous quarter (and a cumulative total of the previous quarters for the year) in dollars and as a percentage of Adjusted Net Win for such quarter. To the extent necessary to comply with this paragraph, the Gaming Enterprise and the Pueblo shall require any and all relevant information be provided to the Commission.
- b. Applicability. The requirements of this paragraph shall apply only in the event that the Pueblo or the Gaming Enterprise offers Discretionary Complimentaries as permitted in Section 4(B)(19) of the Compact. In the event that neither the Pueblo nor the Gaming Enterprise offers Discretionary Complimentaries, the requirements shall not apply.

T. The Commission shall certify annually to the State Gaming Representative that the Pueblo has met its regulatory obligations under the Compact in the form required by and in accordance with the terms and requirements of the 2015 Compact, and is specifically authorized to gather, access, inspect, copy, and compile all information necessary to do so from the Gaming Enterprise, the Pueblo, or any other Person. The Commission shall allow the State Gaming Representative to inspect and verify, and obtain copies (either scanned electronically or in paper form), upon request, of any and all documents related to any item in such Compliance Reports, including all source documents and data.

U. The Commission shall provide true copies of any amendments to tribal laws and regulations affecting Class III Gaming to the State Gaming Representative within thirty (30) days after their enactment or approval, if any. The Commission shall also provide such amendments, as well as those affecting Class II Gaming, to the NIGC, within thirty (30) days of enactment or approval, as appropriate.

V. The Pueblo may not conduct Class III gaming in more than two separate physical buildings or structures on the Reservation.

W. The Commission will assure that the Gaming Enterprise:

1. Operates all Gaming Activity in accordance with Pueblo laws, IGRA and other applicable federal law, and the Tribal-State Compact;
2. Provides for the physical safety of patrons in every Gaming Facility;
3. Provides for the physical safety of employees of the Gaming Enterprise;
4. Provides for the physical safeguarding of Pueblo assets transported to and from a Gaming Facility and the cashier's cage department;
5. Provides for the reasonable protection of the property of patrons and the Gaming Enterprise from illegal activities;
6. Participates in licensing of Primary Management Officials and Key Employees of a Class III Gaming Enterprise;
7. In accordance with policies and procedures approved by the Commission, makes reasonable effort to detain Persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities;
8. Records and investigates any and all unusual occurrences related to Class III Gaming within the Gaming Facility;
9. Complies with all applicable provisions of the Bank Secrecy Act, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Department of the Treasury, the Internal Revenue Service, the Financial Crimes Enforcement Network, and any other related divisions thereof, as applicable, and make all such documentation available to the State Gaming Representative for inspection, scanning, or copying upon request;
10. Posts at all public entrances and exits of each Gaming Facility, signs in both English and Spanish, stating that help is available if a person has a problem with gambling and, at a minimum, provide an appropriate toll-free crisis hotline telephone number and information on the availability of a statewide self-exclusion program with the State Gaming Representative;
11. Complies with, in conjunction with the Commission, all reporting and cooperation requirements in the Tribal-State Compact regarding suspected crimes by non-Indians; and

12. Complies with all requirements with respect to the self-exclusion provisions of the 2015 Compact.

X. Pursuant to the Tribal-State Compact, the State may exercise concurrent jurisdiction with the United States to prosecute criminal violations by a Non-Indian of any State gambling law on the Reservation, any other crime against the Gaming Enterprise or any employee thereof, or that occur on the premises of a Gaming Facility. Immediately upon becoming aware of any suspected crime by a Non-Indian, the Gaming Enterprise or the Commission will notify the State Attorney General and the District Attorney for Sandoval County of the particulars known to the Gaming Enterprise or Commission. Upon any reasonable request by the District Attorney, the Pueblo's Law Enforcement Department (or the Bureau of Indian Affairs, if applicable), and the Commission will conduct an additional investigation and cooperate fully with such District Attorney and State law enforcement agencies on the matter. In the event of an emergency involving a possible violation by a Non-Indian, the Pueblo and its constituent agencies may act as they see fit in accordance with the laws of the Pueblo in order to protect against any immediate threat to lives or property.

Y. The Pueblo and/or the Commission may enter into a Memorandum of Understanding with the District Attorney for the Thirteenth Judicial District, to which Memorandum of Understanding the United States Attorney also may be a party, to address such matters as the specific procedures by which cases will be referred, and participation of the Commission and the Pueblo's Law Enforcement Department (or the Bureau of Indian Affairs, as applicable) in the investigation and prosecution of any such cases.

Z. The State Gaming Representative shall have such access to a Gaming Facility and gaming records as is provided in the Tribal-State Compact.

AA. Unless otherwise provided in the Compact or as may be required by law, any information, documents or communications provided to the Tribe, the Commission, or the Gaming Enterprise by any State entity, or provided by the Pueblo, the Commission, or the Gaming Enterprise to any State entity, or prepared from information obtained from any providing entity, under the provisions of any Tribal-State Compact are confidential.

BB. The Commission and the Gaming Enterprise shall comply with all lawful provisions of the Tribal-State Compact, including any appendices thereto, even if not specifically addressed in this Ordinance and even if in conflict with a provision of this Ordinance. The Tribal-State Compact may be treated as Pueblo law to the extent consistent with IGRA and the intent of this Ordinance.

CC. The Commission and the Gaming Enterprise shall comply with all lawful regulations of the NIGC even if not specifically addressed in this Ordinance and even if in conflict with a provision of this Ordinance lawful. NIGC regulations may be treated as Pueblo law to the extent consistent with IGRA and the intent of this Ordinance.

SECTION 27. Notice and Service.

A. Unless the Pueblo issues a written notice to the NIGC providing otherwise, the designated agent for service to the Pueblo of any official order, determination, or notice of violation from the NIGC shall be:

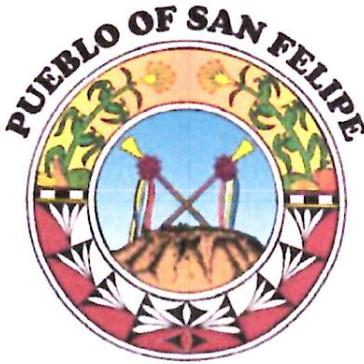
Executive Director
San Felipe Pueblo Regulatory Commission
27 Hagen Road
San Felipe Pueblo, New Mexico 87001

B. Unless the Pueblo issues a written notice to the NIGC providing otherwise, the designated agent for service to the Gaming Enterprise of any official order, determination, or notice of violation from the NIGC shall be:

Chief Executive Officer
San Felipe Pueblo Enterprise/Black Mesa Casino
25 Hagen Road
San Felipe Pueblo, New Mexico 87001

C. Unless otherwise required or requested by the NIGC, notices to the NIGC required by this Ordinance shall be provided as indicated in NIGC regulations, including the express requirement that notices to the NIGC under 25 C.F.R. Parts 556 and 558 be provided to the NIGC Regional Office.

D. Notice to the State Gaming Representative shall be provided as indicated in the Tribal-State Compact.



Office of the Governor

TRIBAL RESOLUTION NO: SFP 2019-148

APPROVING AND ENACTING THE SAN FELIPE PUEBLO FIFTH AMENDED AND RESTATED GAMING ORDINANCE

WHEREAS, The San Felipe Pueblo ("the Pueblo") is a duly recognized sovereign Indian tribe whose traditional law empowers the Tribal Council to enact ordinances; and

WHEREAS, the San Felipe Pueblo Gaming Ordinance adopted July 21, 1994, contained the minimum requirements under federal law for a tribal gaming ordinance, which Ordinance was approved by the National Indian Gaming Commission ("NIGC") on November 17, 1994; and

WHEREAS, the Pueblo adopted the San Felipe Pueblo Amended and Restated Gaming Ordinance, dated July 20, 1999, amending the San Felipe Pueblo Gaming Ordinance, previously adopted July 21, 1994; and

WHEREAS, the San Felipe Pueblo Amended and Restated Gaming Ordinance adopted July 20, 1999 was disapproved by the National Indian Gaming Commission on January 21, 2000; and

WHEREAS, the Pueblo of San Felipe entered into a Tribal-State Compact with the State of New Mexico on October 12, 2001 ("2001 Compact"), which Compact became effective on December 14, 2001 (66 Fed. Reg. 64856); and

WHEREAS, to incorporate the National Indian Gaming Commission requirements, the 2001 Compact provisions, and the Pueblo's experience with gaming, the Pueblo of San Felipe approved its Second Amended and Restated Gaming Ordinance on November 27, 2002, which Ordinance was approved by the National Indian Gaming Commission on January 14, 2003; and

WHEREAS, to effect limited amendments relating to the San Felipe Pueblo Gaming Regulatory Commission ("Gaming Commission"), the Pueblo of San Felipe approved its Third

Resolution Approving and Enacting
Fifth Amended and Restated Gaming Ordinance
December 4, 2019
Page 1 of 3

Amended and Restated Gaming Ordinance on February 12, 2004, which Ordinance was approved by the National Indian Gaming Commission on April 29, 2004; and

WHEREAS, the Pueblo of San Felipe entered into an amended Tribal-State Compact with the State of New Mexico on April 24, 2007 ("2007 Compact"), which Compact took effect on June 18, 2007 (72 *Fed. Reg.* 36717); and

WHEREAS, in part to incorporate changes required by the 2007 Compact, the Pueblo of San Felipe approved its Fourth Amended and Restated Gaming Ordinance on August 26, 2009 by Resolution No. 2009-91, which Ordinance was approved by the National Indian Gaming Commission on October 9, 2009; and

WHEREAS, the Pueblo of San Felipe entered into an amended Tribal-State Compact with the State of New Mexico on January 5, 2016 ("2015 Compact"), which Compact took effect on April 4, 2016 (81 *Fed. Reg.* 19236); and

WHEREAS, the new Compact is referred to as the "2015 Compact" because a number of tribes in New Mexico, most of which had been operating under the 2001 Compact's terms, finished negotiating the new compact's terms in 2015; and

WHEREAS, to effect a limited amendment transferring responsibility for the surveillance function of the Pueblo's Gaming Operation from the Gaming Enterprise to the Pueblo's Regulatory Commission, the Tribal Council approved and enacted the Fifth Amended and Restated Gaming Ordinance on July 27, 2019 ("July Amendment 2019"), which was submitted to the NIGC on September 3, 2019; and

WHEREAS, on December 2, 2019, the Pueblo withdrew the July 2019 Amendment from the NIGC to incorporate the surveillance transfer amendment into more comprehensive amendments to the Gaming Ordinance; and

WHEREAS, the Pueblo now wishes to enact those more comprehensive amendments and amend the Gaming Ordinance to incorporate the July surveillance amendment and to reflect the 2015 Compact provisions and NIGC regulation changes since 2009, and to make modifications based on the Pueblo's continued experience with the operation and regulation of gaming.

NOW, THEREFORE, BE IT RESOLVED, the Tribal Council hereby approves and enacts the San Felipe Fifth Amended and Restated Gaming Ordinance ("Fifth Amended Gaming Ordinance") in the form attached hereto as Exhibit A.



BE IF FURTHER RESOLVED, that the Gaming Commission is hereby directed to submit the Fifth Amended Gaming Ordinance to the Chair of the NIGC for approval, as required by 25 U.S.C. § 2710(b)(2) and 25 C.F.R. Part 522.

BE IF FURTHER RESOLVED, that in response to any technical or compliance issues raised by the NIGC during its review of the Fifth Amended and Restated Gaming Ordinance, the Governor, Lieutenant Governor, and Gaming Commission, in consultation with legal counsel, are authorized and directed to make minor, nonmaterial changes to the ordinance as submitted in order to address the NIGC's concerns if the Governor, Lieutenant Governor, and the Commission all agree that the necessary changes do not conflict with the intent of the Tribal Council and this resolution.

BE IF FURTHER RESOLVED, that, upon approval by the Chair of the NIGC, the Gaming Commission is hereby directed to submit a copy of the Fifth Amended Gaming Ordinance to the State Gaming Representative, as required by § 4(E)(5)(a)(i) of the 2015 Compact.

BE IT FINALLY RESOLVED that the Tribal Administration and the Gaming Commission are directed to take all steps necessary to promptly put into effect the Fifth Amended Gaming Ordinance.

CERTIFICATION

We, the undersigned, respectively as Governor and Lt. Governor of the Pueblo of San Felipe, hereby certify that the foregoing resolution was adopted at a duly called meeting of the Pueblo of San Felipe Tribal Council held on the 4th day of December, 2019, with a quorum being present.


James Candelaria, Governor


John Duran, Lt. Governor

Attest:


Tribal Council Member


Tribal Council Member

