



*Via E-Mail*

September 16, 2021

Jaime P. Stuck, Council Chairperson  
Nottawaseppi Huron Band of Potawatomi  
1485 Mno-Bmadzewen Way  
Fulton, MI 49052

**Re: Nottawaseppi Huron Band of Potawatomi Gaming Regulatory Act  
Amendments, Tribal Council Resolution No. 07-27-21-01**

Dear Chairperson Stuck:

This letter responds to your request on behalf of the Nottawaseppi Huron Band of Potawatomi for the National Indian Gaming Commission (NIGC) to review and approve the Band's amendments to its Gaming Regulatory Act (gaming ordinance). The amendments were adopted by the Nottawaseppi Huron Band of Potawatomi Tribal Council in Resolution No. 07-27-21-01. The National Indian Gaming Commission reviewed the submission.

The ordinance is approved. The amendments are consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations. I note, however, that one of the amendments authorizes the Band to accept wagers from another tribe's Indian lands.<sup>1</sup> The amendment does not specify the circumstances under which such a wager will be accepted, stating only that gaming must be authorized by the tribe on whose land the wager will initiate and must be conducted pursuant to IGRA.

IGRA authorizes a tribe to conduct and regulate gaming activity on Indian lands within that tribe's jurisdiction. Placing a wager is gaming activity, and as such, if a wager is placed from another Tribe's Indian lands, it must be done pursuant to such tribe's authorization and regulatory requirements, and pursuant to IGRA.

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<sup>1</sup> NHBP's gaming ordinance at § 8.5-85a(A)(2).

If you have any questions, please contact Staff Attorney Mary Modrich-Alvarado at 202-632-7003.

Sincerely,

A handwritten signature in blue ink, reading "E. Sequoyah Simermeyer". The signature is written in a cursive, flowing style.

E. Sequoyah Simermeyer  
Chairman

Cc: Chris Rogers, Chair, NHBP Gaming Commission  
(email – [chris.rogers@nhbpgc.org](mailto:chris.rogers@nhbpgc.org))



NOTTAWASEPPI HURON  
BAND OF THE POTAWATOMI

A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT

**NOTTAWASEPPI HURON BAND OF THE POTAWATOMI  
RESOLUTION NO. 07-27-21-01**

**Approving Revised Amendments to Gaming Regulatory Act, Withdrawing Prior Submission and Authorizing Submission of the Amended Code to the National Indian Gaming Commission for Approval**

**WHEREAS:** On December 21, 1995, the Department of the Interior recognized the Nottawaseppi Huron Band of the Potawatomi, as a federally recognized Indian Tribe pursuant to the Federal Acknowledgment Process (60 Fed. Reg. 66315);

**WHEREAS:** Article VI, Section 1 of the Tribe's Constitution empowers the Tribal Council to manage all economic affairs of the Tribe and to regulate the use of real property for Tribal purposes;

**WHEREAS:** Article VI, Section 1 of the Tribe's Constitution empowers the Tribal Council to negotiate with the federal government on behalf of the Tribe;

**WHEREAS:** the Federal Indian Gaming Regulatory Act of 1988 ("IGRA") (25 U.S.C. §§ 2701 *et seq.*) allows tribal operation of gaming facilities for purposes of funding tribal governmental operations, providing for the general welfare of the tribal and its members, promoting tribal economic development, and donating to charitable organizations or local governmental agencies;

**WHEREAS,** the Tribe and the State of Michigan entered into a tribal-state Class III gaming compact on December 3, 1998, approved by the Secretary of the Interior by publication in the Federal Register on February 18, 1999 at 64 Fed. Reg. 8111, as first amended pursuant to an Amendment made and entered on the 23<sup>rd</sup> day of July, 2009, which Amendment was approved by the Secretary of the Interior by publication in the Federal Register on October 8, 2009 at 74 Fed. Reg. 51875, as further amended by a Second Amendment made and entered on the 24<sup>th</sup> day of August, 2016, which Second Amendment was approved by the Secretary of the Interior by publication in the Federal Register on December 12, 2016 at 81 Fed. Reg. 89504; and

**WHEREAS,** in accordance with IGRA, on June 15, 2000 the Tribe passed a tribal gaming ordinance authorizing Class III gaming on its Indian lands, which was approved by the chair of the National Indian Gaming Commission on August 7, 2000, as amended on June 25, 2009, which amendment was approved by the chair of the National Indian Gaming Commission on August 26, 2009, as further amended on November 11, 2010 and January 28, 2011, which amendments were approved by the chair of the National Indian Gaming Commission on February 10, 2011, and as further amended on June 21, 2012, which was approved by the chair of the National Indian Gaming Commission on September 13, 2012; and

**WHEREAS**, the Authority conducts Class III gaming in a casino facility on Reservation lands, which operates under the name "FireKeepers Casino Hotel" pursuant to a Gaming Facility License issued by the Tribe's Gaming Commission at 11177 East Michigan Avenue, Battle Creek, Michigan; and

**WHEREAS**, the Michigan Legislature has enacted the Lawful Internet Gaming Act, MCL 432.301 *et seq.* (hereafter "LIGA") and the Lawful Sports Betting Act, MCL 432.401 *et seq.*, which is the legal basis in state law under which any person may lawfully conduct internet gaming, including internet sports betting, outside of Indian lands in Michigan; and

**WHEREAS**, Section 3(B) of the tribal-state Compact vests authority in the Governor to act on behalf of the State to either agree or reject a Tribe's request for the addition of a new Class III game under the Compact;

**WHEREAS**, pursuant to Section 3(B) of the tribal-state Compact, the Governor of the State of Michigan has approved the inclusion of sports betting and online versions of all approved Class III games as eligible Class III games under the Compact; and

**WHEREAS**, the Tribal Council previously approved certain amendments to the gaming regulatory act, which were submitted to the National Indian Gaming Commission's Office of General Counsel in October 2020; and

**WHEREAS**, at the recommendation of the NIGC's Office of General Counsel, it was recommended that the Tribe's submission be withdrawn and that additional revisions be made to the gaming regulatory act before resubmission and a revised submission was made on April 30, 2021, pursuant to authorization described in Tribal Council Resolution No. 04-22-21-03; and

**WHEREAS**, the Tribe's legal counsel has further discussions with representatives of the NIGC's Office of General Counsel, who requested certain minor revisions to Section 8.5-85a – "Conditions for Acceptance of Internet Wagers", and Tribe's legal counsel has prepared a revised submission reflecting those changes for approval and have presented the same for approval; and

**WHEREAS**, the Tribal Council wishes to, and authorizes the Tribe's legal counsel to submit the revised document for approval.

**NOW THEREFORE BE IT RESOLVED:** The Nottawaseppi Huron Band of the Potawatomi Tribal Council approves the revised, amended and restated Gaming Regulatory Act in the form presented and attached as Exhibit 1.

**IT IS FURTHER RESOLVED THAT:** The Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby withdraws the request for approval submitted on April 30, 2021 and requests final review and approval of the revised amendments reflected in the Amended and Restated Gaming Regulatory Act, dated April 22, 2021, authorizes the Tribe's legal counsel to submit the latest revision to the National Indian Gaming Commission, and requests approval of the Amendments by the appropriate officials of the National Indian Gaming Commission.


**IT IS FURTHER RESOLVED THAT:** The Tribe designates the Tribal Council Chairperson as the agent for service of any official determination, order or notice of violation.

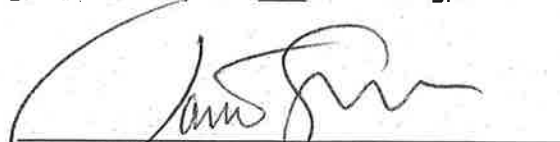
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[CERTIFICATION PAGE FOLLOWS]

## CERTIFICATION

On July 27, 2021, this resolution was approved at a special meeting of the Tribal Council, duly called and held for this purpose, on the Pine Creek Reservation, a quorum being present, by an affirmative vote 4 members, 0 opposing, 1 absent, and 0 abstaining, this 27<sup>TH</sup> day of July 2021.

  
Nancy Smit, Secretary

  
Jamie P. Stuck, Chairperson

Distribution: Government Records  
Legal Department  
National Indian Gaming Commission

**NHBP Government Records Certified Copy**

**True Certified Copy Shall Be Embossed**

Signed by S. Hill

Date 07/27/2021

## Chapter 8.5

### Gaming

**[HISTORY: Adopted by the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi 11-11-2010 by Res. No. 11-11-10-01 (Title VIII, Ch. 5, of the Tribal Code). Amendments noted where applicable.]**

#### Article I

##### Purpose; Public Policy; Authorized Gaming

###### § 8.5-1 Short title.

This chapter shall be known and may be cited as the "Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Act."

###### § 8.5-2 Purpose and authority.

The Tribal Council of the Nottawaseppi Huron Band of Potawatomi Indians enacts this chapter in order to comprehensively regulate all forms of gaming within the Tribe's Reservation. Pursuant to the express grant of authority enumerated in Article VI, Section 1(e), (g), (i), (k), (n) and (h) and Section 3, of the Constitution and the inherent authority of the Tribe as a sovereign tribal nation to provide for the health, safety and welfare of the Nottawaseppi Huron Band of the Potawatomi, the Tribal Council enacts this gaming regulatory act.

###### § 8.5-3 Public policy.

- A. All gaming conducted within the Tribe's Reservation and that is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter.
- B. The Tribal Council hereby finds and declares it to be the public policy of the Tribe, that:
  - (1) Proper regulation of gaming is essential in order to ensure that gaming is conducted honestly and it is free from unlawful conduct and corruptive elements.
  - (2) Strict regulation of all persons, locations, practices, associations and activities related to the conduct of gaming is required in order to maintain public confidence and trust in the honesty and integrity of gaming.
  - (3) All management contractors, primary management officials, key employees, gaming operations and vendors of goods or services must be licensed and controlled to preserve the integrity of gaming, to protect the public, and preserve the general welfare of the Tribe.
  - (4) The conduct of properly licensed and regulated gaming by the Tribe fulfills important policy objectives of the Tribe and the federal government by promoting tribal self-government and economic self-sufficiency.
  - (5) The substantial and relatively stable source of revenue offered by gaming enables the Tribe to fulfill its governmental responsibilities to the tribal membership.

###### § 8.5-4 Adoption; repealer.

This chapter is enacted by adoption of Tribal Council by Resolution No. 11-11-10-01, which also repeals the Gaming Ordinance under Title V enacted by adoption of Tribal Council Resolution No. 6-15-00-01 and approved by the National Indian Gaming Commission on June 19, 2000, as required by the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). This chapter and the repeal of the Gaming Ordinance

of 2000 shall only become effective upon the express approval of this chapter by the National Indian Gaming Commission. The repeal of the Gaming Ordinance of 2000, or any portion thereof, shall not have the effect of reviving any other tribal law repealed by adoption of the Gaming Regulatory Act of 2010 or any amendments thereto.

§ 8.5-5 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 8.5-6 Unauthorized gaming.

All gaming within the Tribe's Reservation, whether Class I, Class II or Class III, is prohibited and unlawful, except as expressly authorized by the chapter. Any person who commits any act of unauthorized gaming on the Reservation or any other tribal land shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction.

§ 8.5-7 Conduct of games.

All gaming shall be conducted by persons duly licensed by the Commission, except to the extent the Commission determines persons engaging in Class I gaming do not require licensing. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance with such regulations governing the conduct of games as may be promulgated by the Commission under this chapter.

§ 8.5-8 Permitted gaming.

- A. Class I gaming. Class I social games and traditional games are permitted to the extent consistent with tribal custom and practice. The Gaming Commission may consult with the Tribal Council to determine the scope and definition, including prize limits, for games which will be considered Class I social games and traditional games recognized by the Tribe's customs and practices. The Gaming Commission may prohibit or regulate the conduct of Class I social or traditional games if it determines such regulation is necessary to promote the public policies behind this chapter.
- B. Class II gaming authorized. Class II gaming, including online versions of Class II gaming and internet wagering on such games, is hereby authorized to be conducted on lands within the Tribe's Reservation; provided, however, that such Class II gaming shall be conducted only in accordance with the provisions of this chapter, the regulations and IGRA.
- C. Class III gaming authorized. Class III gaming, including online versions of Class III gaming and internet wagering on such games, is hereby authorized on lands within the Tribe's Reservation; provided, however, that Class III gaming shall be conducted only in accordance with the provisions of this chapter, the regulations, IGRA and the Compact.
- D. Internet wagering activities by persons located on the Tribe's Reservation is expressly authorized so long as such internet wagers are placed with a gaming establishment located in the State of Michigan that is authorized to receive internet wagers and such internet wagering is otherwise conducted in conformity with the "safe harbor" requirements of the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5362(10).
- E. A gaming establishment licensed under this Act is authorized to accept internet wagers from persons located outside the Tribe's Reservation so long as such internet wagering meets the conditions described in § 8.5-85a.

§ 8.5-9 Location of gaming.

Except for internet wagering activities conducted in conformity with this Act and other applicable law, the Gaming Agency shall ensure that such gaming as it authorizes and licenses pursuant to this chapter is

conducted on lands within the Tribe's Reservation and that federal law does not otherwise specifically prohibit such gaming.

§ 8.5-10 Ownership of gaming.

The Tribe shall have the sole proprietary interest in and responsibility for any gaming operation authorized by this chapter; provided, however, that nothing herein shall prohibit the exercise by any secured party of its rights under any collateral lease or other financing agreement with the Tribe for the purpose of securing repayment of the debt obligations of the Tribe in accordance with the provisions of such agreements and other applicable tribal law.

§ 8.5-11 Use of gaming revenue.

A. Net revenues from any form of gaming authorized under this chapter shall be used only for the following public purposes of the Tribe:

- (1) To fund tribal government operations and programs;
- (2) To provide for the general welfare of the Tribe and its members;
- (3) To promote tribal economic development;
- (4) To make donations to charitable organizations; and
- (5) To help fund operations of local government agencies.

B. The Tribe may only make per capita payments to tribal members from net revenues in accordance with a revenue allocation plan that may be approved or amended from time to time by the Tribal Council and the Secretary of the Interior.

## Article II Definitions

§ 8.5-12 Definitions of terms.

Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), Public Law 100-497, 102 Stat. 2467 (October 17, 1988), 25 U.S.C. § 2701 et seq., and any regulations promulgated thereunder.

**ACT**

Means this Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Act, as amended from time to time.

**AGENCY**

Means the Gaming Regulatory Agency, subdivision of the Tribe, established under Article IV of this chapter, which is responsible for the direct, day-to-day regulation of gaming establishments under this Act.

**APPLICANT**

Means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license required by this chapter.

**APPLICATION**

Means a request for the issuance or renewal of a license required by this chapter.

**AUTHORIZED PARTICIPANT**



For purposes of "internet wagering activities" described in §§ 8.5-85a.-8.5-85c, means an individual who has a valid internet wagering account with a gaming establishment and is at least 21 years of age.

**BUSINESS DAY**

Means Monday through Friday.

**CHAIRPERSON**

Means the Chairperson of the Commission appointed under §§ 8.5-18 and 8.5-19 of this chapter.

**CLASS I GAMING**

Means social games played solely for prizes of minimal value consistent with standards prescribed by regulations adopted by the Commission; or traditional forms of gaming played by individuals in connection with tribal ceremonies or celebrations, which are played in accordance with any regulations adopted by the Commission.

**CLASS II GAMING**

Means Class II gaming as defined in the Indian Gaming Regulatory Act and any regulations promulgated thereunder, including:

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

**CLASS III GAMING**

Means Class III gaming, as defined in the Indian Gaming Regulatory Act at 25 U.S.C. § 2703(8) and any regulations promulgated thereunder, including:

- A. Any house banking game, including but not limited to:
  - (1) Card games such as baccarat, chemin de fer, blackjack (21), and paigow (if played as house banking games).
  - (2) Casino games such as roulette, craps and keno.

- B. Any slot machines as defined in 15 U.S.C. § 1171(A)(1) and electronic or electromechanical facsimiles of any game of chance.
- C. Any sports betting and parimutuel wagering, including but not limited to wagering on horse racing, dog racing or jai alai; or
- D. Lotteries.

But excluding any Class III gaming that is not authorized by the Compact.

**COMMISSION**

Means the subdivision of the Tribe established under Article **III** of this chapter.

**COMMISSIONER**

Means an individual appointed under §§ 8.5-18 and 8.5-19 of this chapter to serve as a member of the Nottawaseppi Huron Band of the Potawatomi Gaming Commission.

**COMPACT**

Means the Compact dated February 18, 1999, including all renewals, amendments, appendices, exhibits and other attachments thereto between the Nottawaseppi Huron Band of the Potawatomi and the State of Michigan providing for the conduct of tribal Class III gaming by the Nottawaseppi Huron Band of the Potawatomi, or any replacement, extension or substitution therefor.

**COMPLIMENTARY**

Means a service or item provided at no cost, or at a reduced cost, to a customer of a gaming establishment.

**CONTROL PERSON**

Means any person who has the power to direct or cause direction of the management and policies of the business operations of a supplier of goods or services as verified by the supplier's ownership and organization structure described in the documents establishing the existence of the supplier and the designation of persons authorized to act on behalf of the supplier. Control shall be presumed for any person owning shares of a corporation that is not a publicly traded corporation if that person owns, controls or holds the power to vote 10% or more of the voting securities of a person. Control persons include members of the board of directors, chief executive officer, chief operating officer, and any person with the responsibility and authority to manage the contract on behalf of the supplier with respect to the gaming goods or services being provided to a gaming operation.

**COUNCIL or TRIBAL COUNCIL**

Means the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi established under Article **IV** of the Nottawaseppi Huron Band of the Potawatomi Constitution as the lawful governing body of the Tribe.

**EMERGENCY OPERATION PLAN**

Means the plan required to be included with a gaming establishment license application under § 8.5-50 of this chapter.

**EXCLUDED PERSON**

Means a person whose name has been added to an exclusion list in accordance with the requirements set forth in § 8.5-98 of this chapter.

**FISCAL YEAR**

Means the twelve month period ending on December 31<sup>st</sup> of each year for the Tribe, FireKeepers Development Authority and the FireKeepers Casino Hotel.

**GAME**

Means any game of chance, however conducted, operated or played, that comes within the definition of gaming provided in this section.

**GAMING**

Means any Class II gaming or Class III gaming activity, either individually or collectively, whether authorized or unauthorized.

**GAMING COMMISSION or COMMISSION**

Means the Nottawaseppi Huron Band of the Potawatomi Gaming Commission established pursuant to this chapter to regulate gaming within the jurisdiction of the Tribe.

**GAMING DEVICE**

Means any mechanical, electromechanical or electronic equipment, contrivance, component or machine, whether used remotely or directly in connection with any gaming, which affects the result of a wager by determining or predicting the outcome of a game or the odds of winning or losing a game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do affect or are capable of affecting, in any way, the playing of any game.

**GAMING EQUIPMENT OR SUPPLIES**

- A. A machine, mechanism, device or implement that affects the result of a game by determining win or loss, including, without limitation, any of the following:
- (1) Any gaming device;
  - (2) Software used with any gaming device;
  - (3) Cards; and
  - (4) Dice.
- B. Gaming equipment or supplies also includes layouts for live table games and representatives of values, including, without limitation, chips, tokens or electronic debit cards and related hardware or software that affect the result of the game.

**GAMING ESTABLISHMENT**

Means any facility or premises where gaming is conducted and includes all buildings, structures and other appurtenances required for the operation or maintenance of such facility or used in connection with such gaming.

**GAMING OPERATION**

Means each economic entity that is licensed by the tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by the tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

**GAMING SERVICES**

Any services or concessions which directly relate to the conduct of gaming, security or surveillance at a gaming establishment, including, without limitation, casino credit reporting services, maintenance or repairer services for gaming equipment or supplies.

**GAMING SITE**

The approximately seventy-eight-acre portion of the Nottawaseppi Huron Band of the Potawatomi tribal lands located in Battle Creek, Michigan, and held in trust by the United States for the benefit of the Nottawaseppi Huron Band of the Potawatomi.

**GROSS GAMING REVENUE**

Means the net win from gaming activities which is the difference between gaming wins and losses before deducting costs and expenses, such as progressive jackpot liability accruals, customer discounts, accruals for certain loyalty program costs, and certain other adjustments. All such adjustments shall be in accordance with the requirements of GAAP and the American Institute of Certified Public Accountant's then-current version of the Audit and Accounting Guide for Casinos – Audits of Casinos.

**INDIAN GAMING REGULATORY ACT or IGRA**

Public Law 100-497, 102 Stat. 2467, enacted on October 17, 1988, and codified at 25 U.S.C. § 2701 et seq.

**INDIAN LANDS**

Means the definition that term is given in the Indian Gaming Regulatory Act at 25 U.S.C. § 2703(4) and any regulations promulgated thereunder, but as to Class III gaming only, such definition shall exclude any Indian lands that are not also included within the definition of "Eligible Indian Lands" set forth in the Compact.

**INTERNET WAGERING**

Means the risking money or something of monetary value on an online version of any Class II or Class III gaming game.

**KEY EMPLOYEE**

A. A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;
- (4) Custodian of gaming equipment or supplies or cash;
- (5) Floor manager;
- (6) Pit boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; or

- (10) Custodian of gambling terminals or other devices operated by the management of any gaming operation, including persons with access to cash and accounting records for such devices.
- B. If not otherwise included, any other person whose total cash compensation from employment in any gaming operation exceeds \$50,000 per year.
- C. If not otherwise included, the four most highly compensated persons in any gaming operation.
- D. Any other employee of any gaming operation that the Commission designates by Commission regulations as a "key employee."

**LICENSE**

Means any authorization granted by the Commission pursuant to this chapter to any person, which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such.

**LICENSEE**

Means any person who has been issued a valid and current license pursuant to the provisions of this chapter.

**MANAGEMENT CONTRACT**

Means any contract, subcontract, or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

**MANAGEMENT CONTRACTOR**

Means any person to whom managerial responsibilities in or for any gaming operation has been delegated under a management contract.

**MANAGEMENT FEE**

Means any monies paid by a gaming operation from gaming revenue to any person pursuant to a management contract, but excluding monies permitted under the management contract to be paid to the management contractor as reimbursement for development advances, operating expenses, capital replacement costs, or in fulfillment of other obligations of such gaming operation.

**NET GAMING REVENUE**

Means gross gaming revenue of a gaming operation less (a) Amounts paid out as, or paid for, prizes; and (b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

**NIGC**

Means the National Indian Gaming Commission.

**ONLINE VERSION OF A GAME**

Also referred to as an "internet game", means any class II or class III game that is offered for play through the internet in which an individual wagers money or something of monetary value for the opportunity to win money or something of monetary value. The "online version" of any class II or class III game includes gaming tournaments conducted via the internet in which individuals compete against one another in 1 or more class II or class III games.

**OPERATING EXPENSE**

Means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which otherwise is so treated by application of generally accepted accounting principles.

**PATRON**

Means any natural person who participates in gaming as a customer or who is physically present on the premises where gaming is conducted as a customer of the gaming establishment.

**PERSON**

Means any business, proprietorship, association, partnership, syndicate, corporation, firm, joint venture, trust or other form of business association or entity, labor organization, state, local government, government instrumentality or entity, as well as a natural person.

**PERSON HAVING A DIRECT OR INDIRECT FINANCIAL INTEREST IN A MANAGEMENT CONTRACT**

- A. When a person is a party to a management contract, any person having a direct financial interest in such management contract;
- B. When a trust is a party to a management contract, any beneficiary or trustee;
- C. When a partnership is a party to a management contract, any partner;
- D. When a corporation is a party to a management contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10) shareholders for a privately held corporation;
- E. When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be a person having a direct financial interest in a management contract; or
- F. Any person or entity who will receive a portion of the direct or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

**PERSON HAVING MANAGEMENT RESPONSIBILITY FOR A MANAGEMENT CONTRACT**

Means the person designated by the management contract as having management responsibility for the gaming operation or a portion thereof.

**PRIMARY MANAGEMENT OFFICIAL**

- A. Any person having management responsibility over all or any part of any gaming operation.
- B. Any person who has authority:
  - (1) To hire and fire employees of a gaming operation.
  - (2) To establish working policy for a gaming operation.
- C. The chief financial officer or other person who has financial management responsibility for any gaming operation.

- D. Any person with management responsibility for a management contract.
- E. Any person the Commission designates by Commission regulations as a "primary management official."

#### **REGULATIONS**

Means any regulations promulgated by the Commission pursuant to this chapter.

#### **RESERVATION**

- A. All lands, the title to which is held in trust by the United States for the benefit of the Nottawaseppi Huron Band of the Potawatomi; and
- B. All lands proclaimed by the Secretary of the Interior to be part of the Tribe's Reservation. The term "Reservation" includes any rights-of-way running through the Reservation.

#### **SECRETARY**

Means the Secretary of the United States Department of the Interior.

#### **SOCIAL GAMES FOR PRIZES OF MINIMAL VALUE**

Means games conducted in connection with tribal community celebrations, pow-wows or tribal-government-sponsored fund-raising activities, in which the total value of prizes awarded during any single event does not exceed \$1,000.

#### **SUPPLIER OF GOODS OR SERVICES**

Means any person who manufactures, sells, leases, distributes, supplies any gaming equipment or supplies, and any person that provides maintenance or repair services for any gaming equipment.

#### **TRADITIONAL FORMS OF INDIAN GAMING**

- A. Gaming activities such as "stick" or "bone" games played as part of tribal ceremonies, celebrations or pow-wows.
- B. Games such as rodeos or horse races, including those for which purses or prizes are awarded, that are played as part of tribal ceremonies, celebrations or pow-wows.

#### **TRIBAL CHAIRPERSON**

Means the duly elected Chairperson of the Tribal Council.

#### **TRIBAL COURT**

Means the Nottawaseppi Huron Band of the Potawatomi Tribal Court.

#### **TRIBE and TRIBAL**

Means or refers to the Nottawaseppi Huron Band of the Potawatomi.

### **Article III**

#### **Establishment and Powers of Commission**

##### **§ 8.5-13 Establishment of Gaming Commission**

The Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby establishes the Nottawaseppi Huron Band of the Potawatomi Gaming Commission (hereinafter the "Gaming Commission" or "Commission") as an independent governmental subdivision of the Tribe.

§ 8.5-14 Governmental attributes of Commission.

As a political subdivision of the Tribe, the Commission is empowered with all the rights, privileges and immunities of the Tribe, including but not limited to the sovereign immunity of the Tribe from suit absent express consent from Tribal Council. The individual members of the Commission are officers of the tribal government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law.

§ 8.5-15 Delegation of certain regulatory authority.

The Tribal Council delegates to the Gaming Commission those regulatory authorities described in § 8.5-27 and general oversight authority over the Gaming Regulatory Agency's regulation of gaming conducted within the Tribe's Reservation to ensure that all gaming conducted within the Tribe's Reservation is conducted in conformance with this chapter, the regulations, the Compact, the IGRA, and regulations promulgated by the NIGC.

§ 8.5-16 Independence of Commission.

In all matters subject to its authority, the Commission shall be and shall act independently and autonomously from the Tribal Council. No prior or subsequent review by the Tribal Council of any actions of the Commission shall be required or permitted, except as may be otherwise explicitly provided in this chapter. Notwithstanding the foregoing, the Commission shall be subject to all tribal law, including generally applicable tribal administrative policies and procedures, including finance and human resources policies, except to the extent that an exception for the Commission is expressly provided in such policies. The Commission fiscal year shall be the fiscal year of the Tribe.

§ 8.5-17 Commission funding.

Commission funding, which shall be separate from that of the Gaming Regulatory Agency, shall be in an amount adequate for the Commission to properly fulfill all of its responsibilities under this chapter. The Tribal Council shall not reduce the annual budget of either of the Commission or Agency during any fiscal year but may approve requests to supplement the budget when necessary. The amount of the Commission's funding shall be established annually for the subsequent fiscal year through a detailed annual budget to be prepared by the Commission and the Agency's Executive Director for Tribal Council approval, as provided in § 8.5-27J of this chapter. The Commission budget shall take into account any unexpended funds that may, with approval of the Tribal Council, be retained and carried over by the Commission at the end of each fiscal year to the next fiscal year, excluding funds that are obligated for costs or expenses incurred during the prior fiscal year.

§ 8.5-18 Composition of Commission.

- A. The Commission shall be composed of a Chairperson and two Commissioners appointed by the Tribal Council under the procedures set forth in § 8.5-19.
- B. At least two members of the Commission shall be enrolled members of the Nottawaseppi Huron Band of the Potawatomi.

§ 8.5-19 Qualifications; appointment of Commissioners.

- A. Qualifications. No person shall serve on the Commission if that person is:

- (1) Under the age of 21;
- (2) A member or officer of the Tribal Council;
- (3) A Judge or employee of the Tribal Court;
- (4) Employed by any gaming operation or by the Gaming Regulatory Agency;
- (5) Resides in the same household with a person employed as a primary management official of any gaming operation;



- (6) Has a direct or indirect financial interest in the gaming operation, including any management contractor, or a direct financial interest in any supplier of gaming goods or services. For purposes of this section, direct financial interest shall not include the right to per capita distributions of gaming revenues pursuant to the IGRA but shall include direct ownership of stock in a publicly traded company, and indirect financial interest shall not include ownership of any mutual funds that hold such stock;
  - (7) Employed or otherwise serves in a position with responsibilities that create a conflict of interest or the appearance of a conflict of interest with the duties and responsibilities of the Commission, as determined by the Tribal Council; or
  - (8) Unable to obtain, or maintain, eligibility to hold a Gaming Commissioner's license under Subsection C.
- B. Additional qualifications. In addition to the qualifications prescribed in Subsection A:
- (1) All members of the Gaming Commission will be required to attend training on hearing procedures not less than annually to develop and refresh competencies in serving as administrative hearing officials; and
  - (2). Commission Members who are not tribal members must possess at least five (5) years' experience in gaming regulation, financial audits of gaming businesses, law or law enforcement.
- C. Eligibility determinations; Gaming Commissioner license. Before any person may take office as a member of the Commission, the Tribal Council shall arrange to have a comprehensive background investigation performed on each person to be appointed. The Council shall only appoint a Gaming Commissioner after it determines that all of the applicable qualifications and licensing standards for service on the Commission have been met in accordance with the standards and procedures set forth in this section.
- (1) All persons appointed to serve on the Commission shall consent to, and fully cooperate in the conduct of, a comprehensive background investigation.
  - (2) Nominees to the Commission shall complete a license application and shall be subject to the same background investigation process and licensing standards that apply to primary management officials under Article VII of this chapter. Such background investigation shall be performed at the direction of the Council.
  - (3) The investigator's report to the Tribal Council shall describe the investigative process and shall include findings verifying that the applicant meets all qualifications and licensing standards to the extent that such findings can be made with reasonable certainty. Regarding any finding that cannot be made with reasonable certainty, the investigator's report shall fully disclose all facts and information obtained through the background investigation that are relevant to the qualification or licensing standard and shall include copies of all documents related thereto.
  - (4) Upon completion of the background investigation, the Council shall review the report and findings of the investigation in closed session. The Council shall make a preliminary determination in open session, as provided in Subsection D, to either approve or deny an appointment, provided that the background investigation report and all information contained therein shall remain confidential and shall not be included in the public record of the Council session unless the appointee consents in writing to have the information included in the public record.
- D. Final determination; confirmation of appointment. Following review of the investigative report and findings, the Council shall make a final determination, not subject to appeal or further review, as to whether the appointee meets the applicable qualifications and licensing standards for appointment to

the Commission and shall, by majority vote, either confirm the appointment or deny the appointment.

§ 8.5-20 Term of office.

Commissioners shall serve three-year terms. Commissioners may serve successive terms of office without limitation; provided that the Tribal Council shall set terms of office to provide for the staggering of terms.

§ 8.5-21 Hold-over policy.

A Commissioner shall continue to serve in his or her position as Commissioner, with full authority, after the completion of his or her term until such time as he/she may be reappointed or a replacement is appointed and sworn into office.

§ 8.5-22 Resignation.

Commission members may, at any time prior to the initiation of removal proceedings under § 8.5-23, resign from the Commission by submitting, in writing, a signed and dated letter of resignation to the Commission Secretary or Chairperson and the Tribal Council Secretary or Chairperson. The resignation shall be effective as of the date tendered unless stated in the resignation letter. A copy of the resignation letter will be forwarded to the Tribal Council Secretary.

§ 8.5-23 Removal or Other Sanction.

- A. The Commission may, by majority vote, request that the Tribal Council initiate a procedure for the removal of a Commission member, and the Tribal Council may, on its own initiative, initiate a removal procedure for any member of the Commission by voting to initiate removal proceedings by simple majority of the Tribal Council for any of the following reasons:
- (1) Nonfeasance, including the persistent failure to perform the duties of the office, including failure to attend a significant number of meetings;
  - (2) Misfeasance, including any substantial or repeated failure to exercise authority or discharge responsibilities in conformity with this chapter, regulations, the IGRA or the Compact;
  - (3) Malfeasance, including: (a) a conviction or a plea of guilty or nolo contendere regarding any felony criminal offense or any other criminal offense involving dishonesty or moral turpitude; (b) repeat or substantial violation(s) of the code of ethics; (c) a knowing violation of this chapter, the regulations, the Liquor Control Code, or other applicable tribal law that assigns duties or responsibilities specifically to the Commission; (d) misconduct in office that threatens the integrity or public image of the Commission; and (e) any conduct or omission which would be cause for denial, revocation or failure to renew a primary management official's license;
  - (4) Failure to maintain the necessary qualifications for office prescribed in § 8.5-19; or
  - (5) Physical or mental disability which prevents the performance of duties.
- B. If the Tribal Council has reason to believe that cause for removal of an appointed Commissioner exists, the Tribal Council shall direct that an investigation be conducted by a qualified, independent investigator. If, in the Council's determination, the investigation substantiates the existence of cause for removal, the Council shall notify the Commissioner of the time and place for a hearing before the Council, which notice shall also fully describe the purpose for the hearing and all claims and allegations to be addressed at the hearing. The notice of hearing shall afford the Commissioner subject to removal not less than fourteen (14) business days to prepare for the hearing. Any investigation and hearing under this section shall be conducted in accordance with the procedures prescribed in Article X, except that the hearing shall be conducted by and before the Tribal Council.
- C. If the Tribal Council determines that the conduct involved merits sanction other than removal, the Tribal Council may, in its discretion, approve a lesser sanction, which may include censure or

temporarily relieving such Commissioner of his/her duties with pay for a period not in excess of 30 days.

§ 8.5-24 Vacancies; appointment to fill vacancy.

- A. Vacancies on the Commission shall be filled by Tribal Council appointment for the balance of the unexpired term.
- B. The Tribal Council shall provide notice of the vacancy to the Band membership and an opportunity to respond prior to filling the vacancy.
- C. The Tribal Council will make a final determination regarding the eligibility of each prospective nominee to the Commission in accordance with the qualifications and procedures described in § 8.5-19.
- D. The Tribal Council will endeavor to fill any vacancy on the Commission within forty-five (45) days of the vacancy, or as soon thereafter as possible, in a manner prescribed by Tribal Council procedures.

§ 8.5-25 Ethics requirements for Commissioners.

Gaming Commissioners shall comply with all requirements of any general code of ethics adopted by the Tribal Council, as well as the following ethical standards of conduct:

- A. No member of the Gaming Commission shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in conflict with the proper discharge of his/her duties as a Gaming Commissioner.
- B. No member of the Gaming Commission shall use the position to secure special privilege or exemptions for himself/herself or others.
- C. No member of the Gaming Commission shall, directly or indirectly, give or receive or agree to receive any compensation, gift, reward or gratuity from any sources for any matter connected with or related to the discharge of his/her duties as a Gaming Commissioner unless otherwise provided by law and/or regulation.
- D. No member of the Gaming Commission shall accept employment or engage in any business or profession which he/she might reasonably expect would require or induce him/her to disclose confidential information of the Tribe, Gaming Commission and/or gaming operation acquired by him/her by reason of official position, nor otherwise use such information for personal gain or benefit (financial or proprietary).
- E. No member of the Gaming Commission shall disclose confidential information gained by reason of official position, nor otherwise use such information for personal gain or benefit.
- F. No member of the Gaming Commission shall transact any business in an official capacity with any business entity of which he/she is an officer, agent, employee or member, or in which he/she owns an interest.
- G. No member of the Gaming Commission nor any firm, corporation or association, or other business entity in which such Commissioner is an agent, director or officer or in which he/she owns a controlling interest, or any interest acquired after the acceptance of tribal appointment, shall sell goods or services to any gaming establishment which is licensed by the NHBP Gaming Commission.
- H. Each member of the Gaming Commission who is an officer, agent, member of, attorney for, or who owns an interest in any firm, corporation, association or other business entity which is subject to

tribal regulation shall file a sworn statement with the Tribal Council Chairman's office, disclosing the nature and extent of his relationship or interest; said statement to be kept in confidence and to be disclosed only to the members of the Tribal Council for the purpose of ascertaining a breach of this code, and the same also to be disclosed to any other authority having the power of removal of any public officer or servant.

- I. All members of the Gaming Commission shall act in a fair, impartial and courteous manner in all dealings with licensees and the public.
- J. No member of the Gaming Commission shall accept any gift, discount or other favor from any licensee that the licensee would not give freely to the general public. Any gift, discount or favor received by any member of Gaming Commission shall be disclosed in writing and reported to the Commission Chair, the Executive Director of the Gaming Agency, and the Tribal Council.
- K. Personal solicitation for or payment to any partisan, political organization for any partisan, political purpose or any compulsory assessment or involuntary contribution in any official capacity is prohibited.
- L. It is the responsibility of each member of the Gaming Commission to maintain the fact, as well as the perception, of keeping an "arm's length distance" from management and employees of FireKeepers Casino Hotel and other persons licensed by the Gaming Commission. In order to maintain this required objectivity, Commission members should not unnecessarily fraternize with casino team members and should not discuss any aspect of Gaming Commission operations with management and employees of FireKeepers Casino Hotel or other licensees.
- M. Gaming Commissioners must only act in an official capacity and as authorized under § 8.5-27. No individual member or member(s) of the Gaming Commission shall have any power or authority to direct or authorize the Executive Director or any employee of the Agency to take any action within the Agency's day-to-day regulatory authority and members of the Gaming Commission should avoid interactions with employees of the Agency, which might unreasonably interfere with the Executive Director's authority to manage the day-to-day activities of the Agency.
- N. All personal or romantic relationships involving Gaming Commissioners with employees of the Gaming Agency or FireKeepers Casino Hotel beyond what would reasonably be described as a "casual social relationship" must be promptly disclosed to the Gaming Commission Chair, the Gaming Agency's Executive Director and the Tribal Council. When circumstances warrant, the Gaming Commission or the Tribal Council may direct an individual Gaming Commissioner to either terminate a relationship with any licensee or resign his/her position on the Gaming Commission.

#### § 8.5-26 Compensation of Commissioners.

The Chairman and Commissioners shall be compensated at rates established by the Council. The Tribal Council shall review the rates of compensation for Commissioners on an annual basis and shall make adjustments to such rates as the Council determines to be appropriate to address increases in the cost-of-living or wage deflation. The Council shall not reduce the rate of compensation for any Commissioner during a Commissioner's term of office. Commissioners shall be entitled to reimbursement for actual expenses incurred on Commission business, including necessary travel expenses, subject to budgetary limitations and in accordance with generally applicable finance policies and procedures adopted by the Council or the Tribe's Chief Financial Officer.

#### § 8.5-27 Powers and duties of Commission.

- A. General. The Commission shall be responsible for exercising general oversight of Gaming Agency to ensure that the Agency is exercising its authority to regulate all gaming conducted within the Tribe's Reservation in a manner that ensures that such gaming is conducted in compliance with this chapter, regulations approved by the Commission, the Indian Gaming Regulatory Act, the Compact. In exercising its oversight authority, the Commission shall avoid unnecessary interference with the

Executive Director's discretion in overseeing the day-to-day operation of the Gaming Agency and shall have refrain from interference with the authority and discretion of any gaming operations managers to manage a gaming establishment.

- B. Appointment of Executive Director of the Agency. The Commission shall have authority to coordinate with the Tribe's human resource department to recruit, interview and appoint the Executive Director of the Agency. The process shall afford an opportunity for the Tribal Council and Chief Executive Officer of the gaming establishment to review and comment on the qualifications of prospective candidates for appointment as Executive Director. The final decision as to whether any candidate meets the qualifications prescribed in § 8.5-41 shall be left to the discretion of the Commission.
- C. Rule-making authority. The Commission shall have the power and duty to review and approve regulations recommended by the Agency, or to initiate the development of proposed regulations for approval, to ensure the integrity of gaming and protection of assets of gaming establishments, including, but not limited to regulations addressing those subjects described in § 8.5-40 (C).
- D. Rule-making process.
  - (1) The Commission shall give notice of its intent to adopt a regulation by posting a copy of the notice in the tribal administration offices and by delivering a copy of the notice by United States Mail or other appropriate means to the Tribal Council Secretary, the Tribe's Legal Department, legal counsel for any gaming operation (if applicable), and the chief executive officer of each gaming establishment. The notice shall include a copy of the proposed regulation and a description of the nature and effect of the proposed regulation. In addition, the notice shall include the following statements:
    - (a) The Commission shall afford interested parties not less than thirty (30) days from the date of the notice to submit comments on the proposed regulation. The Commission may, in its discretion, provide additional time and/or additional opportunities for interested parties to comment on proposed regulations as circumstances warrant or permit.
    - (b) The Commission shall review all comments received during the comment period and, based on such comments, shall make such changes to the proposed regulation as the Commission deems necessary or appropriate.
  - (2) The Commission shall fully consider and address all comments recommending changes to the proposed regulation that are based on sound analysis or are supported by reliable data and information. Prior to taking action to approve any regulation, the Commission shall provide not less than fourteen (14) days notice of its intent to adopt the final regulation to the persons listed in subsection D.(1), above, and to any other person who submitted comments on the proposed regulation. The notice of adoption shall summarize the final regulation and the changes to the proposed regulation. To the extent practicable, the notice of adoption shall include written responses to all substantive comments, provided that the Commission may offer a single response to substantially similar comments.
  - (3) Following the expiration of the fourteen (14) day notice, the Commission shall schedule a meeting to approve the regulation and shall, by official action, set the effective date of the regulation, and publish and post copies of a notice of adoption of the regulation in the same manner as for the notice of intent to adopt the regulation. The notice of adoption shall state the effective date of the regulation and shall announce that copies of the regulation are available from the Commission. Copies of the notice and the final regulation shall be delivered to all persons who were sent a copy of the notice of intent.

(4) **Emergency Rules.** The Commission shall have the authority to adopt emergency rules if the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, economic security, or morals, or to address a substantial void in current regulations, the Commission may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subsection D.(3), above. No such rule shall remain in effect longer than 180 days after the date of its adoption pending completion of notice & comment rulemaking procedures described herein. Whenever feasible, the Commission shall afford the Tribe's Legal Department, legal counsel for each gaming establishment (if applicable), and the chief executive officer of each gaming establishment and opportunity to comment on emergency rules prior to adoption of such rules.

E. **Licensing of Gaming Facilities.** The Commission shall have the authority to approve licenses for gaming facilities as prescribed in Article VI of this chapter.

F. **Adjudicating Administrative Appeals.**

The Commission shall have the power to hear appeals from the following final orders or decisions of the Agency:

(1) Decisions to suspend, restrict or revoke a license for:

(a) Any direct and immediate threat to the health, welfare or safety of the public;

(b) The failure to make prompt and satisfactory progress to correct a problem that was the basis for a license suspension or other disciplinary measure;

(c) Repeated or substantial violations of this chapter, the regulations, the IGRA the Compact, or other applicable laws;

(d) The failure to maintain eligibility for the license; and

(e) The failure to remain eligible for a gaming license in any other jurisdiction where the person is an applicant for or maintains a license, permit or other approval related to gaming.

(2) Any final order of the Executive Director which:

(a) Directs the gaming operation, or any licensee, to take specified corrective actions, or to refrain from taking a specific action deemed to violate this chapter, the regulations, the IGRA, the Compact or other applicable laws within the Commission's jurisdiction;

(b) Assesses any monetary fine or penalty against the gaming operation or employee of any gaming operation, or vendor for violations of this chapter or any regulation.

(3) Patron disputes following exhaustion of the procedures prescribed in § 8.5-97.

G. **Additional Powers.**

The Commission shall also have the power to:

(a) To compromise, negotiate or settle any dispute to which the Commission is a party relating to the Commission's authorized activities;

- (b) Conduct such oversight hearings, and to request information and reports from the Gaming Agency, to determine the effectiveness of regulations and laws, or the need for additional regulations, as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel the production of records and the appearance of witnesses at such hearings.
- H. Establishment of budget. The Commission shall establish an annual budget for its operations, which shall be presented to the Tribal Council for review and approval in accordance with deadlines prescribed by the Tribal Council. The Commission shall have the authority to expend funds within the approved budget without further authorization from the Tribal Council, subject to generally applicable tribal accounting and procurement policies.

§ 8.5-28 Commission meetings.

- A. Regular meetings. The Commission shall conduct a regular meeting once a month at the Commission office or at any other designated meeting place. The Commission shall provide by resolution the time and place for regular meetings. A meeting agenda shall be distributed to all Commission members at least forty-eight (48) hours in advance of the regular meeting, which shall be subject to change by a majority vote of the Commission at such meeting.
- B. Special meetings. Special meetings shall be called by the Commission Chair as necessary to carry out the official duties of the Commission. Notice of each special meeting may be given to each Commission member by hand delivery, telephone, mail or such other method as the Commission may establish. Notice of the special meeting and a proposed agenda must shall be delivered to Commission members at least forty-eight (48) hours in advance of such meeting and shall include the date, time and place of the meeting. The agenda for the special meeting shall be limited to the matters stated in the notice of the meeting unless all members are present at the meeting and a majority agrees to the change to the agenda.
- C. Emergency meetings. An emergency meeting may be called by the Chair of the Commission with less than twenty-four (24) hours' notice, provided that the business proposed to be taken up at the emergency meeting cannot reasonably wait for a special or regular meeting. The Chair of the Commission shall make every reasonable effort to provide all Commissioners with as much prior notice of the meeting as possible under the circumstances. The agenda for the emergency meeting shall be limited to the business proposed in the meeting notice.
- D. Waiver of notice. The notice requirements regarding any special or regular meeting may be waived if all members are present at such meeting and consent to the calling of the meeting.
- E. Meetings open to the public. All meetings of the Commission shall be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information, which the Commission deems confidential pursuant to the provisions of this chapter.
- F. Alternative meeting arrangements. Meetings may be conducted by a telephone conference, video conference, web conference or similar means, as the Commission Chairman deems necessary, subject to such requirements as the Commission may establish. Commission members may participate in any meeting by means of speakerphone or telephone conference, video conference or similar means, provided that all members participating in the meeting can hear and be heard by each other. A member's participation in a meeting described in this subsection without objection at the commencement of the meeting shall be deemed consent to the manner in which such meeting is conducted.
- G. Meeting procedures. The Commission shall prescribe rules of procedure regarding the conduct of its meetings, provided that such rules may not conflict with this chapter or other applicable tribal law. Any question regarding meeting procedure that is not addressed by this chapter, other applicable



tribal law, or by rules of procedure established by the Commission, may be resolved by consulting Robert's Rules of Order.

- H. Hearings. The Commission shall conduct hearings on administrative appeals in accordance with the procedures prescribed in Article X of this chapter. The Commission shall prescribe rules of procedure for the conduct of oversight hearings authorized by this Article and such additional rules regarding the conduct of administrative appeals as the Commission deems necessary, provided such rules may not conflict with this chapter or other applicable tribal law.

§ 8.5-29 Quorum.

A quorum of the Commission shall consist of at least two Commissioners (which may or may not include the Chair). All decisions shall require the affirmative vote of not less than two (2) members of the Commission, unless indicated otherwise in this chapter.

§ 8.5-30 Officers.

- A. Tribal Council will designate a Chairperson for the Commission. The Commission will select among its members a Vice Chairperson and a Secretary. The term of office for officer positions shall be for the term of that Commission position, and members may serve more than one term in that capacity.
- B. The Vice Chairperson shall assume the duties of the Chairperson in the Chairperson's absence. The Secretary shall maintain an official record of all Commission meetings and all other records required to be maintained by the Commission.

§ 8.5-31 Commission offices.

The Commission shall maintain a permanent administrative office. Such office shall serve as the Commission's main business office and shall be the site at which Commission records and documents are maintained and stored on a permanent basis. No person except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission or an attorney for the Commission or Tribe.

§ 8.5-32 Commission recordkeeping.

The Commission shall maintain complete records regarding the following, with due regard for the confidentiality of selected records:

- A. Meeting minutes from all Commission meetings;
- B. Transcript or minutes from all hearings conducted by the Commission;
- C. Commission budget and expenditures;
- D. Communications and correspondence with the Tribal Council, tribal agencies and officials, and state and federal agencies and officials;
- E. Any other records or documents the Commission deems necessary or appropriate.

§ 8.5-33 Reports.

- A. The Commission shall make monthly written reports to the Tribal Council. Such reports shall contain the following information:
- (1) The number of meetings or hearings held, attendance at such meetings/hearings, and significant items on the Commission's meeting or hearing schedule(s) (i.e. regulation drafts in process; type of hearings; reports of activities from the Gaming Agency);
- (2) A summary of any Commission travel and training; and



- (3) All other information which the Commission deems relevant in order to keep the Council adequately informed on all current gaming matters.
- B. Nothing in this section shall be construed to authorize the Commission or Commission staff to provide the Council with any confidential information pertaining to a pending regulatory or criminal investigation.

#### Article IV Establishment, Administration; Powers of the Gaming Agency

##### § 8.5-34 Establishment of the Gaming Regulatory Agency.

The Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby establishes the Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Agency (hereinafter the "Gaming Agency" or "Agency") as an independent governmental subdivision of the Tribe. § 8.5-27 Powers and duties of Commission.

##### § 8.5-36 Governmental attributes of Agency.

As a political subdivision of the Tribe, the Agency is endowed with all the rights, privileges and immunities of the Tribe, including but not limited to the sovereign immunity of the Tribe from suit absent express consent from Tribal Council. The Executive Director and individual employees of the Commission are officers of the tribal government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law.

##### § 8.5-37 Delegation of regulatory authority to the Agency.

Subject only to the general oversight authority of the Gaming Commission, or as otherwise expressly provided herein, the Tribal Council delegates to the Gaming Agency sole authority and responsibility to regulate all gaming conducted within the Tribe's Reservation, as provided by this chapter, which authority includes without limitation the authority to regulate gaming operations, gaming establishments and management contractors, and to license vendors of goods or services, labor organizations, primary management officials, key employees and all other persons subject to the Commission's licensing authority pursuant to this chapter. The Agency shall ensure that all gaming conducted within the Tribe's Reservation is conducted in conformance with this chapter, the regulations, the Compact, the IGRA, regulations promulgated by the NIGC, and other applicable tribal, state and federal laws.

##### § 8.5-38 Independence of Agency.

In all matters within the scope of its delegated regulatory authority, the Agency shall be and shall act independently and autonomously from the Tribal Council. No prior or subsequent review by the Tribal Council of any actions of the Agency taken within the scope of its regulatory authority shall be required or permitted, except as may be otherwise explicitly provided in this chapter. No prior review by the Gaming Commission of any actions of the Agency which are taken within the scope of its regulatory authority and in accordance with approved regulations shall be required or permitted, except as may be explicitly provided in this chapter. Notwithstanding the foregoing, the Agency shall be subject to all tribal law, including generally applicable tribal administrative policies and procedures, except to the extent that an exception for the Agency is expressly provided in such policies. The Agency's fiscal year shall be the fiscal year of the Tribe.

##### § 8.5-39 Agency funding.

Agency funding shall be in an amount sufficient for the Agency to properly fulfill all of its regulatory responsibilities under this chapter. The Tribal Council shall not reduce the Agency's annual budget during any fiscal year but may approve requests by the Agency to supplement the budget when necessary. The amount of the Agency's funding shall be established annually for the subsequent fiscal year through a detailed annual budget to be prepared by the Agency's Executive Director for Tribal Council approval in its annual budgeting process. The Agency budget shall take into account any unexpended funds that may, with approval of the Tribal Council, be retained and carried over by the Agency at the end of each fiscal

year to the next fiscal year, excluding funds that are obligated for costs or expenses incurred during the prior fiscal year.

§ 8.5-40 Powers and duties of Agency.

- A. General. The Agency shall be responsible for ensuring that all gaming conducted within the Tribe's Reservation is conducted in compliance with this chapter, the regulations, the Indian Gaming Regulatory Act and the Compact. In exercising its regulatory authority, the Agency shall avoid unnecessary interference with the authority and discretion of any gaming operations or management contractor to manage a gaming establishment.
- B. Licensing. The Agency shall have the power to conduct investigations and determine the eligibility of applicants for licenses required to operate, manage, conduct business with, or be employed at any gaming operation in accordance with the standards and procedures set forth in Articles VI through VIII of this chapter and the regulations. The Agency shall also have the power to limit, revoke, terminate, condition, suspend or restrict any license when the same will further the purposes and requirements of this chapter.
- C. Gaming Regulations. The Agency shall have the responsibility to develop and propose to the Commission, those regulations deemed reasonably necessary to implement this chapter and to effectively regulate gaming conducted within the Tribe's Reservation, or by gaming establishments licensed under this chapter, which regulations may include, but shall not be limited to, the following:
  - (1) The licensing of gaming establishments;
  - (2) Background investigations and licensing of work permit employees, key employees and primary management officials;
  - (3) Background investigations and licensing of gaming vendors, labor organizations and, to the extent deemed necessary, other suppliers of goods and services to a gaming enterprise;
  - (4) Conducting or causing to be conducted internal audits of gaming operations;
  - (5) Standards and procedures establishing independent reporting requirements for the Surveillance Department as required by § 8.5-93 and other standards as are necessary to assure that the independence of surveillance functions are maintained;
  - (6) The distribution of complimentary items;
  - (7) Permitted games and the conduct thereof;
  - (8) Compliance with applicable standards and procedures for testing gaming equipment or supplies;
  - (9) Audio and video surveillance standards and procedures;
  - (10) Standards and procedures for minimum internal cash, playing cards, and chip-and-token control;
  - (11) Compliance with the Bank Secrecy Act and applicable provisions of the Internal Revenue Code;
  - (12) Resolution of gaming-related disputes involving patrons after all remedies available at the gaming establishment are exhausted;
  - (13) The development and maintenance of a list of excluded persons;

- (14) Agency reporting, recordkeeping, auditing, investigation and enforcement procedures; and
  - (15) Fines and other penalties for violations of this chapter, the regulations, and other applicable law.
- D. Other powers of the Agency. In addition to and in conjunction with the enumerated regulatory powers set forth above in this chapter, authorized employees of the Agency shall have the power to:
- (1) Initiate investigations of licensees and to take action to suspend, restrict or revoke a gaming license for:
    - (a) Any direct and immediate threat to the health, welfare or safety of the public;
    - (b) The failure to make prompt and satisfactory progress to correct a problem that was the basis for a license suspension or other disciplinary measure;
    - (c) Repeated or substantial violations of this chapter, the regulations, the IGRA or the Compact;
    - (d) The failure to maintain eligibility for the license; and
    - (e) The failure to remain eligible for a gaming license in any other jurisdiction where the person is an applicant for or maintains a license, permit or other approval related to gaming.
  - (2) Initiate civil actions in court to enforce provision of this chapter, the regulations or the IGRA;
  - (3) To compromise, negotiate or settle any dispute to which the Agency is a party relating to the Agency's authorized activities;
  - (4) To enter the gaming establishment or other places of business of any licensed gaming facility in order to gain access to, inspect, examine, copy and audit all records, equipment, supplies or other items concerning any aspect of the operation conducted within the Reservation;
  - (5) To investigate, review, decide, adjudicate, enforce and to undertake such other regulatory activities regarding any matters subject to the Agency's jurisdiction as necessary for the Agency to carry out its express duties and responsibilities under this chapter;
  - (6) Initiate or request hearings before the Commission that the Agency may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel the production of records and the appearance of witnesses at such hearings;
  - (7) To provide information received through audits or other investigations that indicates a violation of tribal, federal or applicable state laws or regulations to the appropriate law enforcement officials and to cooperate with such agencies in the investigation and prosecution of charges brought as a result of violations of law;
  - (8) To request assistance from and utilize the services of public and private entities, including the Tribal Court and other courts, the tribal police and other law enforcement agencies, and the Tribal Prosecutor and Tribe's Legal Department in exercising its powers and carrying out its responsibilities;
  - (9) To coordinate with the Michigan Gaming Control Board regarding matters of compliance with the express requirements of the Compact, provided that in exercising such power the Agency shall respect the role and responsibility of the Tribal Council to represent the Tribe's interests as a party to the Compact and to engage in government-to-government consultation with the State of Michigan and its agencies;

- (10) To coordinate and cooperate with the Michigan Gaming Control Board regarding matters related to compliance with the express requirements of the Lawful Internet Gaming Act, MCL 432.301 to MCL 432.322 and the Lawful Sports Betting Act, MCL 432.401 to MCL 432.419, and regulations promulgated thereunder, including the gaming establishment's compliance with the terms and conditions of the Internet Gaming Operator and Internet Sports Betting Operator licenses issued by the Michigan Gaming Control Board; and
  - (11) To coordinate with the National Indian Gaming Commission regarding matters of compliance with the express requirements of the Indian Gaming Regulatory Act and the NIGC regulations, including matters relating to licensing of primary management officials and key employees and the payment of fees to the NIGC, provided that in exercising such power the Agency shall respect the role and responsibility of the Tribal Council to engage in government-to-government consultation with the United States and its agencies.
  - (12) To ensure that each gaming establishment has made arrangements to cause to be conducted independent audits annually and has submitted the results of those audits to the NIGC. Annual audits shall conform to generally accepted auditing standards. All gaming-related contracts that result in the purchase of supplies, services or concessions for more than \$25,000 in any year (except contracts for professional legal and accounting services) shall be specifically included within the scope of the audit conducted. Copies of the annual audit of each licensed gaming facility, and each audit for supplies, services or concessions of each gaming establishment, shall be furnished to the NIGC within 120 days after the end of each fiscal year of the gaming establishment.
- F. Monitoring and investigation. The Agency has the authority and duty to monitor all operations for compliance with this chapter and the regulations, the Nottawaseppi Huron Band of the Potawatomi Liquor Code, any other tribal law that expressly delegates responsibilities to the Agency, the IGRA and the Compact, subject to any limits on the Agency's power set forth in such laws.
- G. Access to records and information. Authorized Agency personnel, shall have access to all areas of any gaming operation and to all records, files, information and data of any gaming operation, wherever located, and may interview any employee, agent or representative of any gaming operation with respect to matters relating to the operation of any gaming operation. Advance notice to the gaming operation or any employee, agent or representative of the gaming operation shall not be required for the Agency to exercise the authority described in this subsection.
- H. Enforcement authority.
- (1) When information received by the Agency through inspections, audits or investigations indicates a violation of this chapter, the regulations, the terms or conditions of any license, or any other applicable tribal or federal laws, the Agency through its Executive Director shall, as warranted under the circumstances:
    - (a) Refer the matter to appropriate law enforcement officials or other appropriate governmental agencies;
    - (b) Pursue further investigation of the matter;
    - (c) Initiate proceedings to fine the gaming operation or person(s) responsible for the violation, or to suspend, restrict or revoke such person's license, or order specific corrective actions to address the violation, in accordance with the procedures in this chapter and the regulation; or
    - (d) Consult with representatives of the gaming operation to correct the violation or resolve the matter, with or without formal proceedings, at the discretion of the Executive Director.

- (2) Any enforcement action taken by the Executive Director on behalf of the Agency shall be fair and reasonable under the circumstances, shall be proportionate to the violation, and shall be designed to promote the goals of correction and improvement, unless the nature or severity of the violation is such that the goals of correction and improvement would be unrealistic. Any enforcement action taken by the Agency must be within its powers, related to its gaming regulatory responsibilities, and shall be conducted in accordance with the hearing procedures described in Article X of this chapter and is subject to appeal pursuant to Article XI of this chapter.

§ 8.5-41 Appointment of Executive Director; qualifications; removal and suspension.

- A. Appointment of the Executive Director. The Executive Director of the Agency shall be appointed and hired by the Gaming Commission and shall provide such reports to the Gaming Commission as may be necessary and appropriate to permit the Commission carry out its oversight responsibilities and perform its other duties.
- B. Qualifications. The Executive Director shall possess the following qualifications:
  - (1) At least five (5) years' responsible administrative experience and training in public or business administration, or possess broad skills in management and regulatory enforcement, and prefer to have an MBA, J.D. or other advanced degree. The Director's experience and training must be of sufficient scope, depth and relevancy to enable him/her to direct the work of the Gaming Commission (agency).
  - (2) Must meet the qualifications for and obtain the same license that Commission members must obtain.
  - (3) Must devote his or her entire time and attention to the duties of the Executive Director and the operation of the Commission.
- C. Compensation. The Director shall be entitled to an annual salary determined by the Gaming Commission. The salary established for the Executive Director and other terms of employment shall be in accordance with the Commission's approved budget and applicable personnel policies and procedures.
- D. Removal, suspension. The Commission may, by majority vote, request that the Tribal Council initiate a procedure for the removal of the Executive Director for any of the reasons stated in § 8.5-23 regarding removal of a Commission member, provided that if the reason for seeking the removal involves the failure to maintain or remain eligible for a license or for any other reason that threatens the integrity or public image of the Commission, the Commission may suspend the Executive Director, with pay, pending the outcome of the removal proceeding.
- E. Vacancy. If there is a vacancy for any reason in the position of Executive Director, the Commission shall assign the duties of the Executive Director to a department manager within the Commission on an interim basis until the Commission fills the vacancy in the position of Executive Director.

§ 8.5-42 Agency departments.

The Agency shall be organized under the Executive Director into the following departments, which shall be under the management and supervision of the Executive Director.

- A. Administration shall perform the administrative functions of the Agency, to include:
  - (1) Maintaining office records.
  - (2) Coordinating all administrative functions from the Agency to other regulatory agencies, law enforcement and intelligence agencies while maintaining strong communications with the gaming operation.

B. Licensing. The Licensing Department shall perform all of the following duties and responsibilities:

- (1) Receiving and processing all license applications.
- (2) Conducting background investigations regarding any applicant for a license and all other suitability investigations on behalf of the Agency that are required or permitted under this chapter.
- (3) Such other matters as the Executive Director may assign to the Department.

C. Auditing and compliance. The Department shall perform the following duties and responsibilities:

- (1) Conducts audits to verify each gaming establishment's compliance with all audit and financial oversight requirements regarding operational and gaming revenues;
- (2) Serve as the internal audit personnel for purposes of compliance with 25 C.F.R. § 542.42 by performing the audits of all major gaming areas of each gaming establishment not less than annually as required by NIGC regulations;
- (3) Monitoring through audit activities each gaming establishment's compliance with this chapter, the regulations, tribal minimum internal controls, IGRA, the Compact, and other laws governing gaming activities and gaming assets applicable to the gaming establishment;
- (4) Recommending the initiation of compliance or enforcement actions resulting from a licensee's failure to comply with the chapter, the regulations, including the tribal minimum internal controls, the IGRA and the Compact; and
- (5) Such other matters as the Executive Director may assign to the Department.

D. Investigations. The Department shall perform the following duties and responsibilities:

- (1) Ensuring all incidents within the scope of Agency's delegated regulatory authority are properly investigated.
- (2) Responsible for collecting, organizing and presenting various types of information in an unbiased manner in order to derive a conclusion in regards to an event or a series of events.
- (3) Monitors the property, identifying potential security and/or safety hazards and reporting appropriately to ensure the safety and protection of guests, employees, gaming revenues, assets and the entire facility.
- (4) Coordinates with the Agency's Auditing and Compliance Departments to investigate potential violations of the chapter, regulations, including tribal minimum internal controls, the Compact and other laws within the Agency's jurisdiction which may be identified through audit activities.
- (5) Coordinates with the gaming establishment's surveillance and security department on security-related matters.
- (6) Monitors the functionality of technical slot machine components for certification by the Agency; such as EPROMS, flash drives, and other software configurations.
- (7) Such other matters as the Executive Director may assign to the Department.

E. Information technologies. The Department shall perform the following duties and responsibilities:

- (1) Manages the day-to-day operation of all Commission and Agency computer systems, network and interfaces with all casino departments, regarding current information technology.

- (2) Assist the Investigations Department, as needed, with monitoring the functionality of technical slot machine components for certification by the Agency; such as EPROMS, flash drives, and other software configurations.
- (3) Monitors the functionality, security and integrity of all computer systems, network and interfaces, associated with any internet wagering systems operated by, or on behalf of, the gaming establishment.
- (4) Conducts information technologies audits for the Agency of the gaming establishment's compliance with information technology internal controls and reviews the results of internal and external information technology audits performed by the gaming establishment's Information Technology Department.
- (5) Such other matters as the Executive Director may assign to the Department.

§ 8.5-43 Powers and duties of Executive Director.

The Executive Director shall have the authority and the duty to carry out on behalf of the Agency the administrative and executive requirements of the Agency under this chapter, the regulations, and the IGRA, including, without limitation:

- A. Agency administration. The Executive Director shall provide administrative direction and support to the Agency, including managing and supervising all Agency staff, consultants and contractors, records management, and the development and oversight of the budget.
- B. Agency staff. The Executive Director shall be responsible for personnel matters, including the recruitment, hiring, supervision and discipline of Agency staff, whose positions shall be established by written position descriptions, subject to the all applicable hiring and employment laws and policies of the Tribe.
- C. Contracting. The Executive Director may negotiate and enter into contracts for the acquisition of goods and services required by the Agency and may otherwise expend funds as needed for the operation of the Agency, subject to such requirements as the Agency may establish, provided that the Executive Director shall ensure that all such contracts and expenditures are within the Agency's approved budget and any contracts which require the Agency or Tribe to waive its sovereign immunity from suit or consent to the jurisdiction of any court or dispute resolution process shall require approval by the Tribal Council unless such authority is expressly delegated to the Executive Director by Tribal Council resolution or statute.
- D. Administration of Agency operations. The Executive Director shall be responsible for overseeing the day-to-day operations of the Agency, including maintaining oversight of the Administration, Licensing, Investigation, Information Technologies, Auditing/Compliance Departments, and such other departments, sections or offices of the Agency. In overseeing Agency, the Executive Director shall ensure that the following activities are performed effectively and in accordance with applicable law and applicable government policies and procedures:
  - (1) Investigations of any matter within the scope of authority of the Agency, including without limitation background investigations necessary to determine the suitability of any applicant for license, are conducted efficiently and professionally.
  - (2) Issue and to assist, as necessary, the Commission in with the issuance of subpoenas, prepare evidence, and cooperate with the Agency's legal counsel in presenting to the Commission, cases in all appeals of or challenges to Agency's or the Commission's decisions asserted in accordance with the standards and procedures provided in this chapter and the regulations.

- (3) Monitor all gaming operations and gaming establishments at random or periodic intervals with or without prior notification to the gaming operation to determine compliance with this chapter, the regulations, IGRA, the Compact and other applicable law and, upon receiving any credible report of a violation thereof, conduct a timely investigation with regard to such report.
  - (4) Address and, as needed, investigate all disputes between gaming patrons and gaming operations pursuant to the standards and procedures set forth in this chapter and the regulations.
  - (5) Maintain and enforce compliance with a list of persons prohibited, or who have self-excluded themselves, from participating in gaming conducted at or with the gaming establishment and other persons who are subject to temporary or permanent bans prohibiting such persons entering the gaming establishment.
  - (6) Assist in enforcing Agency or Commission orders and decisions and, in coordination with appropriate law enforcement agencies, investigate and pursue prosecution of criminal violations of gaming laws and in pursuing criminal and civil enforcement of other applicable tribal, state and federal laws.
- E. Licensing. The Executive Director may grant temporary licenses as authorized under this chapter and may grant any other licenses on behalf of the Agency as expressly provided by the regulations.
  - F. Records management. The Executive Director shall develop and maintain a suitable records management and retention system and shall ensure that all confidential and sensitive records and information are maintained and protected from unauthorized release.
  - G. Evaluate the gaming regulatory system. Evaluate the effectiveness of the Tribe's gaming regulatory system and recommend any changes that may be necessary or desirable.
  - H. Other duties. Perform such other duties as the Executive Director deems necessary as are within the scope of authority delegated to the Agency under this chapter.

## Article V

### Licensing; General Provisions

#### § 8.5-43a Licenses required.

The Gaming Agency, consistent with IGRA, the Compact and this chapter, shall ensure that the following classes of persons acquire and maintain valid licenses pursuant to this chapter:

- A. Class II and Class III gaming establishments;
- B. Management contractors;
- C. Primary management officials;
- D. Key employees, work permits; and
- E. Vendors of goods or services.

#### § 8.5-43b Authority to require licensing of other persons.

The Commission may develop regulations establishing licensing or background investigation requirements for other groups of persons, by classifying additional employees of gaming operations as "work permit employees," by requiring licensing for other categories of employees of a gaming operation, or requiring licensing of persons doing business with a gaming operation in addition to vendors of gaming goods or services.



§ 8.5-43c Gaming establishment license.

No person shall conduct Class II gaming or Class III gaming at any location within the Reservation unless such gaming is conducted at a gaming establishment licensed by the Commission as set forth in Article VI.

§ 8.5-43d Management contractor's license.

No person shall manage a Class II or a Class III gaming operation within the Reservation unless such person possesses a management contractor's license issued by the Commission as set forth in Article VII.

§ 8.5-43e Employees of gaming operation.

No person shall be employed as primary management official, key employee or work permit at any gaming operation within the Reservation unless such person is licensed by the Gaming Agency as set forth in Article VII.

§ 8.5-43e Supplier of gaming goods or services.

No person shall supply any gaming goods or services to any gaming operation within the Reservation unless such person is licensed by the Gaming Agency as set forth in Article VIII.

§ 8.5-43f General rights and duties of applicants.

- A. No property interest or promise of employment or contract. Neither the consideration of the issuance of a license nor the issuance of a license creates or grants to an applicant or a licensee a property interest or due process rights except as may be explicitly provided by this chapter or other tribal laws. The granting of a license by the Gaming Agency does not constitute a commitment on behalf of the Gaming Agency or any other party to contract with, hire or continue to employ or contract with the licensee.
- B. Duties of applicants and licensees. Applicants are required to provide or perform the following:
  - (1) Responsibility to establish qualifications. An applicant for any license or license renewal required by this chapter has the burden of proving by clear and convincing evidence that all standards and other requirements applicable to such license are met. No license shall be granted to any applicant who fails to meet the evidentiary standards and all applicable licensing standards and requirements.
  - (2) Duty to disclose and cooperate. It shall be the responsibility and continuing duty of each applicant/licensee to promptly furnish all information, documentation, assurances, consents, waivers, fingerprint impressions, photographs or other materials required or requested by the Gaming Agency and Commission and to cooperate with the Agency and the Commission in the performance of its duties. Failure to furnish same after receipt of request shall constitute grounds for delaying consideration or denial of the application.
  - (3) Licensee's continuing duty to promptly furnish information. Licensees shall promptly notify the Gaming Agency of any occurrence or event in their lives which constitute a material change (e.g., arrest, filing of criminal charges, address change, name change, etc.) in any information provided in the licensee's application. The failure to promptly report within seventy-two (72) hours of occurrence such information or refusal to comply with a request by the Gaming Agency for information, evidence or testimony may be considered grounds for the suspension, restriction or revocation of a license.
  - (4) Authority to seize, revoke and suspend license. The Executive Director may seize, revoke, restrict, condition or suspend any license issued under this chapter in accordance with the procedures prescribed in §§ 8.5-68 and 8.5-69 and Article X of this chapter and any applicable regulations.
  - (5) Waiver of liability for disclosure of information. Applicants/licensees accept and assume all risks of harm from any public disclosure of information related to the licensing process. Applicants/licensees expressly waive any claims against the Commission, the Agency and the Tribe as well as any person

that furnishes information in good faith to the Gaming Agency or the Commission in any matter relating to the licensing process.

- (6) Consent to examination of accounts and records. Each applicant/licensee shall, in writing, consent to the examination of all bank accounts, other accounts and other records, whether held in the possession or under the control of the applicant/licensee or a third party. Furthermore, the applicant/licensee shall authorize and direct all third parties in possession or with control of such accounts or records to allow such examination thereof by the Gaming Agency or the Commission as the Agency or the Commission, as appropriate, deems necessary.
- (7) Consent to jurisdiction. Any person who applies for a license under this chapter shall be deemed to have given consent to the personal jurisdiction of the Tribe, the Commission and the Tribal Court and to have waived all available defenses against such jurisdiction. Nothing in this chapter shall limit the jurisdiction of the Tribe, the Agency or Commission or the Tribal Court under any circumstances, except as explicitly stated herein.
- (8) Nontransferability of license. All licenses shall be nontransferable and shall prohibit the licensee from transferring any rights or duties related to the license either directly or indirectly without the express approval of the Gaming Agency.

§ 8.5-44 Withdrawal of license application.

Once filed, an application for any license may not be withdrawn by an applicant without the express permission of the Executive Director. An applicant may request permission to withdraw an application by submitting a written request to the Executive Director. The Executive Director may grant or deny such a request, in its sole discretion.

§ 8.5-45 Right to condition license.

- A. Every license issued by the Gaming Agency shall be conditioned upon the licensee continuing to remain eligible to hold such license under the terms and conditions set forth in this chapter and any special conditions prescribed by the Agency.
- B. In the case of licenses approved for tribal members pursuant to § 8.5-62D, the Commission reserves the right to condition the issuance of and continuing right to maintain any license upon the applicant's agreement to comply with certain conditions associated with the holding of such license. Such conditions shall be related to the type of license sought and shall be narrowly tailored to address any specific regulatory concerns associated with the applicant, as revealed by the background investigation, including the particular job responsibilities or contractual obligations to be performed by the applicant.

§ 8.5-46 Term of license.

All licenses, with the exception of temporary licenses, shall be for a term of two (2) years and shall expire on the second anniversary of the effective date of the license.

§ 8.5-47 License fees.

The Commission shall, by regulation, establish a schedule of fees for each type of license issued under this chapter or defer the cost to the gaming operation as an operational expense. The amount of such fees shall be reasonably related to the recovery of the costs of administering the licensing responsibilities under this chapter.

## Article VI Licensing of Gaming Establishments

§ 8.5-48 License required.

No person shall conduct Class II gaming or Class III gaming within the Reservation unless such gaming is conducted at a gaming establishment licensed by the Commission. If gaming is proposed to be

conducted in more than one gaming establishment by any gaming operation, a separate facilities gaming license shall be required for each such gaming establishment where Class II gaming or Class III gaming is conducted.

§ 8.5-49 License application fees.

The license application and renewal fee (if required) shall be as set forth by Commission regulation.

§ 8.5-50 Facilities gaming application procedures.

In order to obtain a facilities gaming license, the gaming operation requesting such license shall submit an application on the form provided by the Commission. The applicant shall include all of the following information regarding the period for which the license is sought:

- A. A description of the proposed gaming, including but not limited to:
  - (1) The type of proposed gaming, along with all instructions, policies, procedures and other documents related to the proposed gaming;
  - (2) The number and types of gaming equipment and gaming devices proposed to be in use within the gaming establishment; and
  - (3) The proposed days and hours of operation.
- B. A description of the gaming establishment, including the layout of the gaming equipment and gaming devices and the surveillance systems in the gaming establishment;
- C. Documentation accurately describing the proposed or current location of the gaming establishment, which verifies that such location is on Indian lands and, if Class III gaming is proposed, that the location constitutes "eligible Indian lands;"
- D. A description of the security, police, fire protection and other public safety services that will be available in the gaming establishment;
- E. Copies of the proposed system of internal controls and accounting procedures for the gaming operation;
- F. The emergency operation plan for the gaming establishment; and
- G. Schedule of all permits and approvals required under applicable tribal health, environmental protection and building codes, including documents verifying the current status of such permits and approvals.

§ 8.5-51 Threshold criteria that must be met by gaming establishments.

In order to be eligible to be issued a facilities gaming license, the applicant must submit documentation sufficient to permit the Commission to determine that the following criteria are met:

- A. The gaming establishment is or will be located on Indian lands and, if applicable, "eligible Indian lands";
- B. The proposed gaming establishment is duly authorized by tribal law and by the gaming operation;
- C. The Tribe or a tribal entity will have the sole proprietary interest in the gaming establishment, notwithstanding the grant to other persons of any security interests in tangible personal property of the gaming establishment;

- D. The gaming establishment's buildings and facilities have adequate, safe and operational plumbing, electrical, heating, cooling and ventilation systems in place;
- E. The gaming establishment's buildings and facilities have been inspected and approved for compliance with all applicable law by a qualified and duly authorized building and fire inspector;
- F. The gaming establishment will be constructed, maintained, and operated in a manner that adequately protects the environment and the health and safety of the public.
- G. The gaming establishment is equipped with security and surveillance equipment meeting or exceeding the tribal minimum internal control standards established by the regulations;
- H. The system of internal controls and accounting procedures for the gaming operation will meet or exceed the requirements of the tribal minimum internal controls, including requirements to ensure that financial statements and charts of account for all gaming revenues will be preserved and subject to audit;
- I. The emergency operation plan for the gaming establishment is sufficient and adequate to ensure the health and safety of the general public in compliance with applicable federal and tribal law;
- J. The gaming establishment's buildings and facilities meet all other requirements of applicable federal and tribal law; and
- K. The gaming operation has paid all applicable license fees and costs.

§ 8.5-52 Facilities gaming license application procedures.

- A. Upon receipt of a complete application for a facilities gaming license, the Commission shall:
  - (1) Review the proposed facilities gaming license application to ensure that all threshold standards required by this chapter are met.
  - (2) Review the system of internal controls and accounting procedures to be used by the gaming operation.
  - (3) Review the layout of the games and surveillance systems for the gaming establishment, including any instructions, policies, procedures, internal controls or other documents related to the layout of games and surveillance systems.
  - (4) Review the emergency operation plan for compliance with the requirements of applicable tribal and federal laws.
  - (5) Review the schedule of permits and approvals required under applicable tribal law and consult as needed with the code enforcement officer responsible for review and approval of such permits and approvals.
  - (6) Review all aspects of the gaming establishment to ensure that it will be in compliance with the provisions of federal and tribal laws and regulations and the Compact.
  - (7) Take any additional steps necessary to ensure the integrity of gaming at the gaming establishment and by the gaming operation.
- B. The Commission shall make its best effort to approve the facilities gaming license application within thirty (30) days following the receipt of a complete application. The Commission shall approve the gaming establishment license application unless the Commission determines that the gaming establishment fails to meet the applicable licensing standards under federal or tribal law or the

Compact or that, based on reasonable grounds, the gaming establishment will be operated in violation of federal or tribal law or the Compact.

- C. The Commission shall, at least fourteen (14) calendar days prior to the date the Commission intends to hold the hearing to consider the license application, post notice of the application in a prominent public location in tribal government buildings and at the gaming establishment. The Commission shall also publish the notice at least twice in a local newspaper serving the Reservation. The Commission shall hold a public hearing to consider the application, in which the applicant, its attorney and any person protesting the application shall have the right to present sworn oral and documentary evidence relevant to the application. The Commission may close the hearing or portions thereof to the extent permitted by applicable tribal law or to consider those portions of the application containing confidential or proprietary information. At the conclusion of the hearing, the Commission shall determine whether to grant or deny the application based upon the Commission's determination of the best interests of the Tribe and compliance with this chapter.
- D. If the Commission denies an application for a gaming establishment license, the Commission shall promptly notify the applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the application, and inform the applicant of its right to appeal the determination in accordance with Article XI.

§ 8.5-53 Conditions applicable to facilities gaming license.

**[Amended 6-21-2012 by Res. No. 06-21-12-18]**

Any gaming operation that holds a facilities gaming license shall comply with such reasonable conditions as may be prescribed by the Commission, including the following:

- A. The gaming operation shall operate and maintain the gaming establishment in a manner that meets the requirements set forth under § 8.5-95 of this chapter.
- B. Prior to initiating any public use of the building or facilities at the gaming establishment, the gaming operation shall have received all required permits, approvals and certificate(s) of occupancy under Chapter 9.2, Construction and Health Codes, of the Tribal Code and other applicable tribal law and shall comply with all conditions imposed through such permits, approvals and certificates.
- C. The gaming operation shall comply with all Internal Revenue Service reporting and filing requirements.
- D. Prior to initiating any gaming at the gaming establishment, all primary management officials, key employees and other employees required under this chapter or the regulations to be licensed shall obtain the appropriate licenses required in Article VII.
- E. The gaming establishment shall be subject to patrol by the gaming operation's security personnel, the tribal police and, to the extent expressly authorized by the Tribe, local and state law enforcement departments. The licensee shall cooperate at all times with all security personnel and law enforcement officers.
- F. The gaming establishment shall be open to inspection by the Commissioners, Commission staff and other duly authorized tribal authorities at all times.
- G. The gaming operation may not discriminate by reason of race, color, national origin, sex, age, physical or mental disability, sexual orientation or creed, provided that nothing herein shall prohibit the licensee from complying with contracting and employment preference requirements regarding Nottawaseppi Huron Band of the Potawatomi members and other Native Americans pursuant to applicable tribal and federal law.

- H. Licensees may not accept for cashing any public assistance check from any federal, state or tribal agency including social security checks.
- I. Licensees may not permit any person under the age of 21 to be employed in any primary management official position.
- J. Licensees may not permit any person under the age of 18 to be employed in any key employee or other gaming or nongaming positions.

§ 8.5-54 Terms of license.

A gaming establishment license shall be valid for a period of two (2) years from the date of issuance.

§ 8.5-55 Posting of licenses.

The gaming establishment license must be posted in a conspicuous location at all times on the premises of each gaming establishment.

§ 8.5-56 Gaming facility license renewals.

- A. Each facilities gaming license must be renewed every two (2) years.
- B. In order to obtain a renewal of a license, the gaming operation shall submit a written renewal application to the Commission on the form provided by the Commission at least forty-five (45) days prior to the date the current license will expire.
- C. The Commission shall approve applications for a renewal license within thirty (30) days following the Commission's receipt of a complete application (and required documents) unless the Commission determines that the gaming establishment fails to meet the applicable licensing standards under federal or tribal law or the Compact or that, based on reasonable grounds, the gaming establishment will be operated in violation of federal or tribal law or the Compact. The Commission may, in its discretion, hold a public hearing to consider the application in accordance with the procedures described in Article X, provided that the Commission may close the hearing or portions thereof to the extent permitted by applicable tribal law.
- D. If the Commission denies a renewal application, the Commission shall, within seven (7) calendar days, notify the applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the application, and inform the applicant of its right to appeal the determination in accordance with Article XI.

Article VII

Licensing of Primary Management Officials, Key Employees and Work Permit Employees of Gaming Operations

§ 8.5-57 Application for gaming employee license.

The Gaming Agency shall require each prospective primary management official, key employee or work permit employee to submit a sworn application to the Gaming Agency on the forms and in the manner required by the Gaming Agency. The application shall include, at a minimum, the forms, information, other requirements described hereunder.

- A. Application form. The application form shall require, at a minimum, the applicant to provide the Gaming Agency with the following information:
  - (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender and all languages (spoken or written).
  - (2) Currently and for the previous ten (10) years:

- (a) Business and employment positions held;
  - (b) Ownership interests in those businesses;
  - (c) Business and residence addresses; and
  - (d) Driver's license numbers, including issuing state.
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Subsection A(2) of this subsection.
- (4) Current business and residence telephone numbers.
- (5) A description of any existing and previous business relationships with other tribes, including an ownership interests in those businesses.
- (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses.
- B. Application form notices. The notices set forth below shall be placed on the front of every application so that the applicant will read the notices prior to filling out the application form.  
[Amended 1-28-2011 by Res. No. 01-28-11-02]

#### **Privacy Act Notice**

**In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations, prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in issuance, denial or revocation of a gaming license or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position.**

The disclosure of your social security number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

#### **False Statements Notice**

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).

- C. Application form authorizations and acknowledgements. Every application form shall require the applicant to sign the following authorization and acknowledgement:

- (1) Authorization permitting the Gaming Agency to investigate the applicant's background, including his criminal and civil records, credit and financial history, business relationships and activities, records of all previous license applications, and tax records.
  - (2) A signed acknowledgement that the applicant consents to the personal jurisdiction of the Tribe, the Gaming Agency and Commission and the Tribal Court and that the applicant waives all available defenses against such jurisdiction.
- D. Personal history disclosure. The personal history disclosure shall require, at a minimum, the following information:
- (1) 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, the current status of the application, and whether or not such license or permit was granted;
  - (2) A list of all felony charges and dispositions against the applicant, if any; and for each felony for which there is ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition (if any), including identification of any conviction or plea of guilty or no contest to any offense, to include gambling-related offense, fraud or misrepresentation at any time;
  - (3) A list of all misdemeanor charges and dispositions against the applicant, if any (excluding traffic charges for which incarceration was not a possible punishment, referred to hereunder as "minor" traffic charges); and for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic charges), the name and address of the court involved and the date and disposition, including identification of any conviction or plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation at any time;
  - (4) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, the criminal charge, the name and address of the court involved, and the date and disposition; and
  - (5) The name and address of any licensing or regulatory agency with which the person has filed an application for a business or occupational license or permit, whether or not such license or permit was granted.
- E. Current photographs. The applicant shall submit with the application one current photograph of the applicant's face of such quality and size as the Gaming Agency shall require.
- F. Personal financial questionnaire. The personal financial questionnaire shall include a statement of assets and liabilities and shall include, at a minimum, the following information:
- (1) A list of all professional or business licenses the applicant has applied for, whether or not those licenses were granted, and the name, address and phone number of the regulatory agency involved.
  - (2) The personal financial questionnaire shall also include a sworn statement to be signed by the applicant stating that neither the applicant nor any member of his immediate family has a past or current financial interest, other than a salary interest, in any gaming-related activity or business anywhere. If the applicant has any relative who has such a relationship, the applicant shall fully disclose his name and the nature of the relationship.
- G. Fingerprint cards. All applicants for a gaming employee license shall submit one original fingerprint card (via Livescan), which shall be processed in accordance with the regulations. The Gaming Agency is hereby designated as the tribal agency authorized to take the fingerprints of key employees and primary management officials. The Gaming Agency may also require one or more



additional fingerprint cards, which the Gaming Agency may submit to be processed by any tribal, local or state agency's criminal history check system, as the Gaming Agency deems necessary.

- H. Other information. The applicant shall complete any other forms and disclose and submit any and all other information required by Commission regulations or reasonably requested by the Gaming Agency.
- I. Application fees and costs. The applicant shall pay all fees and costs (if) required by the Gaming Agency to process the applicant's license application.

§ 8.5-58 Burden of proof.

The burden of proof to establish eligibility to obtain or maintain an employee gaming license shall be by clear and convincing evidence, which burden shall be upon the applicant or licensee, as the case may be.

§ 8.5-59 Background investigation.

- A. The Gaming Agency shall conduct, or cause to be conducted, an investigation sufficient to make the determinations required under § 8.5-60. The background investigation shall include a check of criminal history records information maintained by the Federal Bureau of Investigations. In conducting background investigations, the Gaming Agency shall seek to ensure that gaming operations shall not employ persons whose prior activities, or reputation, habits and associations, pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 CFR Parts 556 and 558, the Compact and this Article VII. The Gaming Agency, its investigators, and the Commission, shall keep confidential the identity of each person interviewed in the course of conducting a background investigation. The Gaming Agency shall establish procedures to protect confidential information generated by the investigation or submitted by the applicants from any unauthorized disclosure. The background investigation shall, at a minimum, consist of at least the following:
  - (1) Verify the applicant's identity through primary sources, such as government-issued identification and other documents, including without limitation social security cards, driver's licenses, birth certificates, or passports;
  - (2) Contact each reference provided in the license application and, when warranted, contact other references and sources identified in the application in order to verify and supplement the information submitted by the applicant/licensee and to resolve any discrepancies encountered through the background investigation;
  - (3) Review the applicant's credit history and, when the applicant is a primary management official or when otherwise warranted, verify the financial information provided by the applicant by contacting financial institutions and other sources;
  - (4) Conduct a civil history check;
  - (5) Conduct a criminal history check through the submission of the applicant's fingerprints to the NIGC and by obtaining information from law enforcement agencies and courts in the jurisdictions where applicant has resided, regarding all felony convictions during the applicant's lifetime and misdemeanor convictions and criminal charges;
  - (6) Inquire into the applicant's previous or existing business relationships; and
  - (7) Verify and evaluate the applicant's history and status with other licensing agencies.

- B. The investigator shall create an investigative report that describes the investigative process, information gained, potential problem areas, and any disqualifying information. The Gaming Agency and Commission shall keep confidential the identity of each person interviewed in the course of the investigation, except as permitted under applicable federal or tribal law or the Compact.

§ 8.5-60 Standards for issuance of gaming employee license.

**[Amended 6-21-2012 by Res. No. 06-21-12-18]**

The Gaming Agency shall not grant a license to any applicant for a gaming employee license who:

- A. Is a member of the Tribal Council, a Tribal Judge or a Tribal law enforcement officer;
- B. Is under the age of 18;
- C. Has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation;
- D. Has within the immediately preceding five (5) years been convicted of or entered a plea of guilty or no contest to "any offense" not specified in Subsection C, provided that this provision shall not apply if the applicant has been pardoned by the governor of the state where the conviction occurred or, if the applicant is a tribal member, the applicant has been determined to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a gaming employee license;
- E. Is determined to have participated in organized crime or unlawful gambling or whose prior activities, criminal records (including a pattern of convictions), reputation, habits and/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 conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or
- F. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Agency or the Commission or refused to respond to questions material to the suitability determination that have been asked by the Gaming Agency or the Commission.
- G. For purposes of Subsection D, the term "any offense" shall mean any criminal offense not described in Subsection C, whether committed in Michigan or any other jurisdiction, that is, or would be, a crime under the provisions of the Michigan Penal Code, Act No. 328 of the Public Acts of 1931, as amended, being MCLA §§ 750.1 to 750.568, or the controlled substance provisions of the Public Health Code, Act No. 368 of the Public Acts of 1978, as amended, being MCLA §§ 333.7101 to 333.7545, or any other criminal offense not specified in Subsection C involving theft, dishonesty, fraud or misrepresentation arising under the law of Michigan or another state or jurisdiction, that was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the employee's criminal record by executive pardon, state court order or operation of law.
- H. For purposes of Subsection C, the term "fraud or misrepresentation" shall mean a criminal offense committed in Michigan or any other jurisdiction involving, theft, fraud or misrepresentation, which is a felony or would be a felony if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the employee's criminal record by executive pardon, state court order or operation of law.

§ 8.5-61 Temporary license.

- A. Issuance of a temporary license. If the Gaming Agency verifies that the applicant has completed all required application requirements set forth in § 8.5-57, the Gaming Agency may, in its sole

discretion, issue a temporary license pending the satisfactory completion of all background investigations, provided that the Gaming Agency:

- (1) Makes a preliminary determination based on the information provided in the application and any other information the Gaming Agency obtains concerning the applicant that, under the licensing standards set forth in § 8.5-60 and as otherwise provided under applicable law or the Compact, granting the temporary license would not pose a threat to the public interest or to the effective regulation of gaming and would not create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming; and
  - (2) Has submitted the completed application and fingerprint card to the NIGC along with all other information required under NIGC regulations.
- B. Period a temporary license may remain valid. The temporary license may be valid for such period of time as the Gaming Agency may determine in its sole discretion, but in no event shall it be valid for more than ninety (90) days from the date of issuance.
- C. Conditions regarding temporary license. An applicant may commence employment under a temporary license; however, upon the occurrence of any of the following, such employment shall terminate immediately and the temporary license shall be summarily revoked pending any hearing requested by the applicant, as provided under this chapter:
- (1) Denial of a license by the Gaming Agency upon receipt of any information indicating that the applicant does not meet the standards for a license set forth in § 8.5-60;
  - (2) Receipt of objections by the NIGC (subject to review by the Commission) to the issuance of a license;
  - (3) The failure by the Gaming Agency to complete the background investigation described in § 8.5-59 and submit to the NIGC within sixty (60) days of the date it issues a temporary license the investigative report and preliminary determination of eligibility made under § 8.5-61; or
  - (4) A violation of any other condition the Gaming Agency or the Commission may place on temporary licenses in general pursuant to this chapter or on a particular temporary license.

§ 8.5-62 Action on applications for gaming employee license; preliminary determinations.

- A. Within fifteen (15) days following the completion of the background investigation described in § 8.5-59 but not more than fifty (50) days from the date it issues a temporary license, the Gaming Agency shall review the application, the investigative reports and any objections to the issuance of a license and additional information regarding the applicant that the Gaming Agency may receive from the NIGC and shall make a preliminary determination of eligibility under the standards set forth in § 8.5-60.
- B. If the Gaming Agency determines that the applicant qualifies for the issuance of a license without any conditions, the Gaming Agency may approve the application on a preliminary basis and may, in its further discretion, issue a temporary license to the applicant if it has not already done so.
- C. If the Gaming Agency determines that an applicant does not, or may not, qualify for the issuance of a license or may qualify for a license only with certain conditions, the Gaming Agency shall notify the applicant that the Gaming Agency intends to deny the application or will only consider approving the license with conditions, as the case may be. Upon the applicant's request, the Gaming Agency shall schedule a hearing in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, the Commission may approve the application on a preliminary basis, with or without

conditions, and may, in its further discretion, issue a temporary license to the applicant, if it has not already done so.

D. If the applicant is a tribal member and the applicant's criminal history reveals that the applicant was convicted of or entered a plea of guilty or no contest to any offense within the preceding five (5) years, the Commission may, upon the applicant's request, hold a hearing to determine whether such applicant is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a gaming employee license. In such case, the Commission will notify the applicant that he must appear for a suitability determination hearing before the Commission. The hearing shall be held in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, the Commission may approve the issuance of a conditional license.

E. Investigative Reports.

(1) The Gaming Agency shall create and maintain an investigation report for each background investigation of a primary management official or key employee.

(2) The investigation reports shall include, at a minimum, include the following:

(a) Steps taken in conducting a background investigation;

(b) Results obtained;

(c) Conclusions reached; and

(d) The basis for those conclusions.

§ 8.5-63 Eligibility Determinations

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

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

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

§ 8.5-63a Notice of Results of Background Investigations

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

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

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

(1) The applicant's name, date of birth and social security number;

(2) The date on which the applicant began, or will begin, working as a primary management official or key employee;

(3) A summary of the information presented in the investigative report, including:

- (a) Licenses that have previously been denied;
  - (b) Gaming licenses that have been revoked, even if subsequently reinstated;
  - (c) Every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and
  - (d) Every felony offense of which the applicant has been convicted or any ongoing prosecution; and
- (4) A copy of the eligibility determination made in accordance with § 8.5-63.

§ 8.5-63b. Granting Gaming Licenses

- A. All primary management officials and key employees of the gaming establishment must have a gaming license issued by the Gaming Agency.
- B. The Gaming Agency is responsible for granting and issuing gaming licenses to primary management officials and key employees.
- C. The Gaming Agency may license a primary management official or key employee applicant after submitting a notice of results of the applicant's background investigation to the NIGC, as required by § 8.5-63a.
- D. The Gaming Agency shall notify the NIGC of the issuance of a license to a primary management official or key employee within 30 days of issuance.
- E. The gaming establishment shall not employ an individual in a primary management official or key employee position who does not have a license after 90 days of beginning work at the gaming operation.
- F. The Gaming Agency must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within 30 days of the NIGC receiving a notice of results of the applicant's background investigation.
- G. The Gaming Agency shall take the NIGC's objections into account when reconsidering a license application.
- H. The Gaming Agency will make the final decision whether to issue a license to an applicant for a primary management official or key employee position.
- I. If the Gaming Agency has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, the Gaming Agency shall provide notice to the Gaming Commission, which shall provide such licensee notice and a hearing, under the procedures described in Article X.

§ 8.5-64 Denial of license.

- A. The tribal Gaming Agency shall not license a primary management official or key employee if an authorized Tribal official determines, in applying the standards in Section 21 for making a license eligibility determination, that licensing the person:
  - (1) Poses a threat to the public interest;

- (2) Poses a threat to the effective regulation of gaming; or
  - (3) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.
- B. When the Gaming Agency does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued licenses after reconsideration, it shall:
- (1) Notify the NIGC;
  - (2) Forward copies of its eligibility determination and notice of results of the applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System; and
  - (3) Notify the applicant of his/her right to appeal the Gaming Agency's decision pursuant to Article X.
- C. If, after a license is issued to a primary management official or a key employee, the Gaming Agency receives notice from the NIGC that the primary management official or key employee is not eligible for employment, the Gaming Agency shall do the following:
- (1) Immediately suspend the license;
  - (2) Provide the licensee with written notice of the suspension and proposed revocation; and
  - (3) Provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license pursuant to Article X.
- D. Following a revocation hearing, the Gamin Commission shall decide whether to revoke or reinstate the license at issue.
- E. The Gaming Agency shall notify the NIGC of its decision to revoke or reinstate a license within 45 days of receiving notification from the NIGC that a primary management official or key employee is not eligible for employment.

#### § 8.5-65 Licensing period.

A gaming employee license issued pursuant to this chapter shall be effective for a period of two (2) years from the date of issuance. The license shall display on its face the licensee's photograph, the licensee's name, the gaming establishment at which the employee is licensed to work, the license number and the date that it expires.

#### § 8.5-66 Renewals.

A holder of a gaming employee license shall apply to the Gaming Agency for a renewal not later than thirty (30) days before the license expires by completing all forms required by the Gaming Agency. Each applicant for a license renewal shall revise and supplement the information provided to the Gaming Agency with the applicant's initial gaming employee license application on such forms and subject to such requirements as may be prescribed by the Gaming Agency.

#### § 8.5-66a Records Retention.

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

- (1) Application for licensing;
- (2) Investigative Reports; and

(3) Eligibility Determinations.

§ 8.5-67 Disclosure of applicant and licensee information and documents.

A. The Gaming Agency may, consistent with its duties and responsibilities under the law and in an effort to preserve and enhance the integrity of tribal gaming, disclose applicant and licensee information, documents, photographs, records and other material under the following circumstances:

- (1) Pursuant to written authorization from the applicant or licensee to whom the information and documents pertain;
- (2) Pursuant to a written request from a duly authorized agent of any agency of the United States, a state or the Tribe, including law enforcement agencies and regulatory bodies when authorized by law, and in accordance with the terms and conditions described in any regulations; and
- (3) If ordered to do so by a court of competent jurisdiction.

B. Disclosure of applicant or licensee information and documents by the Gaming Agency is specifically authorized under the following circumstances:

- (1) National Indian Gaming Commission. The Gaming Agency is required to forward to the NIGC an investigative report on each background investigation. The Gaming Agency shall disclose to the NIGC the revocation of any gaming license and, if that license is reinstated, disclose that as well.
- (2) Michigan Gaming Control Board. Under Section 4(L) of the Compact, the Gaming Agency is required, upon request, to provide representatives of the Michigan Gaming Control Board with access to background investigation information compiled by the Tribe on all key employees and primary management officials.

§ 8.5-68 Suspension or revocation of license.

A. Standard for suspension of license following a hearing. Any license issued under this chapter may, after notice and hearing, be suspended by the Gaming Agency for not more than sixty (60) days if the Gaming Agency determines that any of the following have occurred:

- (1) The licensee has been formally charged with any offense that may disqualify the licensee from holding a license under this chapter.
- (2) The licensee has engaged in conduct that poses a threat to the integrity of gaming or to the health, safety or welfare of the general public at any gaming establishment, whether within or outside the jurisdiction of the Tribe.
- (3) The licensee has knowingly made a material false or misleading statement in his license application.
- (4) The licensee has participated in unauthorized gaming, whether or not regulated by this chapter.
- (5) The licensee has failed or refused to comply with the conditions of his license, with any duty imposed on applicant/licensee under this chapter, or with any lawful order of the Gaming Agency, the Commission, the Tribal Court or the NIGC.

B. Standard for suspension of license pending a hearing. Any license issued under this chapter may be temporarily and immediately suspended by the Gaming Agency for not more than thirty (30) days pending a hearing if:



- (1) The licensee has been formally charged with any offense that may disqualify the licensee from holding a license under this chapter;
  - (2) The NIGC notifies the Gaming Agency that it has information that a licensee employed as a primary management official or key employee is no longer eligible to be licensed; or
  - (3) The Gaming Agency receives reliable information that the licensee has engaged in conduct that poses an immediate threat to the integrity of gaming or to the health, safety or welfare of the general public at any gaming establishment, whether within or outside the jurisdiction of the Tribe.
- C. Standard for revocation of a license following a hearing. Any license issued under this chapter may, after notice and hearing, be revoked if the Commission determines that the licensee fails to meet the standards for a gaming employee license under § 8.5-60 of this chapter or under other applicable law or that the licensee has failed or refused to comply with the conditions of his or her license, with any duty imposed on the licensee under this chapter, or with any lawful order of the Gaming Agency, Commission, the Tribal Court or the NIGC.
- D. Investigation of grounds for suspending a license. Upon receipt by the Gaming Agency of information that a license may be suspended or revoked based on the grounds described in Subsection A, B or C, the Gaming Agency shall promptly conduct an investigation to substantiate the allegations and to obtain any other relevant information that may prove or disprove grounds for suspension or revocation.
- E. Suspension of license pending hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to suspend the license, but the licensee's actions do not appear to present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Gaming Agency shall issue a notice of suspension pending hearing, which shall be served on the licensee.
- F. Summary suspension of license prior to hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to suspend the license, and the licensee's actions present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Executive Director shall issue a notice of summary suspension prior to hearing, which shall be served upon the licensee.
- G. Revocation of license pending hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to revoke a license, but the licensee's actions do not appear to present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Gaming Agency shall issue a notice of revocation pending hearing, which shall be served on the licensee.
- H. Notice and hearing requirements. Any notice of suspension or revocation under this section shall:
- (1) Inform the licensee of the right to a hearing upon request;
  - (2) State in detail the grounds upon which it is issued;
  - (3) Identify any witnesses the Gaming Agency intends to call;
  - (4) Summarize the facts and evidence that the Gaming Agency intends to present to demonstrate that adequate cause exists to support the action against the employee's license; and
  - (5) Inform the employee that he or she has the right to present evidence to rebut the grounds specified in the notice, including testimony from fact witnesses, or to present evidence of mitigating circumstances demonstrating that the action against his or her license is not warranted.



- I. Time requirement for a hearing. A hearing before the Commission shall be set for a date no later than fourteen (14) days after the date the licensee files a written request for a hearing. The licensee shall file a request for a hearing within seven (7) business days from the date the licensee receives a notice. The Commission may, on its own, schedule a hearing, notwithstanding the lack of written request for a hearing from the licensee. The hearing shall be conducted in accordance with the procedures described in Article X.
- J. Conversion of suspension to revocation hearing. If the results of the investigation described in Subsection D indicate that there are sufficient grounds to revoke the licensee's license under the standard set forth in Subsection C, the Gaming Agency may, in its discretion, convert the hearing on the suspension of the license to a hearing to show cause why the licensee's license should be revoked. If the Gaming Agency determines to convert a suspension hearing to a revocation hearing, it shall provide the licensee with a new notice under Subsection E and a new opportunity to request a hearing under Subsection I, which would also commence a new time period for scheduling the hearing.

§ 8.5-69 Show cause hearing for manager and primary management officials.

Notwithstanding the provisions in the foregoing § 8.5-68A through C, in the event that the Gaming Agency determines that there are grounds to issue a notice of suspension or revocation regarding a licensee who is a primary management official, and such grounds do not involve criminal conduct, the following procedures shall apply in addition to the requirements of this chapter that are consistent with this section:

- A. Prior to issuing any notice of suspension or notice of revocation, the Gaming Agency shall issue a notice for show cause to the licensee.
- B. In addition to the notice and hearing requirements set forth in § 8.5-68H, the notice for show cause shall suggest measures the licensee may pursue to resolve the licensing problem.
- C. The Gaming Agency shall provide the licensee with an opportunity to meet with the Executive Director and other Agency representatives prior to the show cause hearing to address any questions related to the hearing. Such meeting shall, except for reasons beyond the control of the licensee or C Gaming Agency representatives, occur within three (3) business days from the date the licensee receives the notice for show cause.
- D. If the licensing problem is not resolved to the Executive Director's satisfaction prior to the show cause hearing, the Commission may proceed with the show cause hearing to suspend or revoke the licensee's license, as warranted, and shall take whatever action it deems appropriate as a result of the hearing.

§ 8.5-70 Requirements regarding files.

The Agency shall create a separate file for each applicant that includes all forms, documents and information submitted by the applicant and all background information compiled by the Agency. All reports obtained from the fingerprint processing shall be incorporated into the applicant's file. The Agency shall retain such files for no less than three (3) years from the date of an applicant's termination from employment and shall make such files available for inspection by the NIGC upon request. Otherwise, such file shall be confidential and shall be maintained in such a manner and pursuant to such procedures as shall safeguard the disclosure of any contents of the file except as may be authorized by law or with the express consent of the applicant or licensee.

Article VIII  
Licensing of Vendors of Gaming Goods or Services

§ 8.5-71 Licensing of vendors of gaming goods or services.

Before any person may supply gaming goods or services to a gaming operation, such person shall obtain from the Gaming Agency a gaming vendors license.

§ 8.5-72 Requirements for gaming vendors license.

Each person applying for a gaming vendors license must complete the following forms:

- A. Application for gaming vendors license;
- B. Disclosure form for business entity for each control person that is a business entity;
- C. Personal history disclosure form for each control person who is a natural person;
- D. Authorization to release information for each control person: business entity or natural person; and
- E. Additional forms or information from an applicant as the Gaming Agency deems necessary.

§ 8.5-73 Application for gaming vendors license.

Any applicant for a gaming vendors license shall submit to the Gaming Agency an application on a form issued by the Commission, which shall, at a minimum, include the following information:

- A. Name of business, any other names the applicant has done business under, business address (including main office address, if different), telephone number, and federal tax ID number (or social security number if a sole proprietorship or single-member LLC);
- B. Identification of the specific gaming goods or services the applicant is proposing to sell or supply to the gaming operation;
- C. Identification of all gaming goods or services available from the applicant to any person;
- D. Trade name(s) used in connection with gaming goods or services, names of any wholly-owned subsidiaries or other businesses owned by the applicant;
- E. Copies of documents establishing the existence of the applicant as a business entity, such as a partnership agreement, trust agreement or articles of incorporation;
- F. Copies of documents establishing the ownership and control of the applicant's business affairs sufficient to permit identification of any and all control persons of the applicant;
- G. Copies of documents designating the person(s) authorized to act on the applicant's behalf;
- H. Copies of bylaws or other documents that provide the day-to-day operating rules for the applicant;
- I. A description of any existing and previous business relationships involving Indian tribes, particularly those including ownership interests in those businesses;
- J. A description of any existing and previous business relationships involving the gaming industry in general, particularly including ownership interests in those businesses;
- K. The name and address of any licensing or regulatory agency with which the applicant or control persons shall have filed an application for a license or permit relating to gaming, whether or not such

license or permit was granted, and whether such license or permit has ever been subject to suspension, revocation or other sanction;

- L. For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction involving the applicant or a control person, the name and address of the court involved, the charge, and the dates of the charge and disposition;
- M. For each misdemeanor conviction or ongoing misdemeanor prosecution involving the applicant or a control person within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;
- N. Complete financial statements or tax returns, with all relevant schedules, for the applicant for the previous three (3) fiscal years;
- O. List of civil lawsuits to which the applicant or a control person has been a defendant within the previous ten (10) years, including the name and address of the court involved, the date and disposition; and
- P. Any additional information the Gaming Agency deems relevant, or as prescribed in regulations adopted by the Commission.
- Q. The following notice shall be placed on the application form for the applicant and all control persons: "Inclusion of false or misleading information in this application may be grounds for denial or revocation of any license."

§ 8.5-74 Background investigation.

- A. The Gaming Agency shall conduct or cause to be conducted a background investigation of the applicant and each control person. Control persons who are natural persons shall be subject to the same background investigation as primary management officials, except that a criminal history check involving the submission of the fingerprints of control persons who are natural persons to the NIGC shall not be required. The background investigation shall consist of at least the following:
  - (1) Verify the applicant's legal identity and standing (if applicable) and verify the identity of all control persons who are natural persons through primary sources, such as government-issued identification and other documents, including without limitation social security cards, driver's licenses, birth certificates or passports;
  - (2) Contact each reference provided in the license application and, when warranted, contact other references and sources identified in the application in order to verify and supplement the information submitted by the applicant and to resolve any discrepancies encountered through the background investigation;
  - (3) Obtain a credit check, (such as a Dunn & Bradstreet report) and, regarding control persons who are natural persons, an individual credit history report, and verify the accuracy of financial information provided by the applicant and control persons by contacting financial institutions and other sources;
  - (4) Conduct a civil history check;
  - (5) Conduct a criminal history check regarding all control persons who are natural persons by obtaining information from law enforcement agencies and courts in the jurisdictions where such persons resided regarding all arrests, charges and convictions;
  - (6) Inquire into any previous or existing business relationships by contacting the entities or tribes; and
  - (7) Verify the applicant's history and status with any licensing agency.

- B. The investigator shall create an investigative report that describes the investigative process, information gained, potential problem areas, and any disqualifying information. The Gaming Agency shall keep confidential the identity of each person interviewed in the course of the investigation, except as permitted under applicable federal or tribal law or the Compact.

§ 8.5-75 Licensing standards.

A person is ineligible to receive a gaming vendors license if any of the following exist:

- A. The applicant, or any control person, has been convicted of a felony within the ten (10) years preceding the date of the license application;
- B. The applicant, or any control person, has been convicted of or entered a plea of guilty or no contest to any gambling-related offense, theft-related crime or to a felony offense involving fraud or misrepresentation;
- C. The applicant, or any control person, employs a person who is directly involved with the management or operations of any gaming operation;
- D. The applicant, or any control person, submitted an application that contains materially false or misleading information;
- E. The applicant, or any control person, is associated with organized crime;
- F. The applicant, or any control person, is determined by the Gaming Agency to be an entity or person whose prior activities, reputation, habits and associations, including any conflicts of interest, 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 or activities in the operation of gaming or the business and financial affairs related thereto; or
- G. The applicant, if a supplier of gaming devices, has failed to demonstrate that it will provide devices that meet the technical requirements for such devices as prescribed in the Compact, in § 8.5-88, and as may be prescribed in the regulations.

§ 8.5-76 Action on applications for gaming vendors; preliminary determinations.

- A. Within fifteen (15) days following the completion of the background investigation(s) described in this chapter, the Agency shall review the application and the investigative report to determine if the applicant qualifies for a gaming vendors license.
- B. If the Gaming Agency determines, pursuant to § 8.5-75, that the applicant qualifies for the issuance of a license without any conditions, the Gaming Agency may approve the application and issue a license.
- C. Not qualified or qualified with conditions.
  - (1) If the Gaming Agency determines, pursuant to § 8.5-75, that an applicant does not, or may not, qualify for the issuance of a license, or may qualify for a license only with certain conditions, because:
    - (a) The applicant's criminal history or past associations and/or habits indicate that the applicant's involvement in supplying gaming equipment or gaming goods or services may create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or

- (b) The applicant may have knowingly and willfully provided materially false and misleading statements or information to the Gaming Agency or refused to respond to questions material to the suitability determination that have been asked by the Gaming Agency.
- (2) The Gaming Agency shall notify the applicant that its application may be denied and, upon the applicant's request, shall schedule a hearing in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, with or without conditions, the Gaming Agency shall approve the application with or without conditions.

§ 8.5-77 Denial of license.

If following the hearing conducted under the procedures described in Article X the Gaming Agency denies any application for a gaming vendors license under this chapter or issues a license with conditions or restrictions, the Gaming Agency shall, within seven (7) calendar days, notify the applicant that the application was denied, specify the reasons for the denial under the standards described in § 8.5-75, and inform the applicant of the applicant's right to appeal as provided in Article XI.

§ 8.5-78 Terms of license.

Except for temporary licenses issued pursuant to § 8.5-82, the terms of gaming vendor licenses issued by the Gaming Agency shall be two (2) years. The term of license shall commence on the date the license becomes effective, inclusive of the effective date of any temporary license, and shall expire at the conclusion of the specified license term on the anniversary of the effective date of the license.

§ 8.5-79 Renewals.

A holder of a gaming vendors license shall apply to the Gaming Agency for a renewal not later than sixty (60) days before its current license expires by completing all forms required by the Gaming Agency. Each applicant for a license renewal shall revise and supplement the information provided to the Gaming Agency with the licensee's initial gaming vendors license application on such forms and subject to such requirements as may be prescribed by the Gaming Agency. A temporary gaming vendors license may be granted where the holder of the license has timely sought a license renewal and paid all required fees and costs but the license renewal has not been approved by the Gaming Agency.

§ 8.5-80 Suspension; summary suspension; revocation of gaming vendors licenses.

The Gaming Agency may suspend, summarily suspend, or revoke a gaming vendors license in accordance with the procedures described in § 8.5-68, provided that any determination to suspend or revoke a gaming vendors license shall be made under the standards set forth in § 8.5-75.

§ 8.5-81 Requirements regarding files.

The Gaming Agency shall create a separate file for each applicant that includes all forms, documents and information submitted by the applicant and all background information compiled by the Gaming Agency. The Gaming Agency shall retain such files for no less than three (3) years from the date of expiration of an applicant's license, including any renewal.

§ 8.5-82 Temporary licenses.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of temporary licenses to applicants for gaming vendors licenses, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions.

§ 8.5-83 Licensing or Registration of Non-Gaming Vendors and Suppliers.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of licenses, or other registration requirements, for vendors or suppliers of non-gaming services and/or suppliers, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions.

§ 8.5-84 Temporary licenses.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of licenses to gaming vendor technician or non-gaming vendor services technicians employed by applicants for gaming vendors licenses or non-gaming vendors/suppliers, whose services the Gaming Agency and Commission determine require licensing or whose services include services of a type normally performed by key employees or other licensees of a gaming enterprise, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions and exemption from licensing or registration for vendors providing goods or services where deemed appropriate (i.e. professional services subject to other licensing; one-time purchases).

Article IX

Regulation of Gaming-Related Activities

§ 8.5-85 Tribal minimum internal control standards.

The Commission shall, in accordance with the procedure described in § 8.5-27, develop and adopt tribal minimum internal control standards (TMICS) applicable to gaming operations. The TMICS shall meet or exceed the minimum internal control standards (MICS) prescribed by the NIGC, provided that the TMICS may differ from the MICS with respect to standards that the Commission determines impose an excessive burden on the gaming operation without fulfilling a valid regulatory purpose. In adopting any standard under the TMICS that differs from a standard under the MICS, the Commission shall in each such instance establish and maintain full, effective and reasonable regulatory controls over the gaming operation. Until such time as the Commission promulgates TMICS through the process prescribed under § 8.5-27, the NIGC MICS in effect as of the effective date of this chapter shall be the applicable TMICS.

§ 8.5-85a. Conditions for Acceptance of Internet Wagers. A licensed gaming establishment may accept internet gaming account wagers placed by an Authorized Participant only as follows:

- A. The account wager is placed directly with the gaming establishment by the holder of the wagering account and the gaming establishment's internet gaming platform has verified that:
  1. The account holder is physically present within the boundaries of the NHBP Reservation or other lands held in trust for the Tribe and the wager was:
    - a. Initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); and
    - b. The wager is placed on a Class II game or, if the wager was placed on any Class III game, that the wager was placed on a Class III game that is authorized under the Tribal-State Compact; or
  2. The account holder is physically present within the boundaries of the Reservation of another federally recognized Indian Tribe and the wager was:
    - a. Authorized by an approved ordinance or resolution of the Tribe on whose reservation the account holder is physically located and, if the wager was placed on any Class II or Class III game, was:
      - i. Placed on a Class II game or a Class III game that is authorized under the Tribal-State Compact in effect for such other Indian tribe with the State in which such Tribe's Reservation is located; and

- ii. Is placed in compliance with the requirements of any State law in such state which Authorizes the placement of internet wagers; and
  - iii. Is otherwise initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); or
- 3. The account holder is physically present within the State of Michigan outside of Indian Lands; and
  - a. the wager was placed in compliance with the requirements of either the Lawful Sports Betting Act for any internet sports betting wager or the Lawful Internet Gaming Act for any other internet wager, and any applicable regulations, which authorize and govern the placement of such internet wagers; and
  - b. Is otherwise initiated, received or otherwise made in compliance with federal law; and
  - c. The wager is placed on a Class II game or a Class III game that is authorized under the Tribal-State Compact in effect; or
- 4. The account holder is physically present within the boundaries of any other State; and
  - a. the wager was placed in compliance with the requirements of any reciprocal agreement with between the State of Michigan and such other State; and
  - b. Is otherwise Initiated or placed in compliance with the requirements of either the Lawful Sports Betting Act for any internet sports betting wager or the Lawful Internet Gaming Act for any other internet wager, and any applicable regulations, which authorize and govern the placement of such internet wagers; and
  - c. Is otherwise initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); and
  - d. The wager is placed on a Class II game or on a Class III game that is authorized under the Tribal-State Compact in effect between the Tribe and the State of Michigan.
- B. The account holder placing the wager has provided the Gaming Facility with the correct authentication information required under Section 8.5-83b to permit the Account holder to gain access to the wagering account; and
- C. The Gaming Operation has verified that the account holder has not sought to place an account wager(s) in excess of the amount of funds on deposit in the wagering account of the holder placing the wager. Funds on deposit include amounts credited to the account holder's account under applicable regulations and operation procedures of the Gaming Operation and in the account at the time the wager is placed.

§ 8.5-85b. Technical standards for Internet Gaming Systems.

- A. No software, computer or other gaming equipment shall be used to conduct Internet gaming unless it has been tested and approved by an independent testing laboratory approved by the Gaming Agency. The Gaming Agency shall refer testing to any nationally-recognized testing



laboratory approved to test gaming software, computers or other gaming equipment and systems by the States of Michigan. The Gaming Agency shall give priority to the testing of software, computers or other gaming equipment, which a gaming establishment has certified it will use to conduct Internet gaming. The Gaming Commission may, by regulation, establish such technical standards for approval of software, computers and other gaming equipment used to conduct Internet gaming, including mechanical, electrical or program reliability, security against tampering, the comprehensibility of wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming. When appropriate or required by the Gaming Agency, the gaming establishment shall set the denominations of internet games and shall simultaneously notify the Gaming Agency of the settings.

- B. No software, computer or other gaming equipment shall be used to conduct internet gaming unless it is able to verify that an Authorized Participant placing a wager is physically present on the Reservation or in another approved jurisdiction from which internet wagers may be accepted as prescribed in Section 8.5-85a. The Gaming Agency shall require that the software, computer hardware or other equipment used by the gaming establishment to conduct Internet gaming is, in fact, verifying every Authorized Participant's physical presence on the Reservation or any other approved jurisdiction each time an Authorized Participant logs onto a new playing session.
- C. Software, computer or other gaming equipment used to conduct Internet gaming provide for the security and effective administration of such games, including but not limited to:
  - 1. Notify players of the type, number, payout, wagering limits, and rules for each internet games;
  - 2. Include procedures and controls for the creation and utilization, of Internet wagering accounts by Authorized Participants, which ensure that that such accounts shall be possessed only by a natural person who is not less than twenty-one (21) years of age, and not in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity, and provided that such accounts shall not be assignable or otherwise transferable;
  - 3. Include procedures for logging into Internet wagering accounts by which Authorized Participants authenticate their identity, agree to the terms, conditions and rules applicable to such games, and logging out, including procedures for automatically logging off persons from the Internet gaming site after a specified period of inactivity;
  - 4. Procedures for acquiring funds in an Internet wagering account by cash, transfer or other means, the withdrawal of such funds from such accounts, the suspension of Internet Gaming activity for security reasons, the termination of an Authorized Participant's Internet wagering accounts and disposition of proceeds therein, and the disposition of unclaimed amounts in dormant Internet wagering accounts pursuant to Section 8.5-94;
  - 5. Mechanisms by which the Gaming Commission, the gaming establishment or Authorized Participants may place limits on the amount of money being wagered per game or during any specified time period, or the amount of losses incurred during any specified time period;
  - 6. Mechanisms to exclude persons not eligible to participate in gaming, including internet gaming, from establishing or accessing his/her wagering account, or from placing wagers through an internet gaming wagering account by reason of inclusion on a list of self-excluded persons maintained by the Gaming Commission or the Michigan Gaming Control Board, or inclusion by the Gaming Commission on a list of excluded persons pursuant to Section 8.5-97 of this Chapter; and



7. Procedures for the security and reliability of Internet games and Authorized Participant's internet wagering accounts, protection of the software, computers and other equipment used in connection with Internet Gaming, and mechanisms to prevent tampering or utilization by unauthorized persons.

§ 8.5-85c. Responsible Gaming.

The gaming establishment shall require the gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the gaming establishment, in a clear, conspicuous, and accessible manner evidence of the gaming establishment's internet gaming license(s) or permits authorizing the gaming establishment to conduct internet gaming. The Gaming Facility shall require the gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the gaming establishment, in a clear, conspicuous, and accessible manner the number of the toll-free compulsive gambling hotline maintained by the State of Michigan and offer responsible gambling services and technical controls to Authorized Participants, consisting of both temporary and permanent self-exclusion for all internet games offered and the ability for authorized participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

§ 8.5-86 System of internal control standards for gaming operations.

Each gaming operation shall be required to develop a system of internal control standards (SICS) designed to assure compliance with the TMICS. Such SICS shall be presented for approval by the Commission. Any changes in the SICS shall be presented to the Commission for approval prior to implementing such amended SICS.

§ 8.5-87 Minimum procedures for control of internal fiscal affairs.

The Commission shall promulgate regulations governing the control of internal fiscal affairs of all gaming operations. At a minimum, such regulations shall require the consistent application of generally accepted accounting principles and shall:

- A. Prescribe minimum procedures for the safeguarding of a gaming operation's assets and revenues, including the recording of cash receipts and evidence of indebtedness and mandatory count procedures. Such regulations shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the gaming operation, assure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- B. Prescribe minimum reporting requirements to the Commission;
- C. Provide for the adoption and use of internal audits conducted in accordance with generally accepted auditing standards by internal auditors licensed or certified to perform audit examinations in the State of Michigan;
- D. Formulate a uniform code of accounts and accounting classifications to assure the consistency, comparability and effective disclosure of financial information. Such a code shall require that records be retained that reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each gaming establishment;
- E. Require gaming operations to maintain accounting records which meet the requirements prescribed in Subsection 4(H) of the Compact;
- F. Prescribe the intervals and circumstances for the gaming operation to furnish financial and accounting information to the Commission, the NIGC or other entity entitled to such information under applicable law;

- G. Provide for the maintenance of documentation (e.g., checklists, programs, reports, etc.), to record all efforts by the gaming operation as it relates to the requirements of this section; and
- H. Provide that all financial statements and documentation referred to in this section be maintained for a minimum of five (5) years.

§ 8.5-88 Oversight of internal fiscal affairs.

The Gaming Agency shall require independent financial audits of all gaming operations on an annual basis. Such independent audits must apply and require the consistent application of generally accepted accounting principles, and shall:

- A. Be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of Michigan;
- B. Include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion, on the financial statements taken as a whole in accordance with standards of the accounting profession established by the rules and regulations of the Michigan State Council of Accountancy and the American Institute of Certified Public Accountants;
- C. Disclose whether the accounts, records and control procedures maintained by the gaming operation conform with this chapter, the regulations and the Compact; and
- D. Perform the "Agreed-Upon Procedures" to verify that the gaming operation is in compliance with the minimum internal control standards required by 25 C.F.R. § 542.3 to provide a review of the internal financial controls of the audited gaming operation and disclose any deviation from the requirements of this chapter and the regulations and report such findings to the Gaming Agency, the Commission and the management of the audited gaming operations.

§ 8.5-89 Complimentary items.

- A. The distribution of complimentary items shall be governed by regulations established by the Commission.
- B. No key employee, primary management official, Tribal Council member, Commissioner, or any person who shares a residence with or is an immediate family member of such person, shall be given or accept complimentary items, unless offered to the general public.
- C. Complimentary items shall be included in the annual budget for the gaming operation.

§ 8.5-90 Certification of gaming devices and gaming software.

All gaming devices and gaming software purchased, leased or otherwise acquired by the gaming operation must meet the technical equipment standards set forth in Section 6 of the Compact and as may be prescribed in the regulations and other applicable law. The Commission shall maintain a complete list of all gaming devices (whether or not such devices are in use) and gaming software used to conduct gaming in such devices located at any gaming establishment or otherwise in the possession of the gaming operation.

§ 8.5-91 Prohibition against electronic aids.

Except as expressly permitted by the Gaming Agency or Commission regulation, no person shall possess, with the intent to use in connection with gaming, either individually or in concert with others, any calculator, computer or other electronic, electromechanical or mechanical device to assist in projecting the outcome or odds of any game, to keep track of or analyze cards, or to change probabilities of any game or any playing strategies that may be employed with regard to a game.

§ 8.5-92 Prohibition against embezzlement.

Any licensee who shall, in the opinion of the Gaming Agency, having lawful custody of or access to gaming operation property, appropriates or attempts to appropriate the same to his or her own use, with intent to deprive the gaming operation thereof, or who unlawfully or improperly diverts or attempts to divert gaming or other revenue properly belonging to a gaming operation, shall constitute grounds for taking administrative sanctions against that licensee. If the Gaming Agency finds that an embezzlement was attempted or occurred, it may pursue administrative sanctions against the licensee, report the matter to appropriate law enforcement authorities and other gaming regulatory agencies for further action, and take such other action as it deems necessary or appropriate. Administrative sanctions against the licensee may include the imposition of fines and the revocation, suspension or limitation of, or refusal to renew, a license issued by the Gaming Agency.

§ 8.5-93 Security and surveillance.

Each gaming establishment must provide for full security and surveillance throughout the gaming establishment at all times which meet or exceed the requirements for such systems established in the TMICS. All security and surveillance personnel in a gaming establishment must be licensed by the Gaming Agency. The security and surveillance sectors of any gaming operation shall coordinate their activities and cooperate with each other as necessary to carry out their official duties and to provide ample protection for all persons and property involved with each gaming operation. The structure and reporting requirements for surveillance functions in any gaming establishment shall be structured and operated in manner which ensures the protection of tribal assets and the integrity of gaming operations. The TMICS applicable to security and surveillance activities in any gaming operation shall prescribe reporting requirements with regard to the types of conduct and activities that may be observed in a gaming establishment, including, at a minimum, conduct or activities by any person, including any failure to act when required to do so, that violates or is not in compliance with:

- A. Applicable criminal law shall be promptly reported to the tribal police; and
- B. This chapter, the regulations, other applicable law, or the Compact shall be promptly reported to the Gaming Agency's Investigations Department.

§ 8.5-94 Weapons in gaming establishments.

- A. A person may not carry a firearm or other weapon, as described in § 8.6-28 of Chapter 8.6, Criminal Laws, of the Tribe's Code, in a gaming establishment, except for the following persons with valid authorization under law:
  - (1) Tribal law enforcement officials;
  - (2) Federal law enforcement officers, as defined in 5 U.S.C. § 8331;
  - (3) State, county or township law enforcement officers, as defined in Section 2 of Michigan Public Act 203 of 1965, as amended, to the extent and under circumstances duly authorized by written agreements approved by the Tribal Council; and
  - (4) Armored car personnel picking up or delivering currency at secured areas.
- B. Law enforcement officers conducting official duties within a gaming establishment shall, to the extent practicable, advise tribal police and the Gaming Agency, or its agents, of their presence.

§ 8.5-95 Compliance with laws to protect the environment, public health and safety.

Every gaming establishment shall be constructed, maintained and operated in a manner that adequately protects the environment, public health and safety, and complies with all applicable tribal laws and applicable federal laws relating to environmental protection and public health and safety. Evidence, that a gaming establishment is in compliance with this section shall address the following requirements under applicable law:

- A. Emergency preparedness, including without limitation the availability of medical, fire and emergency services and evacuation plans for each gaming establishment;
- B. Food and water safety;
- C. Building construction and maintenance;
- D. The handling and storing of hazardous and toxic materials; and
- E. Sanitation and waste disposal.

§ 8.5-96 Unclaimed winnings.

- A. Any winnings, whether property or cash, which are due and payable to a participant in any gaming activity, and which remain unclaimed, shall be held in safekeeping for the benefit of such participant if his or her identity is known. Such winnings shall be held for thirty-six (36) months or such longer period as determined by Commission regulation, or other applicable Tribal statute. The Gaming Agency shall make, or require the gaming operation to make, such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the gaming operation and shall be transferred to the account or place designated by the gaming operation.
- B. In the event the identity of a participant entitled to unclaimed winnings is unknown, the Gaming Agency shall use, or require the gaming operation to use, its best efforts to learn the identity of such individual and shall follow the procedure set forth in § 8.5-97 if the Gaming Agency is able to identify such individual with reasonable certainty; provided, however, if after thirty-six (36) months from the time the winnings were payable, the Gaming Agency has been unable to identify the individual entitled thereto, such winnings shall revert to the ownership of the gaming operation.

§ 8.5-97 Resolution of disputes between gaming public and gaming operation.

Disputes between a patron and a gaming operation shall be resolved as follows:

- A. The gaming operation shall develop written procedures and designate key employees and primary management officials who are authorized to address and resolve complaints by or disputes with patrons. The gaming operation shall provide a copy of the approved procedures to the Gaming Agency and shall promptly provide the Gaming Agency with any amendments thereto.
- B. At a minimum, such procedures shall provide patrons with the opportunity to present complaints, verbally or in writing, to the person(s) designated by the gaming operation to resolve complaints by patrons.
- C. If the complaint involves a dispute regarding at least \$500 or an equivalent value in disputed gambling winnings, goods or services, and the dispute could not be resolved under the internal procedures described in Subsection A to the satisfaction of the patron, the employee(s) of the gaming operation who are designated to resolve complaints shall inform the patron that he/she may file a written complaint with the Gaming Agency. The Gaming Agency's representative shall provide the patron with a complaint form to furnish the Gaming Agency with sufficient information to conduct an investigation.
- D. The Commission shall have a process in place, through regulations, to review and, if necessary, hold hearings under the procedures described in Article X to resolve patron complaints.
- E. The Commission's resolution of a patron complaint shall be final and shall not be subject to further appeal.

§ 8.5-98 Excluded persons.

- A. Exclusion list; creation; effect. Subject to the requirements of this section, the Gaming Agency shall establish and maintain an exclusion list. The exclusion list shall include the names of all natural persons that the Commission has determined will not under any circumstances be allowed to enter any gaming establishment and/or who may be prohibited from participating in any Class II or Class III gaming, which may include participation in internet wagering offered by the gaming establishment.
- B. Information to be included on the exclusion list. The following information, to the extent known, shall be provided for each excluded person:
- (1) Full name, date of birth, and all aliases;
  - (2) A physical description;
  - (3) The effective date the person's name was placed on the list;
  - (4) A photograph, if available;
  - (5) The person's occupation and his current home and business address;
  - (6) The specific reason for exclusion;
  - (7) The date, if any, the exclusion will expire; and
  - (8) Such other information as may be deemed necessary by the Gaming Agency or as set forth in Commission regulations.
- C. Criteria for exclusion or ejection and placement on an exclusion list. The Gaming Agency may on its own initiative or at the request of an authorized representative of the gaming establishment and, subject to the hearing procedures described in Article X, place a person on the exclusion list, if:
- (1) Such person has been convicted of, or pled guilty or nolo contendere to, any felony, any gaming-related crime or any other crime involving dishonesty, including without limitation theft, robbery, burglary, embezzlement or a conspiracy to commit or be an accessory to any such crime;
  - (2) Such person has violated or conspired to violate any provisions of this chapter, the Indian Gaming Regulatory Act, the Compact or other applicable law;
  - (3) Such person has a notorious or unsavory reputation that would likely undermine public confidence and trust in the integrity of gaming. Descriptions or examples of the types of conduct, habits, and associations that would produce such a reputation shall be included in the regulations;
  - (4) The person's name appears on any valid and current exclusion list from another jurisdiction, and the reason for such person's exclusion in the other jurisdiction would also be likely to result in exclusion from gaming establishments located within the Commission's jurisdiction;
  - (5) Due to a demonstrable gambling problem, the person provides a written and signed request to be excluded, with sufficient information to allow the Gaming Agency to positively identify the person; or
  - (6) The person has been denied any form of license by the Gaming Agency or has had a license revoked or not renewed by the Gaming Agency.

D. Procedure for entry of names.

- (1) Consistent with its obligations under applicable law, it shall be the duty of management of each gaming establishment to inform the Gaming Agency in writing of the name of each person that management reasonably believes meets the criteria for placement on the exclusion list, as established by Subsection C above. The Gaming Agency shall notify management of the gaming establishment in writing, following the investigation and hearing described in this subsection, whether or not the Gaming Agency concurs with management's recommendation to place a person's name on the exclusion list.
- (2) Upon receipt of a recommendation from management of the gaming establishment or a signed request from a person requesting voluntary exclusion due to a gambling problem, the Executive Director of the Gaming Agency shall conduct or cause to be conducted an investigation regarding every person whose name is recommended or requested to be placed on the exclusion list. Upon a determination by the Executive Director that there are adequate grounds to add a person's name to the exclusion list under the criteria listed in Subsection C above, the Executive Director shall determine whether or not the person's name should be added to the exclusion list; provided however, that any person who is also included on the responsible gaming database maintained by the Michigan Gaming Control Board shall be prohibited from participating in internet wagering on any internet gaming platform operated by the gaming establishment.. Pursuant to Article X, the Gaming Agency shall send written notice of the exclusion to the person subject to exclusion affording him/her of the opportunity to present evidence and testimony to the Commission concerning his/her exclusion from gaming establishment or from wagering with the gaming operation.
- (3) If the Commission determines that the person's name should not be added to the exclusion list, the person's name shall not be added to the list
- (4) If, after the hearing conducted pursuant to Article X, the Commission determines that the person's name should be added to the exclusion list, or if such person fails to appear at the hearing or fails to present any relevant evidence or testimony to rebut the determination of the Executive Director, such person's name shall be retained on the exclusion list. The Gaming Agency shall promptly notify the person in writing of the Commission's determination.
- (5) The Agency may determine to place a person's name on the exclusion list either permanently or temporarily. If a person is placed on the exclusion list temporarily, the Gaming Agency shall inform the person of the period of time that person's name will be on the exclusion list. The Gaming Agency shall provide authorized representatives of the gaming establishment's surveillance and security department with up-to-date lists of persons on the exclusion list.
- (6) Notwithstanding any determination by either the Executive Director or the Commission that a person should not be placed on the exclusion list, nothing in this Subsection D shall preclude management of the gaming operation from prohibiting such person from entering the gaming establishment or wagering at, or with, the gaming establishment for business or policy reasons under Subsection L.

E. A person on the exclusion list shall have the following ongoing obligations:

- (1) Refrain from entering the gaming establishment's premises and to refrain from all wagering activities at the gaming establishment (including, if applicable, all internet wagering), until the exclusion period has ended or the Commission has approved a request to remove the individual's name from the exclusion list;
- (2) To notify the Commission of any change in address or other personal information; and
- (3) To notify the Commission if he/she receives any direct mail or other marketing solicitations addressed to him/her during the time of his/her exclusion.



- F. An excluded person who enters the gaming establishment and/or participates in wagering in violation of an exclusion order agrees to forfeit any jackpot or thing of value won as a result of any wager made at/with with gaming enterprise, as well as any gaming chips or thing of value issued by the gaming enterprise or any gaming device. The forfeited jackpot or items will be withheld by an authorized representative of the gaming establishment or seized by representative of the Gaming Agency subject to his/her right to request a hearing pursuant to Article X to contest the forfeiture or seizure that the funds or thing(s) of value seized were not issued by the gaming enterprise or were not the result of a jackpot or winnings on wagers.
- G. Any excluded person will, as of the date his/her name is added to the exclusion list, forfeit all points or complimentaries earned on or before his/her exclusion, including points or complimentaries earned under the terms of the gaming establishment's marketing programs and shall include food coupons, coupons or vouchers for chips, hotel complimentaries, and other similar benefits.
- H. Removal from the exclusion list. Any person who has been placed on the exclusion list may petition the Gaming Agency in writing at any time, but not more frequently than annually, to remove the person's name from the list. Upon receipt of a request from any person to have his/her name removed from the exclusion list, the Gaming Agency shall forward the request to the Commission, which shall have a process in place, through regulations, to review and, if necessary, hold hearings under the procedures described in Article X to resolve the request.
- I. Duty to exclude. It shall be the duty of the Gaming Agency and management of each gaming establishment to exclude or eject from a gaming establishment any person whose name appears on the exclusion list. Any primary management official or key employee of a gaming operation who knows or has reason to know that an excluded person has entered or is attempting to enter a gaming establishment shall be responsible for notifying appropriate security and surveillance staff and taking such other action as is within the scope of the employee's authority and responsibility to exclude or eject such person.
- J. Trespass. A person who has received notice that he/she has been placed on the exclusion list, or who has been banned from a gaming establishment's premises under subsection (L), infra, may be charged with criminal trespass under applicable federal or tribal law or a civil infraction upon his or her entry onto the property of the gaming establishment. The notice advising persons that they have been placed on the exclusion list or who is subject to a temporary ban, shall include a notice that they may be criminally prosecuted for trespass under 8 NHBPTC §9-21 or cited with a civil infraction under 8 NHBPTC §6-23 should they attempt to enter onto the gaming establishment site. It is prima facie evidence that a person "received notice" the he/she has been placed on the exclusion list, or has been banned from a gaming establishment's premises, if that person was verbally instructed as to the exclusion or ban, or that notice of the ban by personal delivery or by registered or certified mail, return receipt requested.
- K. Distribution and availability of exclusion lists. The exclusion list shall be regularly updated and shall be distributed to each gaming establishment. The list shall be made available to law enforcement agencies by subpoena or upon request to the extent the law enforcement agency can establish a legitimate need for the list.
- L. The management of a gaming establishment has the authority to ban patrons from a gaming establishment for violations of gaming rules, Tribal or local laws, or property policies. Nothing in this section prohibits management of a gaming establishment from establishing internal procedures for banning patrons from a gaming establishment, for any period of time.

Article X  
Rules of Procedure for Hearings

§ 8.5-98 Scope of rules of procedure.

All license hearings, enforcement hearings and exclusion hearings conducted pursuant to this chapter shall be governed by this chapter. For purposes of this article, the term "affected party" refers to an applicant, licensee, excluded person, or other person who is directly affected by the decision or action that is the subject of the hearing.

§ 8.5-100 Hearings.

- A. The Commission shall afford an applicant an opportunity for a hearing prior to any final action by the Commission on an application, other than an unconditional grant of a license.
- B. Except as provided otherwise in this chapter, the Commission shall afford a licensee the opportunity for a hearing prior to taking formal action resulting in the suspension or revocation of a license or the imposition of any penalties that the Commission is authorized to impose pursuant to this chapter. Nothing in this section shall limit the Commission's authority to summarily suspend or revoke a license without a hearing pursuant to § 8.5-68 or 8.5-80 of this chapter.
- C. The Commission shall afford any other affected party, excluded person or other person the opportunity for a hearing prior to rendering a decision to add such person's name to an exclusion list, sanction or take such other enforcement action the Commission is authorized to take under this chapter.

§ 8.5-101 Notice of hearing.

- A. Except as provided otherwise in this chapter or the regulations, the Commission shall provide written notice to the applicant, licensee or excluded person of the hearing at least fourteen (14) business days prior to the date set for the hearing. The day the affected party receives the notice shall be considered a full day's notice under this section. The notice shall be sent by registered or certified mail or may be personally served upon the affected party. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the action(s) being considered by the Commission, including but not limited to:
  - (1) Whether the Commission is holding the hearing for the purpose of obtaining further information from the affected party;
  - (2) Whether the Commission will be considering the grant or denial of the license application;
  - (3) Whether the Commission will be examining any alleged violations of the chapter, the Compact, the IGRA, the conditions of any license issued by the Commission, any Commission order, or any other applicable laws, regulations or agreements; or
  - (4) Whether any other sanctions or penalties will be considered.
- B. The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

§ 8.5-102 Ex parte communications.

- A. No ex parte communication relative to the action(s) being considered by the Commission or a threat or offer of reward shall be made before a decision is rendered to any member of the Commission by or on behalf of the affected party or such person's attorney.
- B. Nothing in this section shall prohibit the affected party or such person's attorney from communicating with the Commission's legal counsel, its investigators or other authorized agents.



- C. Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.
- D. For purposes of this section only, the action(s) being considered by the Commission shall be those matters identified in the written notice regarding the hearing as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.
- E. The Commission shall have the power to impose any sanction pursuant to this chapter upon its determination that an affected party has made an ex parte communication in violation of this section.

§ 8.5-103 Appearance through counsel.

- A. Affected parties to all hearings governed by this chapter may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.
- B. When an affected party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter shall be made upon the attorney, unless the affected party requests otherwise in writing.
- C. When an affected party is represented by an attorney, the attorney shall sign all motions, notices, requests and other papers on behalf of the affected party, including a request for subpoenas.
- D. Any attorney appearing before the Commission must be duly admitted and authorized to practice before the Tribal Court. The affected party must notify the Commission of the affected party's intent to be represented by an attorney five (5) days prior to the date of the hearing.

§ 8.5-104 Discovery procedures for enforcement hearings.

- A. The Commission's legal counsel and the affected party shall exchange a list of persons that each party intends to call as witnesses no later than five (5) business days before a scheduled hearing. The day the list is received shall be considered a full day's notice under this section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this section may be prohibited from testifying at a hearing, in the Commission's discretion, unless good cause is demonstrated.
- B. The Commission's legal counsel and the affected party shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of their case in chief. This exchange shall be made to the opposing party no later than five (5) business days before a scheduled hearing. The day the documents are received shall be considered a full day's notice under this section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing unless good cause is demonstrated.

§ 8.5-105 Confidential materials.

- A. Prior to submitting any documents or other material or items to the Commission, the applicant or licensee may designate any document it reasonably believes to contain confidential information as "subject to a confidentiality claim" by so marking the document in a prominent manner.
- B. Documents marked in accordance with Subsection A above, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the Compact), without first

providing the affected party with the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission. If the request for such a ruling is made during a public hearing, the hearing shall be adjourned and the Commission shall conduct a closed meeting in order to hear and rule upon the request of the affected party. The affected party may present to the Commission in a closed meeting written and oral argument regarding the confidentiality claim, along with any facts the affected party believes to be relevant to such argument.

- C. In determining whether a document marked in accordance with Subsection A above should be made part of the public record of the Commission proceedings, the Commission will balance the claim for confidentiality against the materiality of the information to the related regulatory procedure or subject of the hearing, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the Commission's decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.
- D. In the event that the Commission rules during a closed meeting that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings, the document and/or information will be made part of the public record unless the affected party requests that the Commission withdraw the document from the proceeding and the Commission's possession. In the event the affected party requests that the document be withdrawn from the Commission's possession, the Commission will then consider the withdrawal request when it weighs the other evidence in the proceeding. A withdrawal of documents from the proceeding shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself to deny the relief requested by the affected party.
- E. In the event that the Commission rules during in a closed session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in making its determination.
- F. At the conclusion of the Commission proceedings, the Commission will return to the affected party all documents marked as "subject to a confidentiality claim" pursuant to Subsection A above that were not: (1) made part of the public record of the proceeding; or (2) that were designated as "confidential" and considered by the Commission in camera.

#### § 8.5-106 Subpoenas.

- A. The Commission and the Executive Director of the Commission have the power and discretion to issue subpoenas to compel the production of documents or other tangible things and to compel the appearance of witnesses to give testimony with regard to any Commission investigation or proceeding. The Commission may impose reasonable penalties and take such other appropriate actions as the Commission deems warranted under the circumstances to address noncompliance with a subpoena.
- B. The Commission and the Executive Director may seek the assistance of the tribal police, the Tribal Prosecutor and the General Counsel in exercising its authority under this section.

#### § 8.5-107 Hearing procedures.

- A. The Chair of the Commission, or other hearing officer designated in writing by the Chair, shall preside over all hearings and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

- B. The Commission may require any person, including but not limited to any applicant, licensee, excluded person or any agent, employee or representative of any applicant or licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. A record of testimony presented shall be maintained and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:
- (1) The refusal to grant a license to the person summoned and/or that person's principal or employer;
  - (2) The revocation or suspension of a license held by the person summoned and/or that person's principal or employer; or
  - (3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.
- C. Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is irrelevant, argumentative or repetitive.
- D. The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly or who shows a lack of proper respect for the Commission or the nature of the proceedings.
- E. Persons shall be permitted to speak only when recognized by the Chair.
- F. Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.
- G. Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.
- H. Except as otherwise provided in this chapter, all hearings held under this chapter shall be closed to the public.
- I. The Commission, in its discretion, has the authority to sequester witnesses.

§ 8.5-108 Evidence.

- A. In hearings governed by this chapter, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- B. All evidence, including records and documents in the possession of the Commission or of which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- C. The Commission may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

- D. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.
- E. The record in a hearing governed by these rules shall include:
  - (1) All applications, intermediate rulings and exhibits and appendices thereto.
  - (2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to § 8.5-105 of this chapter.
  - (3) A statement of matters officially noticed.
  - (4) The record of the hearing, including questions and offers of proof, objections and rulings thereon.
  - (5) Any decision, opinion, findings or report by the Commission.
  - (6) If applicable, a transcript of the hearing prepared by a duly certified court reporter.

§ 8.5-109 Commission decisions.

- A. All decisions to be made by the Commission under this chapter or the regulations shall, when necessary to support the decision, include findings of fact and determinations of law. All such decisions, findings and determinations shall be made by a majority vote of the Commission on the record in an open meeting, except as may be otherwise authorized by tribal law.
- B. A copy of any Commission decision directly affecting an applicant, licensee, excluded person, other interested party shall be served by registered or certified mail, by personal service, or by other means established by regulation.

§ 8.5-110 Sanctions.

If any party or its attorney fails to comply with any Commission order, or any other applicable laws, regulations or agreements, regarding any matter, including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission upon motion or upon its own initiative may, in its discretion, impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including, but not limited to, the following:

- A. An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these rules or any Commission order;
- B. An order that designated facts shall be taken to be established;
- C. An order that the noncompliant party may not support or oppose designated claims or defenses;
- D. An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the noncompliant party; or
- E. A finding against the noncompliant party.

Article XI  
Appeals

§ 8.5-111 Right of appeal; appeals procedures.

An applicant, licensee, excluded person or other person directly affected by any decision or finding of the Commission pursuant to § 8.5-109 of this chapter or any licensing decision of the Commission under this chapter shall have the right to file a request for a rehearing before the Commission. Any such request of

rehearing must be filed with the Commission in writing on or before the 10th day following receipt by such affected person of the written finding of the Commission. The Commission shall have discretion to grant a request for rehearing. In any case which comes before the Commission for final action, the Commission may determine to review all findings of fact and of law or proceed pursuant under a de novo standard. The Commission shall adopt procedures for resolving requests for rehearing, including rehearing proceedings. The Commission's decision on rehearing shall be final, and no further review by the Commission may be considered.

§ 8.5-112 Limited waiver of sovereign immunity of Commission.

The Tribe, by enactment of this chapter, expressly waives the Commission's sovereign immunity from suit for any action brought against the Commission in the Tribal Court that is explicitly authorized by this chapter.

§ 8.5-113 Right to appeal adverse Commission decisions to Tribal Court.

- A. Except for those matters for which this Act expressly precludes any appeal of the Commission's decisions, any person who has received a final adverse decision from the Commission shall have the right to appeal such adverse decision to the Tribal Court. For purposes of this section, a decision shall not be considered "final" unless it has been confirmed upon rehearing or the Commission certifies the decision in writing as final and subject to appeal.
- B. An appeal authorized by this section must be filed within thirty (30) calendar days from the date that the person entitled to bring the appeal receives notice of the final decision from the Commission.
- C. If the Court concludes that the necessary facts for the Commission's decision were not supported by reasonable evidence or that the Commission applied the applicable law incorrectly, it shall so declare and return the matter to the Commission for further consideration consistent with such Tribal Court decision. The Tribal Court shall, except for compelling reasons, limit its review to the administrative record. The Tribal Court shall give deference to the reasonable interpretation and application of tribal gaming regulatory laws by the Commission.
- D. Except as may be permitted under other enacted laws of the Tribe, the relief against the Commission in any such action shall be limited to injunctive or declaratory relief and shall not include any money damages. The Tribal Court may order the Commission to pay court costs and/or attorney's fees to the party bringing an action authorized under this chapter only if the Court determines that the Commission acted with willful disregard of a party's rights under the Nottawaseppi Huron Band of the Potawatomi Constitution, this chapter or other enacted tribal law.

Article XII

Prohibited Acts; Schedule of Offenses; Penalties

§ 8.5-114 Prohibition against certain individuals.

It shall be a violation of this chapter for any licensee to knowingly fail to exclude or eject from the gaming area of a gaming establishment any individual who:

- A. Is visibly under the influence of liquor, a drug or other intoxicating substance;
- B. Is under the age of 21 years;
- C. Is displaying disorderly conduct;
- D. Is a person known to have committed a gaming-related felony;
- E. Is known to have a reputation for cheating or manipulation of games; or

- F. Has been personally excluded or is a member of any group or type of persons which has been excluded for cause from gaming establishments by Commission order.

§ 8.5-115 Prohibited acts.

In addition to other civil and criminal acts that may be regulated or prohibited by this chapter, the regulations, or other tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this chapter and shall subject any perpetrator to citation by the Gaming Agency under applicable Commission regulations, including, but not limited to, the imposition of civil penalties or, when applicable, license suspension or revocation, referral to the Tribe's legal counsel to bring a civil action, or referral by authorized Gaming Agency personnel to appropriate law enforcement authorities to request the initiation of criminal proceedings under applicable Tribal law or issuance of a civil infraction citation:

- A. Altering or misrepresenting the outcome of gaming or other event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
- B. Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;
- C. Aiding anyone in acquiring such knowledge referred to in Subsection **B** of this section for the purposes of increasing or decreasing any bet or wager or for the purpose of determining the course of play;
- D. Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud; or claiming, collecting or taking an amount greater than the amount actually won in such game;
- E. Knowingly to entice or induce another to go to any place where gaming is conducted, to open a wagering account, or place a wager in violation of the provisions of this chapter, with the intent that the other person play or participate in such gaming;
- F. Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of a game or other event which is the subject of the bet or wager, including pinching bets;
- G. Knowingly, with the intent to cheat, alter, tamper with, or manipulate any game, platform, equipment, software, hardware, devices, or supplies used to conduct any gaming authorized under this act, in order to alter the odds or the payout, or to disable the game, platform, equipment, software, hardware, devices, or supplies from operating in the manner contrary to the designed and normal operational purpose for such component or part;
- H. Defrauding or attempting to defraud the Tribe, any licensee or any participant in any gaming;
- I. Participating in any gaming not authorized under this chapter and, when applicable, the Compact;
- J. Knowingly providing false information, omission or making any false statement with respect to an application for employment or for any license, certification or determination provided for in this chapter;
- K. Knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Commission or the Executive Director in connection with any contract for services or property related to gaming;
- L. Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;



- M. Offering or attempting to offer anything of value to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee under this chapter, the regulations, other tribal law, IGRA or other federal law;
- N. Acceptance by a licensee of anything of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the licensee to act or refrain from acting, in a manner contrary to the official duties of the licensee under this chapter, the regulations, tribal law, IGRA or other federal law;
- O. Falsifying, destroying, erasing or altering any books, computer data, records or other information relating to a gaming operation in ways other than is provided in approved internal control procedures;
- P. Taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this chapter, the regulations or IGRA; and
- Q. Entering into any contract or making payment on any contract for the delivery of gaming goods or services to a gaming operation when such contract fails to provide for or result in the delivery of gaming goods or services of fair value for the payment made or contemplated.

§ 8.5-116 Enforcement.

- A. Criminal violations. Any Indian person who willfully violates any provision of § 8.5-115, willfully fails to comply with § 8.5-115, or willfully prevents another person from complying with any provision of § 8.5-115, shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or one-year imprisonment, or both, in proceedings brought under 8 NHBPTC Chapter 8.8 (Criminal Procedures).
- B. Civil violations. Any person who willfully violates any provision of § 8.5-115, willfully fails to comply with any provision of § 8.5-115, or willfully prevents another person from complying with any provision of § 8.5-115, shall be guilty of a civil infraction and liable for a civil fine not to exceed \$5,000. The amount of any such civil fine may be recovered in a civil action brought in the Tribal Court. All civil fines accruing under this chapter shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

*The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.*

## Chapter 8.5 Gaming

**[HISTORY: Adopted by the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi 11-11-2010 by Res. No. 11-11-10-01 (Title VIII, Ch. 5, of the Tribal Code). Amendments noted where applicable.]**

### Article I Purpose; Public Policy; Authorized Gaming

#### § 8.5-1 Short title.

This chapter shall be known and may be cited as the "Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Act."

#### § 8.5-2 Purpose and authority.

The Tribal Council of the Nottawaseppi Huron Band of Potawatomi Indians enacts this chapter in order to comprehensively regulate all forms of gaming within the Tribe's Reservation. Pursuant to the express grant of authority enumerated in Article VI, Section 1(e), (g), (i), (k), (n) and (h) and Section 3, of the Constitution and the inherent authority of the Tribe as a sovereign tribal nation to provide for the health, safety and welfare of the Nottawaseppi Huron Band of the Potawatomi, the Tribal Council enacts this gaming regulatory act.

#### § 8.5-3 Public policy.

- A. All gaming conducted within the Tribe's Reservation and that is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter.
- B. The Tribal Council hereby finds and declares it to be the public policy of the Tribe, that:
  - (1) Proper regulation of gaming is essential in order to ensure that gaming is conducted honestly and it is free from unlawful conduct and corruptive elements.
  - (2) Strict regulation of all persons, locations, practices, associations and activities related to the conduct of gaming is required in order to maintain public confidence and trust in the honesty and integrity of gaming.
  - (3) All management contractors, primary management officials, key employees, gaming operations and vendors of goods or services must be licensed and controlled to preserve the integrity of gaming, to protect the public, and preserve the general welfare of the Tribe.
  - (4) The conduct of properly licensed and regulated gaming by the Tribe fulfills important policy objectives of the Tribe and the federal government by promoting tribal self-government and economic self-sufficiency.
  - (5) The substantial and relatively stable source of revenue offered by gaming enables the Tribe to fulfill its governmental responsibilities to the tribal membership.

#### § 8.5-4 Adoption; repealer.

This chapter is enacted by adoption of Tribal Council by Resolution No. 11-11-10-01, which also repeals the Gaming Ordinance under Title V enacted by adoption of Tribal Council Resolution No. 6-15-00-01 and approved by the National Indian Gaming Commission on June 19, 2000, as required by the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). This chapter and the repeal of the Gaming Ordinance



of 2000 shall only become effective upon the express approval of this chapter by the National Indian Gaming Commission. The repeal of the Gaming Ordinance of 2000, or any portion thereof, shall not have the effect of reviving any other tribal law repealed by adoption of the Gaming Regulatory Act of 2010 or any amendments thereto.

§ 8.5-5 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 8.5-6 Unauthorized gaming.

All gaming within the Tribe's Reservation, whether Class I, Class II or Class III, is prohibited and unlawful, except as expressly authorized by the chapter. Any person who commits any act of unauthorized gaming on the Reservation or any other tribal land shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction.

§ 8.5-7 Conduct of games.

All gaming shall be conducted by persons duly licensed by the Commission, except to the extent the Commission determines persons engaging in Class I gaming do not require licensing. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance with such regulations governing the conduct of games as may be promulgated by the Commission under this chapter.

§ 8.5-8 Permitted gaming.

- A. Class I gaming. Class I social games and traditional games are permitted to the extent consistent with tribal custom and practice. The Gaming Commission may consult with the Tribal Council to determine the scope and definition, including prize limits, for games which will be considered Class I social games and traditional games recognized by the Tribe's customs and practices. The Gaming Commission may prohibit or regulate the conduct of Class I social or traditional games if it determines such regulation is necessary to promote the public policies behind this chapter.
- B. Class II gaming authorized. Class II gaming, including online versions of Class II gaming and internet wagering on such games, is hereby authorized to be conducted on lands within the Tribe's Reservation; provided, however, that such Class II gaming shall be conducted only in accordance with the provisions of this chapter, the regulations and IGRA.
- C. Class III gaming authorized. Class III gaming, including online versions of Class III gaming and internet wagering on such games, is hereby authorized on lands within the Tribe's Reservation; provided, however, that Class III gaming shall be conducted only in accordance with the provisions of this chapter, the regulations, IGRA and the Compact.
- D. Internet wagering activities by persons located on the Tribe's Reservation is expressly authorized so long as such internet wagers are placed with a gaming establishment located in the State of Michigan that is authorized to receive internet wagers and such internet wagering is otherwise conducted in conformity with the "safe harbor" requirements of the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5362(10).
- E. A gaming establishment licensed under this Act is authorized to accept internet wagers from persons located outside the Tribe's Reservation so long as such internet wagering meets the conditions described in § 8.5-85a.

§ 8.5-9 Location of gaming.

Except for internet wagering activities conducted in conformity with this Act and other applicable law, the Gaming Agency shall ensure that such gaming as it authorizes and licenses pursuant to this chapter is

conducted on lands within the Tribe's Reservation and that federal law does not otherwise specifically prohibit such gaming.

§ 8.5-10 Ownership of gaming.

The Tribe shall have the sole proprietary interest in and responsibility for any gaming operation authorized by this chapter; provided, however, that nothing herein shall prohibit the exercise by any secured party of its rights under any collateral lease or other financing agreement with the Tribe for the purpose of securing repayment of the debt obligations of the Tribe in accordance with the provisions of such agreements and other applicable tribal law.

§ 8.5-11 Use of gaming revenue.

A. Net revenues from any form of gaming authorized under this chapter shall be used only for the following public purposes of the Tribe:

- (1) To fund tribal government operations and programs;
- (2) To provide for the general welfare of the Tribe and its members;
- (3) To promote tribal economic development;
- (4) To make donations to charitable organizations; and
- (5) To help fund operations of local government agencies.

B. The Tribe may only make per capita payments to tribal members from net revenues in accordance with a revenue allocation plan that may be approved or amended from time to time by the Tribal Council and the Secretary of the Interior.

Article II  
Definitions

§ 8.5-12 Definitions of terms.

Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), Public Law 100-497, 102 Stat. 2467 (October 17, 1988), 25 U.S.C. § 2701 et seq., and any regulations promulgated thereunder.

**ACT**

Means this Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Act, as amended from time to time.

**Commented [1]:** Editor's Note: "This chapter."

**AGENCY**

Means the Gaming Regulatory Agency, subdivision of the Tribe, established under Article **IV** of this chapter, which is responsible for the direct, day-to-day regulation of gaming establishments under this Act.

**APPLICANT**

Means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license required by this chapter.

**APPLICATION**

Means a request for the issuance or renewal of a license required by this chapter.

**AUTHORIZED PARTICIPANT**

For purposes of “internet wagering activities” described in §§ 8.5-85a.-8.5-85c, means an individual who has a valid internet wagering account with a gaming establishment and is at least 21 years of age.

**BUSINESS DAY**

Means Monday through Friday.

**CHAIRPERSON**

Means the Chairperson of the Commission appointed under §§ 8.5-18 and 8.5-19 of this chapter.

**CLASS I GAMING**

Means social games played solely for prizes of minimal value consistent with standards prescribed by regulations adopted by the Commission; or traditional forms of gaming played by individuals in connection with tribal ceremonies or celebrations, which are played in accordance with any regulations adopted by the Commission.

**CLASS II GAMING**

Means Class II gaming as defined in the Indian Gaming Regulatory Act and any regulations promulgated thereunder, including:

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

**CLASS III GAMING**

Means Class III gaming, as defined in the Indian Gaming Regulatory Act at 25 U.S.C. § 2703(8) and any regulations promulgated thereunder, including:

- A. Any house banking game, including but not limited to:
  - (1) Card games such as baccarat, chemin de fer, blackjack (21), and paigow (if played as house banking games).
  - (2) Casino games such as roulette, craps and keno.

- B. Any slot machines as defined in 15 U.S.C. § 1171(A)(1) and electronic or electromechanical facsimiles of any game of chance.
- C. Any sports betting and parimutuel wagering, including but not limited to wagering on horse racing, dog racing or jai alai; or
- D. Lotteries.

But excluding any Class III gaming that is not authorized by the Compact.

**COMMISSION**

Means the subdivision of the Tribe established under Article **III** of this chapter.

**COMMISSIONER**

Means an individual appointed under §§ 8.5-18 and 8.5-19 of this chapter to serve as a member of the Nottawaseppi Huron Band of the Potawatomi Gaming Commission.

**COMPACT**

Means the Compact dated February 18, 1999, including all renewals, amendments, appendices, exhibits and other attachments thereto between the Nottawaseppi Huron Band of the Potawatomi and the State of Michigan providing for the conduct of tribal Class III gaming by the Nottawaseppi Huron Band of the Potawatomi, or any replacement, extension or substitution therefor.

**COMPLIMENTARY**

Means a service or item provided at no cost, or at a reduced cost, to a customer of a gaming establishment.

**CONTROL PERSON**

Means any person who has the power to direct or cause direction of the management and policies of the business operations of a supplier of goods or services as verified by the supplier's ownership and organization structure described in the documents establishing the existence of the supplier and the designation of persons authorized to act on behalf of the supplier. Control shall be presumed for any person owning shares of a corporation that is not a publicly traded corporation if that person owns, controls or holds the power to vote 10% or more of the voting securities of a person. Control persons include members of the board of directors, chief executive officer, chief operating officer, and any person with the responsibility and authority to manage the contract on behalf of the supplier with respect to the gaming goods or services being provided to a gaming operation.

**COUNCIL or TRIBAL COUNCIL**

Means the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi established under Article **IV** of the Nottawaseppi Huron Band of the Potawatomi Constitution as the lawful governing body of the Tribe.

**EMERGENCY OPERATION PLAN**

Means the plan required to be included with a gaming establishment license application under § 8.5-50 of this chapter.

**EXCLUDED PERSON**

Means a person whose name has been added to an exclusion list in accordance with the requirements set forth in § 8.5-98 of this chapter.

**FISCAL YEAR**

Means the twelve month period ending on December 31<sup>st</sup> of each year for the Tribe, FireKeepers Development Authority and the FireKeepers Casino Hotel.

**GAME**

Means any game of chance, however conducted, operated or played, that comes within the definition of gaming provided in this section.

**GAMING**

Means any Class II gaming or Class III gaming activity, either individually or collectively, whether authorized or unauthorized.

**GAMING COMMISSION or COMMISSION**

Means the Nottawaseppi Huron Band of the Potawatomi Gaming Commission established pursuant to this chapter to regulate gaming within the jurisdiction of the Tribe.

**GAMING DEVICE**

Means any mechanical, electromechanical or electronic equipment, contrivance, component or machine, whether used remotely or directly in connection with any gaming, which affects the result of a wager by determining or predicting the outcome of a game or the odds of winning or losing a game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do affect or are capable of affecting, in any way, the playing of any game.

**GAMING EQUIPMENT OR SUPPLIES**

- A. A machine, mechanism, device or implement that affects the result of a game by determining win or loss, including, without limitation, any of the following:
- (1) Any gaming device;
  - (2) Software used with any gaming device;
  - (3) Cards; and
  - (4) Dice.
- B. Gaming equipment or supplies also includes layouts for live table games and representatives of values, including, without limitation, chips, tokens or electronic debit cards and related hardware or software that affect the result of the game.

**GAMING ESTABLISHMENT**

Means any facility or premises where gaming is conducted and includes all buildings, structures and other appurtenances required for the operation or maintenance of such facility or used in connection with such gaming.

**GAMING OPERATION**

Means each economic entity that is licensed by the tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by the tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

**GAMING SERVICES**

Any services or concessions which directly relate to the conduct of gaming, security or surveillance at a gaming establishment, including, without limitation, casino credit reporting services, maintenance or repairer services for gaming equipment or supplies.

**GAMING SITE**

The approximately seventy-eight-acre portion of the Nottawaseppi Huron Band of the Potawatomi tribal lands located in Battle Creek, Michigan, and held in trust by the United States for the benefit of the Nottawaseppi Huron Band of the Potawatomi.

**GROSS GAMING REVENUE**

Means the net win from gaming activities which is the difference between gaming wins and losses before deducting costs and expenses, such as progressive jackpot liability accruals, customer discounts, accruals for certain loyalty program costs, and certain other adjustments. All such adjustments shall be in accordance with the requirements of GAAP and the American Institute of Certified Public Accountant's then-current version of the Audit and Accounting Guide for Casinos – Audits of Casinos.

**INDIAN GAMING REGULATORY ACT or IGRA**

Public Law 100-497, 102 Stat. 2467, enacted on October 17, 1988, and codified at 25 U.S.C. § 2701 et seq.

**INDIAN LANDS**

Means the definition that term is given in the Indian Gaming Regulatory Act at 25 U.S.C. § 2703(4) and any regulations promulgated thereunder, but as to Class III gaming only, such definition shall exclude any Indian lands that are not also included within the definition of "Eligible Indian Lands" set forth in the Compact.

**INTERNET WAGERING**

Means the risking money or something of monetary value on an online version of any Class II or Class III gaming game.

**KEY EMPLOYEE**

A. A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;
- (4) Custodian of gaming equipment or supplies or cash;
- (5) Floor manager;
- (6) Pit boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; or

- (10) Custodian of gambling terminals or other devices operated by the management of any gaming operation, including persons with access to cash and accounting records for such devices.
- B. If not otherwise included, any other person whose total cash compensation from employment in any gaming operation exceeds \$50,000 per year.
- C. If not otherwise included, the four most highly compensated persons in any gaming operation.
- D. Any other employee of any gaming operation that the Commission designates by Commission regulations as a "key employee."

**LICENSE**

Means any authorization granted by the Commission pursuant to this chapter to any person, which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such.

**LICENSEE**

Means any person who has been issued a valid and current license pursuant to the provisions of this chapter.

**MANAGEMENT CONTRACT**

Means any contract, subcontract, or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

**MANAGEMENT CONTRACTOR**

Means any person to whom managerial responsibilities in or for any gaming operation has been delegated under a management contract.

**MANAGEMENT FEE**

Means any monies paid by a gaming operation from gaming revenue to any person pursuant to a management contract, but excluding monies permitted under the management contract to be paid to the management contractor as reimbursement for development advances, operating expenses, capital replacement costs, or in fulfillment of other obligations of such gaming operation.

**NET GAMING REVENUE**

Means gross gaming revenue of a gaming operation less (a) Amounts paid out as, or paid for, prizes; and (b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

**NIGC**

Means the National Indian Gaming Commission.

**ONLINE VERSION OF A GAME**

Also referred to as an "internet game", means any class II or class III game that is offered for play through the internet in which an individual wagers money or something of monetary value for the opportunity to win money or something of monetary value. The "online version" of any class II or class III game includes gaming tournaments conducted via the internet in which individuals compete against one another in 1 or more class II or class III games.

**OPERATING EXPENSE**

Means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which otherwise is so treated by application of generally accepted accounting principles.

**PATRON**

Means any natural person who participates in gaming as a customer or who is physically present on the premises where gaming is conducted as a customer of the gaming establishment.

**PERSON**

Means any business, proprietorship, association, partnership, syndicate, corporation, firm, joint venture, trust or other form of business association or entity, labor organization, state, local government, government instrumentality or entity, as well as a natural person.

**PERSON HAVING A DIRECT OR INDIRECT FINANCIAL INTEREST IN A MANAGEMENT CONTRACT**

- A. When a person is a party to a management contract, any person having a direct financial interest in such management contract;
- B. When a trust is a party to a management contract, any beneficiary or trustee;
- C. When a partnership is a party to a management contract, any partner;
- D. When a corporation is a party to a management contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10) shareholders for a privately held corporation;
- E. When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be a person having a direct financial interest in a management contract; or
- F. Any person or entity who will receive a portion of the direct or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

**PERSON HAVING MANAGEMENT RESPONSIBILITY FOR A MANAGEMENT CONTRACT**

Means the person designated by the management contract as having management responsibility for the gaming operation or a portion thereof.

**PRIMARY MANAGEMENT OFFICIAL**

- A. Any person having management responsibility over all or any part of any gaming operation.
- B. Any person who has authority:
  - (1) To hire and fire employees of a gaming operation.
  - (2) To establish working policy for a gaming operation.
- C. The chief financial officer or other person who has financial management responsibility for any gaming operation.



- D. Any person with management responsibility for a management contract.
- E. Any person the Commission designates by Commission regulations as a "primary management official."

**REGULATIONS**

Means any regulations promulgated by the Commission pursuant to this chapter.

**RESERVATION**

- A. All lands, the title to which is held in trust by the United States for the benefit of the Nottawaseppi Huron Band of the Potawatomi; and
- B. All lands proclaimed by the Secretary of the Interior to be part of the Tribe's Reservation. The term "Reservation" includes any rights-of-way running through the Reservation.

**SECRETARY**

Means the Secretary of the United States Department of the Interior.

**SOCIAL GAMES FOR PRIZES OF MINIMAL VALUE**

Means games conducted in connection with tribal community celebrations, pow-wows or tribal-government-sponsored fund-raising activities, in which the total value of prizes awarded during any single event does not exceed \$1,000.

**SUPPLIER OF GOODS OR SERVICES**

Means any person who manufactures, sells, leases, distributes, supplies any gaming equipment or supplies, and any person that provides maintenance or repair services for any gaming equipment.

**TRADITIONAL FORMS OF INDIAN GAMING**

- A. Gaming activities such as "stick" or "bone" games played as part of tribal ceremonies, celebrations or pow-wows.
- B. Games such as rodeos or horse races, including those for which purses or prizes are awarded, that are played as part of tribal ceremonies, celebrations or pow-wows.

**TRIBAL CHAIRPERSON**

Means the duly elected Chairperson of the Tribal Council.

**TRIBAL COURT**

Means the Nottawaseppi Huron Band of the Potawatomi Tribal Court.

**TRIBE and TRIBAL**

Means or refers to the Nottawaseppi Huron Band of the Potawatomi.

Article III  
Establishment and Powers of Commission

§ 8.5-13 Establishment of Gaming Commission

The Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby establishes the Nottawaseppi Huron Band of the Potawatomi Gaming Commission (hereinafter the "Gaming Commission" or "Commission") as an independent governmental subdivision of the Tribe.

§ 8.5-14 Governmental attributes of Commission.

As a political subdivision of the Tribe, the Commission is empowered with all the rights, privileges and immunities of the Tribe, including but not limited to the sovereign immunity of the Tribe from suit absent express consent from Tribal Council. The individual members of the Commission are officers of the tribal government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law.

§ 8.5-15 Delegation of certain regulatory authority.

The Tribal Council delegates to the Gaming Commission those regulatory authorities described in § 8.5-27 and general oversight authority over the Gaming Regulatory Agency's regulation of gaming conducted within the Tribe's Reservation to ensure that all gaming conducted within the Tribe's Reservation is conducted in conformance with this chapter, the regulations, the Compact, the IGRA, and regulations promulgated by the NIGC.

§ 8.5-16 Independence of Commission.

In all matters subject to its authority, the Commission shall be and shall act independently and autonomously from the Tribal Council. No prior or subsequent review by the Tribal Council of any actions of the Commission shall be required or permitted, except as may be otherwise explicitly provided in this chapter. Notwithstanding the foregoing, the Commission shall be subject to all tribal law, including generally applicable tribal administrative policies and procedures, including finance and human resources policies, except to the extent that an exception for the Commission is expressly provided in such policies. The Commission fiscal year shall be the fiscal year of the Tribe.

§ 8.5-17 Commission funding.

Commission funding, which shall be separate from that of the Gaming Regulatory Agency, shall be in an amount adequate for the Commission to properly fulfill all of its responsibilities under this chapter. The Tribal Council shall not reduce the annual budget of either of the Commission or Agency during any fiscal year but may approve requests to supplement the budget when necessary. The amount of the Commission's funding shall be established annually for the subsequent fiscal year through a detailed annual budget to be prepared by the Commission and the Agency's Executive Director for Tribal Council approval, as provided in § 8.5-27J of this chapter. The Commission budget shall take into account any unexpended funds that may, with approval of the Tribal Council, be retained and carried over by the Commission at the end of each fiscal year to the next fiscal year, excluding funds that are obligated for costs or expenses incurred during the prior fiscal year.

§ 8.5-18 Composition of Commission.

- A. The Commission shall be composed of a Chairperson and two Commissioners appointed by the Tribal Council under the procedures set forth in § 8.5-19.
- B. At least two members of the Commission shall be enrolled members of the Nottawaseppi Huron Band of the Potawatomi.

§ 8.5-19 Qualifications; appointment of Commissioners.

- A. Qualifications. No person shall serve on the Commission if that person is:

- (1) Under the age of 21;
- (2) A member or officer of the Tribal Council;
- (3) A Judge or employee of the Tribal Court;
- (4) Employed by any gaming operation or by the Gaming Regulatory Agency;
- (5) Resides in the same household with a person employed as a primary management official of any gaming operation;

- (6) Has a direct or indirect financial interest in the gaming operation, including any management contractor, or a direct financial interest in any supplier of gaming goods or services. For purposes of this section, direct financial interest shall not include the right to per capita distributions of gaming revenues pursuant to the IGRA but shall include direct ownership of stock in a publicly traded company, and indirect financial interest shall not include ownership of any mutual funds that hold such stock;
  - (7) Employed or otherwise serves in a position with responsibilities that create a conflict of interest or the appearance of a conflict of interest with the duties and responsibilities of the Commission, as determined by the Tribal Council; or
  - (8) Unable to obtain, or maintain, eligibility to hold a Gaming Commissioner's license under Subsection C.
- B. Additional qualifications. In addition to the qualifications prescribed in Subsection A:
- (1) All members of the Gaming Commission will be required to attend training on hearing procedures not less than annually to develop and refresh competencies in serving as administrative hearing officials; and
  - (2). Commission Members who are not tribal members must possess at least five (5) years' experience in gaming regulation, financial audits of gaming businesses, law or law enforcement.
- C. Eligibility determinations; Gaming Commissioner license. Before any person may take office as a member of the Commission, the Tribal Council shall arrange to have a comprehensive background investigation performed on each person to be appointed. The Council shall only appoint a Gaming Commissioner after it determines that all of the applicable qualifications and licensing standards for service on the Commission have been met in accordance with the standards and procedures set forth in this section.
- (1) All persons appointed to serve on the Commission shall consent to, and fully cooperate in the conduct of, a comprehensive background investigation.
  - (2) Nominees to the Commission shall complete a license application and shall be subject to the same background investigation process and licensing standards that apply to primary management officials under Article VII of this chapter. Such background investigation shall be performed at the direction of the Council.
  - (3) The investigator's report to the Tribal Council shall describe the investigative process and shall include findings verifying that the applicant meets all qualifications and licensing standards to the extent that such findings can be made with reasonable certainty. Regarding any finding that cannot be made with reasonable certainty, the investigator's report shall fully disclose all facts and information obtained through the background investigation that are relevant to the qualification or licensing standard and shall include copies of all documents related thereto.
  - (4) Upon completion of the background investigation, the Council shall review the report and findings of the investigation in closed session. The Council shall make a preliminary determination in open session, as provided in Subsection D, to either approve or deny an appointment, provided that the background investigation report and all information contained therein shall remain confidential and shall not be included in the public record of the Council session unless the appointee consents in writing to have the information included in the public record.
- D. Final determination; confirmation of appointment. Following review of the investigative report and findings, the Council shall make a final determination, not subject to appeal or further review, as to whether the appointee meets the applicable qualifications and licensing standards for appointment to

the Commission and shall, by majority vote, either confirm the appointment or deny the appointment.

§ 8.5-20 Term of office.

Commissioners shall serve three-year terms. Commissioners may serve successive terms of office without limitation; provided that the Tribal Council shall set terms of office to provide for the staggering of terms.

§ 8.5-21 Hold-over policy.

A Commissioner shall continue to serve in his or her position as Commissioner, with full authority, after the completion of his or her term until such time as he/she may be reappointed or a replacement is appointed and sworn into office.

§ 8.5-22 Resignation.

Commission members may, at any time prior to the initiation of removal proceedings under § 8.5-23, resign from the Commission by submitting, in writing, a signed and dated letter of resignation to the Commission Secretary or Chairperson and the Tribal Council Secretary or Chairperson. The resignation shall be effective as of the date tendered unless stated in the resignation letter. A copy of the resignation letter will be forwarded to the Tribal Council Secretary.

§ 8.5-23 Removal or Other Sanction.

A. The Commission may, by majority vote, request that the Tribal Council initiate a procedure for the removal of a Commission member, and the Tribal Council may, on its own initiative, initiate a removal procedure for any member of the Commission by voting to initiate removal proceedings by simple majority of the Tribal Council for any of the following reasons:

- (1) Nonfeasance, including the persistent failure to perform the duties of the office, including failure to attend a significant number of meetings;
- (2) Misfeasance, including any substantial or repeated failure to exercise authority or discharge responsibilities in conformity with this chapter, regulations, the IGRA or the Compact;
- (3) Malfeasance, including: (a) a conviction or a plea of guilty or nolo contendere regarding any felony criminal offense or any other criminal offense involving dishonesty or moral turpitude; (b) repeat or substantial violation(s) of the code of ethics; (c) a knowing violation of this chapter, the regulations, the Liquor Control Code, or other applicable tribal law that assigns duties or responsibilities specifically to the Commission; (d) misconduct in office that threatens the integrity or public image of the Commission; and (e) any conduct or omission which would be cause for denial, revocation or failure to renew a primary management official's license;
- (4) Failure to maintain the necessary qualifications for office prescribed in § 8.5-19; or
- (5) Physical or mental disability which prevents the performance of duties.

B. If the Tribal Council has reason to believe that cause for removal of an appointed Commissioner exists, the Tribal Council shall direct that an investigation be conducted by a qualified, independent investigator. If, in the Council's determination, the investigation substantiates the existence of cause for removal, the Council shall notify the Commissioner of the time and place for a hearing before the Council, which notice shall also fully describe the purpose for the hearing and all claims and allegations to be addressed at the hearing. The notice of hearing shall afford the Commissioner subject to removal not less than fourteen (14) business days to prepare for the hearing. Any investigation and hearing under this section shall be conducted in accordance with the procedures prescribed in Article X, except that the hearing shall be conducted by and before the Tribal Council.

C. If the Tribal Council determines that the conduct involved merits sanction other than removal, the Tribal Council may, in its discretion, approve a lesser sanction, which may include censure or

temporarily relieving such Commissioner of his/her duties with pay for a period not in excess of 30 days.

§ 8.5-24 Vacancies; appointment to fill vacancy.

- A. Vacancies on the Commission shall be filled by Tribal Council appointment for the balance of the unexpired term.
- B. The Tribal Council shall provide notice of the vacancy to the Band membership and an opportunity to respond prior to filling the vacancy.
- C. The Tribal Council will make a final determination regarding the eligibility of each prospective nominee to the Commission in accordance with the qualifications and procedures described in § 8.5-19.
- D. The Tribal Council will endeavor to fill any vacancy on the Commission within forty-five (45) days of the vacancy, or as soon thereafter as possible, in a manner prescribed by Tribal Council procedures.

§ 8.5-25 Ethics requirements for Commissioners.

Gaming Commissioners shall comply with all requirements of any general code of ethics adopted by the Tribal Council, as well as the following ethical standards of conduct:

- A. No member of the Gaming Commission shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in conflict with the proper discharge of his/her duties as a Gaming Commissioner.
- B. No member of the Gaming Commission shall use the position to secure special privilege or exemptions for himself/herself or others.
- C. No member of the Gaming Commission shall, directly or indirectly, give or receive or agree to receive any compensation, gift, reward or gratuity from any sources for any matter connected with or related to the discharge of his/her duties as a Gaming Commissioner unless otherwise provided by law and/or regulation.
- D. No member of the Gaming Commission shall accept employment or engage in any business or profession which he/she might reasonably expect would require or induce him/her to disclose confidential information of the Tribe, Gaming Commission and/or gaming operation acquired by him/her by reason of official position, nor otherwise use such information for personal gain or benefit (financial or proprietary).
- E. No member of the Gaming Commission shall disclose confidential information gained by reason of official position, nor otherwise use such information for personal gain or benefit.
- F. No member of the Gaming Commission shall transact any business in an official capacity with any business entity of which he/she is an officer, agent, employee or member, or in which he/she owns an interest.
- G. No member of the Gaming Commission nor any firm, corporation or association, or other business entity in which such Commissioner is an agent, director or officer or in which he/she owns a controlling interest, or any interest acquired after the acceptance of tribal appointment, shall sell goods or services to any gaming establishment which is licensed by the NHBP Gaming Commission.
- H. Each member of the Gaming Commission who is an officer, agent, member of, attorney for, or who owns an interest in any firm, corporation, association or other business entity which is subject to

tribal regulation shall file a sworn statement with the Tribal Council Chairman's office, disclosing the nature and extent of his relationship or interest; said statement to be kept in confidence and to be disclosed only to the members of the Tribal Council for the purpose of ascertaining a breach of this code, and the same also to be disclosed to any other authority having the power of removal of any public officer or servant.

- I. All members of the Gaming Commission shall act in a fair, impartial and courteous manner in all dealings with licensees and the public.
- J. No member of the Gaming Commission shall accept any gift, discount or other favor from any licensee that the licensee would not give freely to the general public. Any gift, discount or favor received by any member of Gaming Commission shall be disclosed in writing and reported to the Commission Chair, the Executive Director of the Gaming Agency, and the Tribal Council.
- K. Personal solicitation for or payment to any partisan, political organization for any partisan, political purpose or any compulsory assessment or involuntary contribution in any official capacity is prohibited.
- L. It is the responsibility of each member of the Gaming Commission to maintain the fact, as well as the perception, of keeping an "arm's length distance" from management and employees of FireKeepers Casino Hotel and other persons licensed by the Gaming Commission. In order to maintain this required objectivity, Commission members should not unnecessarily fraternize with casino team members and should not discuss any aspect of Gaming Commission operations with management and employees of FireKeepers Casino Hotel or other licensees.
- M. Gaming Commissioners must only act in an official capacity and as authorized under § 8.5-27. No individual member or member(s) of the Gaming Commission shall have any power or authority to direct or authorize the Executive Director or any employee of the Agency to take any action within the Agency's day-to-day regulatory authority and members of the Gaming Commission should avoid interactions with employees of the Agency, which might unreasonably interfere with the Executive Director's authority to manage the day-to-day activities of the Agency.
- N. All personal or romantic relationships involving Gaming Commissioners with employees of the Gaming Agency or FireKeepers Casino Hotel beyond what would reasonably be described as a "casual social relationship" must be promptly disclosed to the Gaming Commission Chair, the Gaming Agency's Executive Director and the Tribal Council. When circumstances warrant, the Gaming Commission or the Tribal Council may direct an individual Gaming Commissioner to either terminate a relationship with any licensee or resign his/her position on the Gaming Commission.

#### § 8.5-26 Compensation of Commissioners.

The Chairman and Commissioners shall be compensated at rates established by the Council. The Tribal Council shall review the rates of compensation for Commissioners on an annual basis and shall make adjustments to such rates as the Council determines to be appropriate to address increases in the cost-of-living or wage deflation. The Council shall not reduce the rate of compensation for any Commissioner during a Commissioner's term of office. Commissioners shall be entitled to reimbursement for actual expenses incurred on Commission business, including necessary travel expenses, subject to budgetary limitations and in accordance with generally applicable finance policies and procedures adopted by the Council or the Tribe's Chief Financial Officer.

#### § 8.5-27 Powers and duties of Commission.

- A. General. The Commission shall be responsible for exercising general oversight of Gaming Agency to ensure that the Agency is exercising its authority to regulate all gaming conducted within the Tribe's Reservation in a manner that ensures that such gaming is conducted in compliance with this chapter, regulations approved by the Commission, the Indian Gaming Regulatory Act, the Compact. In exercising its oversight authority, the Commission shall avoid unnecessary interference with the

Executive Director's discretion in overseeing the day-to-day operation of the Gaming Agency and shall have refrain from interference with the authority and discretion of any gaming operations managers to manage a gaming establishment.

- B. Appointment of Executive Director of the Agency. The Commission shall have authority to coordinate with the Tribe's human resource department to recruit, interview and appoint the Executive Director of the Agency. The process shall afford an opportunity for the Tribal Council and Chief Executive Officer of the gaming establishment to review and comment on the qualifications of prospective candidates for appointment as Executive Director. The final decision as to whether any candidate meets the qualifications prescribed in § 8.5-41 shall be left to the discretion of the Commission.
- C. Rule-making authority. The Commission shall have the power and duty to review and approve regulations recommended by the Agency, or to initiate the development of proposed regulations for approval, to ensure the integrity of gaming and protection of assets of gaming establishments, including, but not limited to regulations addressing those subjects described in § 8.5-40 (C).
- D. Rule-making process.
  - (1) The Commission shall give notice of its intent to adopt a regulation by posting a copy of the notice in the tribal administration offices and by delivering a copy of the notice by United States Mail or other appropriate means to the Tribal Council Secretary, the Tribe's Legal Department, legal counsel for any gaming operation (if applicable), and the chief executive officer of each gaming establishment. The notice shall include a copy of the proposed regulation and a description of the nature and effect of the proposed regulation. In addition, the notice shall include the following statements:
    - (a) The Commission shall afford interested parties not less than thirty (30) days from the date of the notice to submit comments on the proposed regulation. The Commission may, in its discretion, provide additional time and/or additional opportunities for interested parties to comment on proposed regulations as circumstances warrant or permit.
    - (b) The Commission shall review all comments received during the comment period and, based on such comments, shall make such changes to the proposed regulation as the Commission deems necessary or appropriate.
  - (2) The Commission shall fully consider and address all comments recommending changes to the proposed regulation that are based on sound analysis or are supported by reliable data and information. Prior to taking action to approve any regulation, the Commission shall provide not less than fourteen (14) days notice of its intent to adopt the final regulation to the persons listed in subsection D.(1), above, and to any other person who submitted comments on the proposed regulation. The notice of adoption shall summarize the final regulation and the changes to the proposed regulation. To the extent practicable, the notice of adoption shall include written responses to all substantive comments, provided that the Commission may offer a single response to substantially similar comments.
  - (3) Following the expiration of the fourteen (14) day notice, the Commission shall schedule a meeting to approve the regulation and shall, by official action, set the effective date of the regulation, and publish and post copies of a notice of adoption of the regulation in the same manner as for the notice of intent to adopt the regulation. The notice of adoption shall state the effective date of the regulation and shall announce that copies of the regulation are available from the Commission. Copies of the notice and the final regulation shall be delivered to all persons who were sent a copy of the notice of intent.



(4) Emergency Rules. The Commission shall have the authority to adopt emergency rules if the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, economic security, or morals, or to address a substantial void in current regulations, the Commission may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subsection D.(3), above. No such rule shall remain in effect longer than 180 days after the date of its adoption pending completion of notice & comment rulemaking procedures described herein. Whenever feasible, the Commission shall afford the Tribe's Legal Department, legal counsel for each gaming establishment (if applicable), and the chief executive officer of each gaming establishment and opportunity to comment on emergency rules prior to adoption of such rules.

E. Licensing of Gaming Facilities. The Commission shall have the authority to approve licenses for gaming facilities as prescribed in Article VI of this chapter.

F. Adjudicating Administrative Appeals.

The Commission shall have the power to hear appeals from the following final orders or decisions of the Agency:

- (1) Decisions to suspend, restrict or revoke a license for:
  - (a) Any direct and immediate threat to the health, welfare or safety of the public;
  - (b) The failure to make prompt and satisfactory progress to correct a problem that was the basis for a license suspension or other disciplinary measure;
  - (c) Repeated or substantial violations of this chapter, the regulations, the IGRA the Compact, or other applicable laws;
  - (d) The failure to maintain eligibility for the license; and
  - (e) The failure to remain eligible for a gaming license in any other jurisdiction where the person is an applicant for or maintains a license, permit or other approval related to gaming.
- (2) Any final order of the Executive Director which:
  - (a) Directs the gaming operation, or any licensee, to take specified corrective actions, or to refrain from taking a specific action deemed to violate this chapter, the regulations, the IGRA, the Compact or other applicable laws within the Commission's jurisdiction;
  - (b) Assesses any monetary fine or penalty against the gaming operation or employee of any gaming operation, or vendor for violations of this chapter or any regulation.
- (3) Patron disputes following exhaustion of the procedures prescribed in § 8.5-97.

G. Additional Powers.

The Commission shall also have the power to:

- (a) To compromise, negotiate or settle any dispute to which the Commission is a party relating to the Commission's authorized activities;

- (b) Conduct such oversight hearings, and to request information and reports from the Gaming Agency, to determine the effectiveness of regulations and laws, or the need for additional regulations, as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel the production of records and the appearance of witnesses at such hearings.
- H. Establishment of budget. The Commission shall establish an annual budget for its operations, which shall be presented to the Tribal Council for review and approval in accordance with deadlines prescribed by the Tribal Council. The Commission shall have the authority to expend funds within the approved budget without further authorization from the Tribal Council, subject to generally applicable tribal accounting and procurement policies.

§ 8.5-28 Commission meetings.

- A. Regular meetings. The Commission shall conduct a regular meeting once a month at the Commission office or at any other designated meeting place. The Commission shall provide by resolution the time and place for regular meetings. A meeting agenda shall be distributed to all Commission members at least forty-eight (48) hours in advance of the regular meeting, which shall be subject to change by a majority vote of the Commission at such meeting.
- B. Special meetings. Special meetings shall be called by the Commission Chair as necessary to carry out the official duties of the Commission. Notice of each special meeting may be given to each Commission member by hand delivery, telephone, mail or such other method as the Commission may establish. Notice of the special meeting and a proposed agenda must shall be delivered to Commission members at least forty-eight (48) hours in advance of such meeting and shall include the date, time and place of the meeting. The agenda for the special meeting shall be limited to the matters stated in the notice of the meeting unless all members are present at the meeting and a majority agrees to the change to the agenda.
- C. Emergency meetings. An emergency meeting may be called by the Chair of the Commission with less than twenty-four (24) hours' notice, provided that the business proposed to be taken up at the emergency meeting cannot reasonably wait for a special or regular meeting. The Chair of the Commission shall make every reasonable effort to provide all Commissioners with as much prior notice of the meeting as possible under the circumstances. The agenda for the emergency meeting shall be limited to the business proposed in the meeting notice.
- D. Waiver of notice. The notice requirements regarding any special or regular meeting may be waived if all members are present at such meeting and consent to the calling of the meeting.
- E. Meetings open to the public. All meetings of the Commission shall be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information, which the Commission deems confidential pursuant to the provisions of this chapter.
- F. Alternative meeting arrangements. Meetings may be conducted by a telephone conference, video conference, web conference or similar means, as the Commission Chairman deems necessary, subject to such requirements as the Commission may establish. Commission members may participate in any meeting by means of speakerphone or telephone conference, video conference or similar means, provided that all members participating in the meeting can hear and be heard by each other. A member's participation in a meeting described in this subsection without objection at the commencement of the meeting shall be deemed consent to the manner in which such meeting is conducted.
- G. Meeting procedures. The Commission shall prescribe rules of procedure regarding the conduct of its meetings, provided that such rules may not conflict with this chapter or other applicable tribal law. Any question regarding meeting procedure that is not addressed by this chapter, other applicable

tribal law, or by rules of procedure established by the Commission, may be resolved by consulting Robert's Rules of Order.

- H. Hearings. The Commission shall conduct hearings on administrative appeals in accordance with the procedures prescribed in Article X of this chapter. The Commission shall prescribe rules of procedure for the conduct of oversight hearings authorized by this Article and such additional rules regarding the conduct of administrative appeals as the Commission deems necessary, provided such rules may not conflict with this chapter or other applicable tribal law.

§ 8.5-29 Quorum.

A quorum of the Commission shall consist of at least two Commissioners (which may or may not include the Chair). All decisions shall require the affirmative vote of not less than two (2) members of the Commission, unless indicated otherwise in this chapter.

§ 8.5-30 Officers.

- A. Tribal Council will designate a Chairperson for the Commission. The Commission will select among its members a Vice Chairperson and a Secretary. The term of office for officer positions shall be for the term of that Commission position, and members may serve more than one term in that capacity.
- B. The Vice Chairperson shall assume the duties of the Chairperson in the Chairperson's absence. The Secretary shall maintain an official record of all Commission meetings and all other records required to be maintained by the Commission.

§ 8.5-31 Commission offices.

The Commission shall maintain a permanent administrative office. Such office shall serve as the Commission's main business office and shall be the site at which Commission records and documents are maintained and stored on a permanent basis. No person except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission or an attorney for the Commission or Tribe.

§ 8.5-32 Commission recordkeeping.

The Commission shall maintain complete records regarding the following, with due regard for the confidentiality of selected records:

- A. Meeting minutes from all Commission meetings;
- B. Transcript or minutes from all hearings conducted by the Commission;
- C. Commission budget and expenditures;
- D. Communications and correspondence with the Tribal Council, tribal agencies and officials, and state and federal agencies and officials;
- E. Any other records or documents the Commission deems necessary or appropriate.

§ 8.5-33 Reports.

- A. The Commission shall make monthly written reports to the Tribal Council. Such reports shall contain the following information:
  - (1) The number of meetings or hearings held, attendance at such meetings/hearings, and significant items on the Commission's meeting or hearing schedule(s) (i.e. regulation drafts in process; type of hearings; reports of activities from the Gaming Agency);
  - (2) A summary of any Commission travel and training; and

- (3) All other information which the Commission deems relevant in order to keep the Council adequately informed on all current gaming matters.
- B. Nothing in this section shall be construed to authorize the Commission or Commission staff to provide the Council with any confidential information pertaining to a pending regulatory or criminal investigation.

#### Article IV Establishment, Administration; Powers of the Gaming Agency

##### § 8.5-34 Establishment of the Gaming Regulatory Agency.

The Nottawaseppi Huron Band of the Potawatomi Tribal Council hereby establishes the Nottawaseppi Huron Band of the Potawatomi Gaming Regulatory Agency (hereinafter the “Gaming Agency” or “Agency”) as an independent governmental subdivision of the Tribe. § 8.5-27 Powers and duties of Commission.

##### § 8.5-36 Governmental attributes of Agency.

As a political subdivision of the Tribe, the Agency is endowed with all the rights, privileges and immunities of the Tribe, including but not limited to the sovereign immunity of the Tribe from suit absent express consent from Tribal Council. The Executive Director and individual employees of the Commission are officers of the tribal government and shall be immune from suit when acting in their official capacity to the fullest extent permitted by law.

##### § 8.5-37 Delegation of regulatory authority to the Agency.

Subject only to the general oversight authority of the Gaming Commission, or as otherwise expressly provided herein, the Tribal Council delegates to the Gaming Agency sole authority and responsibility to regulate all gaming conducted within the Tribe's Reservation, as provided by this chapter, which authority includes without limitation the authority to regulate gaming operations, gaming establishments and management contractors, and to license vendors of goods or services, labor organizations, primary management officials, key employees and all other persons subject to the Commission's licensing authority pursuant to this chapter. The Agency shall ensure that all gaming conducted within the Tribe's Reservation is conducted in conformance with this chapter, the regulations, the Compact, the IGRA, regulations promulgated by the NIGC, and other applicable tribal, state and federal laws.

##### § 8.5-38 Independence of Agency.

In all matters within the scope of its delegated regulatory authority, the Agency shall be and shall act independently and autonomously from the Tribal Council. No prior or subsequent review by the Tribal Council of any actions of the Agency taken within the scope of its regulatory authority shall be required or permitted, except as may be otherwise explicitly provided in this chapter. No prior review by the Gaming Commission of any actions of the Agency which are taken within the scope of its regulatory authority and in accordance with approved regulations shall be required or permitted, except as may be explicitly provided in this chapter. Notwithstanding the foregoing, the Agency shall be subject to all tribal law, including generally applicable tribal administrative policies and procedures, except to the extent that an exception for the Agency is expressly provided in such policies. The Agency's fiscal year shall be the fiscal year of the Tribe.

##### § 8.5-39 Agency funding.

Agency funding shall be in an amount sufficient for the Agency to properly fulfill all of its regulatory responsibilities under this chapter. The Tribal Council shall not reduce the Agency's annual budget during any fiscal year but may approve requests by the Agency to supplement the budget when necessary. The amount of the Agency's funding shall be established annually for the subsequent fiscal year through a detailed annual budget to be prepared by the Agency's Executive Director for Tribal Council approval in its annual budgeting process. The Agency budget shall take into account any unexpended funds that may, with approval of the Tribal Council, be retained and carried over by the Agency at the end of each fiscal

year to the next fiscal year, excluding funds that are obligated for costs or expenses incurred during the prior fiscal year.

§ 8.5-40 Powers and duties of Agency.

- A. General. The Agency shall be responsible for ensuring that all gaming conducted within the Tribe's Reservation is conducted in compliance with this chapter, the regulations, the Indian Gaming Regulatory Act and the Compact. In exercising its regulatory authority, the Agency shall avoid unnecessary interference with the authority and discretion of any gaming operations or management contractor to manage a gaming establishment.
- B. Licensing. The Agency shall have the power to conduct investigations and determine the eligibility of applicants for licenses required to operate, manage, conduct business with, or be employed at any gaming operation in accordance with the standards and procedures set forth in Articles **VI** through **VIII** of this chapter and the regulations. The Agency shall also have the power to limit, revoke, terminate, condition, suspend or restrict any license when the same will further the purposes and requirements of this chapter.
- C. Gaming Regulations. The Agency shall have the responsibility to develop and propose to the Commission, those regulations deemed reasonably necessary to implement this chapter and to effectively regulate gaming conducted within the Tribe's Reservation, or by gaming establishments licensed under this chapter, which regulations may include, but shall not be limited to, the following:
  - (1) The licensing of gaming establishments;
  - (2) Background investigations and licensing of work permit employees, key employees and primary management officials;
  - (3) Background investigations and licensing of gaming vendors, labor organizations and, to the extent deemed necessary, other suppliers of goods and services to a gaming enterprise;
  - (4) Conducting or causing to be conducted internal audits of gaming operations;
  - (5) Standards and procedures establishing independent reporting requirements for the Surveillance Department as required by § 8.5-93 and other standards as are necessary to assure that the independence of surveillance functions are maintained;
  - (6) The distribution of complimentary items;
  - (7) Permitted games and the conduct thereof;
  - (8) Compliance with applicable standards and procedures for testing gaming equipment or supplies;
  - (9) Audio and video surveillance standards and procedures;
  - (10) Standards and procedures for minimum internal cash, playing cards, and chip-and-token control;
  - (11) Compliance with the Bank Secrecy Act and applicable provisions of the Internal Revenue Code;
  - (12) Resolution of gaming-related disputes involving patrons after all remedies available at the gaming establishment are exhausted;
  - (13) The development and maintenance of a list of excluded persons;

- (14) Agency reporting, recordkeeping, auditing, investigation and enforcement procedures; and
- (15) Fines and other penalties for violations of this chapter, the regulations, and other applicable law.
- D. Other powers of the Agency. In addition to and in conjunction with the enumerated regulatory powers set forth above in this chapter, authorized employees of the Agency shall have the power to:
  - (1) Initiate investigations of licensees and to take action to suspend, restrict or revoke a gaming license for:
    - (a) Any direct and immediate threat to the health, welfare or safety of the public;
    - (b) The failure to make prompt and satisfactory progress to correct a problem that was the basis for a license suspension or other disciplinary measure;
    - (c) Repeated or substantial violations of this chapter, the regulations, the IGRA or the Compact;
    - (d) The failure to maintain eligibility for the license; and
    - (e) The failure to remain eligible for a gaming license in any other jurisdiction where the person is an applicant for or maintains a license, permit or other approval related to gaming.
  - (2) Initiate civil actions in court to enforce provision of this chapter, the regulations or the IGRA;
  - (3) To compromise, negotiate or settle any dispute to which the Agency is a party relating to the Agency's authorized activities;
  - (4) To enter the gaming establishment or other places of business of any licensed gaming facility in order to gain access to, inspect, examine, copy and audit all records, equipment, supplies or other items concerning any aspect of the operation conducted within the Reservation;
  - (5) To investigate, review, decide, adjudicate, enforce and to undertake such other regulatory activities regarding any matters subject to the Agency's jurisdiction as necessary for the Agency to carry out its express duties and responsibilities under this chapter;
  - (6) Initiate or request hearings before the Commission that the Agency may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel the production of records and the appearance of witnesses at such hearings;
  - (7) To provide information received through audits or other investigations that indicates a violation of tribal, federal or applicable state laws or regulations to the appropriate law enforcement officials and to cooperate with such agencies in the investigation and prosecution of charges brought as a result of violations of law;
  - (8) To request assistance from and utilize the services of public and private entities, including the Tribal Court and other courts, the tribal police and other law enforcement agencies, and the Tribal Prosecutor and Tribe's Legal Department in exercising its powers and carrying out its responsibilities;
  - (9) To coordinate with the Michigan Gaming Control Board regarding matters of compliance with the express requirements of the Compact, provided that in exercising such power the Agency shall respect the role and responsibility of the Tribal Council to represent the Tribe's interests as a party to the Compact and to engage in government-to-government consultation with the State of Michigan and its agencies;

- (10) To coordinate and cooperate with the Michigan Gaming Control Board regarding matters related to compliance with the express requirements of the Lawful Internet Gaming Act, MCL 432.301 to MCL 432.322 and the Lawful Sports Betting Act, MCL 432.401 to MCL 432.419, and regulations promulgated thereunder, including the gaming establishment's compliance with the terms and conditions of the Internet Gaming Operator and Internet Sports Betting Operator licenses issued by the Michigan Gaming Control Board; and
  - (11) To coordinate with the National Indian Gaming Commission regarding matters of compliance with the express requirements of the Indian Gaming Regulatory Act and the NIGC regulations, including matters relating to licensing of primary management officials and key employees and the payment of fees to the NIGC, provided that in exercising such power the Agency shall respect the role and responsibility of the Tribal Council to engage in government-to-government consultation with the United States and its agencies.
  - (12) To ensure that each gaming establishment has made arrangements to cause to be conducted independent audits annually and has submitted the results of those audits to the NIGC. Annual audits shall conform to generally accepted auditing standards. All gaming-related contracts that result in the purchase of supplies, services or concessions for more than \$25,000 in any year (except contracts for professional legal and accounting services) shall be specifically included within the scope of the audit conducted. Copies of the annual audit of each licensed gaming facility, and each audit for supplies, services or concessions of each gaming establishment, shall be furnished to the NIGC within 120 days after the end of each fiscal year of the gaming establishment.
- F. Monitoring and investigation. The Agency has the authority and duty to monitor all operations for compliance with this chapter and the regulations, the Nottawaseppi Huron Band of the Potawatomi Liquor Code, any other tribal law that expressly delegates responsibilities to the Agency, the IGRA and the Compact, subject to any limits on the Agency's power set forth in such laws.
- G. Access to records and information. Authorized Agency personnel, shall have access to all areas of any gaming operation and to all records, files, information and data of any gaming operation, wherever located, and may interview any employee, agent or representative of any gaming operation with respect to matters relating to the operation of any gaming operation. Advance notice to the gaming operation or any employee, agent or representative of the gaming operation shall not be required for the Agency to exercise the authority described in this subsection.
- H. Enforcement authority.
- (1) When information received by the Agency through inspections, audits or investigations indicates a violation of this chapter, the regulations, the terms or conditions of any license, or any other applicable tribal or federal laws, the Agency through its Executive Director shall, as warranted under the circumstances:
    - (a) Refer the matter to appropriate law enforcement officials or other appropriate governmental agencies;
    - (b) Pursue further investigation of the matter;
    - (c) Initiate proceedings to fine the gaming operation or person(s) responsible for the violation, or to suspend, restrict or revoke such person's license, or order specific corrective actions to address the violation, in accordance with the procedures in this chapter and the regulation; or
    - (d) Consult with representatives of the gaming operation to correct the violation or resolve the matter, with or without formal proceedings, at the discretion of the Executive Director.



- (2) Any enforcement action taken by the Executive Director on behalf of the Agency shall be fair and reasonable under the circumstances, shall be proportionate to the violation, and shall be designed to promote the goals of correction and improvement, unless the nature or severity of the violation is such that the goals of correction and improvement would be unrealistic. Any enforcement action taken by the Agency must be within its powers, related to its gaming regulatory responsibilities, and shall be conducted in accordance with the hearing procedures described in Article **X** of this chapter and is subject to appeal pursuant to Article **XI** of this chapter.

§ 8.5-41 Appointment of Executive Director; qualifications; removal and suspension.

- A. Appointment of the Executive Director. The Executive Director of the Agency shall be appointed and hired by the Gaming Commission and shall provide such reports to the Gaming Commission as may be necessary and appropriate to permit the Commission carry out its oversight responsibilities and perform its other duties.
- B. Qualifications. The Executive Director shall possess the following qualifications:
  - (1) At least five (5) years' responsible administrative experience and training in public or business administration, or possess broad skills in management and regulatory enforcement, and prefer to have an MBA, J.D. or other advanced degree. The Director's experience and training must be of sufficient scope, depth and relevancy to enable him/her to direct the work of the Gaming Commission (agency).
  - (2) Must meet the qualifications for and obtain the same license that Commission members must obtain.
  - (3) Must devote his or her entire time and attention to the duties of the Executive Director and the operation of the Commission.
- C. Compensation. The Director shall be entitled to an annual salary determined by the Gaming Commission. The salary established for the Executive Director and other terms of employment shall be in accordance with the Commission's approved budget and applicable personnel policies and procedures.
- D. Removal, suspension. The Commission may, by majority vote, request that the Tribal Council initiate a procedure for the removal of the Executive Director for any of the reasons stated in § 8.5-23 regarding removal of a Commission member, provided that if the reason for seeking the removal involves the failure to maintain or remain eligible for a license or for any other reason that threatens the integrity or public image of the Commission, the Commission may suspend the Executive Director, with pay, pending the outcome of the removal proceeding.
- E. Vacancy. If there is a vacancy for any reason in the position of Executive Director, the Commission shall assign the duties of the Executive Director to a department manager within the Commission on an interim basis until the Commission fills the vacancy in the position of Executive Director.

§ 8.5-42 Agency departments.

The Agency shall be organized under the Executive Director into the following departments, which shall be under the management and supervision of the Executive Director.

- A. Administration shall perform the administrative functions of the Agency, to include:
  - (1) Maintaining office records.
  - (2) Coordinating all administrative functions from the Agency to other regulatory agencies, law enforcement and intelligence agencies while maintaining strong communications with the gaming operation.

B. Licensing. The Licensing Department shall perform all of the following duties and responsibilities:

- (1) Receiving and processing all license applications.
- (2) Conducting background investigations regarding any applicant for a license and all other suitability investigations on behalf of the Agency that are required or permitted under this chapter.
- (3) Such other matters as the Executive Director may assign to the Department.

C. Auditing and compliance. The Department shall perform the following duties and responsibilities:

- (1) Conducts audits to verify each gaming establishment's compliance with all audit and financial oversight requirements regarding operational and gaming revenues;
- (2) Serve as the internal audit personnel for purposes of compliance with 25 C.F.R. § 542.42 by performing the audits of all major gaming areas of each gaming establishment not less than annually as required by NIGC regulations;
- (3) Monitoring through audit activities each gaming establishment's compliance with this chapter, the regulations, tribal minimum internal controls, IGRA, the Compact, and other laws governing gaming activities and gaming assets applicable to the gaming establishment;
- (4) Recommending the initiation of compliance or enforcement actions resulting from a licensee's failure to comply with the chapter, the regulations, including the tribal minimum internal controls, the IGRA and the Compact; and
- (5) Such other matters as the Executive Director may assign to the Department.

**Commented [2]:** Editor's Note: See § 8.5-83 of this chapter.

D. Investigations. The Department shall perform the following duties and responsibilities:

- (1) Ensuring all incidents within the scope of Agency's delegated regulatory authority are properly investigated.
- (2) Responsible for collecting, organizing and presenting various types of information in an unbiased manner in order to derive a conclusion in regards to an event or a series of events.
- (3) Monitors the property, identifying potential security and/or safety hazards and reporting appropriately to ensure the safety and protection of guests, employees, gaming revenues, assets and the entire facility.
- (4) Coordinates with the Agency's Auditing and Compliance Departments to investigate potential violations of the chapter, regulations, including tribal minimum internal controls, the Compact and other laws within the Agency's jurisdiction which may be identified through audit activities.
- (5) Coordinates with the gaming establishment's surveillance and security department on security-related matters.
- (6) Monitors the functionality of technical slot machine components for certification by the Agency; such as EPROMS, flash drives, and other software configurations.
- (7) Such other matters as the Executive Director may assign to the Department.

**Commented [3]:** Editor's Note: See § 8.5-83 of this chapter.

E. Information technologies. The Department shall perform the following duties and responsibilities:

- (1) Manages the day-to-day operation of all Commission and Agency computer systems, network and interfaces with all casino departments, regarding current information technology.

- (2) Assist the Investigations Department, as needed, with monitoring the functionality of technical slot machine components for certification by the Agency; such as EPROMS, flash drives, and other software configurations.
- (3) Monitors the functionality, security and integrity of all computer systems, network and interfaces, associated with any internet wagering systems operated by, or on behalf of, the gaming establishment.
- (4) Conducts information technologies audits for the Agency of the gaming establishment's compliance with information technology internal controls and reviews the results of internal and external information technology audits performed by the gaming establishment's Information Technology Department.
- (5) Such other matters as the Executive Director may assign to the Department.

§ 8.5-43 Powers and duties of Executive Director.

The Executive Director shall have the authority and the duty to carry out on behalf of the Agency the administrative and executive requirements of the Agency under this chapter, the regulations, and the IGRA, including, without limitation:

- A. Agency administration. The Executive Director shall provide administrative direction and support to the Agency, including managing and supervising all Agency staff, consultants and contractors, records management, and the development and oversight of the budget.
- B. Agency staff. The Executive Director shall be responsible for personnel matters, including the recruitment, hiring, supervision and discipline of Agency staff, whose positions shall be established by written position descriptions, subject to the all applicable hiring and employment laws and policies of the Tribe.
- C. Contracting. The Executive Director may negotiate and enter into contracts for the acquisition of goods and services required by the Agency and may otherwise expend funds as needed for the operation of the Agency, subject to such requirements as the Agency may establish, provided that the Executive Director shall ensure that all such contracts and expenditures are within the Agency's approved budget and any contracts which require the Agency or Tribe to waive its sovereign immunity from suit or consent to the jurisdiction of any court or dispute resolution process shall require approval by the Tribal Council unless such authority is expressly delegated to the Executive Director by Tribal Council resolution or statute.
- D. Administration of Agency operations. The Executive Director shall be responsible for overseeing the day-to-day operations of the Agency, including maintaining oversight of the Administration, Licensing, Investigation, Information Technologies, Auditing/Compliance Departments, and such other departments, sections or offices of the Agency. In overseeing Agency, the Executive Director shall ensure that the following activities are performed effectively and in accordance with applicable law and applicable government policies and procedures:
  - (1) Investigations of any matter within the scope of authority of the Agency, including without limitation background investigations necessary to determine the suitability of any applicant for license, are conducted efficiently and professionally.
  - (2) Issue and to assist, as necessary, the Commission in with the issuance of subpoenas, prepare evidence, and cooperate with the Agency's legal counsel in presenting to the Commission, cases in all appeals of or challenges to Agency's or the Commission's decisions asserted in accordance with the standards and procedures provided in this chapter and the regulations.

- (3) Monitor all gaming operations and gaming establishments at random or periodic intervals with or without prior notification to the gaming operation to determine compliance with this chapter, the regulations, IGRA, the Compact and other applicable law and, upon receiving any credible report of a violation thereof, conduct a timely investigation with regard to such report.
  - (4) Address and, as needed, investigate all disputes between gaming patrons and gaming operations pursuant to the standards and procedures set forth in this chapter and the regulations.
  - (5) Maintain and enforce compliance with a list of persons prohibited, or who have self-excluded themselves, from participating in gaming conducted at or with the gaming establishment and other persons who are subject to temporary or permanent bans prohibiting such persons entering the gaming establishment.
  - (6) Assist in enforcing Agency or Commission orders and decisions and, in coordination with appropriate law enforcement agencies, investigate and pursue prosecution of criminal violations of gaming laws and in pursuing criminal and civil enforcement of other applicable tribal, state and federal laws.
- E. Licensing. The Executive Director may grant temporary licenses as authorized under this chapter and may grant any other licenses on behalf of the Agency as expressly provided by the regulations.
- F. Records management. The Executive Director shall develop and maintain a suitable records management and retention system and shall ensure that all confidential and sensitive records and information are maintained and protected from unauthorized release.
- G. Evaluate the gaming regulatory system. Evaluate the effectiveness of the Tribe's gaming regulatory system and recommend any changes that may be necessary or desirable.
- H. Other duties. Perform such other duties as the Executive Director deems necessary as are within the scope of authority delegated to the Agency under this chapter.

## Article V

### Licensing; General Provisions

#### § 8.5-43a Licenses required.

The Gaming Agency, consistent with IGRA, the Compact and this chapter, shall ensure that the following classes of persons acquire and maintain valid licenses pursuant to this chapter:

- A. Class II and Class III gaming establishments;
- B. Management contractors;
- C. Primary management officials;
- D. Key employees, work permits; and
- E. Vendors of goods or services.

#### § 8.5-43b Authority to require licensing of other persons.

The Commission may develop regulations establishing licensing or background investigation requirements for other groups of persons, by classifying additional employees of gaming operations as "work permit employees," by requiring licensing for other categories of employees of a gaming operation, or requiring licensing of persons doing business with a gaming operation in addition to vendors of gaming goods or services.

§ 8.5-43c Gaming establishment license.

No person shall conduct Class II gaming or Class III gaming at any location within the Reservation unless such gaming is conducted at a gaming establishment licensed by the Commission as set forth in Article **VI**.

§ 8.5-43d Management contractor's license.

No person shall manage a Class II or a Class III gaming operation within the Reservation unless such person possesses a management contractor's license issued by the Commission as set forth in Article **VII**.

§ 8.5-43e Employees of gaming operation.

No person shall be employed as primary management official, key employee or work permit at any gaming operation within the Reservation unless such person is licensed by the Gaming Agency as set forth in Article **VII**.

§ 8.5-43e Supplier of gaming goods or services.

No person shall supply any gaming goods or services to any gaming operation within the Reservation unless such person is licensed by the Gaming Agency as set forth in Article **VIII**.

§ 8.5-43f General rights and duties of applicants.

- A. No property interest or promise of employment or contract. Neither the consideration of the issuance of a license nor the issuance of a license creates or grants to an applicant or a licensee a property interest or due process rights except as may be explicitly provided by this chapter or other tribal laws. The granting of a license by the Gaming Agency does not constitute a commitment on behalf of the Gaming Agency or any other party to contract with, hire or continue to employ or contract with the licensee.
- B. Duties of applicants and licensees. Applicants are required to provide or perform the following:
- (1) Responsibility to establish qualifications. An applicant for any license or license renewal required by this chapter has the burden of proving by clear and convincing evidence that all standards and other requirements applicable to such license are met. No license shall be granted to any applicant who fails to meet the evidentiary standards and all applicable licensing standards and requirements.
  - (2) Duty to disclose and cooperate. It shall be the responsibility and continuing duty of each applicant/licensee to promptly furnish all information, documentation, assurances, consents, waivers, fingerprint impressions, photographs or other materials required or requested by the Gaming Agency and Commission and to cooperate with the Agency and the Commission in the performance of its duties. Failure to furnish same after receipt of request shall constitute grounds for delaying consideration or denial of the application.
  - (3) Licensee's continuing duty to promptly furnish information. Licensees shall promptly notify the Gaming Agency of any occurrence or event in their lives which constitute a material change (e.g., arrest, filing of criminal charges, address change, name change, etc.) in any information provided in the licensee's application. The failure to promptly report within seventy-two (72) hours of occurrence such information or refusal to comply with a request by the Gaming Agency for information, evidence or testimony may be considered grounds for the suspension, restriction or revocation of a license.
  - (4) Authority to seize, revoke and suspend license. The Executive Director may seize, revoke, restrict, condition or suspend any license issued under this chapter in accordance with the procedures prescribed in §§ 8.5-68 and 8.5-69 and Article **X** of this chapter and any applicable regulations.
  - (5) Waiver of liability for disclosure of information. Applicants/licensees accept and assume all risks of harm from any public disclosure of information related to the licensing process. Applicants/licensees expressly waive any claims against the Commission, the Agency and the Tribe as well as any person

that furnishes information in good faith to the Gaming Agency or the Commission in any matter relating to the licensing process.

- (6) Consent to examination of accounts and records. Each applicant/licensee shall, in writing, consent to the examination of all bank accounts, other accounts and other records, whether held in the possession or under the control of the applicant/licensee or a third party. Furthermore, the applicant/licensee shall authorize and direct all third parties in possession or with control of such accounts or records to allow such examination thereof by the Gaming Agency or the Commission as the Agency or the Commission, as appropriate, deems necessary.
- (7) Consent to jurisdiction. Any person who applies for a license under this chapter shall be deemed to have given consent to the personal jurisdiction of the Tribe, the Commission and the Tribal Court and to have waived all available defenses against such jurisdiction. Nothing in this chapter shall limit the jurisdiction of the Tribe, the Agency or Commission or the Tribal Court under any circumstances, except as explicitly stated herein.
- (8) Nontransferability of license. All licenses shall be nontransferable and shall prohibit the licensee from transferring any rights or duties related to the license either directly or indirectly without the express approval of the Gaming Agency.

§ 8.5-44 Withdrawal of license application.

Once filed, an application for any license may not be withdrawn by an applicant without the express permission of the Executive Director. An applicant may request permission to withdraw an application by submitting a written request to the Executive Director. The Executive Director may grant or deny such a request, in its sole discretion.

§ 8.5-45 Right to condition license.

- A. Every license issued by the Gaming Agency shall be conditioned upon the licensee continuing to remain eligible to hold such license under the terms and conditions set forth in this chapter and any special conditions prescribed by the Agency.
- B. In the case of licenses approved for tribal members pursuant to § 8.5-62D, the Commission reserves the right to condition the issuance of and continuing right to maintain any license upon the applicant's agreement to comply with certain conditions associated with the holding of such license. Such conditions shall be related to the type of license sought and shall be narrowly tailored to address any specific regulatory concerns associated with the applicant, as revealed by the background investigation, including the particular job responsibilities or contractual obligations to be performed by the applicant.

§ 8.5-46 Term of license.

All licenses, with the exception of temporary licenses, shall be for a term of two (2) years and shall expire on the second anniversary of the effective date of the license.

§ 8.5-47 License fees.

The Commission shall, by regulation, establish a schedule of fees for each type of license issued under this chapter or defer the cost to the gaming operation as an operational expense. The amount of such fees shall be reasonably related to the recovery of the costs of administering the licensing responsibilities under this chapter.

Article VI  
Licensing of Gaming Establishments

§ 8.5-48 License required.

No person shall conduct Class II gaming or Class III gaming within the Reservation unless such gaming is conducted at a gaming establishment licensed by the Commission. If gaming is proposed to be

conducted in more than one gaming establishment by any gaming operation, a separate facilities gaming license shall be required for each such gaming establishment where Class II gaming or Class III gaming is conducted.

§ 8.5-49 License application fees.

The license application and renewal fee (if required) shall be as set forth by Commission regulation.

§ 8.5-50 Facilities gaming application procedures.

In order to obtain a facilities gaming license, the gaming operation requesting such license shall submit an application on the form provided by the Commission. The applicant shall include all of the following information regarding the period for which the license is sought:

- A. A description of the proposed gaming, including but not limited to:
  - (1) The type of proposed gaming, along with all instructions, policies, procedures and other documents related to the proposed gaming;
  - (2) The number and types of gaming equipment and gaming devices proposed to be in use within the gaming establishment; and
  - (3) The proposed days and hours of operation.
- B. A description of the gaming establishment, including the layout of the gaming equipment and gaming devices and the surveillance systems in the gaming establishment;
- C. Documentation accurately describing the proposed or current location of the gaming establishment, which verifies that such location is on Indian lands and, if Class III gaming is proposed, that the location constitutes "eligible Indian lands;"
- D. A description of the security, police, fire protection and other public safety services that will be available in the gaming establishment;
- E. Copies of the proposed system of internal controls and accounting procedures for the gaming operation;
- F. The emergency operation plan for the gaming establishment; and
- G. Schedule of all permits and approvals required under applicable tribal health, environmental protection and building codes, including documents verifying the current status of such permits and approvals.

**Commented [4]:** Editor's Note: As defined in the Compact.

§ 8.5-51 Threshold criteria that must be met by gaming establishments.

In order to be eligible to be issued a facilities gaming license, the applicant must submit documentation sufficient to permit the Commission to determine that the following criteria are met:

- A. The gaming establishment is or will be located on Indian lands and, if applicable, "eligible Indian lands";
- B. The proposed gaming establishment is duly authorized by tribal law and by the gaming operation;
- C. The Tribe or a tribal entity will have the sole proprietary interest in the gaming establishment, notwithstanding the grant to other persons of any security interests in tangible personal property of the gaming establishment;

**Commented [5]:** Editor's Note: As defined in the Compact.

- D. The gaming establishment's buildings and facilities have adequate, safe and operational plumbing, electrical, heating, cooling and ventilation systems in place;
- E. The gaming establishment's buildings and facilities have been inspected and approved for compliance with all applicable law by a qualified and duly authorized building and fire inspector;
- F. The gaming establishment will be constructed, maintained, and operated in a manner that adequately protects the environment and the health and safety of the public.
- G. The gaming establishment is equipped with security and surveillance equipment meeting or exceeding the tribal minimum internal control standards established by the regulations;
- H. The system of internal controls and accounting procedures for the gaming operation will meet or exceed the requirements of the tribal minimum internal controls, including requirements to ensure that financial statements and charts of account for all gaming revenues will be preserved and subject to audit;
- I. The emergency operation plan for the gaming establishment is sufficient and adequate to ensure the health and safety of the general public in compliance with applicable federal and tribal law;
- J. The gaming establishment's buildings and facilities meet all other requirements of applicable federal and tribal law; and
- K. The gaming operation has paid all applicable license fees and costs.

§ 8.5-52 Facilities gaming license application procedures.

- A. Upon receipt of a complete application for a facilities gaming license, the Commission shall:
  - (1) Review the proposed facilities gaming license application to ensure that all threshold standards required by this chapter are met.
  - (2) Review the system of internal controls and accounting procedures to be used by the gaming operation.
  - (3) Review the layout of the games and surveillance systems for the gaming establishment, including any instructions, policies, procedures, internal controls or other documents related to the layout of games and surveillance systems.
  - (4) Review the emergency operation plan for compliance with the requirements of applicable tribal and federal laws.
  - (5) Review the schedule of permits and approvals required under applicable tribal law and consult as needed with the code enforcement officer responsible for review and approval of such permits and approvals.
  - (6) Review all aspects of the gaming establishment to ensure that it will be in compliance with the provisions of federal and tribal laws and regulations and the Compact.
  - (7) Take any additional steps necessary to ensure the integrity of gaming at the gaming establishment and by the gaming operation.
- B. The Commission shall make its best effort to approve the facilities gaming license application within thirty (30) days following the receipt of a complete application. The Commission shall approve the gaming establishment license application unless the Commission determines that the gaming establishment fails to meet the applicable licensing standards under federal or tribal law or the

**Commented [6]:** Editor's Note: See § 8.5-83 of this chapter.



Compact or that, based on reasonable grounds, the gaming establishment will be operated in violation of federal or tribal law or the Compact.

- C. The Commission shall, at least fourteen (14) calendar days prior to the date the Commission intends to hold the hearing to consider the license application, post notice of the application in a prominent public location in tribal government buildings and at the gaming establishment. The Commission shall also publish the notice at least twice in a local newspaper serving the Reservation. The Commission shall hold a public hearing to consider the application, in which the applicant, its attorney and any person protesting the application shall have the right to present sworn oral and documentary evidence relevant to the application. The Commission may close the hearing or portions thereof to the extent permitted by applicable tribal law or to consider those portions of the application containing confidential or proprietary information. At the conclusion of the hearing, the Commission shall determine whether to grant or deny the application based upon the Commission's determination of the best interests of the Tribe and compliance with this chapter.
- D. If the Commission denies an application for a gaming establishment license, the Commission shall promptly notify the applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the application, and inform the applicant of its right to appeal the determination in accordance with Article **XI**.

§ 8.5-53 Conditions applicable to facilities gaming license.

**[Amended 6-21-2012 by Res. No. 06-21-12-18]**

Any gaming operation that holds a facilities gaming license shall comply with such reasonable conditions as may be prescribed by the Commission, including the following:

- A. The gaming operation shall operate and maintain the gaming establishment in a manner that meets the requirements set forth under § 8.5-95 of this chapter.
- B. Prior to initiating any public use of the building or facilities at the gaming establishment, the gaming operation shall have received all required permits, approvals and certificate(s) of occupancy under Chapter 9.2, Construction and Health Codes, of the Tribal Code and other applicable tribal law and shall comply with all conditions imposed through such permits, approvals and certificates.
- C. The gaming operation shall comply with all Internal Revenue Service reporting and filing requirements.
- D. Prior to initiating any gaming at the gaming establishment, all primary management officials, key employees and other employees required under this chapter or the regulations to be licensed shall obtain the appropriate licenses required in Article **VII**.
- E. The gaming establishment shall be subject to patrol by the gaming operation's security personnel, the tribal police and, to the extent expressly authorized by the Tribe, local and state law enforcement departments. The licensee shall cooperate at all times with all security personnel and law enforcement officers.
- F. The gaming establishment shall be open to inspection by the Commissioners, Commission staff and other duly authorized tribal authorities at all times.
- G. The gaming operation may not discriminate by reason of race, color, national origin, sex, age, physical or mental disability, sexual orientation or creed, provided that nothing herein shall prohibit the licensee from complying with contracting and employment preference requirements regarding Nottawaseppi Huron Band of the Potawatomi members and other Native Americans pursuant to applicable tribal and federal law.

- H. Licensees may not accept for cashing any public assistance check from any federal, state or tribal agency including social security checks.
- I. Licensees may not permit any person under the age of 21 to be employed in any primary management official position.
- J. Licensees may not permit any person under the age of 18 to be employed in any key employee or other gaming or nongaming positions.

§ 8.5-54 Terms of license.

A gaming establishment license shall be valid for a period of two (2) years from the date of issuance.

§ 8.5-55 Posting of licenses.

The gaming establishment license must be posted in a conspicuous location at all times on the premises of each gaming establishment.

§ 8.5-56 Gaming facility license renewals.

- A. Each facilities gaming license must be renewed every two (2) years.
- B. In order to obtain a renewal of a license, the gaming operation shall submit a written renewal application to the Commission on the form provided by the Commission at least forty-five (45) days prior to the date the current license will expire.
- C. The Commission shall approve applications for a renewal license within thirty (30) days following the Commission's receipt of a complete application (and required documents) unless the Commission determines that the gaming establishment fails to meet the applicable licensing standards under federal or tribal law or the Compact or that, based on reasonable grounds, the gaming establishment will be operated in violation of federal or tribal law or the Compact. The Commission may, in its discretion, hold a public hearing to consider the application in accordance with the procedures described in Article X, provided that the Commission may close the hearing or portions thereof to the extent permitted by applicable tribal law.
- D. If the Commission denies a renewal application, the Commission shall, within seven (7) calendar days, notify the applicant of the specific reasons for such denial, provide a description of any corrective actions that the Commission determines will cure the deficiencies in the application, and inform the applicant of its right to appeal the determination in accordance with Article XI.

## Article VII

### Licensing of Primary Management Officials, Key Employees and Work Permit Employees of Gaming Operations

§ 8.5-57 Application for gaming employee license.

The Gaming Agency shall require each prospective primary management official, key employee or work permit employee to submit a sworn application to the Gaming Agency on the forms and in the manner required by the Gaming Agency. The application shall include, at a minimum, the forms, information, other requirements described hereunder.

- A. Application form. The application form shall require, at a minimum, the applicant to provide the Gaming Agency with the following information:
  - (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender and all languages (spoken or written).
  - (2) Currently and for the previous ten (10) years:

- (a) Business and employment positions held;
- (b) Ownership interests in those businesses;
- (c) Business and residence addresses; and
- (d) Driver's license numbers, including issuing state.
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Subsection A(2) of this subsection.
- (4) Current business and residence telephone numbers.
- (5) A description of any existing and previous business relationships with other tribes, including an ownership interests in those businesses.
- (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses.
- B. Application form notices. The notices set forth below shall be placed on the front of every application so that the applicant will read the notices prior to filling out the application form.  
[Amended 1-28-2011 by Res. No. 01-28-11-02]

#### **Privacy Act Notice**

**In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations, prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in issuance, denial or revocation of a gaming license or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position.**

The disclosure of your social security number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

#### **False Statements Notice**

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).

- C. Application form authorizations and acknowledgements. Every application form shall require the applicant to sign the following authorization and acknowledgement:

- (1) Authorization permitting the Gaming Agency to investigate the applicant's background, including his criminal and civil records, credit and financial history, business relationships and activities, records of all previous license applications, and tax records.
  - (2) A signed acknowledgement that the applicant consents to the personal jurisdiction of the Tribe, the Gaming Agency and Commission and the Tribal Court and that the applicant waives all available defenses against such jurisdiction.
- D. Personal history disclosure. The personal history disclosure shall require, at a minimum, the following information:
- (1) 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, the current status of the application, and whether or not such license or permit was granted;
  - (2) A list of all felony charges and dispositions against the applicant, if any; and for each felony for which there is ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition (if any), including identification of any conviction or plea of guilty or no contest to any offense, to include gambling-related offense, fraud or misrepresentation at any time;
  - (3) A list of all misdemeanor charges and dispositions against the applicant, if any (excluding traffic charges for which incarceration was not a possible punishment, referred to hereunder as "minor" traffic charges); and for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic charges), the name and address of the court involved and the date and disposition, including identification of any conviction or plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation at any time;
  - (4) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, the criminal charge, the name and address of the court involved, and the date and disposition; and
  - (5) The name and address of any licensing or regulatory agency with which the person has filed an application for a business or occupational license or permit, whether or not such license or permit was granted.
- E. Current photographs. The applicant shall submit with the application one current photograph of the applicant's face of such quality and size as the Gaming Agency shall require.
- F. Personal financial questionnaire. The personal financial questionnaire shall include a statement of assets and liabilities and shall include, at a minimum, the following information:
- (1) A list of all professional or business licenses the applicant has applied for, whether or not those licenses were granted, and the name, address and phone number of the regulatory agency involved.
  - (2) The personal financial questionnaire shall also include a sworn statement to be signed by the applicant stating that neither the applicant nor any member of his immediate family has a past or current financial interest, other than a salary interest, in any gaming-related activity or business anywhere. If the applicant has any relative who has such a relationship, the applicant shall fully disclose his name and the nature of the relationship.
- G. Fingerprint cards. All applicants for a gaming employee license shall submit one original fingerprint card (via Livescan), which shall be processed in accordance with the regulations. The Gaming Agency is hereby designated as the tribal agency authorized to take the fingerprints of key employees and primary management officials. The Gaming Agency may also require one or more

additional fingerprint cards, which the Gaming Agency may submit to be processed by any tribal, local or state agency's criminal history check system, as the Gaming Agency deems necessary.

- H. Other information. The applicant shall complete any other forms and disclose and submit any and all other information required by Commission regulations or reasonably requested by the Gaming Agency.
- I. Application fees and costs. The applicant shall pay all fees and costs (if) required by the Gaming Agency to process the applicant's license application.

§ 8.5-58 Burden of proof.

The burden of proof to establish eligibility to obtain or maintain an employee gaming license shall be by clear and convincing evidence, which burden shall be upon the applicant or licensee, as the case may be.

§ 8.5-59 Background investigation.

- A. The Gaming Agency shall conduct, or cause to be conducted, an investigation sufficient to make the determinations required under § 8.5-60. The background investigation shall include a check of criminal history records information maintained by the Federal Bureau of Investigations. In conducting background investigations, the Gaming Agency shall seek to ensure that gaming operations shall not employ persons whose prior activities, or reputation, habits and associations, pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 CFR Parts 556 and 558, the Compact and this Article **VII**. The Gaming Agency, its investigators, and the Commission, shall keep confidential the identity of each person interviewed in the course of conducting a background investigation. The Gaming Agency shall establish procedures to protect confidential information generated by the investigation or submitted by the applicants from any unauthorized disclosure. The background investigation shall, at a minimum, consist of at least the following:
  - (1) Verify the applicant's identity through primary sources, such as government-issued identification and other documents, including without limitation social security cards, driver's licenses, birth certificates, or passports;
  - (2) Contact each reference provided in the license application and, when warranted, contact other references and sources identified in the application in order to verify and supplement the information submitted by the applicant/licensee and to resolve any discrepancies encountered through the background investigation;
  - (3) Review the applicant's credit history and, when the applicant is a primary management official or when otherwise warranted, verify the financial information provided by the applicant by contacting financial institutions and other sources;
  - (4) Conduct a civil history check;
  - (5) Conduct a criminal history check through the submission of the applicant's fingerprints to the NIGC and by obtaining information from law enforcement agencies and courts in the jurisdictions where applicant has resided, regarding all felony convictions during the applicant's lifetime and misdemeanor convictions and criminal charges;
  - (6) Inquire into the applicant's previous or existing business relationships; and
  - (7) Verify and evaluate the applicant's history and status with other licensing agencies.

- B. The investigator shall create an investigative report that describes the investigative process, information gained, potential problem areas, and any disqualifying information. The Gaming Agency and Commission shall keep confidential the identity of each person interviewed in the course of the investigation, except as permitted under applicable federal or tribal law or the Compact.

§ 8.5-60 Standards for issuance of gaming employee license.

**[Amended 6-21-2012 by Res. No. 06-21-12-18]**

The Gaming Agency shall not grant a license to any applicant for a gaming employee license who:

- A. Is a member of the Tribal Council, a Tribal Judge or a Tribal law enforcement officer;
- B. Is under the age of 18;
- C. Has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation;
- D. Has within the immediately preceding five (5) years been convicted of or entered a plea of guilty or no contest to "any offense" not specified in Subsection C, provided that this provision shall not apply if the applicant has been pardoned by the governor of the state where the conviction occurred or, if the applicant is a tribal member, the applicant has been determined to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a gaming employee license;
- E. Is determined to have participated in organized crime or unlawful gambling or whose prior activities, criminal records (including a pattern of convictions), reputation, habits and/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 conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or
- F. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Agency or the Commission or refused to respond to questions material to the suitability determination that have been asked by the Gaming Agency or the Commission.
- G. For purposes of Subsection D, the term "any offense" shall mean any criminal offense not described in Subsection C, whether committed in Michigan or any other jurisdiction, that is, or would be, a crime under the provisions of the Michigan Penal Code, Act No. 328 of the Public Acts of 1931, as amended, being MCLA §§ 750.1 to 750.568, or the controlled substance provisions of the Public Health Code, Act No. 368 of the Public Acts of 1978, as amended, being MCLA §§ 333.7101 to 333.7545, or any other criminal offense not specified in Subsection C involving theft, dishonesty, fraud or misrepresentation arising under the law of Michigan or another state or jurisdiction, that was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the employee's criminal record by executive pardon, state court order or operation of law.
- H. For purposes of Subsection C, the term "fraud or misrepresentation" shall mean a criminal offense committed in Michigan or any other jurisdiction involving, theft, fraud or misrepresentation, which is a felony or would be a felony if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the employee's criminal record by executive pardon, state court order or operation of law.

§ 8.5-61 Temporary license.

- A. Issuance of a temporary license. If the Gaming Agency verifies that the applicant has completed all required application requirements set forth in § 8.5-57, the Gaming Agency may, in its sole

discretion, issue a temporary license pending the satisfactory completion of all background investigations, provided that the Gaming Agency:

- (1) Makes a preliminary determination based on the information provided in the application and any other information the Gaming Agency obtains concerning the applicant that, under the licensing standards set forth in § 8.5-60 and as otherwise provided under applicable law or the Compact, granting the temporary license would not pose a threat to the public interest or to the effective regulation of gaming and would not create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming; and
  - (2) Has submitted the completed application and fingerprint card to the NIGC along with all other information required under NIGC regulations.
- B. Period a temporary license may remain valid. The temporary license may be valid for such period of time as the Gaming Agency may determine in its sole discretion, but in no event shall it be valid for more than ninety (90) days from the date of issuance.
- C. Conditions regarding temporary license. An applicant may commence employment under a temporary license; however, upon the occurrence of any of the following, such employment shall terminate immediately and the temporary license shall be summarily revoked pending any hearing requested by the applicant, as provided under this chapter:
- (1) Denial of a license by the Gaming Agency upon receipt of any information indicating that the applicant does not meet the standards for a license set forth in § 8.5-60;
  - (2) Receipt of objections by the NIGC (subject to review by the Commission) to the issuance of a license;
  - (3) The failure by the Gaming Agency to complete the background investigation described in § 8.5-59 and submit to the NIGC within sixty (60) days of the date it issues a temporary license the investigative report and preliminary determination of eligibility made under § 8.5-61; or
  - (4) A violation of any other condition the Gaming Agency or the Commission may place on temporary licenses in general pursuant to this chapter or on a particular temporary license.

§ 8.5-62 Action on applications for gaming employee license; preliminary determinations.

- A. Within fifteen (15) days following the completion of the background investigation described in § 8.5-59 but not more than fifty (50) days from the date it issues a temporary license, the Gaming Agency shall review the application, the investigative reports and any objections to the issuance of a license and additional information regarding the applicant that the Gaming Agency may receive from the NIGC and shall make a preliminary determination of eligibility under the standards set forth in § 8.5-60.
- B. If the Gaming Agency determines that the applicant qualifies for the issuance of a license without any conditions, the Gaming Agency may approve the application on a preliminary basis and may, in its further discretion, issue a temporary license to the applicant if it has not already done so.
- C. If the Gaming Agency determines that an applicant does not, or may not, qualify for the issuance of a license or may qualify for a license only with certain conditions, the Gaming Agency shall notify the applicant that the Gaming Agency intends to deny the application or will only consider approving the license with conditions, as the case may be. Upon the applicant's request, the Gaming Agency shall schedule a hearing in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, the Commission may approve the application on a preliminary basis, with or without

conditions, and may, in its further discretion, issue a temporary license to the applicant, if it has not already done so.

- D. If the applicant is a tribal member and the applicant's criminal history reveals that the applicant was convicted of or entered a plea of guilty or no contest to any offense within the preceding five (5) years, the Commission may, upon the applicant's request, hold a hearing to determine whether such applicant is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a gaming employee license. In such case, the Commission will notify the applicant that he must appear for a suitability determination hearing before the Commission. The hearing shall be held in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, the Commission may approve the issuance of a conditional license.

E. Investigative Reports.

- (1) The Gaming Agency shall create and maintain an investigation report for each background investigation of a primary management official or key employee.
- (2) The investigation reports shall include, at a minimum, include the following:
  - (a) Steps taken in conducting a background investigation;
  - (b) Results obtained;
  - (c) Conclusions reached; and
  - (d) The basis for those conclusions.

§ 8.5-63 Eligibility Determinations

- A. Before a license is issued to a primary management official or key employee, the Executive Director or his/her designee, shall make a finding concerning the eligibility of that person for receiving a gaming license by reviewing the applicant's prior activities, criminal record, if any, and reputation, habits and associations.
- B. If the Executive Director or his/her designee, in applying the standards adopted in this ordinance, determines that licensing the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming, he or she shall not license that person in a key employee or primary management official position.
- C. Copies of the eligibility determination shall be included with the notice of results that must be submitted to the NIGC before the licensing of a primary management official or key employee.

§ 8.5-63a Notice of Results of Background Investigations

- A. Before issuing a license to a primary management official or key employee, the Gaming Agency shall prepare a notice of results of the applicant's background investigation to submit to the NIGC.
- B. The notice of results must be submitted to the NIGC no later than 60 days after the applicant begins working for the gaming enterprise.
- C. The notice of results shall include the following information:
  - (1) The applicant's name, date of birth and social security number;
  - (2) The date on which the applicant began, or will begin, working as a primary management official or key employee;



(3) A summary of the information presented in the investigative report, including:

- (a) Licenses that have previously been denied;
  - (b) Gaming licenses that have been revoked, even if subsequently reinstated;
  - (c) Every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and
  - (d) Every felony offense of which the applicant has been convicted or any ongoing prosecution; and
- (4) A copy of the eligibility determination made in accordance with § 8.5-63.

§ 8.5-63b. Granting Gaming Licenses

- A. All primary management officials and key employees of the gaming establishment must have a gaming license issued by the Gaming Agency.
- B. The Gaming Agency is responsible for granting and issuing gaming licenses to primary management officials and key employees.
- C. The Gaming Agency may license a primary management official or key employee applicant after submitting a notice of results of the applicant's background investigation to the NIGC, as required by § 8.5-63a.
- D. The Gaming Agency shall notify the NIGC of the issuance of a license to a primary management official or key employee within 30 days of issuance.
- E. The gaming establishment shall not employ an individual in a primary management official or key employee position who does not have a license after 90 days of beginning work at the gaming operation.
- F. The Gaming Agency must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within 30 days of the NIGC receiving a notice of results of the applicant's background investigation.
- G. The Gaming Agency shall take the NIGC's objections into account when reconsidering a license application.
- H. The Gaming Agency will make the final decision whether to issue a license to an applicant for a primary management official or key employee position.
- I. If the Gaming Agency has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, the Gaming Agency shall provide notice to the Gaming Commission, which shall provide such licensee notice and a hearing, under the procedures described in Article X.

§ 8.5-64 Denial of license.

- A. The tribal Gaming Agency shall not license a primary management official or key employee if an authorized Tribal official determines, in applying the standards in Section 21 for making a license eligibility determination, that licensing the person:
  - (1) Poses a threat to the public interest;

- (2) Poses a threat to the effective regulation of gaming; or
- (3) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.
- B. When the Gaming Agency does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued licenses after reconsideration, it shall:
  - (1) Notify the NIGC;
  - (2) Forward copies of its eligibility determination and notice of results of the applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System; and
  - (3) Notify the applicant of his/her right to appeal the Gaming Agency's decision pursuant to Article X.
- C. If, after a license is issued to a primary management official or a key employee, the Gaming Agency receives notice from the NIGC that the primary management official or key employee is not eligible for employment, the Gaming Agency shall do the following:
  - (1) Immediately suspend the license;
  - (2) Provide the licensee with written notice of the suspension and proposed revocation; and
  - (3) Provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license pursuant to Article X.
- D. Following a revocation hearing, the Gamin Commission shall decide whether to revoke or reinstate the license at issue.
- E. The Gaming Agency shall notify the NIGC of its decision to revoke or reinstate a license within 45 days of receiving notification from the NIGC that a primary management official or key employee is not eligible for employment.

§ 8.5-65 Licensing period.

A gaming employee license issued pursuant to this chapter shall be effective for a period of two (2) years from the date of issuance. The license shall display on its face the licensee's photograph, the licensee's name, the gaming establishment at which the employee is licensed to work, the license number and the date that it expires.

§ 8.5-66 Renewals.

A holder of a gaming employee license shall apply to the Gaming Agency for a renewal not later than thirty (30) days before the license expires by completing all forms required by the Gaming Agency. Each applicant for a license renewal shall revise and supplement the information provided to the Gaming Agency with the applicant's initial gaming employee license application on such forms and subject to such requirements as may be prescribed by the Gaming Agency.

§ 8.5-66a Records Retention.

- A. The Gaming Agency shall retain, for no less than three years from the date a primary management official or key employee is terminated from employment with the gaming establishment, the following documentation:
  - (1) Application for licensing;
  - (2) Investigative Reports; and

(3) Eligibility Determinations.

§ 8.5-67 Disclosure of applicant and licensee information and documents.

A. The Gaming Agency may, consistent with its duties and responsibilities under the law and in an effort to preserve and enhance the integrity of tribal gaming, disclose applicant and licensee information, documents, photographs, records and other material under the following circumstances:

- (1) Pursuant to written authorization from the applicant or licensee to whom the information and documents pertain;
- (2) Pursuant to a written request from a duly authorized agent of any agency of the United States, a state or the Tribe, including law enforcement agencies and regulatory bodies when authorized by law, and in accordance with the terms and conditions described in any regulations; and
- (3) If ordered to do so by a court of competent jurisdiction.

B. Disclosure of applicant or licensee information and documents by the Gaming Agency is specifically authorized under the following circumstances:

- (1) National Indian Gaming Commission. The Gaming Agency is required to forward to the NIGC an investigative report on each background investigation. The Gaming Agency shall disclose to the NIGC the revocation of any gaming license and, if that license is reinstated, disclose that as well.
- (2) Michigan Gaming Control Board. Under Section 4(L) of the Compact, the Gaming Agency is required, upon request, to provide representatives of the Michigan Gaming Control Board with access to background investigation information compiled by the Tribe on all key employees and primary management officials.

§ 8.5-68 Suspension or revocation of license.

A. Standard for suspension of license following a hearing. Any license issued under this chapter may, after notice and hearing, be suspended by the Gaming Agency for not more than sixty (60) days if the Gaming Agency determines that any of the following have occurred:

- (1) The licensee has been formally charged with any offense that may disqualify the licensee from holding a license under this chapter.
- (2) The licensee has engaged in conduct that poses a threat to the integrity of gaming or to the health, safety or welfare of the general public at any gaming establishment, whether within or outside the jurisdiction of the Tribe.
- (3) The licensee has knowingly made a material false or misleading statement in his license application.
- (4) The licensee has participated in unauthorized gaming, whether or not regulated by this chapter.
- (5) The licensee has failed or refused to comply with the conditions of his license, with any duty imposed on applicant/licensee under this chapter, or with any lawful order of the Gaming Agency, the Commission, the Tribal Court or the NIGC.

B. Standard for suspension of license pending a hearing. Any license issued under this chapter may be temporarily and immediately suspended by the Gaming Agency for not more than thirty (30) days pending a hearing if:

- (1) The licensee has been formally charged with any offense that may disqualify the licensee from holding a license under this chapter;
  - (2) The NIGC notifies the Gaming Agency that it has information that a licensee employed as a primary management official or key employee is no longer eligible to be licensed; or
  - (3) The Gaming Agency receives reliable information that the licensee has engaged in conduct that poses an immediate threat to the integrity of gaming or to the health, safety or welfare of the general public at any gaming establishment, whether within or outside the jurisdiction of the Tribe.
- C. Standard for revocation of a license following a hearing. Any license issued under this chapter may, after notice and hearing, be revoked if the Commission determines that the licensee fails to meet the standards for a gaming employee license under § 8.5-60 of this chapter or under other applicable law or that the licensee has failed or refused to comply with the conditions of his or her license, with any duty imposed on the licensee under this chapter, or with any lawful order of the Gaming Agency, Commission, the Tribal Court or the NIGC.
- D. Investigation of grounds for suspending a license. Upon receipt by the Gaming Agency of information that a license may be suspended or revoked based on the grounds described in Subsection A, B or C, the Gaming Agency shall promptly conduct an investigation to substantiate the allegations and to obtain any other relevant information that may prove or disprove grounds for suspension or revocation.
- E. Suspension of license pending hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to suspend the license, but the licensee's actions do not appear to present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Gaming Agency shall issue a notice of suspension pending hearing, which shall be served on the licensee.
- F. Summary suspension of license prior to hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to suspend the license, and the licensee's actions present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Executive Director shall issue a notice of summary suspension prior to hearing, which shall be served upon the licensee.
- G. Revocation of license pending hearing. If upon completion of the investigation the Gaming Agency determines that grounds exist to revoke a license, but the licensee's actions do not appear to present a direct and immediate threat to the integrity of gaming or to the peace, safety, health or welfare of the community, the Gaming Agency shall issue a notice of revocation pending hearing, which shall be served on the licensee.
- H. Notice and hearing requirements. Any notice of suspension or revocation under this section shall:
- (1) Inform the licensee of the right to a hearing upon request;
  - (2) State in detail the grounds upon which it is issued;
  - (3) Identify any witnesses the Gaming Agency intends to call;
  - (4) Summarize the facts and evidence that the Gaming Agency intends to present to demonstrate that adequate cause exists to support the action against the employee's license; and
  - (5) Inform the employee that he or she has the right to present evidence to rebut the grounds specified in the notice, including testimony from fact witnesses, or to present evidence of mitigating circumstances demonstrating that the action against his or her license is not warranted.

- I. Time requirement for a hearing. A hearing before the Commission shall be set for a date no later than fourteen (14) days after the date the licensee files a written request for a hearing. The licensee shall file a request for a hearing within seven (7) business days from the date the licensee receives a notice. The Commission may, on its own, schedule a hearing, notwithstanding the lack of written request for a hearing from the licensee. The hearing shall be conducted in accordance with the procedures described in Article X.
- J. Conversion of suspension to revocation hearing. If the results of the investigation described in Subsection D indicate that there are sufficient grounds to revoke the licensee's license under the standard set forth in Subsection C, the Gaming Agency may, in its discretion, convert the hearing on the suspension of the license to a hearing to show cause why the licensee's license should be revoked. If the Gaming Agency determines to convert a suspension hearing to a revocation hearing, it shall provide the licensee with a new notice under Subsection E and a new opportunity to request a hearing under Subsection I, which would also commence a new time period for scheduling the hearing.

§ 8.5-69 Show cause hearing for manager and primary management officials.

Notwithstanding the provisions in the foregoing § 8.5-68A through C, in the event that the Gaming Agency determines that there are grounds to issue a notice of suspension or revocation regarding a licensee who is a primary management official, and such grounds do not involve criminal conduct, the following procedures shall apply in addition to the requirements of this chapter that are consistent with this section:

- A. Prior to issuing any notice of suspension or notice of revocation, the Gaming Agency shall issue a notice for show cause to the licensee.
- B. In addition to the notice and hearing requirements set forth in § 8.5-68H, the notice for show cause shall suggest measures the licensee may pursue to resolve the licensing problem.
- C. The Gaming Agency shall provide the licensee with an opportunity to meet with the Executive Director and other Agency representatives prior to the show cause hearing to address any questions related to the hearing. Such meeting shall, except for reasons beyond the control of the licensee or C Gaming Agency representatives, occur within three (3) business days from the date the licensee receives the notice for show cause.
- D. If the licensing problem is not resolved to the Executive Director's satisfaction prior to the show cause hearing, the Commission may proceed with the show cause hearing to suspend or revoke the licensee's license, as warranted, and shall take whatever action it deems appropriate as a result of the hearing.

§ 8.5-70 Requirements regarding files.

The Agency shall create a separate file for each applicant that includes all forms, documents and information submitted by the applicant and all background information compiled by the Agency. All reports obtained from the fingerprint processing shall be incorporated into the applicant's file. The Agency shall retain such files for no less than three (3) years from the date of an applicant's termination from employment and shall make such files available for inspection by the NIGC upon request. Otherwise, such file shall be confidential and shall be maintained in such a manner and pursuant to such procedures as shall safeguard the disclosure of any contents of the file except as may be authorized by law or with the express consent of the applicant or licensee.

Article VIII  
Licensing of Vendors of Gaming Goods or Services

§ 8.5-71 Licensing of vendors of gaming goods or services.

Before any person may supply gaming goods or services to a gaming operation, such person shall obtain from the Gaming Agency a gaming vendors license.

§ 8.5-72 Requirements for gaming vendors license.

Each person applying for a gaming vendors license must complete the following forms:

- A. Application for gaming vendors license;
- B. Disclosure form for business entity for each control person that is a business entity;
- C. Personal history disclosure form for each control person who is a natural person;
- D. Authorization to release information for each control person: business entity or natural person; and
- E. Additional forms or information from an applicant as the Gaming Agency deems necessary.

§ 8.5-73 Application for gaming vendors license.

Any applicant for a gaming vendors license shall submit to the Gaming Agency an application on a form issued by the Commission, which shall, at a minimum, include the following information:

- A. Name of business, any other names the applicant has done business under, business address (including main office address, if different), telephone number, and federal tax ID number (or social security number if a sole proprietorship or single-member LLC);
- B. Identification of the specific gaming goods or services the applicant is proposing to sell or supply to the gaming operation;
- C. Identification of all gaming goods or services available from the applicant to any person;
- D. Trade name(s) used in connection with gaming goods or services, names of any wholly-owned subsidiaries or other businesses owned by the applicant;
- E. Copies of documents establishing the existence of the applicant as a business entity, such as a partnership agreement, trust agreement or articles of incorporation;
- F. Copies of documents establishing the ownership and control of the applicant's business affairs sufficient to permit identification of any and all control persons of the applicant;
- G. Copies of documents designating the person(s) authorized to act on the applicant's behalf;
- H. Copies of bylaws or other documents that provide the day-to-day operating rules for the applicant;
- I. A description of any existing and previous business relationships involving Indian tribes, particularly those including ownership interests in those businesses;
- J. A description of any existing and previous business relationships involving the gaming industry in general, particularly including ownership interests in those businesses;
- K. The name and address of any licensing or regulatory agency with which the applicant or control persons shall have filed an application for a license or permit relating to gaming, whether or not such

license or permit was granted, and whether such license or permit has ever been subject to suspension, revocation or other sanction;

- L. For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction involving the applicant or a control person, the name and address of the court involved, the charge, and the dates of the charge and disposition;
- M. For each misdemeanor conviction or ongoing misdemeanor prosecution involving the applicant or a control person within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;
- N. Complete financial statements or tax returns, with all relevant schedules, for the applicant for the previous three (3) fiscal years;
- O. List of civil lawsuits to which the applicant or a control person has been a defendant within the previous ten (10) years, including the name and address of the court involved, the date and disposition; and
- P. Any additional information the Gaming Agency deems relevant, or as prescribed in regulations adopted by the Commission.
- Q. The following notice shall be placed on the application form for the applicant and all control persons: "Inclusion of false or misleading information in this application may be grounds for denial or revocation of any license."

§ 8.5-74 Background investigation.

- A. The Gaming Agency shall conduct or cause to be conducted a background investigation of the applicant and each control person. Control persons who are natural persons shall be subject to the same background investigation as primary management officials, except that a criminal history check involving the submission of the fingerprints of control persons who are natural persons to the NIGC shall not be required. The background investigation shall consist of at least the following:
  - (1) Verify the applicant's legal identity and standing (if applicable) and verify the identity of all control persons who are natural persons through primary sources, such as government-issued identification and other documents, including without limitation social security cards, driver's licenses, birth certificates or passports;
  - (2) Contact each reference provided in the license application and, when warranted, contact other references and sources identified in the application in order to verify and supplement the information submitted by the applicant and to resolve any discrepancies encountered through the background investigation;
  - (3) Obtain a credit check, (such as a Dunn & Bradstreet report) and, regarding control persons who are natural persons, an individual credit history report, and verify the accuracy of financial information provided by the applicant and control persons by contacting financial institutions and other sources;
  - (4) Conduct a civil history check;
  - (5) Conduct a criminal history check regarding all control persons who are natural persons by obtaining information from law enforcement agencies and courts in the jurisdictions where such persons resided regarding all arrests, charges and convictions;
  - (6) Inquire into any previous or existing business relationships by contacting the entities or tribes; and
  - (7) Verify the applicant's history and status with any licensing agency.

- B. The investigator shall create an investigative report that describes the investigative process, information gained, potential problem areas, and any disqualifying information. The Gaming Agency shall keep confidential the identity of each person interviewed in the course of the investigation, except as permitted under applicable federal or tribal law or the Compact.

§ 8.5-75 Licensing standards.

A person is ineligible to receive a gaming vendors license if any of the following exist:

- A. The applicant, or any control person, has been convicted of a felony within the ten (10) years preceding the date of the license application;
- B. The applicant, or any control person, has been convicted of or entered a plea of guilty or no contest to any gambling-related offense, theft-related crime or to a felony offense involving fraud or misrepresentation;
- C. The applicant, or any control person, employs a person who is directly involved with the management or operations of any gaming operation;
- D. The applicant, or any control person, submitted an application that contains materially false or misleading information;
- E. The applicant, or any control person, is associated with organized crime;
- F. The applicant, or any control person, is determined by the Gaming Agency to be an entity or person whose prior activities, reputation, habits and associations, including any conflicts of interest, 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 or activities in the operation of gaming or the business and financial affairs related thereto; or
- G. The applicant, if a supplier of gaming devices, has failed to demonstrate that it will provide devices that meet the technical requirements for such devices as prescribed in the Compact, in § 8.5-88, and as may be prescribed in the regulations.

§ 8.5-76 Action on applications for gaming vendors; preliminary determinations.

- A. Within fifteen (15) days following the completion of the background investigation(s) described in this chapter, the Agency shall review the application and the investigative report to determine if the applicant qualifies for a gaming vendors license.
- B. If the Gaming Agency determines, pursuant to § 8.5-75, that the applicant qualifies for the issuance of a license without any conditions, the Gaming Agency may approve the application and issue a license.
- C. Not qualified or qualified with conditions.
  - (1) If the Gaming Agency determines, pursuant to § 8.5-75, that an applicant does not, or may not, qualify for the issuance of a license, or may qualify for a license only with certain conditions, because:
    - (a) The applicant's criminal history or past associations and/or habits indicate that the applicant's involvement in supplying gaming equipment or gaming goods or services may create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or



- (b) The applicant may have knowingly and willfully provided materially false and misleading statements or information to the Gaming Agency or refused to respond to questions material to the suitability determination that have been asked by the Gaming Agency.
- (2) The Gaming Agency shall notify the applicant that its application may be denied and, upon the applicant's request, shall schedule a hearing in accordance with the procedures described in Article X. If following such hearing the Commission determines that the applicant qualifies for the issuance of a license, with or without conditions, the Gaming Agency shall approve the application with or without conditions.

§ 8.5-77 Denial of license.

If following the hearing conducted under the procedures described in Article X the Gaming Agency denies any application for a gaming vendors license under this chapter or issues a license with conditions or restrictions, the Gaming Agency shall, within seven (7) calendar days, notify the applicant that the application was denied, specify the reasons for the denial under the standards described in § 8.5-75, and inform the applicant of the applicant's right to appeal as provided in Article XI.

§ 8.5-78 Terms of license.

Except for temporary licenses issued pursuant to § 8.5-82, the terms of gaming vendor licenses issued by the Gaming Agency shall be two (2) years. The term of license shall commence on the date the license becomes effective, inclusive of the effective date of any temporary license, and shall expire at the conclusion of the specified license term on the anniversary of the effective date of the license.

§ 8.5-79 Renewals.

A holder of a gaming vendors license shall apply to the Gaming Agency for a renewal not later than sixty (60) days before its current license expires by completing all forms required by the Gaming Agency. Each applicant for a license renewal shall revise and supplement the information provided to the Gaming Agency with the licensee's initial gaming vendors license application on such forms and subject to such requirements as may be prescribed by the Gaming Agency. A temporary gaming vendors license may be granted where the holder of the license has timely sought a license renewal and paid all required fees and costs but the license renewal has not been approved by the Gaming Agency.

§ 8.5-80 Suspension; summary suspension; revocation of gaming vendors licenses.

The Gaming Agency may suspend, summarily suspend, or revoke a gaming vendors license in accordance with the procedures described in § 8.5-68, provided that any determination to suspend or revoke a gaming vendors license shall be made under the standards set forth in § 8.5-75.

§ 8.5-81 Requirements regarding files.

The Gaming Agency shall create a separate file for each applicant that includes all forms, documents and information submitted by the applicant and all background information compiled by the Gaming Agency. The Gaming Agency shall retain such files for no less than three (3) years from the date of expiration of an applicant's license, including any renewal.

§ 8.5-82 Temporary licenses.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of temporary licenses to applicants for gaming vendors licenses, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions.

§ 8.5-83 Licensing or Registration of Non-Gaming Vendors and Suppliers.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of licenses, or other registration requirements, for vendors or suppliers of non-gaming services and/or suppliers, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions.

§ 8.5-84 Temporary licenses.

The Gaming Commission is authorized to promulgate regulations establishing the standards and procedures for issuance of licenses to gaming vendor technician or non-gaming vendor services technicians employed by applicants for gaming vendors licenses or non-gaming vendors/suppliers, whose services the Gaming Agency and Commission determine require licensing or whose services include services of a type normally performed by key employees or other licensees of a gaming enterprise, including the issuance of temporary licenses to persons licensed by duly established and authorized regulatory agencies in other jurisdictions and exemption from licensing or registration for vendors providing goods or services where deemed appropriate (i.e. professional services subject to other licensing; one-time purchases).

Article IX

Regulation of Gaming-Related Activities

§ 8.5-85 Tribal minimum internal control standards.

The Commission shall, in accordance with the procedure described in § 8.5-27, develop and adopt tribal minimum internal control standards (TMICS) applicable to gaming operations. The TMICS shall meet or exceed the minimum internal control standards (MICS) prescribed by the NIGC, provided that the TMICS may differ from the MICS with respect to standards that the Commission determines impose an excessive burden on the gaming operation without fulfilling a valid regulatory purpose. In adopting any standard under the TMICS that differs from a standard under the MICS, the Commission shall in each such instance establish and maintain full, effective and reasonable regulatory controls over the gaming operation. Until such time as the Commission promulgates TMICS through the process prescribed under § 8.5-27, the NIGC MICS in effect as of the effective date of this chapter shall be the applicable TMICS.

§ 8.5-85a. Conditions for Acceptance of Internet Wagers. A licensed gaming establishment may accept internet gaming account wagers placed by an Authorized Participant only as follows:

- A. The account wager is placed directly with the gaming establishment by the holder of the wagering account and the gaming establishment's internet gaming platform has verified that:
  1. The account holder is physically present within the boundaries of the NHBP Reservation or other lands held in trust for the Tribe and the wager was:
    - a. Initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); and
    - b. The wager is placed on a Class II game or, if the wager was placed on any Class III game, that the wager was placed on a Class III game that is authorized under the Tribal-State Compact; or
  2. The account holder is physically present within the boundaries of the Reservation of another federally recognized Indian Tribe and the wager was:
    - a. Authorized by an approved ordinance or resolution of the Tribe on whose reservation the account holder is physically located and, if the wager was placed on any Class II or Class III game, was:
      - i. Placed on a Class II game or a Class III game that is authorized under the Tribal-State Compact in effect for such other Indian tribe with the State in which such Tribe's Reservation is located; and

- ii. Is placed in compliance with the requirements of any State law in such state which Authorizes the placement of internet wagers; and
    - iii. Is otherwise initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); or
  - 3. The account holder is physically present within the State of Michigan outside of Indian Lands; and
    - a. the wager was placed in compliance with the requirements of either the Lawful Sports Betting Act for any internet sports betting wager or the Lawful Internet Gaming Act for any other internet wager, and any applicable regulations, which authorize and govern the placement of such internet wagers; and
    - b. Is otherwise initiated, received or otherwise made in compliance with federal law; and
    - c. The wager is placed on a Class II game or a Class III game that is authorized under the Tribal-State Compact in effect; or
  - 4. The account holder is physically present within the boundaries of any other State; and
    - a. the wager was placed in compliance with the requirements of any reciprocal agreement with between the State of Michigan and such other State; and
    - b. Is otherwise Initiated or placed in compliance with the requirements of either the Lawful Sports Betting Act for any internet sports betting wager or the Lawful Internet Gaming Act for any other internet wager, and any applicable regulations, which authorize and govern the placement of such internet wagers; and
    - c. Is otherwise initiated, received or otherwise made in compliance with federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq), and the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq); and
    - d. The wager is placed on a Class II game or on a Class III game that is authorized under the Tribal-State Compact in effect between the Tribe and the State of Michigan.
  - B. The account holder placing the wager has provided the Gaming Facility with the correct authentication information required under Section 8.5-83b to permit the Account holder to gain access to the wagering account; and
  - C. The Gaming Operation has verified that the account holder has not sought to place an account wager(s) in excess of the amount of funds on deposit in the wagering account of the holder placing the wager. Funds on deposit include amounts credited to the account holder's account under applicable regulations and operation procedures of the Gaming Operation and in the account at the time the wager is placed.
- § 8.5-85b. Technical standards for Internet Gaming Systems.
- A. No software, computer or other gaming equipment shall be used to conduct Internet gaming unless it has been tested and approved by an independent testing laboratory approved by the Gaming Agency. The Gaming Agency shall refer testing to any nationally-recognized testing

laboratory approved to test gaming software, computers or other gaming equipment and systems by the States of Michigan. The Gaming Agency shall give priority to the testing of software, computers or other gaming equipment, which a gaming establishment has certified it will use to conduct Internet gaming. The Gaming Commission may, by regulation, establish such technical standards for approval of software, computers and other gaming equipment used to conduct Internet gaming, including mechanical, electrical or program reliability, security against tampering, the comprehensibility of wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming. When appropriate or required by the Gaming Agency, the gaming establishment shall set the denominations of internet games and shall simultaneously notify the Gaming Agency of the settings.

- B. No software, computer or other gaming equipment shall be used to conduct internet gaming unless it is able to verify that an Authorized Participant placing a wager is physically present on the Reservation or in another approved jurisdiction from which internet wagers may be accepted as prescribed in Section 8.5-85a. The Gaming Agency shall require that the software, computer hardware or other equipment used by the gaming establishment to conduct Internet gaming is, in fact, verifying every Authorized Participant's physical presence on the Reservation or any other approved jurisdiction each time an Authorized Participant logs onto a new playing session.
- C. Software, computer or other gaming equipment used to conduct Internet gaming provide for the security and effective administration of such games, including but not limited to:
  - 1. Notify players of the type, number, payout, wagering limits, and rules for each internet games;
  - 2. Include procedures and controls for the creation and utilization, of Internet wagering accounts by Authorized Participants, which ensure that that such accounts shall be possessed only by a natural person who is not less than twenty-one (21) years of age, and not in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity, and provided that such accounts shall not be assignable or otherwise transferable;
  - 3. Include procedures for logging into Internet wagering accounts by which Authorized Participants authenticate their identity, agree to the terms, conditions and rules applicable to such games, and logging out, including procedures for automatically logging off persons from the Internet gaming site after a specified period of inactivity;
  - 4. Procedures for acquiring funds in an Internet wagering account by cash, transfer or other means, the withdrawal of such funds from such accounts, the suspension of Internet Gaming activity for security reasons, the termination of an Authorized Participant's Internet wagering accounts and disposition of proceeds therein, and the disposition of unclaimed amounts in dormant Internet wagering accounts pursuant to Section 8.5-94;
  - 5. Mechanisms by which the Gaming Commission, the gaming establishment or Authorized Participants may place limits on the amount of money being wagered per game or during any specified time period, or the amount of losses incurred during any specified time period;
  - 6. Mechanisms to exclude persons not eligible to participate in gaming, including internet gaming, from establishing or accessing his/her wagering account, or from placing wagers through an internet gaming wagering account by reason of inclusion on a list of self-excluded persons maintained by the Gaming Commission or the Michigan Gaming Control Board, or inclusion by the Gaming Commission on a list of excluded persons pursuant to Section 8.5-97 of this Chapter; and

7. Procedures for the security and reliability of Internet games and Authorized Participant's internet wagering accounts, protection of the software, computers and other equipment used in connection with Internet Gaming, and mechanisms to prevent tampering or utilization by unauthorized persons.

§ 8.5-85c. Responsible Gaming.

The gaming establishment shall require the gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the gaming establishment, in a clear, conspicuous, and accessible manner evidence of the gaming establishment's internet gaming license(s) or permits authorizing the gaming establishment to conduct internet gaming. The Gaming Facility shall require the gaming vendor providing its internet gaming platform to display, on the internet gaming platform used by the gaming establishment, in a clear, conspicuous, and accessible manner the number of the toll-free compulsive gambling hotline maintained by the State of Michigan and offer responsible gambling services and technical controls to Authorized Participants, consisting of both temporary and permanent self-exclusion for all internet games offered and the ability for authorized participants to establish their own periodic deposit and internet wagering limits and maximum playing times.

§ 8.5-86 System of internal control standards for gaming operations.

Each gaming operation shall be required to develop a system of internal control standards (SICS) designed to assure compliance with the TMICS. Such SICS shall be presented for approval by the Commission. Any changes in the SICS shall be presented to the Commission for approval prior to implementing such amended SICS.

§ 8.5-87 Minimum procedures for control of internal fiscal affairs.

The Commission shall promulgate regulations governing the control of internal fiscal affairs of all gaming operations. At a minimum, such regulations shall require the consistent application of generally accepted accounting principles and shall:

- A. Prescribe minimum procedures for the safeguarding of a gaming operation's assets and revenues, including the recording of cash receipts and evidence of indebtedness and mandatory count procedures. Such regulations shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the gaming operation, assure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- B. Prescribe minimum reporting requirements to the Commission;
- C. Provide for the adoption and use of internal audits conducted in accordance with generally accepted auditing standards by internal auditors licensed or certified to perform audit examinations in the State of Michigan;
- D. Formulate a uniform code of accounts and accounting classifications to assure the consistency, comparability and effective disclosure of financial information. Such a code shall require that records be retained that reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each gaming establishment;
- E. Require gaming operations to maintain accounting records which meet the requirements prescribed in Subsection 4(H) of the Compact;
- F. Prescribe the intervals and circumstances for the gaming operation to furnish financial and accounting information to the Commission, the NIGC or other entity entitled to such information under applicable law;

- G. Provide for the maintenance of documentation (e.g., checklists, programs, reports, etc.), to record all efforts by the gaming operation as it relates to the requirements of this section; and
- H. Provide that all financial statements and documentation referred to in this section be maintained for a minimum of five (5) years.

§ 8.5-88 Oversight of internal fiscal affairs.

The Gaming Agency shall require independent financial audits of all gaming operations on an annual basis. Such independent audits must apply and require the consistent application of generally accepted accounting principles, and shall:

- A. Be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of Michigan;
- B. Include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion, on the financial statements taken as a whole in accordance with standards of the accounting profession established by the rules and regulations of the Michigan State Council of Accountancy and the American Institute of Certified Public Accountants;
- C. Disclose whether the accounts, records and control procedures maintained by the gaming operation conform with this chapter, the regulations and the Compact; and
- D. Perform the “Agreed-Upon Procedures” to verify that the gaming operation is in compliance with the minimum internal control standards required by 25 C.F.R. § 542.3 to provide a review of the internal financial controls of the audited gaming operation and disclose any deviation from the requirements of this chapter and the regulations and report such findings to the Gaming Agency, the Commission and the management of the audited gaming operations.

§ 8.5-89 Complimentary items.

- A. The distribution of complimentary items shall be governed by regulations established by the Commission.
- B. No key employee, primary management official, Tribal Council member, Commissioner, or any person who shares a residence with or is an immediate family member of such person, shall be given or accept complimentary items, unless offered to the general public.
- C. Complimentary items shall be included in the annual budget for the gaming operation.

§ 8.5-90 Certification of gaming devices and gaming software.

All gaming devices and gaming software purchased, leased or otherwise acquired by the gaming operation must meet the technical equipment standards set forth in Section 6 of the Compact and as may be prescribed in the regulations and other applicable law. The Commission shall maintain a complete list of all gaming devices (whether or not such devices are in use) and gaming software used to conduct gaming in such devices located at any gaming establishment or otherwise in the possession of the gaming operation.

§ 8.5-91 Prohibition against electronic aids.

Except as expressly permitted by the Gaming Agency or Commission regulation, no person shall possess, with the intent to use in connection with gaming, either individually or in concert with others, any calculator, computer or other electronic, electromechanical or mechanical device to assist in projecting the outcome or odds of any game, to keep track of or analyze cards, or to change probabilities of any game or any playing strategies that may be employed with regard to a game.

§ 8.5-92 Prohibition against embezzlement.

Any licensee who shall, in the opinion of the Gaming Agency, having lawful custody of or access to gaming operation property, appropriates or attempts to appropriate the same to his or her own use, with intent to deprive the gaming operation thereof, or who unlawfully or improperly diverts or attempts to divert gaming or other revenue properly belonging to a gaming operation, shall constitute grounds for taking administrative sanctions against that licensee. If the Gaming Agency finds that an embezzlement was attempted or occurred, it may pursue administrative sanctions against the licensee, report the matter to appropriate law enforcement authorities and other gaming regulatory agencies for further action, and take such other action as it deems necessary or appropriate. Administrative sanctions against the licensee may include the imposition of fines and the revocation, suspension or limitation of, or refusal to renew, a license issued by the Gaming Agency.

§ 8.5-93 Security and surveillance.

Each gaming establishment must provide for full security and surveillance throughout the gaming establishment at all times which meet or exceed the requirements for such systems established in the TMICS. All security and surveillance personnel in a gaming establishment must be licensed by the Gaming Agency. The security and surveillance sectors of any gaming operation shall coordinate their activities and cooperate with each other as necessary to carry out their official duties and to provide ample protection for all persons and property involved with each gaming operation. The structure and reporting requirements for surveillance functions in any gaming establishment shall be structured and operated in manner which ensures the protection of tribal assets and the integrity of gaming operations. The TMICS applicable to security and surveillance activities in any gaming operation shall prescribe reporting requirements with regard to the types of conduct and activities that may be observed in a gaming establishment, including, at a minimum, conduct or activities by any person, including any failure to act when required to do so, that violates or is not in compliance with:

- A. Applicable criminal law shall be promptly reported to the tribal police; and
- B. This chapter, the regulations, other applicable law, or the Compact shall be promptly reported to the Gaming Agency's Investigations Department.

§ 8.5-94 Weapons in gaming establishments.

- A. A person may not carry a firearm or other weapon, as described in § 8.6-28 of Chapter 8.6, Criminal Laws, of the Tribe's Code, in a gaming establishment, except for the following persons with valid authorization under law:
  - (1) Tribal law enforcement officials;
  - (2) Federal law enforcement officers, as defined in 5 U.S.C. § 8331;
  - (3) State, county or township law enforcement officers, as defined in Section 2 of Michigan Public Act 203 of 1965, as amended, to the extent and under circumstances duly authorized by written agreements approved by the Tribal Council; and
  - (4) Armored car personnel picking up or delivering currency at secured areas.
- B. Law enforcement officers conducting official duties within a gaming establishment shall, to the extent practicable, advise tribal police and the Gaming Agency, or its agents, of their presence.

§ 8.5-95 Compliance with laws to protect the environment, public health and safety.

Every gaming establishment shall be constructed, maintained and operated in a manner that adequately protects the environment, public health and safety, and complies with all applicable tribal laws and applicable federal laws relating to environmental protection and public health and safety. Evidence, that a gaming establishment is in compliance with this section shall address the following requirements under applicable law:

- A. Emergency preparedness, including without limitation the availability of medical, fire and emergency services and evacuation plans for each gaming establishment;
- B. Food and water safety;
- C. Building construction and maintenance;
- D. The handling and storing of hazardous and toxic materials; and
- E. Sanitation and waste disposal.

§ 8.5-96 Unclaimed winnings.

- A. Any winnings, whether property or cash, which are due and payable to a participant in any gaming activity, and which remain unclaimed, shall be held in safekeeping for the benefit of such participant if his or her identity is known. Such winnings shall be held for thirty-six (36) months or such longer period as determined by Commission regulation, or other applicable Tribal statute. The Gaming Agency shall make, or require the gaming operation to make, such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the gaming operation and shall be transferred to the account or place designated by the gaming operation.
- B. In the event the identity of a participant entitled to unclaimed winnings is unknown, the Gaming Agency shall use, or require the gaming operation to use, its best efforts to learn the identity of such individual and shall follow the procedure set forth in § 8.5-97 if the Gaming Agency is able to identify such individual with reasonable certainty; provided, however, if after thirty-six (36) months from the time the winnings were payable, the Gaming Agency has been unable to identify the individual entitled thereto, such winnings shall revert to the ownership of the gaming operation.

§ 8.5-97 Resolution of disputes between gaming public and gaming operation.

Disputes between a patron and a gaming operation shall be resolved as follows:

- A. The gaming operation shall develop written procedures and designate key employees and primary management officials who are authorized to address and resolve complaints by or disputes with patrons. The gaming operation shall provide a copy of the approved procedures to the Gaming Agency and shall promptly provide the Gaming Agency with any amendments thereto.
- B. At a minimum, such procedures shall provide patrons with the opportunity to present complaints, verbally or in writing, to the person(s) designated by the gaming operation to resolve complaints by patrons.
- C. If the complaint involves a dispute regarding at least \$500 or an equivalent value in disputed gambling winnings, goods or services, and the dispute could not be resolved under the internal procedures described in Subsection A to the satisfaction of the patron, the employee(s) of the gaming operation who are designated to resolve complaints shall inform the patron that he/she may file a written complaint with the Gaming Agency. The Gaming Agency's representative shall provide the patron with a complaint form to furnish the Gaming Agency with sufficient information to conduct an investigation.
- D. The Commission shall have a process in place, through regulations, to review and, if necessary, hold hearings under the procedures described in Article X to resolve patron complaints.
- E. The Commission's resolution of a patron complaint shall be final and shall not be subject to further appeal.



§ 8.5-98 Excluded persons.

- A. Exclusion list; creation; effect. Subject to the requirements of this section, the Gaming Agency shall establish and maintain an exclusion list. The exclusion list shall include the names of all natural persons that the Commission has determined will not under any circumstances be allowed to enter any gaming establishment and/or who may be prohibited from participating in any Class II or Class III gaming, which may include participation in internet wagering offered by the gaming establishment.
- B. Information to be included on the exclusion list. The following information, to the extent known, shall be provided for each excluded person:
- (1) Full name, date of birth, and all aliases;
  - (2) A physical description;
  - (3) The effective date the person's name was placed on the list;
  - (4) A photograph, if available;
  - (5) The person's occupation and his current home and business address;
  - (6) The specific reason for exclusion;
  - (7) The date, if any, the exclusion will expire; and
  - (8) Such other information as may be deemed necessary by the Gaming Agency or as set forth in Commission regulations.
- C. Criteria for exclusion or ejection and placement on an exclusion list. The Gaming Agency may on its own initiative or at the request of an authorized representative of the gaming establishment and, subject to the hearing procedures described in Article X, place a person on the exclusion list, if:
- (1) Such person has been convicted of, or pled guilty or nolo contendere to, any felony, any gaming-related crime or any other crime involving dishonesty, including without limitation theft, robbery, burglary, embezzlement or a conspiracy to commit or be an accessory to any such crime;
  - (2) Such person has violated or conspired to violate any provisions of this chapter, the Indian Gaming Regulatory Act, the Compact or other applicable law;
  - (3) Such person has a notorious or unsavory reputation that would likely undermine public confidence and trust in the integrity of gaming. Descriptions or examples of the types of conduct, habits, and associations that would produce such a reputation shall be included in the regulations;
  - (4) The person's name appears on any valid and current exclusion list from another jurisdiction, and the reason for such person's exclusion in the other jurisdiction would also be likely to result in exclusion from gaming establishments located within the Commission's jurisdiction;
  - (5) Due to a demonstrable gambling problem, the person provides a written and signed request to be excluded, with sufficient information to allow the Gaming Agency to positively identify the person; or
  - (6) The person has been denied any form of license by the Gaming Agency or has had a license revoked or not renewed by the Gaming Agency.

D. Procedure for entry of names.

- (1) Consistent with its obligations under applicable law, it shall be the duty of management of each gaming establishment to inform the Gaming Agency in writing of the name of each person that management reasonably believes meets the criteria for placement on the exclusion list, as established by Subsection C above. The Gaming Agency shall notify management of the gaming establishment in writing, following the investigation and hearing described in this subsection, whether or not the Gaming Agency concurs with management's recommendation to place a person's name on the exclusion list.
- (2) Upon receipt of a recommendation from management of the gaming establishment or a signed request from a person requesting voluntary exclusion due to a gambling problem, the Executive Director of the Gaming Agency shall conduct or cause to be conducted an investigation regarding every person whose name is recommended or requested to be placed on the exclusion list. Upon a determination by the Executive Director that there are adequate grounds to add a person's name to the exclusion list under the criteria listed in Subsection C above, the Executive Director shall determine whether or not the person's name should be added to the exclusion list; provided however, that any person who is also included on the responsible gaming database maintained by the Michigan Gaming Control Board shall be prohibited from participating in internet wagering on any internet gaming platform operated by the gaming establishment.. Pursuant to Article X, the Gaming Agency shall send written notice of the exclusion to the person subject to exclusion affording him/her of the opportunity to present evidence and testimony to the Commission concerning his/her exclusion from gaming establishment or from wagering with the gaming operation.
- (3) If the Commission determines that the person's name should not be added to the exclusion list, the person's name shall not be added to the list
- (4) If, after the hearing conducted pursuant to Article X, the Commission determines that the person's name should be added to the exclusion list, or if such person fails to appear at the hearing or fails to present any relevant evidence or testimony to rebut the determination of the Executive Director, such person's name shall be retained on the exclusion list. The Gaming Agency shall promptly notify the person in writing of the Commission's determination.
- (5) The Agency may determine to place a person's name on the exclusion list either permanently or temporarily. If a person is placed on the exclusion list temporarily, the Gaming Agency shall inform the person of the period of time that person's name will be on the exclusion list. The Gaming Agency shall provide authorized representatives of the gaming establishment's surveillance and security department with up-to-date lists of persons on the exclusion list.
- (6) Notwithstanding any determination by either the Executive Director or the Commission that a person should not be placed on the exclusion list, nothing in this Subsection D shall preclude management of the gaming operation from prohibiting such person from entering the gaming establishment or wagering at, or with, the gaming establishment for business or policy reasons under Subsection L.

E. A person on the exclusion list shall have the following ongoing obligations:

- (1) Refrain from entering the gaming establishment's premises and to refrain from all wagering activities at the gaming establishment (including, if applicable, all internet wagering), until the exclusion period has ended or the Commission has approved a request to remove the individual's name from the exclusion list;
- (2) To notify the Commission of any change in address or other personal information; and
- (3) To notify the Commission if he/she receives any direct mail or other marketing solicitations addressed to him/her during the time of his/her exclusion.

- F. An excluded person who enters the gaming establishment and/or participates in wagering in violation of an exclusion order agrees to forfeit any jackpot or thing of value won as a result of any wager made at/with with gaming enterprise, as well as any gaming chips or thing of value issued by the gaming enterprise or any gaming device. The forfeited jackpot or items will be withheld by an authorized representative of the gaming establishment or seized by representative of the Gaming Agency subject to his/her right to request a hearing pursuant to Article X to contest the forfeiture or seizure that the funds or thing(s) of value seized were not issued by the gaming enterprise or were not the result of a jackpot or winnings on wagers.
- G. Any excluded person will, as of the date his/her name is added to the exclusion list, forfeit all points or complimentaries earned on or before his/her exclusion, including points or complimentaries earned under the terms of the gaming establishment's marketing programs and shall include food coupons, coupons or vouchers for chips, hotel complimentaries, and other similar benefits.
- H. Removal from the exclusion list. Any person who has been placed on the exclusion list may petition the Gaming Agency in writing at any time, but not more frequently than annually, to remove the person's name from the list. Upon receipt of a request from any person to have his/her name removed from the exclusion list, the Gaming Agency shall forward the request to the Commission, which shall have a process in place, through regulations, to review and, if necessary, hold hearings under the procedures described in Article X to resolve the request.
- I. Duty to exclude. It shall be the duty of the Gaming Agency and management of each gaming establishment to exclude or eject from a gaming establishment any person whose name appears on the exclusion list. Any primary management official or key employee of a gaming operation who knows or has reason to know that an excluded person has entered or is attempting to enter a gaming establishment shall be responsible for notifying appropriate security and surveillance staff and taking such other action as is within the scope of the employee's authority and responsibility to exclude or eject such person.
- J. Trespass. A person who has received notice that he/she has been placed on the exclusion list, or who has been banned from a gaming establishment's premises under subsection (L), infra, may be charged with criminal trespass under applicable federal or tribal law or a civil infraction upon his or her entry onto the property of the gaming establishment. The notice advising persons that they have been placed on the exclusion list or who is subject to a temporary ban, shall include a notice that they may be criminally prosecuted for trespass under 8 NHBPTC §9-21 or cited with a civil infraction under 8 NHBPTC §6-23 should they attempt to enter onto the gaming establishment site. It is prima facie evidence that a person "received notice" the he/she has been placed on the exclusion list, or has been banned from a gaming establishment's premises, if that person was verbally instructed as to the exclusion or ban, or that notice of the ban by personal delivery or by registered or certified mail, return receipt requested.
- K. Distribution and availability of exclusion lists. The exclusion list shall be regularly updated and shall be distributed to each gaming establishment. The list shall be made available to law enforcement agencies by subpoena or upon request to the extent the law enforcement agency can establish a legitimate need for the list.
- L. The management of a gaming establishment has the authority to ban patrons from a gaming establishment for violations of gaming rules, Tribal or local laws, or property policies. Nothing in this section prohibits management of a gaming establishment from establishing internal procedures for banning patrons from a gaming establishment, for any period of time.

Article X  
Rules of Procedure for Hearings

§ 8.5-98 Scope of rules of procedure.

All license hearings, enforcement hearings and exclusion hearings conducted pursuant to this chapter shall be governed by this chapter. For purposes of this article, the term "affected party" refers to an applicant, licensee, excluded person, or other person who is directly affected by the decision or action that is the subject of the hearing.

§ 8.5-100 Hearings.

- A. The Commission shall afford an applicant an opportunity for a hearing prior to any final action by the Commission on an application, other than an unconditional grant of a license.
- B. Except as provided otherwise in this chapter, the Commission shall afford a licensee the opportunity for a hearing prior to taking formal action resulting in the suspension or revocation of a license or the imposition of any penalties that the Commission is authorized to impose pursuant to this chapter. Nothing in this section shall limit the Commission's authority to summarily suspend or revoke a license without a hearing pursuant to § 8.5-68 or 8.5-80 of this chapter.
- C. The Commission shall afford any other affected party, excluded person or other person the opportunity for a hearing prior to rendering a decision to add such person's name to an exclusion list, sanction or take such other enforcement action the Commission is authorized to take under this chapter.

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§ 8.5-101 Notice of hearing.

- A. Except as provided otherwise in this chapter or the regulations, the Commission shall provide written notice to the applicant, licensee or excluded person of the hearing at least fourteen (14) business days prior to the date set for the hearing. The day the affected party receives the notice shall be considered a full day's notice under this section. The notice shall be sent by registered or certified mail or may be personally served upon the affected party. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the action(s) being considered by the Commission, including but not limited to:
  - (1) Whether the Commission is holding the hearing for the purpose of obtaining further information from the affected party;
  - (2) Whether the Commission will be considering the grant or denial of the license application;
  - (3) Whether the Commission will be examining any alleged violations of the chapter, the Compact, the IGRA, the conditions of any license issued by the Commission, any Commission order, or any other applicable laws, regulations or agreements; or
  - (4) Whether any other sanctions or penalties will be considered.
- B. The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

§ 8.5-102 Ex parte communications.

- A. No ex parte communication relative to the action(s) being considered by the Commission or a threat or offer of reward shall be made before a decision is rendered to any member of the Commission by or on behalf of the affected party or such person's attorney.
- B. Nothing in this section shall prohibit the affected party or such person's attorney from communicating with the Commission's legal counsel, its investigators or other authorized agents.

- C. Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.
- D. For purposes of this section only, the action(s) being considered by the Commission shall be those matters identified in the written notice regarding the hearing as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.
- E. The Commission shall have the power to impose any sanction pursuant to this chapter upon its determination that an affected party has made an ex parte communication in violation of this section.

§ 8.5-103 Appearance through counsel.

- A. Affected parties to all hearings governed by this chapter may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.
- B. When an affected party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter shall be made upon the attorney, unless the affected party requests otherwise in writing.
- C. When an affected party is represented by an attorney, the attorney shall sign all motions, notices, requests and other papers on behalf of the affected party, including a request for subpoenas.
- D. Any attorney appearing before the Commission must be duly admitted and authorized to practice before the Tribal Court. The affected party must notify the Commission of the affected party's intent to be represented by an attorney five (5) days prior to the date of the hearing.

§ 8.5-104 Discovery procedures for enforcement hearings.

- A. The Commission's legal counsel and the affected party shall exchange a list of persons that each party intends to call as witnesses no later than five (5) business days before a scheduled hearing. The day the list is received shall be considered a full day's notice under this section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this section may be prohibited from testifying at a hearing, in the Commission's discretion, unless good cause is demonstrated.
- B. The Commission's legal counsel and the affected party shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of their case in chief. This exchange shall be made to the opposing party no later than five (5) business days before a scheduled hearing. The day the documents are received shall be considered a full day's notice under this section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing unless good cause is demonstrated.

§ 8.5-105 Confidential materials.

- A. Prior to submitting any documents or other material or items to the Commission, the applicant or licensee may designate any document it reasonably believes to contain confidential information as "subject to a confidentiality claim" by so marking the document in a prominent manner.
- B. Documents marked in accordance with Subsection A above, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the Compact), without first

providing the affected party with the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission. If the request for such a ruling is made during a public hearing, the hearing shall be adjourned and the Commission shall conduct a closed meeting in order to hear and rule upon the request of the affected party. The affected party may present to the Commission in a closed meeting written and oral argument regarding the confidentiality claim, along with any facts the affected party believes to be relevant to such argument.

- C. In determining whether a document marked in accordance with Subsection A above should be made part of the public record of the Commission proceedings, the Commission will balance the claim for confidentiality against the materiality of the information to the related regulatory procedure or subject of the hearing, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the Commission's decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.
- D. In the event that the Commission rules during a closed meeting that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings, the document and/or information will be made part of the public record unless the affected party requests that the Commission withdraw the document from the proceeding and the Commission's possession. In the event the affected party requests that the document be withdrawn from the Commission's possession, the Commission will then consider the withdrawal request when it weighs the other evidence in the proceeding. A withdrawal of documents from the proceeding shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself to deny the relief requested by the affected party.
- E. In the event that the Commission rules during in a closed session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in making its determination.
- F. At the conclusion of the Commission proceedings, the Commission will return to the affected party all documents marked as "subject to a confidentiality claim" pursuant to Subsection A above that were not: (1) made part of the public record of the proceeding; or (2) that were designated as "confidential" and considered by the Commission in camera.

§ 8.5-106 Subpoenas.

- A. The Commission and the Executive Director of the Commission have the power and discretion to issue subpoenas to compel the production of documents or other tangible things and to compel the appearance of witnesses to give testimony with regard to any Commission investigation or proceeding. The Commission may impose reasonable penalties and take such other appropriate actions as the Commission deems warranted under the circumstances to address noncompliance with a subpoena.
- B. The Commission and the Executive Director may seek the assistance of the tribal police, the Tribal Prosecutor and the General Counsel in exercising its authority under this section.

§ 8.5-107 Hearing procedures.

- A. The Chair of the Commission, or other hearing officer designated in writing by the Chair, shall preside over all hearings and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

- B. The Commission may require any person, including but not limited to any applicant, licensee, excluded person or any agent, employee or representative of any applicant or licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. A record of testimony presented shall be maintained and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:
- (1) The refusal to grant a license to the person summoned and/or that person's principal or employer;
  - (2) The revocation or suspension of a license held by the person summoned and/or that person's principal or employer; or
  - (3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.
- C. Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is irrelevant, argumentative or repetitive.
- D. The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly or who shows a lack of proper respect for the Commission or the nature of the proceedings.
- E. Persons shall be permitted to speak only when recognized by the Chair.
- F. Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.
- G. Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.
- H. Except as otherwise provided in this chapter, all hearings held under this chapter shall be closed to the public.
- I. The Commission, in its discretion, has the authority to sequester witnesses.

§ 8.5-108 Evidence.

- A. In hearings governed by this chapter, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- B. All evidence, including records and documents in the possession of the Commission or of which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- C. The Commission may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

D. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

E. The record in a hearing governed by these rules shall include:

- (1) All applications, intermediate rulings and exhibits and appendices thereto.
- (2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to § 8.5-105 of this chapter.
- (3) A statement of matters officially noticed.
- (4) The record of the hearing, including questions and offers of proof, objections and rulings thereon.
- (5) Any decision, opinion, findings or report by the Commission.
- (6) If applicable, a transcript of the hearing prepared by a duly certified court reporter.

§ 8.5-109 Commission decisions.

- A. All decisions to be made by the Commission under this chapter or the regulations shall, when necessary to support the decision, include findings of fact and determinations of law. All such decisions, findings and determinations shall be made by a majority vote of the Commission on the record in an open meeting, except as may be otherwise authorized by tribal law.
- B. A copy of any Commission decision directly affecting an applicant, licensee, excluded person, other interested party shall be served by registered or certified mail, by personal service, or by other means established by regulation.

§ 8.5-110 Sanctions.

If any party or its attorney fails to comply with any Commission order, or any other applicable laws, regulations or agreements, regarding any matter, including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission upon motion or upon its own initiative may, in its discretion, impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including, but not limited to, the following:

- A. An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these rules or any Commission order;
- B. An order that designated facts shall be taken to be established;
- C. An order that the noncompliant party may not support or oppose designated claims or defenses;
- D. An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the noncompliant party; or
- E. A finding against the noncompliant party.

Article XI  
Appeals

§ 8.5-111 Right of appeal; appeals procedures.

An applicant, licensee, excluded person or other person directly affected by any decision or finding of the Commission pursuant to § 8.5-109 of this chapter or any licensing decision of the Commission under this chapter shall have the right to file a request for a rehearing before the Commission. Any such request of



rehearing must be filed with the Commission in writing on or before the 10th day following receipt by such affected person of the written finding of the Commission. The Commission shall have discretion to grant a request for rehearing. In any case which comes before the Commission for final action, the Commission may determine to review all findings of fact and of law or proceed pursuant under a de novo standard. The Commission shall adopt procedures for resolving requests for rehearing, including rehearing proceedings. The Commission's decision on rehearing shall be final, and no further review by the Commission may be considered.

§ 8.5-112 Limited waiver of sovereign immunity of Commission.

The Tribe, by enactment of this chapter, expressly waives the Commission's sovereign immunity from suit for any action brought against the Commission in the Tribal Court that is explicitly authorized by this chapter.

§ 8.5-113 Right to appeal adverse Commission decisions to Tribal Court.

- A. Except for those matters for which this Act expressly precludes any appeal of the Commission's decisions, any person who has received a final adverse decision from the Commission shall have the right to appeal such adverse decision to the Tribal Court. For purposes of this section, a decision shall not be considered "final" unless it has been confirmed upon rehearing or the Commission certifies the decision in writing as final and subject to appeal.
- B. An appeal authorized by this section must be filed within thirty (30) calendar days from the date that the person entitled to bring the appeal receives notice of the final decision from the Commission.
- C. If the Court concludes that the necessary facts for the Commission's decision were not supported by reasonable evidence or that the Commission applied the applicable law incorrectly, it shall so declare and return the matter to the Commission for further consideration consistent with such Tribal Court decision. The Tribal Court shall, except for compelling reasons, limit its review to the administrative record. The Tribal Court shall give deference to the reasonable interpretation and application of tribal gaming regulatory laws by the Commission.
- D. Except as may be permitted under other enacted laws of the Tribe, the relief against the Commission in any such action shall be limited to injunctive or declaratory relief and shall not include any money damages. The Tribal Court may order the Commission to pay court costs and/or attorney's fees to the party bringing an action authorized under this chapter only if the Court determines that the Commission acted with willful disregard of a party's rights under the Nottawaseppi Huron Band of the Potawatomi Constitution, this chapter or other enacted tribal law.

Article XII

Prohibited Acts; Schedule of Offenses; Penalties

§ 8.5-114 Prohibition against certain individuals.

It shall be a violation of this chapter for any licensee to knowingly fail to exclude or eject from the gaming area of a gaming establishment any individual who:

- A. Is visibly under the influence of liquor, a drug or other intoxicating substance;
- B. Is under the age of 21 years;
- C. Is displaying disorderly conduct;
- D. Is a person known to have committed a gaming-related felony;
- E. Is known to have a reputation for cheating or manipulation of games; or

- F. Has been personally excluded or is a member of any group or type of persons which has been excluded for cause from gaming establishments by Commission order.

§ 8.5-115 Prohibited acts.

In addition to other civil and criminal acts that may be regulated or prohibited by this chapter, the regulations, or other tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this chapter and shall subject any perpetrator to citation by the Gaming Agency under applicable Commission regulations, including, but not limited to, the imposition of civil penalties or, when applicable, license suspension or revocation, referral to the Tribe's legal counsel to bring a civil action, or referral by authorized Gaming Agency personnel to appropriate law enforcement authorities to request the initiation of criminal proceedings under applicable Tribal law or issuance of a civil infraction citation:

- A. Altering or misrepresenting the outcome of gaming or other event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
- B. Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;
- C. Aiding anyone in acquiring such knowledge referred to in Subsection **B** of this section for the purposes of increasing or decreasing any bet or wager or for the purpose of determining the course of play;
- D. Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud; or claiming, collecting or taking an amount greater than the amount actually won in such game;
- E. Knowingly to entice or induce another to go to any place where gaming is conducted, to open a wagering account, or place a wager in violation of the provisions of this chapter, with the intent that the other person play or participate in such gaming;
- F. Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of a game or other event which is the subject of the bet or wager, including pinching bets;
- G. Knowingly, with the intent to cheat, alter, tamper with, or manipulate any game, platform, equipment, software, hardware, devices, or supplies used to conduct any gaming authorized under this act, in order to alter the odds or the payout, or to disable the game, platform, equipment, software, hardware, devices, or supplies from operating in the manner contrary to the designed and normal operational purpose for such component or part;
- H. Defrauding or attempting to defraud the Tribe, any licensee or any participant in any gaming;
- I. Participating in any gaming not authorized under this chapter and, when applicable, the Compact;
- J. Knowingly providing false information, omission or making any false statement with respect to an application for employment or for any license, certification or determination provided for in this chapter;
- K. Knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Commission or the Executive Director in connection with any contract for services or property related to gaming;
- L. Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;

- M. Offering or attempting to offer anything of value to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee under this chapter, the regulations, other tribal law, IGRA or other federal law;
- N. Acceptance by a licensee of anything of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the licensee to act or refrain from acting, in a manner contrary to the official duties of the licensee under this chapter, the regulations, tribal law, IGRA or other federal law;
- O. Falsifying, destroying, erasing or altering any books, computer data, records or other information relating to a gaming operation in ways other than is provided in approved internal control procedures;
- P. Taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this chapter, the regulations or IGRA; and
- Q. Entering into any contract or making payment on any contract for the delivery of gaming goods or services to a gaming operation when such contract fails to provide for or result in the delivery of gaming goods or services of fair value for the payment made or contemplated.

§ 8.5-116 Enforcement.

- A. Criminal violations. Any Indian person who willfully violates any provision of § 8.5-115, willfully fails to comply with § 8.5-115, or willfully prevents another person from complying with any provision of § 8.5-115, shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or one-year imprisonment, or both, in proceedings brought under 8 NHBPTC Chapter 8.8 (Criminal Procedures).
- B. Civil violations. Any person who willfully violates any provision of § 8.5-115, willfully fails to comply with any provision of § 8.5-115, or willfully prevents another person from complying with any provision of § 8.5-115, shall be guilty of a civil infraction and liable for a civil fine not to exceed \$5,000. The amount of any such civil fine may be recovered in a civil action brought in the Tribal Court. All civil fines accruing under this chapter shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.