



VIA FACSIMILE & U.S. MAIL

AUG 17 2009

Donald Tofpi, Chairman  
Kiowa Tribe of Oklahoma  
P.O. Box 369  
Carnegie, OK 73015  
Fax: 580-654-2972

RE: Amendment to the Amended and Restated Kiowa Gaming Ordinance

Dear Chairman Tofpi:

This letter responds to your request that the Chairman of the National Indian Gaming Commission (NIGC) review and approve the amendment to the Amended and Restated Kiowa Gaming Ordinance of 2005 (Gaming Ordinance) passed on July 21, 2009, under Resolution CY-2009-421. The amendment changes terms of the gaming ordinance that affect the Gaming Commission:

- Despite the independence clause, the Business Committee may now review Gaming Commission decisions;
- The Gaming Commission members now have specific term limits;
- The Gaming Commissioners' terms are spelled out in detail;
- Personnel decisions now involve the Business Committee;
- The Gaming Commission no longer has a secretary as an officer and the treasurer's duties are expanded;
- Gaming Commission members no longer require a four-year degree;
- The Gaming Commission now has a quorum of four instead of two;
- Gaming Commissioners receive a smaller stipend for services; and
- The Gaming Commission budget is called and approved by the Business Committee.

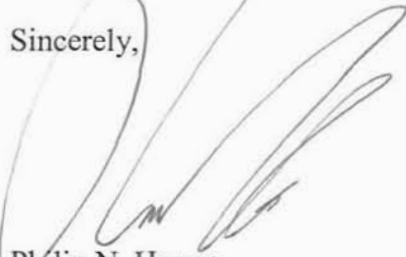
This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations. These changes are effective upon the date that I approve them.

I must take this opportunity to again impress upon the Tribe the importance of maintaining a strong and independent gaming commission. An independent gaming commission ensures integrity of the gaming operation and can prevent significant violations of law without the need for state or federal action. Because these provisions restrict the autonomy and efficacy of the Tribe's gaming commission, they cause me

restrict the autonomy and efficacy of the Tribe's gaming commission, they cause me some concern. I would encourage the Business Committee to exercise these powers cautiously, if at all.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip N. Hogen', is written over the word 'Sincerely,'.

Philip N. Hogen  
Chairman



# Kiowa Tribe of Oklahoma

P.O. Box 369 • Carnegie, Oklahoma • 73015

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## Kiowa Business Office

### RESOLUTION NO. CY-2009-421

#### RESOLUTION OF THE KIOWA BUSINESS MEETING AMENDING IN CERTAIN PARTICULARS THE AMENDED AND RESTATED KIOWA GAMING ORDINANCE OF 2005, AND SUBSEQUENT AMENDMENTS THERETO, AND FOR OTHER PURPOSES

**WHEREAS,** the Kiowa Indian Tribe of Oklahoma (the "Tribe") is a sovereign nation and from time immemorial has been a sovereign nation; and

**WHEREAS,** the Tribe is federally recognized by the Secretary of the Interior of the United States as having powers of self government and as being eligible for the special programs and services provided by the United States to Indians, and its sovereignty is thereby recognized by the United States, all as evidenced by order of the Associate Commissioner of Indian Affairs, dated March 13, 1970, approving the constitution and bylaws of the Tribe (the "Constitution"); and

**WHEREAS,** pursuant to the Constitution and specifically pursuant to Article V, section 2, the Tribe has delegated to its elected representatives, the Business Committee ("Business Committee"), the responsibility and authority to take all necessary action to promulgate and enforce ordinances and codes to protect the general welfare of the Tribe and its members; and

**WHEREAS,** pursuant to Ballot Issue 94-A-5, passed on the 18<sup>th</sup> day of June, 1994, the Kiowa Indian Council authorized the Kiowa Business Committee to develop and enact a Gaming Ordinance to authorize, license and regulate Class II and Class III gaming on Tribal Land of the Kiowa Indian Tribe of Oklahoma; and

**WHEREAS,** by Resolution No. CY-95-39 and CY-95-40, both dated June 26, 1995, the Business Committee, acting pursuant to the aforesaid delegated power, enacted resolutions to approve and adopt the Kiowa Indian Tribe of Oklahoma Gaming Ordinance of 1995 and the Kiowa Indian Tribe of Oklahoma Gaming Facility Bonding Ordinance of 1995 (together, as amended, the "Indian Gaming Ordinance"); and

**WHEREAS,** as required under Federal law, the Initial Gaming Ordinance was approved by the Chairman of the National Indian Gaming Commission (the "NIGC"), as indicated by that Chairman's publication of a notice of approval of Class III tribal gaming ordinances, in Volume 61, Federal Register, page 31963, on Friday, June 21, 1996; and

**WHEREAS,** on July 21, 2001, by Resolution No. CY-2001-045, the Business Committee exercised its authority, as delegated to it by the Kiowa Indian Council and by the Constitution, to amend, in accordance with Article XIV of the Initial Gaming Ordinance, in certain particulars, the Initial Gaming Ordinance; and

**WHEREAS,** by letter dated September 7, 2001, the NIGC granted its approval of the amendment to the Initial Gaming Ordinance; and

**WHEREAS,** the initial appointment of Commissioners by the Kiowa Business Committee was made pursuant to Kiowa Business Committee Resolution No. CY-2001-045, dated the 12<sup>th</sup> day of July, 2001, and established the Kiowa Gaming Commission which consists of four (4) members with terms of office as follows:

- (a) Tribal Chairman;
- (b) First Commissioner whose term is seven (7) years and whose term expire on May 31, 2008;
- (c) Second Commissioner whose term is for six (6) years and whose term expires on May 31, 2007; and
- (d) Third Commissioner whose terms is five (5) years and whose term expires May 31, 2006; and

**WHEREAS,** by Resolution No. CY-2005-160, dated the 15<sup>th</sup> day of February, 2005, the Kiowa Business Committee approved a document entitled Amended Gaming Ordinance and the same was approved by NIGC. Said Ordinance did extend the terms of office of the incumbent Commissioners of the Kiowa Gaming Commission beyond the initial terms of appointment made by the Kiowa Business Committee on the 13<sup>th</sup> day of July, 2001 and by Kiowa Business Committee Resolution No. CY-2001-045, and reduced the number of Commissioners to three (3) thereby deleting the Tribal Chairman as a member of the Commission; and

**WHEREAS,** by Resolution No. CY-2005-176, dated September 3, 2005, the Business Committee further exercised its power of amendment of the Initial Gaming Ordinance, by promulgating the Amended and Restated Gaming Ordinance of 2005 (the "Gaming Ordinance of 2005") and maintained the extended terms of the Gaming Commissioner as set forth in Kiowa Business Committee Resolution No. CY-2001-160; and

**WHEREAS,** pursuant to Federal law, on September 8, 2005, the Chairman of the NIGC approved the Amended and Restated Gaming Ordinance of 2005; and

**WHEREAS,** it has come to the attention of the Kiowa Business Committee that the extended terms of office of the incumbent Commissioners as set forth in

the Amended Gaming Ordinance and the Amended and Restated Gaming Ordinance of 2005 was entered and promulgated by the Kiowa Business Committee through mistake and inadvertence; and

**WHEREAS,** the incumbent Commissioners have not satisfied the mandatory provisions of Article XI, Constitution of the Kiowa Tribe of Indians of Oklahoma by taking the Oath of Office for Commissioner of the Kiowa Gaming Commission for any term of office past the dates specified on each respective Oath of Office as Commissioner of the Kiowa Gaming Commission, as set forth above, and the three (3) offices of Commissioner of the Kiowa Gaming Commission are declared vacant and subject to being filled by appointees selected by the Kiowa Business Committee in accordance with the Amended and Restated Kiowa Gaming Ordinance, Laws of the Kiowa Tribe of Oklahoma, and the Constitution and By-laws of the Kiowa Tribe of Oklahoma; and

**WHEREAS,** the Kiowa Business Committee has been advised that there no longer exists any necessity for the continued existence of Paragraph 12 (Regulations) of the Article 8, Section 1, Paragraphs g and h of the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005 wherein the Powers and Duties of the Commissioners of the Kiowa Gaming Commission was expanded to authorize the creation of Emergency Rules and Regulations and that Kiowa Business Resolution No. CY-2007-716, at page five (5) should be rescinded as the same relates to the creation of the authority of the Kiowa Gaming Commission to enact Emergency Rules and Regulations and that Paragraph 12 (Regulations) of Article 8, Section 1, Paragraphs g and h of the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005 should be repealed.

**NOW, THEREFORE IT BE AND IT IS HEREBY RESOLVED** that the Amended and Restated Gaming Ordinance of the Kiowa Tribe of Oklahoma be and the same is hereby amended to read as follows:

**Article 8. Tribal Gaming Commission**

- (2) **Independence.** The Tribe recognizes the importance of an independent Gaming Commission in maintaining a well-regulated gaming facility. The commission shall be and act independently on all matters within its purview of the Gaming Commissions regulatory authority.
- (b) **Membership and Terms of Office.** The Gaming Commission shall consist of five (5) members: a Chairperson, Vice-Chairperson, Treasurer, Secretary and Commissioner. **Terms of office shall be for three (3)**



**years** until their respective successors are duly appointed by the Kiowa Business Committee. There shall be a **two (2) term limitation** that a Kiowa Gaming Commissioner may serve, upon execution of this resolution.

- (c) **Initial appointment of Commissioners.** Notwithstanding the foregoing Kiowa Gaming Commissioners who are incumbent upon the effective date of this resolution amending the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance and reconstituting the Kiowa Gaming Commission shall serve respective offices for the following terms: Chairman, Treasurer, to be appointed to a term on September 1, 2009 and expire on August 31, 2012. The Vice-Chairman, Secretary and Commissioner shall be appointed to a term on September 1, 2010 and expire on August 31, 2013. There shall be a limitation to serve no more than two (2) consecutive terms. Upon completion of second consecutive term a commissioner cannot be reappointed for a two (2) year duration after completion of his/her term.
- (e) **Minimum Requirements.** Members of the Kiowa Gaming Commission shall be subject to the same background check requirements as key employees and primary management officials, and must be licensed accordingly. The minimum requirements for appointment as a member of the Kiowa Gaming Commission are as follows:
- (1) Member of the Kiowa Indian Tribe of Oklahoma.
  - (2) Minimum of 30 years of age.
- (h) **Officers.** Officers of the Gaming Commission shall be the Chairman, Vice-Chairman, Secretary, Treasurer.
- (1) **Chairman.** The Chairman of the Kiowa Gaming Commission shall preside at all meetings of the Gaming Commission. She or he shall have general supervision of the affairs of the Kiowa Gaming Commission and shall perform all duties of the Chairman as specified. The Chairman shall designate as pro tempore the Vice-Chairman and thereafter the Secretary in his or her absence to serve in the capacity of the Chairman. The Chairman upon approval of a quorum of the Gaming Commission in a duly called meeting shall be designated as the official spokesperson for the Kiowa Gaming Commission.
  - (2) **Treasurer.** The Treasurer of the Kiowa Gaming Commission shall be responsible for each yearly budget allowance receive

from the Kiowa Business Committee that will be disbursed on a monthly basis in accordance with the yearly approved budget. The Treasurer shall keep an accurate record account of all receipts and disbursements from the annual budget allowance. The Treasurer shall forward all proceeds from vendor fees, license fees, fines, liquor tax fees and any other fees that may derive from Kiowa Gaming Commission. Upon completion of the annual budget ending on September 30, any excess funds will be forwarded to the Kiowa Business Committee. The Treasurer shall make appropriate quarterly financial reports to the Kiowa Business Committee. Accounts and records shall be opened at all times for inspection by the Kiowa Business Committee. All books records shall be subject to audit at the discretion of the Kiowa Business Committee. All budget funds entrusted to the care of the Treasurer shall be kept in a special bank account authorized by resolution of the Gaming Commission and all disbursements there from shall be made by check with the checks to be countersigned by the Chairman of the Gaming Commission and in his or his absence the Vice-Chairman and in the absence of the Treasurer shall be signed by the Secretary. In the event of an extended absence or inability of the Treasurer to perform his duties, and when the office is for either of these reasons declared by vacant, the secretary of the Gaming Commission shall assume the designated duties of the Treasurer.

- (j) **Powers and Duties.** The Gaming Commission shall have the following powers and perform the following duties:
  - (I) Ensure compliance with all applicable Tribal, and Federal laws, rules and regulations regarding Indian Gaming;
  - (Q) Order the temporary or permanent closure of a Gaming Operation on Kiowa Indian lands and take such other enforcement as are authorized under this ordinance shall be approved and concurrence of the Kiowa Business Committee;
- (2) **Internal Operations.** The Gaming Commission shall have the power and duty to:
  - (A) Employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as deems necessary and including an Executive Director to operate the day to day

administrative and regulatory functions of the Kiowa Gaming Commission office.

- (B) Adopt, amend, or repeal personnel policies and procedures governing the Kiowa Gaming Commission employees, with concurrence and approval of the Kiowa Business Committee;
- (C) **DELETE:** Establish from time to time consultant groups and advisory boards which shall have such duties and the members of which shall hold office for such periods as the Gaming Commission may determine;
- (D) **(C) Adopt by-laws and regulations.** as necessary for its internal operations, provided that such by-laws and regulations shall be consistent to the provisions of this ordinance and other applicable Tribal laws, with concurrence and approval of the Kiowa Business Committee;
- (E) **Meetings.** The Commission shall hold meetings at least once a month at the Kiowa Gaming Commission 's main office facility or at any other designated meeting place, subject to the following:
  - (i) **Special meetings** of the Kiowa Gaming Commission shall not exceed twelve (12) per year, by written request of any four (4) Gaming Commissioners, as necessary to carry out the official duties of the Gaming Commission. Notice of special meetings shall be given at least twenty-four (24) hours in advance to the Kiowa Gaming Commission Chairman. Such meetings shall include the date, time and place of the proposed meetings. Kiowa Business Committee shall be given the same notice of any and all meetings of the Kiowa Gaming Commission;
  - (ii) **DELETE:** An emergency meeting may be called by the Tribal Gaming Chairman or any two Commissioners with less than 24-hours notice provided, however, that the Tribal Gaming Chairman (or the two Commissioners as the case may be) shall use all reasonable and diligent efforts to notify all Commissioners of such meetings, with as much prior notice as may be practicable under the circumstances;



- (H) **Fees** the Gaming Commission shall forward all payments, fees assessments, penalties interest, and fines collected under the authority of this ordinance to the Kiowa Business Committee for the sole use of the Kiowa Tribe of Oklahoma;
- (3) **Budget.** The Gaming Commission shall have established a budget for Kiowa Gaming Commission operations. The Commission shall submit established budget to the Kiowa Business Committee for their approval, annual budget ending September 30;
- (A) **The Gaming Budget** for any year shall be equal to two-thirds of one percent of the gross gaming revenue (win) but in no event more than \$1,000,000. If the Gaming Commission budget need exceeds the cap for any year the commission shall request approval for additional funds from the Kiowa Business Committee;
- (B) **Any Surplus** remaining in the Gaming Commission budget at the end of the fiscal year shall be refunded to the Kiowa Business Committee;
- (C) **The Gaming Commission** shall present its annual budget to the Kiowa Business Committee for its review and approval. In the event the Kiowa Business Committee fails to approve the budget, the Gaming Commission shall operate under the prior years annual budget allocation until such time as the Kiowa Business Committee provides its approval;
- (5) **Reporting.** The Kiowa Gaming Commission shall have the power and duty to:
- (B) **File** a quarterly and annual financial report with the Kiowa Business Committee or upon request and which shall include:
- (D) In addition to the foregoing reports, upon the written request of the Kiowa Tribal Chairman, the Gaming Commission shall promptly and fully advise the Kiowa Business Committee with respect to any specific business and affairs of the Kiowa Gaming Commission and shall provide with such response, copies of all records, books, and documents reasonably requested, except for confidential documents such as licensees,

reports of background checks investigations and suitability determinations and other records that are pursuant to this Ordinance and are confidential;

**(12) Regulations.**

- (m) **Quorum: voting** The Kiowa Gaming Commission shall meet and decide all matters by majority vote of the full commission. The Chairperson, or the Vice-Chairperson in the Chair's absence, shall preside at each meeting. The presence of four (4) members of the Gaming Commission shall constitute a quorum for a meeting. The vote of Four (4) Commissioners shall constitute as a majority vote and shall be binding on the Gaming Commission;
- (n) **Compensation.** The Gaming Commissioners shall be entitled to receive a fixed stipend as compensation of \$300.00 per meeting (to cover mileage, fuel, meals and etc.). The per meeting stipend shall be payable for regular and special meetings of the Kiowa Gaming Commission;

**Article 9. Ethics**

The Kiowa Tribe of Oklahoma recognizes that the duties of the Kiowa Gaming Commission include making important decisions on highly sensitive issues. As such, the Tribe has determined that the Gaming Commission shall be held to extremely high ethical standards and shall be subject to removal for violating these standards. Prior to taking their positions as Gaming Commissioners and as the Executive Director of the Kiowa Gaming Commission (collectively, the "Commissioners"), the Commissioners shall agree to be bound by the following principles:

- (f) Members shall act impartially, in accordance with all relevant federal and tribal laws (where applicable), and shall not give preferential treatment to any private organization or individual, including to any immediate family member.

**Article 32. Amendments**

All provisions of this ordinance are subject to amendment by the Kiowa Business Committee and all amendments of this ordinance shall be effective upon execution of a resolution of the Kiowa Business Committee. All amendments will be forwarded by the Kiowa Business Committee to the National Indian Gaming Commission for approval.

**AND BE IT FURTHER RESOLVED**, that Kiowa Business Committee Resolution No. CY-2007-716, at page five (5) thereof, is rescinded only to those provisions granting the Commissioners of the Kiowa Gaming Commission, the power and authority to create Emergency Rules and Regulations and Paragraph 12 (Regulations) of Article 8, Section 1, Paragraphs g and h, Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005, creating the authority of the Kiowa Gaming Commission to enact Emergency Rules and Regulations is hereby repealed;

**AND BE IT FURTHER RESOLVED**, that as herein amended, the Amended and Restated Gaming Ordinance is hereby ratified and confirmed;

**AND BE IT FURTHER RESOLVED**, that to the extent that any ordinance, regulation, policy or practice of the Kiowa Tribe is inconsistent with this Resolution hereby enacted, such ordinance, regulation, policy or practice is hereby superseded and repealed;

**AND BE IT FURTHER RESOLVED**, that the Tribal Chairman and the Tribal Secretary be and they are hereby authorized and directed to submit this Resolution together with the Gaming Ordinance to the National Indian Gaming Commission for approval as required by and pursuant to Title 25 Code of Federal Regulations, Section 522.1—522.12 inclusive and to the Assistant Secretary for Indian Affairs or his authorized representative, pursuant to Article V, Subsection 2(g) of the Tribal Constitution;

**AND BE IT FURTHER RESOLVE**, that the foregoing becomes effective on the date on which it is approved by NIGC Chairman pursuant to those regulations and by Assistant Secretary for Indian Affairs or his authorized representative, pursuant to Article V, Subsection 2(g) of the Tribal Constitution ("effective date");

**AND BE IT FURTHER RESOLVED**, that promptly following the effective date the Tribal Business Committee be and hereby authorized and directed to make the appointments to the Gaming Commission pursuant to the Gaming Ordinance as hereby amended;

**AND BE IT FURTHER RESOLVED**, that any part of these resolutions be found by a court of competent jurisdiction to be inconsistent with the Tribal Constitution then only that part found to be so inconsistent shall be void an of no effect (but only to the extent of such inconsistency), and all other parts of this Resolution shall remain in full force and effect.

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### CERTIFICATION

The foregoing Resolution No. **CY-2009-421** was duly adopted at a **Special** Kiowa Business Committee meeting, held on **July 21, 2009**, at the Kiowa Tribal Complex, located in Carnegie, Oklahoma, with majority vote of ( **6** ) for, ( **0** ) against and ( **0** ) abstentions, a quorum being present.

**ATTEST:**

**WITNESS:**

*Sharon Peña*  
Sharon Pena, Tribal Secretary

*Ted Lonewoff*  
Dr. Ted Lonewoff, Vice-Chairman

