



OCT 7 2008

Jean Stacy  
President  
Lower Sioux Indian Community  
P.O. Box 308  
Morton, MN 56270

Dear President Stacy:

This letter is in response to your request for the National Indian Gaming Commission (NIGC) to review and approve an amendment to the Lower Sioux Indian Community (Community) Gaming Ordinance (Ordinance) enacted via Resolution No. 08-51. The ordinance is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and NIGC's regulations and is hereby approved.

The amendment allows for Community Council (Council) members to "serve in a policy oversight role over the non-regulatory operations of the gaming operation" as members of the gaming operation's board of directors. Amendment, art. VI(A). I understand that the amendment is meant to ensure that the policy and oversight roles of the gaming operation are filled by tribal members with experience in such areas and that in a relatively small community like Lower Sioux, there may be short supply of members with such experience. Therefore, it is reasonable for the Community to encourage members to act in dual roles.

While I appreciate the practicality of the amendment, I am concerned that it may have the unintended effect of eroding the independence of the Tribal Gaming Commission (TGC). Essentially, the amendment allows the same members who appoint and remove regulators to create policy for the regulated operation. While there are a number of provisions that insulate the TGC from external control, I note that the Council is the only governmental body authorized to remove a gaming commissioner and that decision is unreviewable. Ordinance, art. VII(J). Should the Community ever wish to consider the matter further, the NIGC will be happy to provide any assistance you may require.

Thank you for your submission. If you have any questions, please contact Staff Attorney Jennifer Ward at 202-418-9814.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip N. Hogen', written over a large, light-colored oval shape.

Philip N. Hogen  
Chairman



# Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1

Morton, Minnesota 56270

*Cansayapi Otunwe*

SEP - 2 2008

## LOWER SIOUX INDIAN COMMUNITY RESOLUTION NO. 08-133

### FURTHER AMEND GAMING ORDINANCE AND SUBMISSION TO THE NATIONAL INDIAN GAMING COMMISSION

- WHEREAS, The Lower Sioux Indian Community is a duly organized and federally-recognized Indian Tribe under 25 U.S.C. § 476, and is governed by the terms of a Constitution and By-Laws originally adopted by the Tribal Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,
- WHEREAS, pursuant to said Constitution and Bylaws, the Community Council is the governing body of the Lower Sioux Indian Community; and
- WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS, including but not limited to: (a) To negotiate with the Federal, State, and local Governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department ...; (b) To employ counsel for the protection and advancement of the rights of the Community and its members ...; (c) To approve or veto any sale, disposition, lease, or encumbrance of community lands, interests in lands, or other community assets; (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Community prior to the submission of such estimates to the Bureau of the Budget and to Congress; (e) To make assignments of community land to members of the Community in conformity with Article IX of this Constitution; (f) To manage all economic affairs and enterprises of the Community in accordance with the terms of a charter ...; (g) To appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community; (h) To levy assessments upon members of the Community for the use of Community property and privileges, and to permit the performance of reservation labor in lieu thereof, and to levy; (i) To safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation ...; (j) To establish ordinances ...; (k) To regulate the

manner of taking nominations for Community officers and of holding community elections ...: (l) To adopt resolutions regulating the procedure of the Community Council itself and of other Community agencies and community officials; (m) To encourage and foster the arts, crafts, traditions, and culture of the Mdewakanton Sioux Indians of Minnesota; (n) To charter subordinate organizations for economic purposes and to regulate the activities of all such organizations ...; (o) To protect and preserve the property, wildlife and natural resources of the Community; (p) To delegate to subordinate boards, or community officials, or to cooperative associations ...; (q) To select delegates to sit in the annual conference of the Minnesota Mdewakanton Sioux Indians and in the National Council of the entire Sioux Nation; and,

WHEREAS, on March 28, 2006, the National Indian Gaming Commission, acting under the authority of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2710(b)(1)(B), approved the Lower Sioux Indian Community Gaming Ordinance; and

WHEREAS, the Community Council determined was in the best interests of the Community to amend the Lower Sioux Gaming Ordinance Section VI regarding the Board of Directors;

WHEREAS, the Community Council amended the Lower Sioux Gaming Ordinance Section VI in Resolution 08-51 and submitted the Resolution and amendments for approval to the National Indian Gaming Commission in a letter dated May 14, 2008 from President Jean Stacy; and

WHEREAS, in response to the Community's request the National Indian Gaming Commission suggested one change requiring the Board of Directors to be subject to the gaming licensure requirements of a Primary Management Officials under the Lower Sioux Gaming Ordinance

WHEREAS, the Community Council adopted the suggested changes by amending the Lower Sioux Gaming Ordinance in Resolution No. 08-132 which also replaced, revoked, superseded Resolution 08-51; and

WHEREAS, the Community Council has determined it in the best interest of the Community to make further changes to the Gaming Ordinance.

**NOW THEREFORE BE IT ORDAINED**, the Community Council hereby adopts the attached amendments to the Lower Sioux Gaming Ordinance a clear copy and a redlined copy attached and incorporated by reference.

**BE IT FURTHER ORDAINED**, the Community Council hereby authorizes the submission of the attached proposed amendments, incorporated by reference, to the

Lower Sioux Gaming Ordinance to the National Indian Gaming Commission for approval pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.

**CERTIFICATION**

I certify that Resolution No. 08- 133 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 28<sup>th</sup> day of July, 2008, a quorum being present by a vote of   5   in favor,   0   opposed, and   0   abstaining.

Jean Stacy  
Jean Stacy, President

Lori Nelson  
Lori Nelson, Vice-President

Francine Unruh  
Francine Unruh  
Treasurer

Margaret Harp  
Margaret Harp  
Secretary

Wanda Blue  
Wanda Blue  
Assistant Secretary Treasurer



**VI. Board of Directors**

- A. In addition to the General Manager for the facility, there shall established a Tribal Gaming Board of Directors which shall serve in policy oversight role over the non-regulatory operations of the gaming operation. In the event the Community enters into a management contract approved by the NIGC, the Board may delegate some or all duties to the approved management contractor.
- B. The Board of Directors may consist of the Tribal Council with terms coinciding with the terms of his or her office. The Board of Directors shall consist of no less than three (3) members and no more than five (5). Any member of the Board of Directors that is not a Tribal Council Member shall serve at the leisure of the Tribal Council.
- C. The Board of Directors may act in its official capacity even if there are vacancies on the Board of Directors.
- D. The Board of Directors shall perform the following duties:
- i. Approve non regulatory policies for all departments of the gaming facility, whether managed by a tribal employee or by an approved management contractor;
  - ii. Inspect and examine on a periodic basis all books, records and papers of the gaming facility and any other department within the gaming facility;
  - iii. Approve hours of operation for the gaming facility;
  - iv. Approve wager limits, if not regulated by the Tribal / State Compact or other applicable gaming regulation;
  - v. Approve marketing plans;
  - vi. Approve policies regarding interviews, selection and training of the gaming operation as well as other employees paid by the gaming operation;
  - vii. Approve employee policies, rate of pay and hours of work;
  - viii. Approve an annual operating budget. This is subject to Community Council approval if no Community Council Members are serving as the majority of the Board of Directors;
  - ix. Review bids concerning the gaming operation and its departments; and
  - x. Any other duties necessary to monitor and oversee the policies of the gaming operation.

E. Removal

1. A member of the Board of Directors may be removed for the following:
  - (i) neglect of duty;
  - (ii) misconduct;
  - (iii) malfeasance;
  - (iv) any other act that would render the member unqualified as a member of the Board of Directors.
2. If a member of the Board of Directors is removed for reason and he or she is a Tribal Council Member, that position may remain vacant, provided there is at least 3 members, or it may be filled by any other person. Removal from the Board of Directors shall not effect their position as an elected Tribal Council Member.

E. Members of the Board of Directors shall be compensated such compensation shall be determined by the Community Council.