



December 17, 2009

Carleton Naiche-Palmer, President  
Mescalero Apache Tribe  
P.O. Box 227  
Mescalero, NM 88340  
FAX: (505) 464-9191

Re: Amended Tribal Gaming Ordinance, approval

Dear President Naiche-Palmer:

On September 23, 2009, and on behalf of the Mescalero Apache Tribe (Tribe), you requested that I review and approve amendments to the Tribe's gaming ordinance adopted by Tribal Council Resolution Ordinance 09-13. This amendment authorizes the use and licensure of a management contractor at any of the Tribe's gaming operations.

This letter constitutes approval of the amendment. Nothing therein conflicts with IGRA's requirements and the NIGC's regulations.

Thank you for submitting the amended Tribal Gaming Ordinance for review and approval. If you have any questions, please contact Staff Attorney Heather McMillan Nakai at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Skibine", with a long horizontal flourish extending to the right.

George T. Skibine  
Acting Chairman

**MESCALERO APACHE TRIBE  
MESCALERO, NEW MEXICO**

**ORDINANCE 09-13**

**WHEREAS**, the Mescalero Apache Tribe, an Indian tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. §476), and under its Revised Constitution has full power and authority to act for the Tribe; and

**WHEREAS**, pursuant to Article XI, Section 1(i) of the Revised Constitution of the Mescalero Apache Tribe, the Mescalero Apache Tribal Council has the power to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

**WHEREAS**, pursuant to Article XI, Section 1(d) of the Revised Constitution of the Mescalero Apache Tribe, the Mescalero Apache Tribal Council has the power to adopt and approve plans of operation to govern the conduct of any business or industry that will further the economic well-being of the members of the Tribe; and

**WHEREAS**, pursuant to Article XIII, Section 2 of the Revised Constitution of the Mescalero Apache Tribe, the Mescalero Apache Tribal Council shall, by ordinance, establish the principles and policies governing the operation and control of all enterprises of the Tribe; and

**WHEREAS**, the Mescalero Apache Tribal Council previously adopted Ordinance 03-08 which governs the conduct of gaming activities on the Mescalero Apache Reservation; and

**WHEREAS**, the Mescalero Apache Tribal Council wishes to amend Ordinance 03-08 to more extensively deal with licensing and to provide for and govern any and all management contracts that the Tribe wishes to enter into with management contractors for gaming operations; and

**WHEREAS**, the Mescalero Apache Tribal Council previously amended Section 10 of Ordinance 03-08 with Ordinance 09-08; and

**WHEREAS**, specifically, the Tribal Council wishes to replace Sections 9 and 10 of Ordinance 03-08, as amended by Ordinance 09-09, with the provisions contained herein.

**NOW, THEREFORE, BE IT ORDAINED** that Sections 9 and 10 of Ordinance 03-08 as amended by Ordinance 09-09, as each currently exists, be and hereby are repealed and replaced with the following provisions:

**SECTION 9. Licenses for Operating and Conducting Games of Chance**

A. Licenses Required.

1. Gaming Enterprise. The Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission.
2. Gaming Facility. Each Gaming Facility shall be licensed by the Mescalero Apache Tribal Gaming Commission.
3. Gaming Employees. All Gaming Employees shall be licensed by the Mescalero Apache Tribal Gaming commission and subject to background investigations.
4. Management Contractors. All Management Contractors, including their principals, primary management officials, key employees and shareholders having in excess of 10% ownership or interest, shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to background investigations.
5. Sales of Gaming Devices, Equipment or Services. Any person or entity proposing to sell or lease any Gaming Device, Gaming Equipment, or provide Gaming Services to a Gaming Enterprise shall be licensed by the Mescalero Apache Tribal Gaming Commission and subject to a background investigation before being permitted to sell or lease any Gaming Device or Gaming Equipment or provide any Gaming Services to any Gaming Enterprise, Gaming Facility, or Management Contractor.

B. License Application. Each applicant for a license shall file with the Mescalero Apache Tribal Gaming Commission a written application in the form prescribed by the Mescalero Apache Tribal Gaming commission, duly executed and verified, along with the applicant's fingerprint card, current photograph and any fees required by the Mescalero Apache Tribal Gaming Commission. At a minimum, the application form shall contain all of the following information and requests for information:

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

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 employed in a gaming operation. The information will be used by members and staff of the Mescalero Apache Tribal Gaming Commission, and of the National Indian Gaming Commission ("NIGC") who have need for the information in performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when, pursuant to a requirement by a

tribe or the NIGC, the information is relevant to the hiring or firing of an employee, the issuance 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 the Tribe's being unable to hire you as a primary management official or in a key employee position.

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

2. A notice stating that any existing persons or entities shall be notified in writing that they shall either:
  - a. Complete a new application that contains a new Privacy Act Notice.
  - b. Sign a statement that contains the Privacy Act Notice and consent to the routine uses of information described in that Notice.
3. The following notice ("False Statement Notice") shall be placed on the application form before that form is filled out by any applicant:

A false statement on any part of the application by any party required to be licensed by Section 9(A) above may be grounds for not hiring you, denying you a license or for firing you after you begin work, or revoking any license previously issued. Also, you may be punished by fine or imprisonment. See 18 U.S. Code §1001.
4. The Mescalero Apache Tribal Gaming Commission shall notify in writing any persons or entities required to be licensed that they shall either:
  - a. Complete a new application form that contains a False Statement Notice; or
  - b. Sign a statement that contains the Notice.
5. The Mescalero Apache Tribal Gaming Commission shall request from each person or entity required by Section 9(A) above to be licensed all of the following information:
  - a. Full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
  - b. Currently and for the previous 10 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; provided,

that any applicant who is a primary management official, key employee, management contractor, manufacturer or supplier of gaming devices and/or a person providing gaming services, must provide such information from the age of 18;

- c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under Section 10(B)(5)(b) above;
- d. Current business and residence telephone numbers;
- e. A description of existing or previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between the businesses and Indian tribes;
- f. A description of any existing and previous business relationships with the gaming industry, including, but not limited to, ownership interests in those businesses;
- g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
- i. For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations) since age 18, the charge, the date of the charge, the name and address of the court involved, and the date and disposition, if any;
- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge occurred since age 18 and is not otherwise listed pursuant to Section 9(B)(5)(h) or Section 9(B)(5)(i), the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;
- k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;

- l. A current photograph;
  - m. Fingerprints shall be taken by the Commission or any other qualified Law Enforcement Agency. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, a designated agency shall forward the fingerprint cards directly to the NIGC.
  - n. The fee required by the Mescalero Apache Tribal Gaming Commission; and
  - o. Any other information that the Mescalero Apache Tribal Gaming Commission deems relevant.
- C. Background Investigations to Determine Eligibility to Work in Gaming Enterprises.
1. Upon receipt of a completed application and required fee for licensing, the Mescalero Apache Tribal Gaming Commission shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.
  2. Background checks of applicants will be performed pursuant to the following procedures:
    - a. The Mescalero Apache Tribal Gaming Commission will provide applications to applicants upon request, and shall collect and maintain the applications;
    - b. Pursuant to a Memorandum of Understanding between the Tribe and the NIGC, the Mescalero Apache Tribal Gaming Commission Employee Licensing Agent(s) will collect fingerprints from all applicants and forward the fingerprint cards directly to the NIGC. The NIGC will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Mescalero Apache Tribal Gaming Commission.
    - c. The Mescalero Apache Tribal Gaming Commission shall investigate the information provided in the applications. This investigation will include:
      - i. Contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;
      - ii. Interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Mescalero Apache Tribal Gaming Commission to

make a determination concerning whether the applicant meets applicable eligibility requirements;

- iii. Reviewing relevant financial records of the applicant for the 3 years preceding the application; and
  - iv. Contacting any state, federal, or other government agency that is referred to in the application.
  - v. Reviewing state, county and tribal court criminal records.
- d. The Mescalero Apache Tribal Gaming Commission shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under this Ordinance. The Mescalero Apache Tribal Gaming Commission shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.
  - e. The Mescalero Apache Tribal Gaming commission will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Mescalero Apache Tribal Gaming Commission will perform additional investigations.
3. In conducting a background investigation, the Mescalero Apache Tribal Gaming Commission and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.
  4. The Mescalero Apache Tribal Gaming Commission shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.
  5. With respect to principals, key employees and primary management officials, the Mescalero Apache Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigations for no less than 6 years from the date of termination of employment.
  6. Once the investigation is complete, the Mescalero Apache Tribal Gaming Commission will decide whether the applicant meets the eligibility criteria under this ordinance.
  7. All background investigations and reports shall remain confidential.
- D. Procedures for Forwarding Applications and Reports.

1. When a key employee or primary management official begins work at a gaming enterprise authorized by the Tribal-State Compact and this Ordinance, the Mescalero Apache Tribal Gaming Commission shall forward to the NIGC a completed suitability of employment report.
2. The Mescalero Apache Tribal Gaming Commission shall forward the report referred to in Section 9(D)(4) to the NIGC and the State Gaming Representative within 60 days after an employee begins work.
3. A key employee or primary management official who does not have a license shall not be employed after 90 days.
4. The Mescalero Apache Tribal Gaming Commission shall prepare and forward to the NIGC and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:
  - a. Steps taken in conducting the background investigation;
  - b. Results obtained;
  - c. Conclusions reached; and
  - d. The basis for those conclusions.
5. The Mescalero Apache Tribal Gaming Commission shall submit with the report a copy of the eligibility determination made under Section 9(C)(6).
6. The Mescalero Apache Tribal Gaming Commission may issue a license to any person or entity who:
  - a. Has provided a complete and accurate application and complied fully with any and all requests by the Mescalero Apache Tribal Gaming Commission for information concerning the background and activities of the applicant;
  - b. If a natural person, has attained the age of 21 years;
  - c. Is not a person whose prior activities, criminal record, if any, habits, or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the danger of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and
  - d. Has not attempted to interfere or to influence, and has not interfered or influenced, unduly for its gain or advantage, any



decision or process relating to gaming or the government of the Tribe.

7. The Mescalero Apache Tribal Gaming Commission shall respond to any request for additional information from the NIGC or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the 30 day period under Section 9(E)(4) until the NIGC or the State Gaming Representative receives the additional information. However, in no event shall a request for additional information by the State Gaming Representative extend the 30 day period under Section 9(E)(4) of this Ordinance for a total period of more than 60 days from the date the State Gaming Representative received the Investigative Report.
  8. If, within the 30 day period described above, the NIGC or the State Gaming Representative provides the Mescalero Apache Gaming Commission with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Mescalero Apache Tribal Gaming Commission has provided an application and Investigative Report, the Mescalero Apache Tribal Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.
- F. Fees for Licensing. The fees for gaming licenses and background investigations shall be set by the Mescalero Apache Tribal Gaming Commission from time to time and made available at any time upon request.
- G. Duration and Renewal of Licenses. All employee gaming licenses issued by the Mescalero Apache Tribal Gaming Commission shall be valid for 3 years from the date of issuance. Any employee applying for renewal of a license that has submitted the required application and any other information required by the Mescalero Apache Tribal Gaming Commission at least 60 days before the expiration of the license may continue to be employed under the expired license until the Mescalero Apache Tribal Gaming Commission or NIGC, if required by the IGRA, takes final action on the renewal application. Any person renewing a gaming license shall provide updated material and information as requested on the renewal application form, but shall not be required to resubmit historical data already provided to the Mescalero Apache Tribal Gaming Commission.

#### **SECTION 10. Management Contract**

- A. Each Management Contract is subject to the prior approval of the National Indian Gaming Commission.

B. Each Management Contract shall be approved by the Tribal Council and each Management Contractor shall be licensed by the Mescalero Apache Tribal Gaming Commission. Before final licensure by the Mescalero Apache Tribal Gaming Commission, the Gaming Commission shall obtain and consider, in addition to the background information described in Section 9 above, the following information:

1. Background information on the proposed Management Contractor, including its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed Management Contractor, and in the case of a corporation, the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly ten percent (10%) of its issues or outstanding stock.
2. A description of any previous experience that each person listed in Section 10(B)(1) above has had with other gaming contracts, with Indian tribes, or with the gaming industry generally, including the name and address of any tribal government or licensing agency with which such person has had a contract relating to gaming.
3. A complete financial statement of each person listed in Section 10(B)(1) above.
4. The Mescalero Apache Tribal Gaming Commission shall contact each of the tribal governments and licensing agencies in Subsection 10(B)(2) above to determine the performance history of the proposed Management Contractor.
5. The Mescalero Apache Tribal Gaming Commission shall arrange to have each proposed Management Contractor investigated to learn of his personal attributes and to determine whether the contractor has a prior criminal record or any pending criminal charges.
6. The Mescalero Apache Tribal Gaming Commission shall obtain an independent verification of the completed financial statements of each proposed Management Contractor.
7. The Mescalero Apache Tribal Gaming Commission shall undertake any additional steps it can to determine the character and reputation of each proposed Management Contractor.

C. Any Management Contract approved by the Tribal Council shall contain at a minimum the following:

1. A provision requiring at least a monthly financial accounting of the gaming enterprise's income and expenses, with an annual financial accounting to be prepared by an independent auditor who is acceptable to the Tribe.

2. A provision setting forth an absolute cap on payment of management fees such that management fees shall not exceed thirty percent (30%) of net revenues.
  3. A defined term limit for the contract that does not exceed federal law.
  4. A provision guaranteeing the Tribe a minimum guaranteed payment which shall always take precedence over the management contractor's payment.
  5. A defined ceiling for repayment of development and contractor's costs.
- D. A Management Contract shall be of no force or effect until affirmatively approved by the National Indian Gaming Commission and until the Management Contractor is licensed by the Mescalero Apache Gaming Commission.

ORDINANCE 09-13

CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 9th day of December 2009, at legally called session of the Mescalero Apache Tribal Council, by a vote of 8 for and 0 against, with 0 abstaining at which quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.

Carleton Naiche-Palmer  
Carleton Naiche-Palmer, President

Gregory Mendez  
Gregory Mendez, Secretary