



JUL 16 2002

Bernard Mora, Chairman
Pueblo of Tesuque Gaming Commission
Route 5, Box 360-T
Santa Fe, New Mexico 87506

RE: Approval of the Pueblo of Tesuque Amended and Restated Gaming Ordinance

Dear Mr. Mora:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for the review and approval of the Amended and Restated Gaming Ordinance (Ordinance) of the Pueblo of Tesuque (Pueblo) submitted on May 16, 2002. The Pueblo by Resolution No. 2002-04-02 on April 30, 2002, adopted the Ordinance. This letter constitutes approval of your submission under the Indian Gaming Regulatory Act (IGRA). Such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Pueblo exercises jurisdiction.

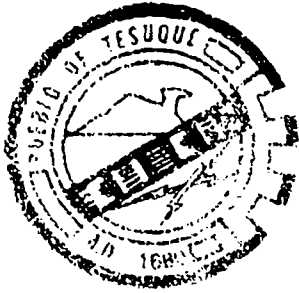
Thank you for submitting the Pueblo of Tesuque Ordinance for review and approval. The NIGC staff and I continue to look forward to working with you and the Community in implementing the IGRA. If you have questions or require further assistance, please contact Maria Getoff at 202/632-7003.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Montie R. Deer".

Montie R. Deer
Chairman

cc: Governor Paul Swazo
Gwenellen P. Janov



Pueblo of Tesuque
Route 5 Box 360-T
Santa Fe, New Mexico 87501

MAY 24 2002

RESOLUTION NO. 2002-04-02
PUEBLO OF TESUQUE TRIBAL COUNCIL
AMENDMENT AND RESTATEMENT OF TRIBAL GAMING ORDINANCE

WHEREAS, on or about December 16, 1989, by Resolution Number 1989-12-04, the Tribal Council of the Pueblo of Tesuque ("Pueblo") adopted a Gaming Ordinance for the Pueblo of Tesuque ("Gaming Ordinance"), which Gaming Ordinance was amended on or about August 24, 1994, by Resolution Number 1994-08-03, and was further amended and restated on April 3, 1997, by Resolution Number 1997-04-02 and on September 25, 1997, by Resolution Number 1997-09-04; and

WHEREAS, the Pueblo's experience over the years in conducting and regulating its gaming activities has suggested numerous ways in which amending the Gaming Ordinance could tighten the Pueblo's regulation of its gaming activities, thereby permitting the Pueblo more effectively to exercise its primary regulatory responsibilities over gaming on the Pueblo of Tesuque Indian Reservation ("Reservation"), pursuant to its inherent sovereignty and under the Indian Gaming Regulatory Act ("IGRA"); and

WHEREAS, a new Class III Indian Gaming Compact ("2001 Compact") was executed between the Pueblo and the State of New Mexico, which 2001 Compact was approved on December 14, 2001.

WHEREAS, the 2001 Compact somewhat alters the duties and responsibilities of the Pueblo with respect to the conduct of Class III gaming on the reservation; and

WHEREAS, in light of the Pueblo's desire to enhance and make more effective its regulation of gaming on the reservation, and in further light of the need to conform certain portions of the Gaming Ordinance to the 2001 Compact, the Tribal Council believes it necessary and in the best interests of the Pueblo to amend, clarify, and update the Gaming Ordinance to assure that gaming activities are conducted in a fair, honest, and professional manner and to assure that the Class III gaming activities of the Pueblo are conducted in compliance with Compact.

BE IT THEREFORE RESOLVED that the Tribal Council hereby adopts the amended restated Gaming Ordinance ("Amended and Restated Gaming Ordinance"), in the form attached hereto, which amends the Gaming Ordinance by clarifying and updating the Gaming Ordinance to correct any technical errors, to enhance and clarify the Pueblo's regulatory authority over gaming activities on the reservation, and to make the Gaming Ordinance consistent with the 2001 Compact, IGRA, and the federal regulations promulgated there under.

BE IT FURTHER RESOLVED that the Amended and Restated Gaming Ordinance shall take effect on the date the 2001 Compact takes effect by virtue of the publication in the Federal Register of the Secretary's approval of the 2001 Compact ("Effective Date").

BE IT FURTHER RESOLVED that the Pueblo of Tesuque Gaming Commission is directed to submit this Resolution and the attached Amended and Restated Gaming Ordinance adopted herein to the National Indian Gaming Commission, together with the 2001 Compact, for approval of these amendments to the Gaming Ordinance, as required by IGRA, 25 U.S.C. § 2710(b)(1)(B) and 2710(d)(1)(A)(iii), within fifteen (15) days after the Effective Date.

BE IT FINALLY RESOLVED that, pursuant to Section 4(B) of the 2001 Compact, the Pueblo's Gaming Commission is directed to submit the attached Amended and Restated Gaming Ordinance to the State Gaming Representative within 30 days after the Effective Date.

CERTIFICATION

I, the undersigned, as Governor of the Pueblo of Tesuque, hereby certify that the foregoing Resolution was adopted by a vote of 9 for and 0 against, with 0 abstaining, at a duly called meeting of the Tribal Council, at which a quorum was present, held on the April day of 30th 2002.

Paul Swazo 4/30/02
Governor Paul Swazo Date

Mark R. Scheel 4/30/02
Councilman Date

[Signature]
Councilman

[Signature] for Ser Chris Sanchez
Councilman

[Signature]
Councilman

[Signature]
Councilman

[Signature] for D. Herrera
Councilman

[Signature]
Councilman

[Signature]
Councilman

PUEBLO OF TESUQUE GAMING ORDINANCE

Originally adopted by Resolution No. 1989-12-04, dated December 16, 1989, as Amended by Resolution No. 1994-08-3, dated August 24, 1994, as Amended and Restated by Resolution No. 1997-04-02, dated April 3, 1997, as Amended and Restated by Resolution No. 1997-09-04, dated September 25, 1997, and as Amended and Restated by Resolution No. 2002-04-02, dated April 30, 2002 by the Pueblo of Tesuque Tribal Council.

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PUEBLO OF TESUQUE GAMING ORDINANCE

BE IT ENACTED BY THE COUNCIL OF THE PUEBLO OF TESUQUE: An Ordinance to Govern, Regulate, and Control Gaming Activities on the Pueblo of Tesuque Indian Reservation.

SECTION 1. NAME. The name of this Ordinance shall be the Pueblo of Tesuque Gaming Ordinance.

SECTION 2. DEFINITIONS. In this Ordinance, unless the context otherwise requires:

a. “Bingo Equipment” means equipment used in connection with Bingo Games, and includes the receptacle and numbered objects drawn from it; the master board upon which such objects are placed as drawn; the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them; the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; the public address system; and all other articles essential to the operation, conduct, and playing of Bingo Games.

b. “Bingo Game” means the Game of Chance commonly known as “bingo” (whether or not electronic, computer, or other technologic aids are used in connection therewith), which is played for prizes, including monetary prizes, with cards bearing numbers and other designations in which the holder of the cards covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.

c. “Class II Gaming” means those games described in 25 U.S.C. § 2703(7)(A) and 25 C.F.R. § 502.3, including but not limited to Bingo Games.

d. “Class III Gaming” means all forms of gaming as defined in 25 U.S.C. § 2703(8) and 25 C.F.R. § 502.4.

e. “Commission” means the Pueblo of Tesuque Gaming Commission, which is the Pueblo agency responsible for regulating Class II and Class III Gaming Activity conducted by the Pueblo and for ensuring that such Gaming Activity is conducted in compliance with applicable tribal and federal law and the Compact. The Commission is the agency of the Pueblo to be identified to the State Gaming Representative as the Tribal Gaming Agency responsible for the regulatory actions of the Pueblo of Tesuque under the Compact between the Pueblo of Tesuque and the State of New Mexico.

f. “Compact” means any compact entered into and currently in effect between the Pueblo of Tesuque and the State of New Mexico pursuant to Section 11(d) of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d).

g. “Council” means the Pueblo of Tesuque Tribal Council, the governing body of the Pueblo of Tesuque.

h. “Games of Chance” means all forms of Class II and Class III Gaming, but shall not include social games played solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

i. “Gaming Activity” or “Gaming Operation” means the conduct or act of conducting Class II and Class III Games of Chance.

j. “Gaming Device” means a Gaming Machine or associated equipment, and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a Class III Game or determines the outcome of a Class III Game; “Gaming Device” does not include a system or device that affects a Class III Game solely by stopping its operation so that the outcome remains undetermined.

k. “Gaming Employee,” notwithstanding any different definition in a Compact, for purposes of this Gaming Ordinance means any natural person employed by the Gaming Enterprise,

including but not limited to the Manager, Key Employees, and Primary Management Officials, and regardless of whether or not the Employee's duties involve direct involvement in or contact with Gaming Activities.

l. "Gaming Enterprise" means the business entity established and operated by the Pueblo of Tesuque, acting through the Council, to conduct and operate Games of Chance on the Reservation.

m. "Gaming Facility" means the buildings or structures in which Class II and Class III Gaming activities are operated on the Reservation pursuant to this Gaming Ordinance, together with the parking areas and other adjacent areas associated therewith.

n. "Gaming Machine" means a mechanical, electromechanical, or electronic contrivance or machine that, upon insertion of a coin, token, or similar object, or upon payment of any consideration, is available to play or operate a Class III Game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

o. "Gaming Operation" or "Gaming Activity" means the conduct or act of conducting Class II and Class III Games of Chance.

p. "Gaming Ordinance" means this Pueblo of Tesuque Gaming Ordinance, as it now exists or as it may hereafter be amended from time to time.

q. "Gaming Services" means any goods or services, except legal and accounting services, provided to the Pueblo of Tesuque in connection with and that directly involve the operation of Class II or Class III Gaming in any Gaming Facility.

r. "Governor" means the Governor of the Pueblo of Tesuque.

s. "Gross receipts" means receipts from the sale of shares, tickets, or rights in any manner connected with participation or the right to participate in any Game of Chance, including but not

limited to any admission fee or charge, the sale of merchandise, refreshments, souvenirs, services, equipment, or supplies, interest earned on deposits, and all other miscellaneous receipts.

t. "Indian" means any person who is a member of a federally-recognized Indian tribe or who is recognized as an Indian under federal law.

u. "Key Employee" means:

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

A. Bingo caller;

B. Counting room supervisor;

C. Chief of Security;

D. Custodian of gaming supplies or cash;

E. Floor manager;

F. Pit boss;

G. Dealer;

H. Croupier;

I. Approver of credit; or

J. Custodian of Gaming Devices, including persons with access to cash and accounting records within such devices;

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

3. If not otherwise included, the four most highly compensated persons in the gaming operation.

v. "License" means a license duly issued by the Commission to any person required to be licensed in accordance with the licensing procedures set forth in this Gaming Ordinance.

- w. "Licensee" means any person who has been duly licensed by the Commission.
- x. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2701(d)(9) and 2711 and as defined in 25 C.F.R. § 502.14.
- y. "Management Contractor" means any person or entity that has entered into a Management Contract with the Pueblo of Tesuque.
- z. "Manager" means the Person having ultimate responsibility for managing the Gaming Enterprise, hired directly as an employee or pursuant to a Management Contract under Section 8 of this Gaming Ordinance.
- aa. "Member of the Pueblo of Tesuque" means an enrolled member of the Pueblo of Tesuque.
- bb. "National Indian Gaming Commission" means the National Indian Gaming Commission established by the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21, 18 U.S.C. §§ 1166-68.
- cc. "Net Revenues" means the gross revenues of a Gaming Operation less amounts paid out as, or paid for prizes and total gaming-related operating expenses, excluding management fees.
- dd. "Net Win" as defined in the Compact means the total amount wagered in Class III Gaming at a Gaming Facility on all Gaming Machines less the following:
 - 1. the amount paid out in prizes, including the cost to the Gaming Enterprise of noncash prizes won, on Gaming Machines;
 - 2. the amount paid to the State of New Mexico on account of the State's regulatory costs; and
 - 3. the sum of two hundred seventy-five thousand dollars (\$275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each

year beginning on the first day of January occurring after the Compact has been in effect for at least twelve (12) months.

ee. “Non-Gaming Services” means any goods or services, except legal and accounting services, provided to the Pueblo of Tesuque in connection with the operation of a Gaming Facility but that do not constitute “Gaming Services” because they do not directly involve the operation of Class II or Class III Gaming. Examples of “Non-Gaming Services” include but are not limited to equipment, transportation, food, linens, janitorial supplies, maintenance, security services, payroll, and records storage.

ff. “Person” means a natural person, firm, association, partnership, government or political subdivision or agency thereof, joint venture, corporation, or other legal entity.

gg. “Primary Management Official” means:

1. The person having management responsibility for a Management Contract;
2. Any person who has authority:
 - A. To hire and fire employees; or
 - B. To establish working policy for the Gaming Operation; or
3. The chief financial officer or other person who has financial management

responsibility.

hh. “Reservation” means all lands within the exterior boundaries of the Pueblo of Tesuque Indian Reservation and its confirmed grants from prior sovereigns and any lands title to which is held in trust by the United States for the benefit of the Pueblo of Tesuque or a member thereof and held by the Pueblo of Tesuque subject to a restriction by the United States against alienation, and over which lands the Pueblo of Tesuque exercises governmental power.

ii. “State Gaming Representative” means the person or agency designated by the State of New Mexico to be responsible for actions of the State set out in the Compact between the Pueblo of Tesuque and the State of New Mexico.

jj. “Temporary License” means a License for no longer than ninety (90) days issued by the Tesuque Gaming Commission pursuant to the provisions of this Gaming Ordinance.

kk. “Treasurer” means the Treasurer of the Pueblo of Tesuque.

ll. “Tribal Court” means the Pueblo of Tesuque Tribal Court.

SECTION 3. PURPOSES. The purposes of this Gaming Ordinance are to make lawful and to regulate the operation, conduct, and playing of Games of Chance on the Reservation, so that such games are conducted in a fair and honest manner, affording patrons a fair chance to win in accordance with the nature of the games, and so that revenue may be generated by such games to fund tribal governmental operations and programs that promote the health, education, and welfare of the Pueblo of Tesuque and its members and that promote tribal economic development. It is the further purpose of this Gaming Ordinance to regulate the operation of all subsidiary activity taking place at any Gaming Facility so that the public’s health and safety are protected and so that all activity taking place within a Gaming Facility is conducted in compliance with applicable law.

SECTION 4. INTERPRETATION. This Gaming Ordinance is an exercise of the sovereign power of the Pueblo of Tesuque and shall be liberally construed for the accomplishment of its purposes and to comply with the Indian Gaming Regulatory Act.

SECTION 5. GAMING POLICY.

a. **Games of Chance Prohibited.** No person may operate or conduct any Games of Chance within the boundaries of the Reservation except in accordance with the provisions of this Gaming Ordinance.

b. **Ownership of Gaming Enterprise.** The Pueblo of Tesuque, acting through the Council, shall have the sole proprietary interest in and responsibility for any Gaming Operation conducted on the Reservation.

c. **Protection of the Environment, Public and Employee Safety, and Property.** The Pueblo shall construct, maintain, and operate all Gaming Facilities, and all activities taking place at a Gaming Facility shall be conducted, in a manner that adequately protects the environment and the public health and safety.

d. **Licensing Procedures.** Licensing procedures shall be adopted by the Commission and such procedures shall be enforced strictly for all employees of Class II and Class III Gaming operations pursuant to 25 C.F.R. § 558.1(b), including but not limited to the Manager, Primary Management Officials, Key Employees, and all others subject to the licensing requirements of this Gaming Ordinance.

e. **Providers of Class III Gaming Equipment.** Any and all Class III Gaming Machines, Gaming Devices, equipment, or supplies to be used by the Pueblo of Tesuque or Gaming Enterprise in conducting Class III Gaming shall comply with the standards imposed by the State of Nevada on Class III Gaming Machines, Gaming Devices, equipment, or supplies. Compliance with such standards shall begin no later than thirty (30) days after the effective date of the Compact, *provided* that any and all Class III Gaming Machines, Gaming Devices, equipment, or supplies already in use at a Gaming Facility on the effective date of the Compact shall be replaced or upgraded, if necessary, to comply with such standards by no later than one (1) year after the effective date of the Compact. Before the Gaming Enterprise may enter into any future lease or purchase agreement for Class III Gaming Machines, Gaming Devices, equipment, or supplies, the Commission shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the

seller or lessor or the lease or purchase agreement to permit the Commission to license those persons in accordance with the licensing requirements in this Gaming Ordinance. The seller, lessor, manufacturer, or distributor shall provide, assemble, and install all Class III Gaming Machines, Gaming Devices, equipment, and supplies in a manner approved by the Commission.

SECTION 6. PUEBLO OF TESUQUE GAMING COMMISSION.

a. **Establishment of Commission.** The Pueblo of Tesuque Gaming Commission is hereby established for purposes of regulating all Games of Chance and other activity taking place in any Gaming Facility within the Reservation and enforcing this Gaming Ordinance. The Commission shall be an agency of the Tribal Government.

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

1. To permit or refuse to permit the operation or conduct of any Games of Chance within the Reservation and to specify the conditions therefor, *provided* that the operation or conduct of any Games of Chance must be approved by a Resolution of the Council.

2. Subject to appeal pursuant to Section 11 of this Gaming Ordinance, to grant, deny, condition, suspend, reinstate, revoke, or renew any and all Licenses issued or required to be issued in accordance with this Gaming Ordinance, and to hear and decide matters affecting such granting, denying, conditioning, suspending, reinstating, revoking, or renewing of Licenses.

3. To monitor and oversee on a continuing basis the operation and conduct of all Games of Chance and other activity taking place in any Gaming Facility within the Reservation, including but not limited to ongoing monitoring and oversight of Licensees engaged in the operation and conduct of such games.

4. To inspect and examine all Gaming Facilities within the Reservation at which Games of Chance are played during all hours of Class II and Class III Gaming Activity and to have

immediate, unrestricted access to any and all areas of a Gaming Facility to ensure that all Gaming Facilities are constructed, operated, and maintained in a manner that adequately protects the environment and the public health and safety, and otherwise ensures compliance with this Gaming Ordinance, the Compact, and National Indian Gaming Commission regulations.

5. To promulgate rules for any Class II or Class III Gaming Activity on the Reservation, except that rules for Class III activities shall not be in conflict with rules, if any, adopted under the Compact or federal regulations enacted to implement IGRA.

6. To promulgate rules and regulations, in addition to those required by Section 6(b)(5) above, as it deems appropriate to implement the provisions of this Gaming Ordinance.

7. To enforce Technical Standards, Minimum Internal Control Standards, and any other standards required by the National Indian Gaming Commission or other federal or tribal law.

8. To prepare and provide the Gaming Enterprise with the formula to calculate the monthly minimum bankroll requirement, and to review the Gaming Enterprise's monthly calculation.

9. To conduct or cause to be conducted background investigations of persons involved, directly or indirectly, in the operation or conduct of Games of Chance within the Reservation.

10. To inspect, examine, photocopy, and audit all papers, books, and records respecting Gaming Activities operated or conducted within the Reservation and any other matters necessary to carry out the duties of the Commission under this Gaming Ordinance, including all activity conducted at a Gaming Facility.

11. To obtain an order of the Tribal Court to enforce the Commission's authority to inspect, examine, photocopy, and audit all papers, books, and records as authorized by Section 6(b)(10) above.

12. Subject to the approval of the Council, to negotiate and enter into, on behalf of the Pueblo, contracts, Memoranda of Understanding, and Joint Powers Agreements with tribal, federal, state, and private entities for activities necessary to the discharge of the duties of the Commission and to contract with the National Indian Gaming Commission for the enforcement of federal regulations governing gaming on Indian reservations.

13. To establish and collect license and permit fees, investigation fees, and regulatory fees to defray costs associated with the Commission's regulatory activities, *provided* that the license fee payable by a provider of Gaming Services, and the license or permit fee payable by a provider of non-Gaming Services, shall be based on a percentage of the gross receipts of the provider's sales, leases, or other transactions with the Gaming Facility(ies) on the Reservation.

14. To issue subpoenas to require the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under review, consideration, or investigation by the Commission, and to bring actions in the Tribal Court for the enforcement of such subpoenas.

15. To bring suit in the Tribal Court seeking temporary and permanent orders closing a Game of Chance in accord with this Gaming Ordinance.

16. To bring suit in the Tribal Court seeking sanctions, including civil monetary sanctions, for violations of this Gaming Ordinance, of any regulations promulgated hereunder, or of the Compact.

17. To assess civil administrative fines for violations of this Gaming Ordinance, of any regulations promulgated hereunder, or of the Compact.

18. To hold such hearings, to sit and act at such times and places, and to take testimony and receive such evidence as the Commission deems relevant in fulfilling its duties.

19. To administer oaths and affirmations to witnesses appearing before the Commission.

20. To implement and administer a system, including the promulgation of regulations, for investigating and licensing management, employees, vendors, and others connected with Gaming Activities and other activities taking place at a Gaming Facility, including the issuance of Facility licenses to Gaming Facilities, and the issuance of temporary and other licenses to individuals and entities, and the verification of internal controls, as required by this Gaming Ordinance, IGRA, and the Compact or equivalent procedures prescribed by the Secretary.

21. Subject to the approval of the Council and as further set forth in Section 6(m) of this Gaming Ordinance, to adopt the budget of the Commission at least annually and to adopt modifications of such budget.

22. To keep minutes, records, and books in which shall be kept a true, faithful, and correct record of all proceedings before the Commission.

23. To recommend amendments to this Gaming Ordinance to the Council.

24. To submit quarterly reports to the Council on the activities of the Commission, which reports shall include information on funding, revenues, and expenses.

25. To require an audit and a certified financial statement, by an independent certified public accountant licensed by the State of New Mexico, covering all financial activities of the Gaming Enterprise.

26. To carry out the responsibilities and exercise the rights of the Tribal Gaming Agency under the Compact, to obtain any necessary approvals from the Governor or Council for all such activities, and to report to the Governor and Council on all such activities annually and upon

request, and to inspect and make copies of New Mexico state records concerned with all Class III Gaming conducted under this Gaming Ordinance.

27. To hire and fire employees of the Commission as necessary to discharge the Commission's duties, *provided* that all such Commission employees shall be required to submit to and satisfactorily pass a background investigation.

28. To investigate any suspicion of wrongdoing related to any activity conducted at a Gaming Facility, to record and investigate unusual occurrences related to Class II and Class III Gaming at a Gaming Facility, and to cause persons who may be involved in illegal acts to be detained for the purpose of notifying appropriate law enforcement authorities.

29. To conduct or cause to be conducted such investigation as may be necessary to determine, in connection with any activity conducted at a Gaming Facility, compliance with law, including this Gaming Ordinance, or with any contracts or agreements related to activity conducted at a Gaming Facility.

30. To certify Management Contracts in accordance with this Gaming Ordinance.

31. To hear appeals in accordance with this Gaming Ordinance.

32. To ensure that revenues from any Gaming Activities on the Reservation are used only in accordance with this Gaming Ordinance, IGRA, and the Compact.

33. To maintain a compilation of all laws and regulations concerning the operation of Games of Chance on the Reservation.

34. To take such action as may be reasonable and appropriate to enforce this Gaming Ordinance and the rules and regulations of the Commission.

c. **Independent Decision Making Authority.** Notwithstanding the fact that the Commission is an agency of Tribal Government, the decisions of the Commission regarding licensing, suitability, compliance with applicable law, and other regulatory matters shall be within the exclusive province of the Commission, *provided* that any person or entity adversely affected by a ruling of the Commission, including but not limited to the Gaming Enterprise or any employee thereof, may petition the Tribal Court for review of such decision in accordance with Sections 11(f) and 13(c) and (d) of this Gaming Ordinance.

d. **Procedure for Promulgation of Regulations.** The Commission shall comply with the following procedure when promulgating rules and regulations authorized by this Gaming Ordinance:

1. The Commission shall first hold an informal meeting with the Manager and/or other representative(s) of the Gaming Enterprise to discuss the purpose of the proposed regulation and its substantive content. The Gaming Enterprise shall be given an opportunity to advise the Commission of any policy concerns.

2. After the Gaming Enterprise has had an opportunity to advise the Commission of its concerns, the Commission shall put the proposed regulation in a form for formal circulation and comment. At a minimum, the proposed regulation shall be mailed to the Gaming Enterprise, to the Manager, and to each party known by the Commission to be directly affected by the proposed regulation, and copies of the proposed regulation shall be posted at the tribal administration offices, at the Gaming Enterprise offices, and at each Gaming Facility, *provided* that notice of any proposed regulation directly affecting employees of the Gaming Enterprise shall be satisfied by posting the proposed regulation at the Gaming Enterprise offices and at each Gaming Facility. The Commission shall allow a minimum of fourteen (14) and a maximum of thirty (30) calendar days for comment.

3. The Commission may receive comments from all interested parties. After considering all comments, the Commission shall publish the regulation in final form by posting a copy of the final regulation in the tribal administration offices, at the Gaming Enterprise offices, and at each Gaming Facility, and by sending a copy of the final regulation to the Gaming Enterprise, to the Manager, and to each party known by the Commission to be directly affected by the subject of the proposed regulation, *provided* that notice of any proposed regulation directly affecting employees of the Gaming Enterprise shall be satisfied by posting the final regulation at the Gaming Enterprise offices and at each Gaming Facility.

4. The regulation shall become effective upon publication by posting and circulation as specified in Subsection 6(d)(3) above.

5. Copies of all regulations promulgated by the Commission shall be kept in the Commission's office for public inspection and copying during normal office hours, Monday through Friday, excluding holidays. Copies of all Tribal Council resolutions involving gaming or that affect gaming, shall be kept with documents in the Commission offices showing tribal laws and regulations in effect.

6. Council approval is not necessary for any Commission rule or regulation to take effect, but the Council shall have the power, prior or subsequent to the effective date of the regulation, to modify or rescind any regulation.

e. **Composition; Selection; Term.** The Commission shall consist of three (3) full-time Commissioners appointed by the Council. A Commissioner may be involuntarily removed from office only by the Council, and only for cause and pursuant to the procedures set forth in Subsection (h) of this Section.

f. **Qualification of Commissioners.** Two (2) Commissioners must be Members of the Pueblo of Tesuque, and one (1) Commissioner must be a non-member of the Pueblo of Tesuque. No person shall be eligible or qualified to serve or continue to serve as Commissioner or as an appointee or employee of the Commission, who:

1. Has been convicted of a felony or gaming offense;
2. Has any financial interest in, or management responsibility for, any Gaming Activity or supplier of any Gaming Device (except that marriage to an individual who is employed by the Gaming Enterprise but not as a Key Employee or Primary Management Official is permitted); or
3. Has a financial interest in, or management responsibility for, any Management Contract submitted to the Council for review or approval.

g. **Licensing of Commissioners.** Commissioners shall be licensed by the Commission. Notwithstanding any other provision of this Gaming Ordinance, the decision of the Commission to grant a license to a proposed appointee to the office of Commissioner shall require the ratification of the Council. Upon conclusion of the required background investigation and after making its suitability determination, the Commission shall forward to the Governor its determination that the proposed appointee is suitable for licensing and that a License should be granted. The Council shall decide whether or not to ratify the Commission's suitability finding. In making its decision, the Council may review the background investigation material gathered by the Commission, *provided* that each Council member shall first sign a confidentiality agreement (or any other agreement required by an applicable federal agency) expressly agreeing that he shall not disclose the background information to any other person. The Council's refusal to ratify the Commission's decision to grant a License to a proposed appointee shall be final and not subject to appeal.

h. **Removal of Commissioners.** A Commissioner may be involuntarily removed from office by the Council only for cause and only in accordance with the following procedures:

1. Removal of a Commissioner may be initiated by a member or members of the Council, who shall provide the Governor with a written request specifying the cause for removal, signed by not fewer than six (6) members of the Council;

2. The cause for removal shall be limited to: (i) conviction in any court of a felony or crime involving moral turpitude; (ii) failure to meet or maintain the qualifications for Commissioners set forth in Subsection (f) of this Section; (iii) gross neglect of duty; (iv) malfeasance in office; or (v) conduct that amounts to gross and intentional disregard of the laws and procedures applicable to the affairs of the Commission;

3. Not less than twenty (20) nor more than thirty (30) days following receipt of the written request for removal, the Council shall convene a special meeting for the sole purpose of voting on the removal of the Commissioner. Before any vote is taken, the Commissioner shall be given a full opportunity, either in person or through a representative of his or her choice, to answer or otherwise respond to any and all charges against him or her; and

4. To remove a Commissioner from office, the affirmative vote of no fewer than six (6) of the members of the Council is required.

i. **Resignations and Vacancies.** A Commissioner may resign at any time by giving written notice to the Chairperson of the Commission and to the Governor. The resignation shall become effective at the time specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Commission, howsoever caused, shall be filled for the unexpired portion of the vacated Commissioner's term by a qualified person appointed by the Governor with the written consent of the Council.

j. **Selection of Officers.** The Commission shall select annually by majority vote one of its members to serve as Chairperson and one of its members to serve as Vice Chairperson/Secretary. The Vice Chairperson/Secretary shall serve as Chairperson during meetings of the Commission at which the Chairperson is absent.

k. **Motions and Resolutions; Meetings; Quorum.** The powers of the Commission are vested in the Commissioners. All official actions of the Commission shall be taken by motion or resolution approved by the affirmative vote of a majority of the Commission. The Commission shall meet at the call of the Chairperson or a majority of the Commissioners. Two (2) members of the Commission shall comprise a quorum.

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

m. **Budget.** The Commission's budget shall be funded from the following sources, which shall be reflected as revenues on the budget submitted annually by the Commission to the Council for approval:

1. All license fees required by this Gaming Ordinance, which shall be payable to and retained by the Commission;
2. An annual regulatory fee of two hundred fifty thousand dollars (\$250,000), payable by the Gaming Enterprise directly to the Commission in twelve (12) equal monthly installments;
3. Such other amounts as the Commission may request and the Council may grant; and

4. The fee assessed in Subsections (m)(2) above shall increase by three percent (3%) each year, beginning on the first day of January, 2003.

n. **Compensation.** The Commissioners shall be compensated as determined by the Council.

SECTION 7. LICENSES FOR OPERATING AND CONDUCTING GAMES OF CHANCE.

a. **Licenses Required.**

1. **Gaming Commissioners.** Each member of the Commission shall be licensed by the Commission, subject to Council ratification as required by Section 6(g) of this Gaming Ordinance, and subject to a background investigation.

2. **Gaming Facility.** Each place, facility, or location on the Reservation where the Pueblo elects to engage in Gaming Activities shall be licensed by the Commission.

3. **Gaming Enterprise.** The Gaming Enterprise shall be licensed by the Commission.

4. **Gaming Employees.** All Gaming Employees shall be licensed by the Commission and subject to background investigations. For purposes of this Section, Gaming Employee means any natural person employed by the Gaming Enterprise, including but not limited to the Manager, Key Employees, and Primary Management Officials, and regardless of whether or not the employee's duties involve direct involvement in or contact with Gaming Activities.

5. **Management Contractors.** All Management Contractors, including their principals, Primary Management Officials, Key Employees, and shareholders having in excess of 5% ownership, shall be licensed by the Commission and subject to background investigations.

6. **Providers of Gaming Devices, Equipment, or Services.** Any person proposing to sell or lease any Gaming Device, Gaming Equipment, or to provide Gaming Services to a

Gaming Enterprise shall be licensed by the Commission and subject to background investigation before being permitted to sell or lease any Gaming Device or Gaming Equipment or to provide any Gaming Services to any Gaming Enterprise, Gaming Facility, or Management Contractor.

7. **Providers of Non-Gaming Services.** Any person proposing to sell, lease, or provide Non-Gaming Services to a Gaming Enterprise shall be issued a license or a permit by the Commission and subject to background investigation before being permitted to sell, lease, or provide Non-Gaming Services to any Gaming Enterprise, Gaming Facility, or Management Contractor. Individual principals, Key Employees, Primary Management Officials, and other employees of Providers of Non-Gaming Services shall be licensed and subject to background investigation to the extent deemed necessary and appropriate by the Commission, taking into consideration such factors as (but not limited to) the nature of the service provided, the size and geographical location of the Provider's offices, and the extent of any individual's access to the Gaming Facility.

8. **Lenders, Investors, and Providers of Financial Services.** Lenders, investors, and providers of financial services, and such agents, employees, and major shareholders of such persons as required by the Commission, shall be licensed by the Commission and subject to background investigation.

b. **License Application.** Each applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, along with the applicant's fingerprint card, current photograph, and the fee required by the Commission.

1. The following notice shall be placed on the application form for all employees before that form is filled out by an applicant:

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 Tesuque Gaming Commission and the National Indian Gaming Commission, which have need for the information in the 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 investigation or prosecution or when, pursuant to a requirement by a tribe or the National Indian Gaming Commission, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigation of activities while associated with a tribe or a Gaming Operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise

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

2. Existing Key Employees and Primary Management Officials shall be notified in writing that they shall either:

A. Complete a new application form that contains the Privacy Act notice; or

B. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for all employees before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U.S.C. §1001.

4. The Commission shall notify all existing employees in writing that they shall either:

A. Complete a new application form that contains a notice regarding false statements; or

B. Sign a statement that contains the notice regarding false statements.

c. **Background Investigations.**

1. Upon receipt of a completed application and the required fee, the Commission shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. The background investigation shall be at least as stringent as is required by the Compact and 25 C.F.R. Part 556, and shall provide all available information necessary to the determination required under 25 C.F.R. § 558.2. In particular, the Commission shall cause a thorough criminal history check to be made of each applicant, by having the National Indian Gaming Commission process the applicant's fingerprint card through the Federal Bureau of Investigation.

3. The Commission shall request from each applicant, and from each principal, Primary Management Official, and Key Employee of each applicant, 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, and all languages spoken or written;

B. Currently and for the previous ten (10) years, business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; *provided* that all applicants for positions as Primary Management Official, Key Employee, Management Contractor, manufacturer or supplier of Gaming Machines or Gaming Devices, and/or a person providing Gaming Services, must provide such information currently and from the age of eighteen (18);

C. The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Subsection (c)(3)(B) of this Section;

D. Current business and residence telephone numbers;

E. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses, and a description of any potential or actual conflict of interest between such businesses and Indian tribes;

F. A description of any existing and previous business relationships in 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 applicant 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 charge for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

I. For each misdemeanor charge for which there is an ongoing prosecution or conviction (excluding minor traffic charges), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

J. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Subsection (c)(3)(H) or (c)(3)(I) of this Section, 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 taken by the Commission;

N. The fee required by the Commission; and

O. Any other information, including tax returns, financial statements, or other financial information, that the Commission deems relevant.

4. In conducting a background investigation, the Commission and its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

5. Background checks of applicants will be performed pursuant to the following procedures:

A. The Commission will provide applications to potential applicants upon request, and shall collect and maintain the applications;

B. The Commission shall investigate or cause to be investigated the information provided in the applications. Such 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 Commission to make a determination on whether the applicant meets applicable eligibility requirements; (iii) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and (iv) contacting any state, federal, or other government agency that is referred to in the application.

C. The Commission shall document any information obtained that calls into question whether the applicant meets the eligibility requirements under this Gaming Ordinance. The disposition of these problem areas shall be documented in detail, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

D. The Commission will review the results of the investigation for all persons subject to licensing, including a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found to be insufficient, the Commission will perform additional investigations.

E. Once the investigation is complete, the Commission will decide whether the applicant meets the eligibility requirements under the Gaming Ordinance.

F. In conducting a background investigation and review, the Commission and its agents and all persons privy to the information shall keep confidential the identity of each person interviewed in the course of investigation.

d. **Temporary License.** Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Commission may issue a temporary License to the applicant unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The Commission may suspend a Temporary License, pending further investigation, if additional information comes to light in the course of the investigation suggesting that the Applicant will not qualify for a License or if the Applicant has made a false statement or deliberately or substantially failed to provide information to the Commission. The Temporary License shall become void and be of no effect upon either (1) the issuance of the License; (2) the issuance of a notice of denial; or (3) ninety (90) days after the Licensee has begun working.

e. **Eligibility Determination.** The Commission shall review the person's prior activities, criminal record, if any, and reputation, habit, and associations to make a finding concerning the eligibility of an applicant, or a principal, Key Employee, or Primary Management Official of an applicant, for employment or involvement in the Gaming Enterprise. Upon completion of the investigation, the Commission shall either determine that an applicant is eligible to be licensed or deny the application. If the Commission determines that employment or involvement of any person or applicant poses a threat to the public interest or to the effective regulation of any Gaming Activity, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities of any Gaming Operation, the Commission shall deny the application.

f. **Additional Background Investigations.** The Commission retains the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

g. **Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission and the State Gaming Representative.**

1. When a Key Employee or Primary Management Official begins work at the Gaming Enterprise, the Commission shall forward to the National Indian Gaming Commission and the State Gaming Representative a completed application for employment and conduct the background investigation and make the eligibility determination referred to in Subsection (e) of this Section.

2. The Commission shall forward the report referred to in Subsection (h) of this Section to the National Indian Gaming Commission and the State Gaming Representative within sixty (60) days after an employee begins work.

3. The Gaming Enterprise shall not employ as a Key Employee or Primary Management Official a person who does not have a License after ninety (90) days.

h. Report to the National Indian Gaming Commission and the State Gaming Representative.

1. Pursuant to the procedures set out in Subsection (g) of this Section, the Commission shall prepare and forward to the National Indian Gaming Commission and to the State Gaming Representative an investigative report on each background investigation on each applicant for a License. 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 bases for those conclusions.

2. The Commission shall submit with the report a copy of the eligibility determination made under Subsection (e) of this Section.

3. If a license is not issued to an applicant, the Commission:

A. Shall notify the National Indian Gaming Commission and State Gaming Representative; and

B. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

4. With respect to principals, Key Employees, or Primary Management Officials, the Commission shall retain applications for employment and reports (if any) of background investigations for no less than three (3) years from the date of termination of employment.

i. Granting of a Gaming License.

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives an investigative report, the National Indian Gaming Commission notifies the

Commission that it has no objection to the issuance of a License, and the State Gaming Representative has no objections within thirty (30) days following its receipt of an investigative report, the Commission may issue a License to the applicant.

2. The Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission 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 thirty (30) day period under Subsection (i)(1) of this Section until the Chairman of the National Indian Gaming Commission and/or State Gaming Representative receives the additional information; *provided* that, in no event shall a request for additional information by the State Gaming Representative extend the thirty (30) day period under Subsection (i)(1) of this Section for a total period of more than sixty (60) days from the date the State Gaming Representative received the investigative report.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission or State Gaming Representative provides the Commission with a statement itemizing objections to the issuance of a License to a principal, Key Employee, or Primary Management Official for whom the Commission has provided an application and investigative report, the Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission and/or State Gaming Representative, and shall make a final decision whether to issue a License to such applicant.

j. **Duration and Renewal of Licenses.** A License shall be effective for a time period to be specified by the Commission, not to exceed three (3) years from the date of its issuance; *provided* that, a Licensee that has applied timely for a renewal may continue to be employed or engaged or to conduct business under an expired License until action is taken on the renewal application by the

Commission. Applicants seeking renewal of a License shall pay a renewal fee and update information, as requested, on the appropriate renewal forms, but, in the discretion of the Commission, may not be required to resubmit historical data already available to the Commission.

SECTION 8. MANAGEMENT CONTRACT.

a. **Hiring of Manager.** The Council may hire and employ a Manager to manage and direct the day-to-day business affairs of the Gaming Enterprise. The Manager may be hired directly as an employee of the Pueblo of Tesuque or pursuant to a written Management Contract. A Management Contract must conform to the requirements of this Gaming Ordinance, tribal law, and the Indian Gaming Regulatory Act and regulations promulgated thereunder, and any such contract must be approved by the Council in accordance with the provisions of this Section, and must further be approved by the Chairman of the National Indian Gaming Commission in accordance with the provisions of 25 C.F.R. Part 533. The Council shall provide the Commission with a copy of every contract employing a Manager, regardless of whether the Manager is hired directly as an employee of the Pueblo or pursuant to a written Management Contract.

b. **License Required Upon Approval of Management Contract.** Upon approval of any Management Contract, all principals, Primary Management Officials, and Key Employees of the Management Contractor must obtain a License from the Commission within sixty (60) days.

c. **Standards for Approval.** The Council may approve a Management Contract only if the contract provides:

1. For the adoption and maintenance of adequate accounting procedures and for verifiable financial reports to be prepared and submitted to the Council on a monthly basis;

2. For access of the Commission to the Gaming Operations and for permission for the Commission to verify the daily gross revenues and income made from Class II and Class III Gaming Activity.

3. For a minimum guaranteed payment to the Pueblo of Tesuque, which payment must be made prior to retirement of any development and construction costs;

4. For an agreed ceiling for the repayment of development and construction costs;

5. For a contract term not to exceed five (5) years, except that the Council may authorize a contract term that exceeds five (5) years but does not exceed seven (7) years if the Council is satisfied that the investment required and the income projections for the Gaming Operation require the additional time;

6. For grounds and procedures for terminating such contract;

7. That the Management Contractor has no authority to waive the Pueblo of Tesuque's sovereign immunity without a duly passed resolution of the Council on a contract by contract basis;

8. Requires that all Gaming Activity covered by the Management Contract will be conducted in accordance with this Gaming Ordinance and regulations promulgated hereunder, the Compact, if applicable, and the Indian Gaming Regulatory Act; and

9. All other provisions required by 25 C.F.R. § 531.1.

d. **Management Contract Fees.** The Council may approve a Management Contract providing for a fee based upon a percentage of the Net Revenues. Such fee shall not exceed thirty percent (30%) of the Net Revenues, except that the Council may approve a Management Contract providing for a fee that exceeds thirty percent (30%) but not forty percent (40%) of the Net Revenues of a Gaming

Activity if the Council is satisfied that the capital investment required and income projections for such Gaming Activity require the additional fee.

e. **Grounds for Disapproval.** The Council shall not approve any Management Contract if the Council determines that:

1. The Management Contractor, or any principal, Primary Management Official, or Key Employee of the Management Contractor, is not licensed or is ineligible to be licensed;

or

2. A trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

f. **Modification and Revocation of Management Contract.** The Council shall have the authority to require appropriate contract modifications and may void any Management Contract if it determines that this Gaming Ordinance or the Management Contract has been violated.

g. **Management Contract Binding Upon Approval.** No Management Contract, and no modification, revision, or amendment thereto, shall be binding upon the Pueblo of Tesuque unless and until approved by the Council and by the Secretary of the Interior or the Chairman of the National Indian Gaming Commission and forwarded to the Commission.

SECTION 9. FINANCIAL PRACTICES AND REPORTING.

a. **Monthly Reports.** On or before the tenth (10th) day of each month, the Manager shall file with the Commission and the Council a certified financial report for the preceding calendar month showing the amount of Gross Receipts derived by the Gaming Enterprise, the operating expenses incurred or paid, the specific classifications of such expenses, and the Net Revenues derived from the Gaming Enterprise. The monthly financial report shall be accompanied by a separate document calculating the Gaming Enterprise's minimum bankroll requirements for the coming month, determined

pursuant to the formula provided by the Commission. Both the Manager and the Comptroller (or other Chief Financial Officer) of the Gaming Enterprise shall sign such monthly reports, certifying that the report is true and correct to the best of their knowledge. It is the duty of the Manager to maintain and keep such books and records as may be necessary to substantiate the particulars of each report. If the Manager fails to file a report within the time allowed, or if a report is not properly certified or not fully, accurately, and truthfully completed, the License of the Manager may be suspended until the deficiency has been corrected.

b. **Maintenance of Books and Records; Commission Access.** Full and accurate books of account, maintained in accordance with generally accepted accounting principles consistently applied, shall be kept on the premises of a Gaming Facility showing the condition of the business and all transactions conducted by the Gaming Enterprise. The Commission and the Council shall have access to such books of account and shall be entitled to examine them in any form or medium without notice at any time, either in person or by an agent, and the Manager's consent to such access and examination shall not be necessary. All records required to be kept by this Section in whatever form or medium shall be maintained for not less than five (5) years. Such records shall include:

- 1 Revenues, expenses, assets, liabilities, and equity for each Gaming Enterprise;
2. Daily cash transactions for each Class III Gaming Activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox, and gaming room bank;
3. All returned checks, hold checks, or other similar credit instruments:

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

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

6. Records of all tribal gaming enforcement activities;

7. Audits prepared by or on behalf of the Pueblo of Tesuque or the Gaming Enterprise;

8. Personnel information on all Gaming Employees, including rotation sheets, hours worked, employee profiles, and background checks, if in the possession of the Gaming Enterprise.

c. **Allowable Operating Expenses.** No item of expense shall be incurred or paid in connection with operating or conducting any Gaming Operation except a bona fide expense in a reasonable amount. Expenses may be incurred for such items and purposes that a similar enterprise would incur or pay under generally acceptable accounting principles, including but not limited to the following:

1. For the purchase of goods, wares, and merchandise furnished;

2. For services rendered by the Manager (including repayment of development fees and construction costs, if any) for maintenance or reports of gaming and related equipment, and for operating or conducting Games of Chance;

3. For regulatory fees required to be paid to the Pueblo of Tesuque, the National Indian Gaming Commission, or the State of New Mexico under the Compact;

4. For rent, janitorial, and security services;

5. For legal and accounting fees;

6. For taxes and license fees;

7. For utilities and trash removal costs;
8. For advertising;
9. For vehicle expenses;
10. For insurance;
11. For the interest portion of any debt payments;
12. For employee training;
13. For necessary and appropriate business travel;
14. For employee wages; and
15. For prizes for winners of Games of Chance.

d. **Deposit of Gross Receipts; Payment of Operating Expenses.** All Gross Receipts shall be deposited in a separate Gaming General Operating Account of the Pueblo of Tesuque which shall contain only gross receipts. All operating expenses shall be withdrawn from such account by consecutively numbered checks duly signed by the Manager or an official or officials designated by the Manager payable to a specific person or organization.

e. **Annual Audit.**

1. The Council shall retain a certified public accountant, licensed by the State of New Mexico, as the independent outside auditor of the Gaming Enterprise. The auditor shall conduct an annual outside independent certified audit of all activities being conducted by the Gaming Enterprise. The audit shall be prepared in accordance with generally accepted accounting principles consistently applied. The auditor shall report on the auditor's examination of the books and records of the Gaming Enterprise and on the auditor's recommendations with respect to the management of the Gaming Enterprise and any failure to comply with applicable law or contractual obligations. Prior to commencement of the audit, the Council and the auditor, in consultation with the Commission and the

Manager, shall define the scope of the audit. The Council and the Commission may, in their discretion, require that the scope of the audit be expanded to better reflect the financial operations, condition, and obligations of the Gaming Enterprise. The Commission may designate an individual from the Commission to observe and maintain communication with the independent auditor once the Council has selected the auditing firm.

2. The Gaming Enterprise, within one hundred and twenty (120) days of the close of the Pueblo of Tesuque's fiscal year, shall deliver the annual outside certified audit and financial statement to the Council, the Commission, and the National Indian Gaming Commission in accordance with all applicable regulations.

3. The Commission, within one hundred and twenty (120) days of receiving the audit and certified financial statement, shall furnish copies of the audit and certified financial statement covering all Class III Gaming of the Gaming Enterprise to the State Gaming Representative and the State Treasurer, to the extent required by the Compact.

f. **Audit of Contracts.** All gaming related contracts for supplies, services, or merchandise, in an amount greater than \$25,000 annually, except contracts for professional legal or accounting services, shall be specifically included within the annual outside independent certified audit referred to in Subsection (e) of this Section.

g. **Disposition of Net Revenues.** The Net Revenues derived from any Gaming Operation shall be deposited into the general fund of the Pueblo of Tesuque and shall not be used for purposes other than:

1. To fund Pueblo of Tesuque governmental operations and programs;
2. To provide for the general welfare of the Pueblo of Tesuque and its members;

3. To promote tribal economic development;
4. To contribute to charitable organizations; and
5. To help fund operations of local Pueblo of Tesuque governmental agencies.

h. **Compliance with Internal Revenue Code.** The Manager and Gaming Enterprise shall maintain a permanent record containing the name and address of each player who receives a prize if and as required by, and in accordance with, the Internal Revenue Code.

i. **Compliance with Bank Secrecy Act.** The Manager and Gaming Enterprise shall comply with all applicable provisions of the federal Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all record-keeping and reporting requirements of the Internal Revenue Service.

SECTION 10. TESUQUE GAMING ENTERPRISE.

a. **Establishment of the Enterprise.** There is hereby established, as a wholly owned enterprise of the Pueblo of Tesuque, the Tesuque Gaming Enterprise, which enterprise shall have the authority to establish, equip, operate, and maintain Class II and Class III Gaming Operations on the Reservation at such locations as the Council may designate. The Tesuque Gaming Enterprise shall have the following powers and duties:

1. To acquire, construct, lease, modify, furnish, equip, and maintain such facilities and premises as the Gaming Enterprise determines are necessary or appropriate to engage in Gaming Operations in accordance with this Gaming Ordinance.

2. Subject to Council approval as required in Section 10(b)(3) of this Gaming Ordinance, to employ, direct, supervise, manage, control, promote, demote, discharge, fix the compensation of, and define the powers and duties of such officers and other employees as the Gaming

Enterprise determines are required for the operation and conduct of Gaming Activities in accordance with this Gaming Ordinance.

3. To engage in Gaming Activities in accordance with this Gaming Ordinance, *provided* that the Gaming Enterprise may conduct only such Class III Gaming activities as are authorized by the Compact, and *provided further* that the Gaming Enterprise shall obtain authorization from the Gaming Commission before commencing any new Class II or Class III Game and before resuming any previously discontinued or suspended Class II or Class III Game.

4. To adopt operating plans and budgets.

5. To adopt personnel policies, which are subject to the approval of the Council, a copy of which (together with all amendments thereto) shall be forwarded upon adoption to the Commission.

6. To adopt operating procedures for each department, a copy of which (together with all amendments thereto) shall be forwarded upon adoption to the Commission.

7. To enter into contracts and expend funds of the Gaming Enterprise without Council approval up to the dollar limit on contracts and expenditures applicable to other Pueblo tribal enterprises, unless the Council by resolution specifically establishes some other spending limit for the Gaming Enterprise. Any contract or expenditure by the Gaming Enterprise in an amount greater than the designated limit requires specific approval by the Council.

8. Without in any way limiting or being limited by the foregoing, to do all other lawful things and perform all other lawful acts as the Gaming Enterprise determines are necessary or appropriate for the purpose of engaging in Gaming Activities, and all other activities reasonably related thereto, in accordance with this Gaming Ordinance.

b. **Supervision of Gaming Activities.**

1. The Gaming Enterprise shall be under the overall direction of the Council, which shall act as the Board of Directors of the Gaming Enterprise. The day-to-day operations of the Gaming Enterprise shall be under the direction of the Manager, who shall be hired by the Council in accordance with the provisions of Section 8 of this Gaming Ordinance.

2. The Manager, subject to the guidance and direction of the Council (acting as the Board of the Enterprise), shall have and perform all of the powers and duties of the Gaming Enterprise.

3. The Manager shall hire and supervise the other employees of the Gaming Enterprise, subject to the following conditions:

A. Council approval is required for the hiring, firing, and specific terms of employment (including but not limited to compensation) for the following specific Gaming Enterprise employees: Assistant Managers, Comptroller (or other Chief Financial Officer), Human Resources Director, Slots Director, Marketing Director, and Security Director;

B. Council approval is required for any employee to be paid in excess of \$50,000 per year;

C. No Gaming Enterprise employee may be paid a bonus without the prior approval of the Council.

c. **Budgets; Business Plan.**

1. *Budget.* The Gaming Enterprise shall prepare and adopt an annual budget, which must be submitted to and approved by the Council.

2. *Business Plan.* The Gaming Enterprise shall prepare and submit to the Council an annual Business Plan, which shall include but not be limited to the coming year's revenue goals, anticipated capital improvements, management changes, and marketing initiatives.

d. **Contracts.** The Gaming Enterprise shall provide copies of all contracts, for both Gaming Services and Non-Gaming Services, to the Commission.

e. **Officer in Charge.** The Manager shall designate an employee of the Gaming Enterprise to be the Officer in Charge on each day during which any Gaming Activities are being conducted by the Gaming Enterprise, *provided* that no person shall be designated Officer in Charge unless such person has held a valid gaming License issued by the Commission under the provisions of this Gaming Ordinance for no fewer than ten (10) days prior to the date on which such person is designated Officer in Charge. The Officer in Charge shall have direct responsibility for all Gaming Activities on that day. The Officer in Charge shall supervise all activities and shall be present on the premises continuously throughout the period during which Gaming Activities are taking place and for a period of at least one hour after such activities have been concluded for the day.

f. **Premises Open to Commission.** All areas of any Gaming Facility shall at all times be open to inspection by the Commission and the Council, and their agents specifically appointed for any such inspection.

g. **Provisions Applicable to Bingo Games.** The following provisions shall apply to the conduct of Bingo Games at any Gaming Facility operated by the Gaming Enterprise:

1. ***Merchandise Prizes.*** When any merchandise is awarded as a prize in a Bingo Game, the value of such merchandise shall be its current retail price. Merchandise awarded as a prize shall not be redeemable or convertible into cash, directly or indirectly.

2. **Usual Prices.** Equipment, prizes, and supplies for Bingo Games shall not be purchased or sold at prices in excess of the usual price thereof.

3. **No Limit on Prizes.** There shall be no limit on the size of the prize offered or given in any Bingo Game.

4. **Rules of Play.** Bingo Equipment shall be designed and maintained, and the method of play shall be such, that each card shall have an equal opportunity to win. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game has begun. All numbers or designations drawn shall be announced plainly and clearly, and shall be audible or visible to all the players present including, where more than one room is used for any Bingo Game, all players present in each room. The receptacle, the caller, and the person removing the objects or balls from the receptacle must be visible to all the players at all times, except that where more than one room is used for any Bingo Game, the receptacle and the caller must be present in the room where the greatest number of players is present. The cards or sheets of the players shall be part of a deck, group, or series of cards, no two of which shall be alike, and which deck, group, or series shall not be so prepared or arranged as to prefer any card. The particular arrangement of numbers or designations required to be covered in order to win the game and the amount of the prize shall be plainly and clearly described, and audibly or visibly announced to the players immediately before each game has begun.

5. **Players Entitled to Verification.** Any player shall be entitled to call for a verification of all numbers or designations drawn at the time a winner is determined, and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the Officer in Charge on the occasion.

6. **Players Required to be Present.** Only persons physically present on the premises where a Bingo Game is actually operated and conducted may participate as players in the game.

7. **Additional Rules.** The Commission shall have the authority to promulgate additional rules, not inconsistent with this Gaming Ordinance, governing Bingo Games conducted hereunder, to protect the players and assure the fairness of such games.

h. **Provisions Applicable to Class III Gaming Activities.** The following provisions shall apply only to the conduct of Class III Gaming activities operated by the Gaming Enterprise:

1. **Class III Gaming to be Conducted in Accordance with Compact.** Any and all Class III Gaming activities to be conducted by the Gaming Enterprise shall be conducted in accordance with the Compact. In the event of any inconsistency between this Gaming Ordinance and such Compact, the Compact shall control; *provided* that, in the event of any inconsistency between the Compact and the Indian Gaming Regulatory Act or other federal law, such federal law shall control. As required by the Compact, the following provisions are hereby adopted as a matter of Pueblo of Tesuque law and shall be enforced with respect to the Pueblo of Tesuque's conduct of Class III Gaming:

A.. No person under twenty-one (21) years of age shall participate in Class III Gaming.

B. The Gaming Enterprise shall not employ any person in Class III Gaming who is under twenty-one (21) years of age or who has not been licensed in accordance with this Gaming Ordinance.

C. The Gaming Enterprise shall meet standards and requirements equivalent to or more stringent than those in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and other federal laws generally applicable to Indian Tribes relating to wages, hours and conditions of work, and the regulations issued thereunder; *provided* that the

imposition of such standards shall not be construed as a submittal by the Pueblo of Tesuque to federal jurisdiction under said laws or as creating under Pueblo of Tesuque law any causes of action available to any person under such federal laws.

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

E. The Gaming Enterprise and any Management Contractor shall not discriminate in the employment of persons at the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age, or handicap; *provided* that, the Pueblo of Tesuque, the Gaming Enterprise, and any Management Contractor shall provide for tribal member and other Indian preference in employment in Class II and Class III Gaming activities as set forth in this Gaming Ordinance, consistent with Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

F. The Gaming Enterprise shall allow the State of New Mexico Department of Environment and/or United States Indian Health Service inspectors to inspect the food service operations of a Gaming Facility where Class III Gaming is conducted during the normal business hours of the Gaming Facility to assure that standards and requirements equivalent to the State's Food Service Sanitation Act are maintained.

G. The Gaming Enterprise shall not:

- i. cash for patrons any paycheck or any type of government assistance check, including Social Security, TANF, pension, and other similar checks; or
- ii. extend credit to patrons by accepting IOUs or markers.

H. Each electronic and electromechanical Gaming Machine in use at the Gaming Facility must pay out a mathematically demonstratable percentage of all amounts wagered, which percentage shall be not less than eighty percent (80%), and the odds of a player achieving a winning outcome from the games on each Gaming Machine must be posted on each such Gaming Machine.

I. Automatic teller machines located on Gaming Facility premises where Class III Gaming is conducted shall be programmed so that such machines will not accept cards issued by the State of New Mexico to TANF recipients for access to TANF benefits.

J. No later than ninety (90) days after the effective date of the Compact, all Gaming Machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each Gaming Machine in use. The wager and payout data of each machine, once it is fed into the Gaming Enterprise's central computer, may be accessed electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; *provided* that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer.

K. If the Council and Gaming Enterprise permit alcoholic beverages to be served and consumed at the Gaming Facility:

i. No employee of the Gaming Enterprise shall sell, serve, give, or deliver an alcoholic beverage to an intoxicated person or procure or aid in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

ii. Employees of the Gaming Enterprise that dispense, sell, serve, or deliver alcoholic beverages must attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act;

iii. The Gaming Enterprise shall purchase and maintain a liquor liability insurance policy that will provide personal injury coverage of at least one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year; and

iv. No alcoholic beverages shall be sold, served, delivered, or consumed in that part of the Gaming Facility where Class III Gaming is allowed.

L. The Gaming Enterprise will provide annually to the State Gaming Representative a certificate of insurance showing that it is maintaining in effect policies of liability insurance insuring the Gaming Enterprise, the Pueblo of Tesuque, and their agents and employees against claims, demands, or liability for bodily injury and property damages brought by a patron or visitor arising from an occurrence described in Subsection (b)(1) of Section 14 of this Gaming Ordinance, and such policies shall provide bodily injury and property damage coverage in an amount of at least fifty million dollars (\$50,000,000) per occurrence and fifty million dollars (\$50,000,000) annual aggregate and include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured up to the limits of such coverage, *provided* that such limits of liability insurance coverage shall be subject to increase or decrease as may be required by the Compact.

M. The Gaming Enterprise shall spend an amount no less than one-quarter of one percent (.25%) of its Net Win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, or for the prevention of compulsive gambling in New Mexico, and shall distribute a substantial portion of such funds to an organization that has expertise in and provides

counseling, intervention, or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership. The Gaming Enterprise shall provide the Commission with documents sufficient to permit the Commission to verify compliance with this requirement, including but not limited to a detailed budget of amounts spent for this purpose and the recipients of the payments.

N. The Gaming Enterprise shall not operate any Class III Gaming at the Gaming Facility for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays).

O. Neither the Pueblo of Tesuque nor the Gaming Enterprise may provide, allow, contract to provide, or arrange to provide alcoholic beverages for no charge or at reduced prices, or provide, allow, contract to provide, or arrange to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to participate in Class III Gaming.

P. The Gaming Enterprise or a Management Contractor shall report to the New Mexico secretary of state, in the same manner and at the same times as are required of political committees under the provisions of the state's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative, or employee, of any moneys derived from revenue from the Gaming Enterprise or of anything of value acquired with that revenue, to a candidate, political committee, or person holding an office elected or to be elected at any election covered by the state's Campaign Reporting Act.

Q. The Commission shall provide true and correct copies of all tribal laws and regulations affecting Class III Gaming to the State Gaming Representative and the National Indian Gaming Commission and will provide true copies of any amendments thereto or additional laws

or regulations affecting Class III Gaming within thirty (30) days after their enactment (or approval, if any); *provided* that the Commission or the Pueblo of Tesuque shall provide copies of any amendments to this Gaming Ordinance to the National Indian Gaming Commission within fifteen (15) days after the adoption of the amendments.

R. The Commission shall certify annually to the State Gaming Representative that the Commission has met its regulatory obligations under the Compact.

2. ***Vendor Licensing.*** Any Person that has supplied or proposes to supply any Gaming Machines, Gaming Devices, or equipment to the Gaming Enterprise for use in conjunction with any Class III Gaming Activity must be licensed by the Commission and shall be subject to a full background investigation in accordance with the provisions of Section 7 of this Ordinance, and the Commission shall prescribe appropriate forms, procedures and standards for such licensing.

3. ***Class III Gaming Rules.*** The Commission shall have the authority to prescribe such other rules and procedures to govern any Class III Gaming authorized to be conducted under the terms of the Compact and this Gaming Ordinance, which are not inconsistent with the provisions of the Compact, this Gaming Ordinance, or the Indian Gaming Regulatory Act and regulations issued thereunder.

i. **Employees; Prohibition Against Employees Engaging in Gaming.** Any and all persons who operate or conduct or assist in operating or conducting any Games of Chance hereunder shall be employees of the Gaming Enterprise and shall wear legible identification tags, issued by the Commission, showing their names and photographs, and the name of the Gaming Enterprise. No employee of the Gaming Enterprise, the Commission, or the Manager may participate in Games of Chance conducted by the Gaming Enterprise or win any prize or thing of value from the Gaming Enterprise during his or her employment and for a period of ninety (90) days after the termination of such employment.

j. **Qualifications for Employment.** Employees of the Gaming Enterprise shall be of good moral character, shall not have been convicted of any felony or gaming offense, and, as a condition of their contract of employment, shall agree to any lawful means of testing for truthfulness, including but not limited to polygraph testing, at any time and without prior notice, concerning the handling, collection, and/or disbursement of Gross Receipts. No person shall be employed by the Gaming Enterprise or the Manager whose prior activities, criminal record (if any), reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance any danger of unsuitable, unfair, or illegal practices, methods, or activities in the Gaming Operation of the Gaming Enterprise or the carrying on of any business or financial arrangements incidental thereto.

k. **Preference in Employment.** Members of the Pueblo of Tesuque and their spouses and children shall receive preference in employment and advancement if they meet the qualifications for employment with the Gaming Enterprise and the Manager. If there are not qualified persons from among the Members of the Pueblo of Tesuque and their spouses and children to fill any available positions, the Gaming Enterprise shall hire such qualified persons as are available, but it shall give preference to qualified members of other Indian tribes.

l. **Advertisement of Positions.** Notice of the availability of any positions with the Gaming Enterprise shall be posted on the premises of the Gaming Facility where such vacancy exists, and at least two other locations selected by the Commission, in consultation with the Council, for at least fifteen (15) days prior to the filling of the position, unless special circumstances exist as determined by the Council that warrant dispensing with such notice or posting for a shorter period. The notice shall contain a description of the minimum job qualifications, duties, hours of work, compensation, and the application procedure, including the application deadline.

m. **Personnel Policies and Benefits.**

1. The Manager shall adopt written personnel policies and procedures for employees of the Gaming Enterprise, which shall be provided to each employee and which shall be subject to the approval of the Council and forwarded upon adoption to the Commission. The policies and procedures shall include, but not be limited to:

A. A grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

B. An employee's right to receive a written statement of reasons for dismissal in the event such employee is dismissed; and

C. A consistent procedure for treating terminated employees, including distinctions as appropriate for employees who resign from their employment versus employees who are terminated for cause.

2. The Gaming Enterprise shall provide employment benefits, including but not limited to sick leave, life insurance, paid annual leave, medical and dental insurance, unemployment and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs.

n. **Hiring and Training of Employees.**

1. The Gaming Enterprise and the Manager shall provide sufficient training to all employees to enable them to perform their jobs properly.

2. The Gaming Enterprise shall, in addition, provide special management training programs for employees who are Pueblo members, to enable selected Pueblo members to become managers and supervisors in Gaming Operations of the Gaming Enterprise. Such special management

training programs shall include specific time lines indicating when a Pueblo member who meets all training standards shall become eligible for a manager's or supervisor's position. The expense of providing such special management training to Pueblo members shall be a separately budgeted operating expense of the Gaming Enterprise.

o. **Appointment of OSHA Officer.** The Manager shall appoint a full-time employee who is familiar with and responsible for the Gaming Enterprise's duties and responsibilities under the federal Occupational Health and Safety Act.

SECTION 11. SUSPENSION OR REVOCATION OF LICENSE.

a. **Grounds for Suspension and Revocation.** If a Licensee makes a false statement in any application for a License, in any statement annexed thereto, or in any response to a request by the Commission or the Council for information; fails to keep sufficient books and records to substantiate the reports required by this Gaming Ordinance; falsifies any books or records relating to any transaction in connection with the operation or conduct of any Games of Chance; is convicted of any felony or gaming offense; interferes with or unduly influences or attempts to interfere with or unduly influence any decision or process of the government of the Pueblo of Tesuque relating to gaming; or deliberately or substantially fails to provide information to or answer relevant questions of the Commission or the Council or otherwise fails to comply with this Gaming Ordinance or the terms of any License granted pursuant hereto; or if the Council or Commission receives reliable information from the National Indian Gaming Commission or any other source that the Licensee does not meet the standard established in Section 7(e) of this Gaming Ordinance; his or her License may be suspended; *provided* that, when the Council or Commission receives reliable information from the National Indian Gaming Commission that the Licensee does not meet the standard established in Section 7(e) of this Gaming Ordinance, his or her License shall be suspended. After notice and a hearing before the Commission pursuant to this Section, such License also may be

revoked. This sanction is in addition to any other sanction that may be imposed under this Gaming Ordinance.

b. **Notice; Immediate Suspension.** Proceedings to suspend or revoke a License shall be initiated by the Commission by serving a complaint upon the Licensee. If, in the Commission's judgment, the public interest; the effective regulation and control of gaming; or the safe, fair, and honest operation and conduct of Games of Chance so requires, the Commission may suspend a License immediately pending the holding of a hearing. Such an immediate suspension shall take effect upon service of the complaint upon the Licensee.

c. **Contents of Complaint; Service.** The complaint shall set forth the violations of this Gaming Ordinance which the Commission has reasonable cause to believe the Licensee has committed. The Commission shall cause the complaint and notice of hearing to be served personally upon the Licensee or any agent of the Licensee, or to be sent by certified mail to the Licensee at the address shown upon the License, with a copy sent to the Council. The complaint shall notify the Licensee of the place and date of a hearing, such date to be not less than twenty (20) days after the Licensee receives a copy of the complaint.

d. **Answer; Subpoenas.** Upon receipt of a complaint and notice of hearing, the Licensee shall answer the complaint and shall inform the Commission whether the Licensee desires to present evidence. At the request of the Licensee for good cause shown, or on its own motion, the Commission shall issue subpoenas for the attendance of witnesses and for the production of papers, books, records, and documents.

e. **Hearing; Written Decision.** The hearing shall be held and concluded without unreasonable delay. The Commission shall hear the matter and make a decision in writing, including findings of fact in support of its decision. The Commission shall issue its decision within thirty (30) days

of the hearing. The Licensee shall be informed immediately of the decision and, in the event of a suspension, revocation, or reinstatement of his or her License, of the effective date of the suspension, revocation, or reinstatement. The Commission shall notify the National Indian Gaming Commission and the State Gaming Representative of its decision.

f. **Appeal.**

1. **Appeal as of Right to Tribal Court.** The decision of the Commission suspending or revoking a License may be appealed to the Tribal Court. Written notice of the appeal must be filed with the Tribal Court and served on the Commission within ten (10) calendar days of the Commission's decision. The Tribal Court shall decide the appeal within twenty (20) days after its filing, and shall state in writing the reasons for its decision.

2. **Permissive Review by the Tribal Council.** A party not satisfied with the decision of the Tribal Court may seek review of that decision by the Council. Notice of appeal to the Council shall be filed with the Governor and served on the Commission within seven (7) calendar days from the Tribal Court's written decision, with notice given to the Tribal Court. The Council need not accept an appeal from a decision of the Tribal Court, and its failure to act within fourteen (14) calendar days of receiving an appeal shall be deemed summary denial of the appeal. If the Council accepts an appeal from the Tribal Court, it shall notify both the Appellant and the Commission and shall give both the Appellant and the Commission the opportunity to be heard.

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

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

SECTION 12. PROHIBITED ACTS. In addition to any other act prohibited by this Gaming Ordinance, it shall be a violation of this Ordinance for any person:

a. To conduct or participate in any Class II or Class III gaming on the Reservation other than at an authorized and licensed Gaming Facility.

b. To receive, distribute, apply, or divert any property, funds, proceeds, or other assets of the Gaming Enterprise to or for the benefit of any person except as authorized by this Gaming Ordinance or regulations promulgated hereunder, IGRA, NIGC regulations, or the Compact.

c. To tamper with any Gaming Device or Gaming Equipment used in the conduct of any Gaming Activity with the intent to cause any person to win or lose any wager other than in accordance with the publicly announced rules of the Gaming Enterprise.

d. To do any other act in connection with the conduct of any Gaming Activity with the intent to affect the outcome of any wager other than in accordance with the publicly announced rules of the Gaming Enterprise.

e. To alter or misrepresent the outcome of any other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

f. To place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of a Game of Chance or any event that affects the outcome of the Game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

g. To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Device or gaming equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.

h. To place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets.

i. To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of a Game of Chance or other event which is the subject of the bet, including pinching bets.

j. To manipulate, with the intent to cheat, any component of an electronic Game of Chance or Gaming Device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to manipulating a Gaming Device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

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

l. To possess, with the intent to use, any device to assist in projecting the outcome of a Game of Chance, in keeping track of the cards played. in analyzing the probability of the occurrence of an event relating to the Game, or in analyzing the strategy for playing or betting to be used in the Game.

m. To use any device or means to cheat, or to possess any such device while at a Gaming Facility.

n. To knowingly entice or induce another to go to any place where Games of Chance are being conducted or operated in violation of the provisions of this Ordinance or regulations promulgated hereunder, IGRA, the Compact, or other applicable law and regulation with the intent that the other person play or participate in those Games.

o. To willfully obstruct any Commission investigation.

SECTION 13. VIOLATIONS, JURISDICTION, ENFORCEMENT OR SUBPOENAS; LIMITED WAIVER OF SOVEREIGN IMMUNITY.

a. **Criminal Penalties.**

1. Except as otherwise provided in Subsection (a) of this Section, any Indian who violates any provision of this Gaming Ordinance shall be guilty of a criminal offense punishable by a fine, or by imprisonment, or both, the amount of such fine and the length of such imprisonment to be up to the maximum amount and length that federal law allows Indian tribes to impose.

2. Pursuant to the Compact, the State of New Mexico may exercise concurrent jurisdiction with the United States to prosecute violations by non-members of the Pueblo of Tesuque of any State of New Mexico gambling law on the Reservation, any other crime against the Gaming Enterprise or any employee thereof, or that occurs on the premises of a Gaming Facility. Immediately upon becoming aware of any suspected crime by a non-member of the Pueblo of Tesuque, the Gaming Enterprise or the Commission will notify the State of New Mexico Attorney General and the District Attorney for Santa Fe County of the particulars available to the Gaming Enterprise or Commission. Upon any reasonable request by the District Attorney for Santa Fe County, the Pueblo of Tesuque Law Enforcement Department and the Commission will perform additional investigation and cooperate fully with such District Attorney and State of New Mexico law enforcement agencies on the matter. In the

event of an emergency involving a possible violation by a non-member of the Pueblo of Tesuque, the Pueblo of Tesuque and its constituent agencies may act as they see fit in accordance with the laws of the Pueblo of Tesuque in order to protect against any immediate threat to lives or property.

3. The Pueblo of Tesuque may enter into a Memorandum of Understanding with the District Attorney for Santa Fe County, to which Memorandum of Understanding the United States Attorney also may be a party, to address such matters as the specific procedures by which cases under Subsection (a)(2) of this Section will be referred, participation of the Commission and the Pueblo of Tesuque Law Enforcement Department in the investigation and prosecution of any such case, and payments by the Pueblo of Tesuque to the Office of the District Attorney for Santa Fe County to defray the costs of handling such cases.

b. **Civil Sanction.** Any person who violates any provision of this Gaming Ordinance, including the Gaming Enterprise and its employees, shall be liable for civil monetary sanctions not to exceed five thousand dollars (\$5,000) for each day such violation occurs, along with any civil damages caused by the commission of such violation. Such person also may be excluded from the Reservation to the extent such exclusion is consistent with the laws of the Pueblo of Tesuque.

c. **Tribal Court Jurisdiction.** The Tribal Court shall have jurisdiction over all violations of this Gaming Ordinance and over all persons who are Licensees and/or parties to a Management Contract entered pursuant to this Gaming Ordinance, including agents, employees, owners, directors, and officers of such parties. In addition to the penalties and civil sanctions prescribed in Subsections (a) and (b) of this Section, the Tribal Court may grant such other legal and equitable relief as is necessary and proper for the enforcement of this Gaming Ordinance and of the provisions of any Management Contract entered pursuant thereto, including but not limited to injunctive relief against acts in violation thereof. Nothing in this Gaming Ordinance, however, shall be construed to authorize or

require the exercise of criminal jurisdiction over non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision. In any proceeding arising under this Gaming Ordinance, the Tribal Court shall state in writing the reasons for its decision.

d. **Appeal from Tribal Court to the Tribal Council.** A party not satisfied with the decision of the Tribal Court may seek review by the Council. Notice of appeal to the Council shall be filed with the Governor and served on the Commission within seven (7) calendar days from the Tribal Court's written decision, with notice given to the Tribal Court. The Council need not accept an appeal from a decision of the Tribal Court, and its failure to act within fourteen (14) calendar days of receiving an appeal shall be deemed summary denial of the appeal. If the Council accepts an appeal from the Tribal Court, it shall notify both the Appellant and the Commission and shall give both the Appellant and the Commission the opportunity to be heard.

e. **Enforcement of Council Orders and Commission Orders and Subpoenas.** If a person is ordered by the Commission or the Council to attend or to produce books, accounts, records, or other documents in any investigation or hearing conducted by the Commission or the Council and fails to obey the command of the subpoena without reasonable cause, or if a person in attendance at any hearing or investigation refuses, without lawful cause, to be examined, to answer a legal and pertinent question, or to exhibit any book, account, record, or other document when ordered to do so by the Commission or the Council, the Commission or the Council may apply to the Tribal Court for an order returnable in not less than five (5) nor more than ten (10) days directing the person to show cause why he or she should not comply with such order. For purposes of this Gaming Ordinance, no person shall be excused from testifying or producing any books, accounts, records, or other documents in any investigation or hearing on the ground that such testimony or documentary evidence may tend to incriminate such person, if the Council or the Tribal Court agrees in writing that such person shall not be prosecuted, punished, or

subjected to any penalty or forfeiture resulting from such testimony or production, *provided* that no person shall be exempt from prosecution or punishment for any act of perjury committed by him or her under a grant of immunity under this Subsection.

f. **Limited Waiver of Sovereign Immunity.** The Pueblo of Tesuque hereby waives the immunity of the Gaming Enterprise and its employees from suit for the sole and limited purpose of permitting the Tribal Court to hear and determine proceedings initiated by the Commission to enforce this Gaming Ordinance against the Gaming Enterprise, including the assessment of fines, sanctions, and injunctive relief.

SECTION 14. PATRON DISPUTES AND VISITOR CLAIMS.

a. **Procedures for Resolving Patron Disputes.** Except as otherwise provided in Subsection (b) of this Section, whenever any patron of any Gaming Activity being conducted by the Gaming Enterprise under the provisions of this Gaming Ordinance believes that he or she should not have lost any money, or has not received any winnings to which the patron believes he or she was entitled, or in any other respect was treated wrongly or unfairly, any employee to whom the patron communicates the complaint shall refer the patron to the Manager. The Manager shall investigate the matter thoroughly, and shall attempt to resolve the complaint amicably and promptly and in keeping with the spirit of this Gaming Ordinance. The Manager's proposed action shall be communicated to the patron in writing, no more than ten (10) calendar days after the complaint is brought to the Manager. If the patron is dissatisfied with the resolution proposed by the Manager, the patron may, within ten (10) calendar days of receipt of the Manager's decision, appeal to the Commission. The Commission shall investigate the facts underlying the complaint and the actions of the Manager thereon, and shall make a final decision, in writing, either to affirm the Manager's proposed resolution, or to take some different action (but in no case shall the Commission's decision be less favorable to the patron than the Manager's proposal). If the patron is still

dissatisfied, he or she may request that the dispute be referred to binding arbitration, either by a single arbitrator (if the parties agree on one) or by a panel of three (3) arbitrators, one appointed by the patron, one appointed by the Manager, and a third by the other two; *provided*, that if the arbitration results in a decision that is no more favorable to the patron than the decision of the Commission, the patron shall bear one-half of the costs of the arbitration. The arbitrator(s) shall establish procedures to ensure a full, fair, and expeditious hearing of the dispute.

b. **Resolving Patron and Visitor Claims of Liability for Bodily Injury or Property Damage.**

1. The Tribal Court shall have original jurisdiction over claims of liability by a patron of or visitor to a Gaming Facility where Class III Gaming is conducted for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise.

2. A patron or visitor having a claim described in Subsection (b)(1) of this Section may pursue that claim in the Tribal Court or, at the option of the patron or visitor, in binding arbitration. The patron or visitor shall make a written election that is final, binding, and unappealable.

3. Claims brought under Subsection (b)(1) of this Section must be commenced by filing an action in Tribal Court or serving a demand for arbitration within three (3) years of the date that the claim accrues.

4. Arbitration shall be conducted, pursuant to an election by a patron or visitor under Subsection (b)(3) of this Section, as follows:

A. The patron or visitor shall submit a written demand for arbitration to the Gaming Enterprise by certified mail, return receipt requested;

B. The patron or visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand by the Gaming Enterprise, and the two arbitrators shall select a third arbitrator, but in the event the two arbitrators cannot agree on the

selection of the third arbitrator within thirty (30) days of their appointment, they shall apply to the American Arbitration Association to appoint the third arbitrator;

C. The arbitration panel shall permit the parties to engage in reasonable discovery and shall establish other procedures to ensure a full, fair, and expeditious hearing on the claim; and

D. The award of the arbitration panel shall be final and binding.

c. **Posting of Notice.** The Gaming Enterprise shall prominently post a notice, bearing the title, "PATRON DISPUTE AND VISITOR CLAIMS PROCEDURES," informing patrons and visitors of the remedies set forth in this Section, and setting forth the language of Subsections (a) and (b) of this Section, in every room of every Gaming Facility where Gaming Activity occurs.

d. **Public Health and Safety.** Each Gaming Facility and additions thereto shall comply with health, safety, and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code, and the Uniform Plumbing Code. The Pueblo of Tesuque shall cause inspections to be conducted with respect to these standards at least annually. Pursuant to the Compact, the State Gaming Representative may be present during an annual inspection, *provided* the request to be present is made sufficiently in advance of such inspection. Upon a written request by the State Gaming Representative, the Commission shall provide copies of such inspection reports to the State Gaming Representative.

SECTION 15. SOVEREIGN IMMUNITY. The Pueblo does not in any way waive its sovereign immunity from suit in any court to contest the validity of this Gaming Ordinance or in any other matter, except to the limited extent explicitly set out in Section 14(b)(1) (Protection of Patrons) and in Section 13(f) (permitting the Commission to enforce this Gaming Ordinance against the Enterprise).

Nothing in this Gaming Ordinance waives the sovereign immunity of the Pueblo as to claims arising from employment contracts.

SECTION 16. MISCELLANEOUS.

a. **Severability.** In the event that any provision in this Gaming Ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Gaming Ordinance.

b. **Gender.** Any noun or pronoun used herein shall refer to any gender and to any number as the context requires or permits.

Originally adopted by Resolution No. 1989-12-04, December 16, 1989. Amended by Resolution No. 1994-08-3, August 24, 1994, Amended and Restated by Resolution No. 1997-04-02, dated April, 3, 1997. Amended and Restated by Resolution No. 1997-09-04, dated September 25, 1997, and Amended and Restated by Resolution No. 2002-04-02, dated April 30, 2002.