



March 5, 2013

Via U.S. Mail and Facsimile

Alix Foster, Director
Swinomish Indian Tribal Community
Office of the Tribal Attorney
11404 Moorage Way
La Conner, WA 98258

Re: Swinomish Indian Tribal Community Ordinance Amendments, No. 323

Dear Ms. Foster:

This letter responds to your request on behalf of the Swinomish Indian Tribal Community ("Tribe") for review and approval of the Tribe's recent amendments to its gaming ordinance ("Ordinance") in Ordinance No. 323. Your request was made in a letter, dated February 7 and received on February 11, along with an e-mail communication, dated February 11, which supplemented and clarified the February 7th letter. The amendments change the name of the Casino Business Committee to the Gaming Enterprise Management Board in Title 16, Sections 1 and 8, of the Ordinance.

We appreciate that the Tribe brought the Ordinance amendments to our attention. The amendments are approved, as they are consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations.

If you have any questions or require assistance, please contact Katherine Zebell at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tracie L. Stevens".

Tracie L. Stevens
Chairwoman

cc: Alicia Engstrom
Tribal Paralegal/Code Reviser

SWINOMISH INDIAN TRIBAL COMMUNITY
SWINOMISH INDIAN RESERVATION

ORDINANCE NO. 323 REPEALING ORDINANCE 322 AND
AMENDING ORDINANCE NO. 171 (CURRENTLY CODIFIED AS STC 16-01.070 AND
16-08.060)

WHEREAS, the Swinomish Indian Tribal Community (the "Tribe") is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476); and

WHEREAS, the Tribe is organized under a Constitution and By-Laws originally ratified by the Tribe on November 16, 1935, and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended and ratified by the Tribe on September 7, 1985 and approved by the Secretary of the Interior on October 22, 1985; and

WHEREAS, the Swinomish Indian Senate (the "Senate") is the duly elected governing body of the Swinomish Indian Tribal Community and exercises governmental authority over all lands and waters within the Swinomish Indian Reservation; and

WHEREAS, Ordinance 304 which was approved by the Senate and by the National Indian Gaming Commission changed the name of the Gaming Business Committee to Gaming Enterprise Management Board in Title 16, Chapter 5 of the Swinomish Tribal Code; and

WHEREAS, Chapters 1 and 8 of Title 16 which contain references to the Gaming Business Committee were inadvertently not amended by Ordinance 304; and

WHEREAS, the Gaming Enterprise Management Board finds that it is necessary to amend Title 16, Chapters 1 and 8 to ensure consistency and avoid ambiguity within the Tribe's Gaming Laws; and

WHEREAS, the Gaming Enterprise Management Board recommended that Title 16, Chapters 1 and 8 be amended to replace "Gaming Business Committee" with "Gaming Enterprise Management Board"; and

WHEREAS, the Senate adopted the findings and the recommendations of the Gaming Enterprise Management Board; and

WHEREAS, the Senate reviewed the suggested changes to STC 16-01.070 and STC 16-08.060 and enacted Ordinance 322 to enact these changes; and

WHEREAS, it was subsequently learned that Ordinance 322 mistakenly amended Ordinance 118 rather than Ordinance 171 which had previously repealed and rescinded Ordinance 118; and

WHEREAS, the Tribe promptly notified the Bureau of Indian Affairs or the National Indian Gaming Commission and withdraw Ordinance 322 from consideration for approval; and

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WHEREAS, the Gaming Enterprise Management Board recommends that Ordinance 322 be repealed; and

WHEREAS, the Senate adopts the findings and the recommendations of the Gaming Enterprise Management Board; and

WHEREAS, the Senate is authorized to take this action pursuant to Article VI, Sections 1(l) of the Constitution of the Tribe approved January 27, 1936, as amended, and pursuant to the inherent powers of the Swinomish Indian Tribal Community, NOW THEREFORE,

BE IT ENACTED BY THE SWINOMISH SENATE that Ordinance 322 is hereby repealed; and

BE IT FURTHER ENACTED BY THE SWINOMISH INDIAN SENATE that the following changes to STC 16-01.070 and STC 16-08.060 are hereby enacted and approved pursuant to the authority of the Swinomish Constitution and By-Laws and the inherent powers of the Swinomish Indian Tribal Community:

16-01.070 Definitions.

(G) "Gaming Enterprise Management Board" means the body, established pursuant to Section 16-05.020 of this Title, with responsibility for the management of the Gaming Enterprise.

Deleted: Gaming Business Committee

Deleted: or "Business Committee"

16-08.060 Violations.

(B) Receive, distribute, apply, or divert any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person except as authorized by this Title and approved by the Gaming Enterprise Management Board in the ordinary course of business.

Deleted: Business Committee

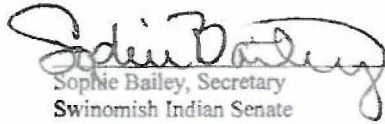
(E) To participate as a player in any regular public bingo game, any lottery, any pari-mutuel wager, or game of chance authorized pursuant to Chapter 16-06, conducted by the Tribe, while such person is: (1) a member of the Gaming Commission; (2) a member of the Gaming Enterprise Management Board; (3) an employee of the Gaming Commission; or (4) an employee of the Gaming Enterprise unless the employee of the Gaming Enterprise's participation is authorized by the rules and regulations of the Gaming Commission.

Deleted: Business Committee

Brian Cladoosby
Brian Cladoosby, Chairman
Swinomish Indian Senate

CERTIFICATION

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing Ordinance was approved at a Regular Meeting of the Swinomish Indian Senate held on February 5, 2013, at which time a quorum was present and the Ordinance was passed by a vote of 6 FOR, 0 AGAINST, and 0 ABSTENTIONS.


Sophie Bailey, Secretary
Swinomish Indian Senate

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Title 16 - Gaming

Chapter 8 – Penalties for Violations

Sec.

- 16-08.010 Criminal Offenses
- 16-08.020 Separate Offenses
- 16-08.030 Permit
- 16-08.040 Tribal Court
- 16-08.050 Civil Remedies
- 16-08.060 Violations

Legislative History

Enacted:

Ordinance 323 Rescinding Ordinance 322 and Amending Ordinance No. 118 (Currently Codified as STC 16-01.070 and 16-08.060), (2/5/13), BIA (xx/xx/xx), NIGC (xx/xx/xx).

Ordinance 171 Regulating Gaming and Repealing and Superseding Ordinance Nos. 103, 104, 118, 130 and 151 (6/30/03), BIA (7/3/03), NIGC (10/3/03).

Repealed or Superseded:

Ordinance 322 Amending Ordinance No. 118 (Currently Codified as STC 16-01.070 and 16-08.060), (1/8/13), BIA (xx/xx/xx), NIGC (xx/xx/xx).

Ordinance 151 Amendments to Swinomish Gaming Ordinance (4/9/02), BIA (6/7/02), NIGC (7/17/02) (amending Ord. 103).

Ordinance 118 Amendments to Swinomish Gaming Ordinance (5/7/96), BIA (5/23/96), NIGC (not required, 8/15/96) (amending Ord. 103).

Ordinance 103 Swinomish Gaming Ordinance (10/5/93), BIA (10/14/93), NIGC (11/10/93) (repealing Ord. 50).

Ordinance 50 Gaming Ordinance (3/5/85), Enacting Res. 85-3-13, BIA (3/25/85).

16-08.010 Criminal Offenses.

Any person, operator, player, permittee or employee of the Tribe who violates any provision of this Title or any regulation adopted hereunder, and who is subject to the criminal jurisdiction of the Swinomish Tribal Court, shall be guilty of a criminal offense and shall be subject to a fine of up to five thousand dollars (\$5,000.00) or imprisonment of not to exceed twelve (12) months, or both, as well as the cost of prosecution.

[History] Ord. 171 (6/30/03); Ord. 118 (5/7/96); Ord. 103 (10/5/93).

16-08.020 Separate Offenses.

Each day that a violation continues shall be considered a separate offense for the purposes of

this Title.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-08.030 Permit.

If the Swinomish Tribal Court finds that a permittee or licensee has violated any part of this Title, the Court shall order that any then valid permits or licenses be revoked.

[History] Ord. 171 (6/30/03); Ord. 118 (5/7/96); Ord. 103 (10/5/93).

16-08.040 Tribal Court.

The Swinomish Gaming Commission and the Swinomish Tribal Court shall have exclusive jurisdiction over any controversies arising under this Title. The Tribal Court shall have exclusive jurisdiction to enforce Sections 16-08.010 through 16-08.030.

[History] Ord. 171 (6/30/03); Ord. 151 (4/9/02); Ord. 118 (5/7/96); Ord. 103 (10/5/93).

16-08.050 Civil Remedies.

Any person who violates any provision of this Title, including any provision of the Compact incorporated herein, or any Commission rule or regulation adopted pursuant to this Title, shall be subject to civil penalties including exclusion from employment by any tribal gaming enterprise, exclusion from attendance at any tribal gaming facility, exclusion from the Swinomish Indian Reservation, the payment of restitution, and a monetary penalty of up to \$5,000.00 for each such violation. Each day that a violation continues shall be considered a separate violation for the purposes of this section. The Gaming Commission shall have the authority to impose such penalties on any person within the civil jurisdiction of the Tribe. The Commission is hereby authorized to pursue civil remedies against violators in tribal, state, and federal court.

[History] Ord. 171 (6/30/03); Ord. 118 (5/7/96); Ord. 103 (10/5/93).

16-08.060 Violations.

It shall be a violation of this Title for any person to:

- (A) Conduct or participate in any Class II or Class III gaming operation on the Swinomish Indian Reservation except as authorized by this Title.
- (B) Receive, distribute, apply, or divert any property, funds, proceeds or other assets of the Gaming Enterprise to the benefit of any individual or any other person except as authorized by this Title and approved by the Gaming Enterprise Management Board in the ordinary course of business.

- (C) Tamper with any equipment used in the conduct of tribal gaming operations with the intent to cause any person to win or lose any wager other than in accord with the publicly announced rules of such gaming operations.
- (D) Do any other act in connection with the conduct of the tribal gaming operations with the intent to affect the outcome of any wager other than in accord with the publicly announced rules of such gaming operations.
- (E) To participate as a player in any regular public bingo game, any lottery, any pari-mutuel wager, or game of chance authorized pursuant to Chapter 16-06, conducted by the Tribe, while such person is: (1) a member of the Gaming Commission; (2) a member of the Gaming Enterprise Management Board; (3) an employee of the Gaming Commission; or (4) an employee of the Gaming Enterprise unless the employee of the Gaming Enterprise's participation is authorized by the rules and regulations of the Gaming Commission.

[History] Ord. 323 (2/5/13); Ord. 171 (6/30/03); Ord. 151 (4/9/02); Ord. 118 (5/7/96); Ord. 103 (10/5/93).

Title 16 – Gaming

Chapter 1 – General Provisions

Sec.

16-01.010	Title
16-01.020	Authority
16-01.030	Purpose and Scope
16-01.040	Policy
16-01.050	Findings
16-01.060	Rules of Construction
16-01.070	Definitions

Legislative History

Enacted:

Ordinance 323 Rescinding Ordinance 322 and Amending Ordinance No. 118 (Currently Codified as STC 16-01.070 and 16-08.060), (2/5/13), BIA (xx/xx/xx), NIGC (xx/xx/xx).
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Ordinance 151 Amendments to Swinomish Gaming Ordinance (4/9/02), BIA (6/7/02), NIGC (7/17/02).
Ordinance 118 Amendments to Swinomish Gaming Ordinance (5/7/96), BIA (5/23/96), NIGC (not required, 8/15/96).
Ordinance 104 Amendments to Swinomish Gaming Ordinance (11/3/93), BIA (11/8/93), NIGC (11/10/93) (amending Ord. 103).
Ordinance 103 Swinomish Gaming Ordinance (10/5/93), BIA (10/14/93), NIGC (11/10/93).
Ordinance 50 Gaming Ordinance (3/5/85) (Enacting Res. 85-3-13), BIA (3/25/85).

[Ed. Note. The Indian Gaming Regulatory Act provides that the Chairman of the National Indian Gaming Commission shall approve tribal ordinances and resolutions concerning Class II and Class III gaming. 25 USCA § 2710. The Chairman's approval of Ordinance 103 and Ordinance 104 was published in the Federal Register on December 14, 1993 as is required under 25 CFR § 522.8. 58 Fed. Reg. 65406. On August 15, 1996, the NIGC Chairman determined that the amendments in Ordinance 118 did not require NIGC approval. That decision notwithstanding, the Chairman published his approval of Ordinance 118 in the Federal Register on June 21, 1996. 61 Fed. Reg. 31963-02. The Chairman's approval of Ordinance 151 was published in the Federal Register on August 26, 2002. 67 Fed. Reg. 54823-03.]

16-01.010 Title.

This Title shall be referred to as the “Gaming Code.”

[History] Ord. 171 (6/30/03).

16-01.020 Authority.

This Title is hereby adopted pursuant to Article VI (Powers of the Senate), Sections 1(a), (k), (l), (m) and (s) of the Swinomish Constitution.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-01.030 Purpose and Scope.

The purposes of this Title are found to be as follows:

- (A) To provide a new and continuous source of income and revenues to the Tribe in order to provide social, cultural, and law enforcement services to members and other residents of the Swinomish Indian Reservation.
- (B) To create a control mechanism to insure the proper regulation of Class II and Class III authorized gaming activities.
- (C) To provide members and guests an opportunity to participate in social games as provided herein.
- (D) To provide for the social welfare and protection of tribal members and all others who reside within or pass through the Swinomish Indian Reservation.
- (E) Except as specifically provided herein, the Swinomish Indian Tribal Community by enactment of this Title does not intend to authorize any form of gaming, gambling or other wagering activity within the Swinomish Indian Reservation.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-01.040 Policy.

It is the policy of the Swinomish Indian Tribal Community to regulate and oversee the operation of authorized gaming activities to the end that the Tribe is better able to provide its members with community and social services; while at the same time, to insure that widespread gaming is not allowed within the Swinomish Indian Reservation, and safeguard the public against the influx of organized crime and undesirable persons.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-01.050 Findings.

The Senate makes the following findings:

- (A) The Tribe is in need of developing ways and means of increasing tribal income and revenue in order to promote the public welfare, provide for public protection through Law Enforcement, and provide needed social, health and educational services to protect the general welfare of its members;
- (B) The generation of revenues through gaming activities for the promotion of tribal governmental and social programs is in the Tribe's interest as is participation in such activities and social pastimes as are hereinafter authorized;
- (C) Tribally owned and regulated Class II and Class III authorized gaming activities operated under the direction of the Tribe will not lead to a proliferation of undesired gaming, or to the influx of organized crime or other undesirable persons, but will serve the economic needs of the Tribe; and
- (D) The exercise of tribal power through this Title is necessary to protect the right of tribal self-government and to regulate its internal relations so as to protect its political and economic security.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-01.060 Rules of Construction.

Unless otherwise specifically provided;

- (A) The masculine includes the feminine;
- (B) The singular includes the plural;
- (C) "Includes" and "including" are not limiting; and
- (D) "Or" is not exclusive.

[History] Ord. 171 (6/30/03); Ord. 103 (10/5/93).

16-01.070 Definitions.

For purposes of this Title, unless otherwise expressly provided, the following definitions shall apply:

- (A) "**Act**" means the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. § 2701 et seq.

- (B) **"Class II Gaming"** means Class II gaming as defined in accordance with the Act, 25 U.S.C. § 2703(7)(A).
- (C) **"Class III Gaming"** means Class III gaming as defined in accordance with the Act, 25 U.S.C. § 2703(8).
- (D) **"Commission"** means the Swinomish Gaming Commission.
- (E) **"Compact"** means the Tribal - State Compact for Class III Gaming between the Swinomish Indian Tribal Community and the State of Washington, entered into on December 21, 1992, and approved by the Secretary of the Interior on February 11, 1993, in accordance with the Act, and any duly approved amendments to such Compact.
- (F) **"Gaming"** means any activity where the player stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he or she or someone else will receive something of value in the event of a certain outcome, but shall not include bona fide business transactions valid under the law of contracts such as contracts for the purchase of commodities or other items at a future date or contracts for insurance, indemnity or guarantee to compensate unforeseeable loss, nor include traditional Indian games played by tribal members and their guests.
- (G) **" Gaming Enterprise Management Board "** means the body, established pursuant to Section 16-05.020 of this Title, with responsibility for the management of the Gaming Enterprise.
- (H) **"Gaming Enterprise"** means the Swinomish Gaming Enterprise established by the Tribe to conduct gaming operations of the Tribe on the Swinomish Indian Reservation.
- (I) **"Gaming Facilities"** means any room or rooms in which Class II or Class III gaming is conducted on the Swinomish Indian Reservation.
- (J) **"National Indian Gaming Commission"** means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.
- (K) **"Net Revenues"** means gross revenues of a gaming activity less amounts paid out as, or paid for, prizes and total operating expenses including debt service but excluding management fees paid to a management contractor within the meaning of 25 U.S.C. § 2711 (c).
- (L) **"Reservation"** means the Swinomish Indian Reservation including all Indian lands as defined in 25 U.S.C. § 2703(4)(B).
- (M) **"Senate" or "Tribal Senate"** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.

- (N) **"State"** means the State of Washington.
- (O) **"State Gaming Agency"** means the Washington State Gambling Commission or such other agency as the State may establish to carry out the regulatory responsibilities of the State under the Compact.
- (P) **"Title"** means the Swinomish Indian Tribal Community Gaming Title.
- (Q) **"Tribe"** means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section Sixteen of the Indian Reorganization Act of 1934 (25 U.S.C. § 476).

[History] Ord. 323 (2/5/13); Ord. 171 (6/30/03); Ord. 151 (4/9/02); Ord. 118 (5/7/96); Ord. 104 (11/3/93); Ord. 103 (10/5/93).