



FEB 27 2004

Anthony D. Johnson, Chairman
Nez Perce Tribe
Nez Perce Tribal Executive Committee
P.O. Box 305
Lapwai, ID 83540-0305

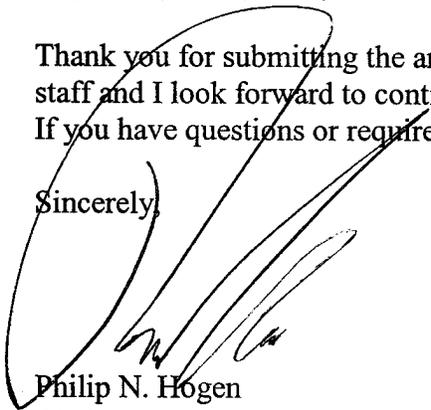
Re: Request for approval of amendments to Nez Perce gaming ordinance

Dear Chairman Johnson:

This letter is in response to the request by the Nez Perce Tribe that the National Indian Gaming Commission (NIGC) review and approve amendments to the Nez Perce Gaming Ordinance, certified by the Tribal Executive Committee January 3, 2004, pursuant to Resolution NP 03-469. The Chairman of the NIGC approved the original Ordinance on February 16, 1995, and earlier amendments on December 9, 1996, and June 27, 2001. This letter constitutes our approval of the most recent amendments under the Indian Gaming Regulatory Act (IGRA).

Thank you for submitting the amendments to the Nez Perce Gaming Ordinance. The NIGC staff and I look forward to continuing to work with you and the Tribe to implement the IGRA. If you have questions or require further assistance, please contact our office at 202-632-7003.

Sincerely,



Philip N. Hogen
Chairman

cc: Julie Kane, Esq.
NIGC Region I (with amended ordinance)

RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 26, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

WHEREAS, it is the responsibility of the Nez Perce Tribal Executive Committee to promote and protect the health, education and welfare of the Nez Perce people; and

WHEREAS, amendments to Chapter 6-2, Gaming Ordinance were adopted by resolution NP 03-469 and submitted to the National Indian Gaming Commission (NIGC) for final approval; and

WHEREAS, since that time NIGC has reviewed the proposed amendments and provided recommendations for minor changes prior to approval; and

WHEREAS, the Tribe and NIGC worked together to make the acceptable amendments, so that NIGC approval will be probable.

NOW, THEREFORE BE IT RESOLVED, that having made the required amendments, the Nez Perce Tribal Executive Committee hereby authorizes the amendments to Chapter 6-2, Gaming Ordinance.

CERTIFICATION

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Regular Session, January 13, 2004, in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY: Jacob B. Whiteplume, Sr.
Jacob B. Whiteplume, Sr. Secretary

ATTEST:

Anthony D. Johnson
Anthony D. Johnson, Chairman

CHAPTER 6-2
GAMING ORDINANCE

GAMING COMMISSION

§ 6-2-1 Definitions

For purposes of this chapter:

(a) "Act" means the federal Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. §§ 2701 *et seq.* and 18 U.S.C. §§ 1166-68.

(b) "Bingo" means a game, whether or not electronic, computer, or other technological aids are used in connection therewith

- (1) which is played for prizes, including monetary prizes with cards bearing numbers or other designations;
- (2) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
- (3) 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 same location) pull-tabs, lotto, punch cards, tip jars, instant bingo, and other games similar to bingo.

(c) "Class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(d) "Class II Gaming" see § 6-2-8

(e) "Class III gaming" means all forms of gaming that are not class I or class II gaming.

(f) "Commission" or "Gaming Commission" means the Nez Perce Tribal Gaming Commission, the single tribal agency primarily responsible for regulatory oversight of Class III gaming as authorized under the Nez Perce 1995 Class III Gaming Compact.

(g) "Fishing Derby" means a fishing contest, with or without the payment or given of any entry fee or other consideration by some or all of the contestants wherein prizes are awarded for the species, size, weight or quality of fish caught in a bona fide fishing or recreational event.

(h) "Fund raising event" means a fund raising event sponsored by a bona fide religious, charitable or nonprofit organization at which gaming activities will be conducted under the regulation of the Nez Perce Tribal Gaming Commission. Gaming as authorized under this section may be allowed provided that sixty percent of the net income from such events shall be devoted solely to a lawful purpose of the Nez Perce Tribe and provided that the tribal or BIA law enforcement agency shall be notified as to the time and place where such activity shall be conducted.

(i) "Gaming" means those activities defined in §6-2-7, §6-2-8 and § 6-2-9.

(j) "Gaming area" means the area where Class II or Class III gaming occurs. This does not include cage, soft count, showroom, food and beverage, parking lots, delivery areas, hotels, warehouses, money areas or gift shops.

(k) "Gaming code" means the laws, rules and regulations adopted by the Tribe as amended from time to time governing gaming activities at Tribal gaming facilities, and any other gaming operations conducted within the boundaries of the Nez Perce Reservation.

(l) "Gaming employee" means any natural person employed in the operation or management of the gaming operation, whether employed by the Tribe or by any enterprise providing onsite services to the Tribe within the gaming facility, excluding persons providing maintenance, janitorial or other such ancillary non-gaming services such as food service employees. For purposes of this chapter, "gaming employee" shall include any employee whose duties include the handling of cash generated from Class II or Class III gaming activities.

(m) "Gaming facility" or "gaming facilities" means all buildings, improvements and facilities used or maintained in connection with the conduct of gaming whether or not authorized by the Nez Perce Tribe.

(n) "Gaming operation" means any gaming enterprise whether or not authorized by the Tribe on Indian lands for the conduct of gaming.

(o) "Governor" means the Governor of the State of Idaho.

(p) "Indian lands" means Indian lands as defined in the Act, as well as lands within the State which meet the requirements of 25 U.S.C. § 2719.

(q) "Key employee" means a person who performs one or more of the following

functions:

- (1) bingo caller; or
- (2) bingo cashier; or
- (3) accounting head; or
- (4) bingo floor personnel;
- (5) bingo inventory/control manager
- (6) bingo manager
- (7) bingo paymaster
- (8) lead cashier
- (9) cashiers
- (10) vault cashiers
- (11) cashier secretary
- (12) data entry clerk (marketing/promotions)
- (13) gaming clerk; or
- (14) ordering/receiving clerk; or
- (15) drop crew lead; or
- (16) drop crew member; or
- (17) machine floor (change) personnel; or
- (18) machine technician; or
- (19) lead machine technician; or
- (20) security guard assistant; or
- (21) head of security; or
- (22) shift manager; or
- (23) shift supervisor; or
- (24) soft count personnel; or
- (25) vault personnel; or
- (26) vault auditor; or
- (27) vault clerks; or
- (28) surveillance officers;
- (29) counting room supervisor; or
- (30) chief of security; or
- (31) custodian of gaming supplies or cash; or
- (32) floor manager; or
- (33) pit boss; or
- (34) dealer; or
- (35) croupier; or
- (36) approver of credit; and
- (37) custodian of gambling devices including persons with access to cash and the accounting records within such devices; or
- (38) any other person whose total cash compensation is in excess of \$50,000.00 per year; and

(39) the four most highly compensated persons in the gaming operation.

(r) "License" and variations of that word such as licenses and licensed, unless otherwise defined herein and as indicated by the context, means either:

(1) an approval or certification issued by the Nez Perce Tribal Gaming Commission to any natural person or enterprise to be involved in the gaming operation or in the providing of gaming services to the gaming operation, or

(2) the formal document evidencing authority granted by the Nez Perce Tribe to engage in gaming under this Act.

(s) "Licensee" means any natural person or enterprise that has been approved and licensed by the Nez Perce Tribe Gaming Commission to be involved in the gaming operation or in the provision of gaming services to or in the gaming operations.

(t) "Management Contract" means a contract for the development and management of a Class III gaming operation, as provided in Article 9 of the Nez Perce 1995 Class III Gaming Compact with the State of Idaho, and approved pursuant to the Act.

(u) "Management Contractor" means any person, corporation or entity that enters into a development and management contract with the Tribe pursuant to Article 9 of the Nez Perce 1995 Class III Gaming Compact..

(v) "Net revenue" means gross gaming receipts of a gaming operation minus amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.

(w) "NIGC" means the National Indian Gaming Commission.

(x) "NPTEC" means the Nez Perce Tribal Executive Committee, which is the governing body of the Nez Perce Tribe.

(y) "Operator" means any person, organization or entity that operates any gaming activity that is subject to regulation under this Ordinance, on the Nez Perce Reservation.

(z) "Pari-mutual betting" means a system of wagering on a live race whereby the winners divide the total amount wagered, in proportion to the amount individually wagered after deducting commissions, fees and taxes. For purposes of this Ordinance wagering on live races is authorized if it occurs either at a racetrack or on Indian lands by means of a simulcast of a live race and is approved by the Commission.

(aa) "Player" means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gaming in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gaming activity.

(ab) "Primary management official" means:

- (1) the person having management responsibility for a management contract; or
- (2) any person who has authority to hire and fire employees or to set up working policy for the gaming operation; or
- (3) the chief financial officer; or
- (4) other person who has financial management responsibility; including
 - (A) accounting controller; or
 - (B) the general manager.

(ac) "Regulations" means the gaming regulations promulgated by the Nez Perce Tribe pursuant to this chapter.

(ad) "Simulcast" means a simultaneous telecast of a live race, including horses, dogs, mules and any other race contest of a species legal in this jurisdiction.

(ae) "State" means the State of Idaho, its authorized officials, agents and representatives.

(af) "State gaming agency" means the Idaho State Lottery or any other agency designated by the State of Idaho to coordinate Class III gaming.

(ag) "State Lottery" means:

- (1) Any type of game that the State hereafter conducts as a lottery game.

(ah) "Thing of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or any interest therein.

(ai) "Track" means an in-state or out-of-state facility licensed to operate horse or other racing where pari-mutuel wagering on races is conducted.

(aj) "Tribal law enforcement agency" means the police force of the Tribe, established and maintained by the Tribe, pursuant to the Tribe's powers of self-government, to carry out law enforcement on Indian lands, including the law enforcement program maintained by the Bureau of Indian Affairs on the Nez Perce Reservation.

(ak) "Tribe" means the Nez Perce Tribe, its authorized officials, agents and representatives.

§ 6-2-2 Purpose

This ordinance is enacted to:

(a) Regulate all forms of permissible and authorized gaming within the jurisdiction of the Nez Perce Tribe.

(b) Safeguard all persons from unscrupulous and illegal operations of any type of gaming.

(c) Protect all persons from any infiltration of organized crime into any gaming operation within the jurisdiction.

(d) Provide for tribal audit system on all gaming operations.

(e) Provide that the Tribe will have primary regulatory authority over all forms of gaming on the Nez Perce Reservation subject only to applicable federal law.

(f) Provide for system of investigations of all persons associated with gaming.

(g) Provide a system of licensing for any gaming activities subject to the provisions of this Act that occur within the Nez Perce Reservation.

(h) To provide revenues for the operation of the tribal government.

(i) To allow the tribal government to use the revenues generated for tribal self determination, to generate value on the reservation, to provide additional tribal services, employment for tribal members and for general economic development and individual self-sufficiency of tribal members.

(j) To harmonize with and adhere as much as possible to the Indian Gaming

Regulatory Act, Public Law 100-497, 102 Stat. 2467-88. 25 U.S.C. §§ 2701 *et seq.* as enacted by the U.S. Congress on October 17, 1988.

(k) To cooperate and agree on a sovereign to sovereign basis with the State of Idaho and any other concerned or affected states to enter into compacts or other agreements for gaming operation, regulation or coordination.

(l) To establish a commission within the tribal organization to oversee and regulate gaming consistent with this ordinance and within the precepts established by the Nez Perce Tribal Executive Committee.

§ 6-2-3 Ownership of Gaming and Use of Gaming Revenue

(a) The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance, unless individually owned gaming is approved and licensed under this ordinance.

- (1) In order to be licensed by the Nez Perce Tribe, individual owners, in addition to the requirements of this ordinance, shall also be required to:
 - (i) Pay to the Nez Perce Tribe not less than 60 percent of the individually owned operation's net revenues, to be used only for the purposes set forth below;
 - (ii) Pay an assessment to the National Indian Gaming Commission as set forth in 25 CFR § 514.1;
 - (iii) Comply with eligibility standards of a State license for the same activity, so that if the individual is ineligible to receive a State license to conduct the same activity within that jurisdiction, a tribal license shall be denied.

(b) Net revenues from tribal gaming or from individually owned games shall be used only for one or more of the following purposes:

- (1) To fund tribal government operations or programs;
- (2) To provide for the general welfare of the tribe and its members;
- (3) To promote tribal economic development;
- (4) To donate to charitable organizations; or

(5) To help fund operations of local government agencies.

(c) If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

(d) The Nez Perce Tribe hereby specifically reserves, through its inherent power, the full right and authority to adopt or impose a uniform and comprehensive system of revenue, taxation and licensing relating to gaming allowed by this ordinance.

§ 6-2-4 Severability (section amended by NPTEC 9/9/03)

If any clause, provision or section of this ordinance shall be ruled invalid or unenforceable by any court of competent jurisdiction by final order after all appellate jurisdiction is exhausted, such holding shall not invalidate or render unenforceable any other remaining provisions of this ordinance. Until such final order is entered and review exhausted, the questioned provisions shall be valid absent an enforceable injunction to the contrary, in full force and effect.

§ 6-2-5 Amendment

Except as provided in § 6-2-13(m), all powers of amendment are retained by the Nez Perce Tribal Executive Committee.

§ 6-2-6 Sovereignty

The Nez Perce Tribal Executive Committee acting for the Nez Perce Tribe by this enactment, does expressly retain and does not in any way waive its right of sovereignty as expressed in treaties, laws or in any other manner.

AUTHORIZED GAMBLING ACTIVITIES

§ 6-2-7 Class I Gaming

Class I gaming is defined as social games solely for prize of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(a) Class I gaming may be engaged in by individuals and organizations without restriction and is not subject to the provisions of this Act.

§ 6-2-8 Class II Gaming

Class II gaming is defined as:

(a) The game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith)

- (1) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations:
- (2) in which the holder of the card covers such numbers or designations with objects, similarly numbered or designated, which are drawn or electronically determined; and
- (3) 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; and

(b) Card games that:

- (1) are explicitly authorized by the laws of the State of Idaho, or
- (2) are not explicitly prohibited by the laws of the State of Idaho and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(c) The Nez Perce Tribe may engage in Class II gaming as an operator without the necessity of a license under this Act but shall comply with other applicable provisions of this Act.

(d) Until this Act is amended by appropriate action of the Nez Perce Tribal Executive Committee in a manner consistent with the relevant provisions of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, the Nez Perce Tribe shall be the only entity or organization authorized to engage in gaming activities on the Nez Perce Reservation for profit to the exclusion of any other entity, organization or person. The Nez Perce Tribe may conduct or license gaming activities on behalf of bona fide charitable, religious and non-profit organizations subject to regulations promulgated by the Commission on this topic and the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*

§ 6-2-9 Class III Gaming

(a) Class III gaming means all forms of gaming that are not Class I or Class II gaming.

(b) No person, entity, corporation, organization or government, except the Nez Perce Tribe, shall authorize or conduct any form of Class III gaming within the Nez Perce Reservation unless such gaming is consistent with:

- (1) the Indian Gaming Regulatory Act;
- (2) a Tribal-State compact for Class III gaming; and
- (3) is licensed by the Nez Perce Tribe.

(c) The Nez Perce Tribe shall enact rules and regulations regarding licensing of Class III games which shall be consistent with the provisions of the Indian Gaming Regulatory Act and the laws of the Nez Perce Tribe.

(d) Any person, entity, corporation, organization or government that conducts Class III gaming within the Nez Perce Reservation or that purports to authorize such gaming in violation of the laws or regulations of the Nez Perce Tribe commits a civil infraction.

(e) Any person, entity, corporation, organization or government found to have committed a civil infraction by failing to comply with the laws of the Nez Perce Tribe shall be subject to a civil fine in addition to other legal and equitable remedies available in civil cases.

(f) The Nez Perce Tribal Executive Committee hereby reserves the right to later enact authorization of Class III gaming as defined herein upon proper compliance with the Class III gaming requirements of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*

§ 6-2-10 Gaming Prohibited

All gaming activities not authorized by this Act, including, but not limited to, those activities commonly known as bookmaking, betting, card parlors, bunco or confidence games, pyramid clubs or schemes, chain letters and three card monte, are unlawful and prohibited.

§ 6-2-11 Nez Perce Tribe Gaming Commission Established

(a) The Nez Perce Tribe Gaming Commission (the “Commission”) shall consist of three individuals appointed by the Nez Perce Tribal Executive Committee.

(b) Each Commissioner shall serve for a term of three (3) years, with the term beginning on January 1 of the year of the appointment and ending on December 31 of the third year; except that for the initial group of Commissioners, one position will be for a term of three (3) years, one position will be for a term of two (2) years and one position will be for a term of one (1) year allowing for a staggered term process thereafter.

(c) Commission members shall serve beyond their term only in the event that NPTEC fails to promptly make appointments for the subsequent year. Upon the appointments for the following year, the prior year's appointments shall expire.

(d) Commission positions vacated prior to the end of the term shall be promptly filled by NPTEC so that a full Commission may serve on a continual basis. However, a temporary vacancy on the Commission shall not mean the Commission will be non-functional, since business can be conducted with a minimum of two members being present.

(e) The Commission shall elect among themselves a President, Vice President and Secretary-Treasurer. Elections shall be conducted each year, within two weeks after NPTEC appointments are made.

§ 6-2-12 Powers and Duties of the Commission and of the Nez Perce Tribal Executive Committee with Regard to the Commission Hours, Compensation and Removal (section amended by NPTEC 9/9/03)

(a) The Commission shall:

- (1) Oversee and regulate the gambling activities authorized by this chapter. Such power includes the power to inspect premises.
- (2) Safeguard and regulate by civil fines and other actions as specified in § 6-2-25 of this chapter.
- (3) Issue licenses when such are required by this chapter, and in accordance with § 6-2-16 through § 6-2-22 of this chapter.
- (4) Deny or revoke such license when the results of a thorough and objective investigation by the NPTGC indicates that such action is appropriate and/or in accordance with § 6-2-23 through § 6-2-25 of this chapter.
- (5) Formulate and promulgate rules and regulations which shall govern in detail the issuance of licenses, the amount of the license fee, and the revocation of licenses.

- (6) Insure the proper record keeping of gambling proceeds of the Nez Perce Tribe Gaming Enterprise, gaming licenses and anyone whose gambling activities subject him to the provisions of the Bank Secrecy Act, CFR Title 12, Banks and Banking or CFR Title 31, Money and Finance, or any other applicable requirement of the Internal Revenue Service .
- (7) Cause a review of the appropriate records of gaming licensees of the Nez Perce Tribe at least every three years. Appropriate records are those directly related to determining a licensee's suitability to hold a gaming license.
- (8) Cause annual outside audits as required by the Indian Gaming Regulatory Act, of all gaming activities on the Nez Perce Reservation to be conducted and submitted to the National Indian Gaming Commission specifically including all gaming-related contracts for supplies, services or concessions having a contract amount in excess of \$25,000.00 per annum or in any 12 month period.
- (9) Insure that facilities where gaming occurs are properly constructed and maintained and that the operation of the game is conducted in a manner which adequately protects the environment and the public health and safety.
- (10) Cause to be conducted background investigation and suitability determinations of potential gaming employees as required by the National Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

(b) It shall be the responsibility of the NPTEC to set the maximum hours (not to exceed 40 hours per week) and hourly compensation for the Gaming Commission.

(c) Any Gaming Commission member may be removed by NPTEC for cause, including neglect of duty, failure to recuse oneself in cases of conflicts of interest as set forth in § 6-2-12(d), gross misconduct or failure to attend more than on half of the regular commission meetings, or for any offense listed in § 4-1-93 through § 4-1-111, inclusive of the Nez Perce Tribal Code.

(d) NPTEC, or the Subcommittee appointed by NPTEC, shall act as the Gaming Commission for purposes of making the suitability determination for a gaming license applicant in the event that a Gaming Commissioner has a conflict, or the appearance of a conflict, including the following:

- (1) Any member of the Gaming Commission has applied for the same position

held by a particular gaming license applicant; or

- (2) Any member of the Gaming Commission has participated in the background investigation of a license applicant; or
- (3) Any member of the Gaming Commission is considered "immediate family" as defined in the Gaming Enterprise Human Resources Manual, of a gaming license applicant.

GAMING OPERATIONS

§6-2-13 General Gaming Operations Requirements (section amended by NPTEC 9/9/03)

(a) Each gaming employee or operator including owners of an operating entity as defined in (o) of this section, prior to beginning work, shall be required to be licensed, at least on a temporary or conditional basis as provided for in this chapter, by the Nez Perce Tribe Gaming Commission and shall be required to apply to the Commission for a determination that he:

- (1) has not been convicted of an offense related to gambling, fraud, misrepresentation or deception, drugs or a felony; for the past ten (10) years;
- (2) has no prior activities, reputation, habits, or associations affecting his present conduct that would pose a threat to the effective regulation and control of gaming, or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities, in the conduct of gaming; and
- (3) has no present interest in the conduct of any gaming business.

(b) The determination shall be confidential unless otherwise required for purposes of the tribal Human Resources Manual or the requirements of federal law or regulation.

(c) The Gaming Commission is also subject to periodic background investigations, at the discretion of NPTEC, and by the full NPTEC, based on any findings brought to the attention of NPTEC by the Internal Auditor or Background Investigator.

(d) The employee or contractor shall follow the application procedure for licenses described herein, provided that, no notice shall be published, and no public hearing shall be held. No employee may accept any gift or thing of value from a gaming contractor.

(e) In addition to any provisions of the tribal Human Resources Manual which may be applicable, any employee or operator shall be required to comply with the provisions of this

ordinance, the provisions of his contract with the Tribe, if any, and the provisions of applicable federal law.

(f) Any entity which contracts with a tribal gaming operation, shall be required to submit to a determination as required in (a) of this section. No such contract will be valid until it is approved by the Commission and the Secretary of the Interior as is necessary under federal law.

(g) Tribally operated gaming shall be held in compliance with this ordinance, and any other applicable laws, rules and regulations.

(h) Operators or employees in charge of tribally operated gaming shall provide required reports, audits and the results of any contract for service or supplies at least quarterly or when required.

(i) Any operator or employee of the tribal gaming operation shall deposit the proceeds of the gaming operation according to applicable federal and tribal law.

(j) Any operator or employee may request the assistance of the Commission in obtaining training or instruction for the benefit of the tribal gaming operation as well as in determining the proper meaning of this ordinance.

(k) The Commission may require that any operator or employee of a tribal gaming operation be bonded in a particular amount. The Gaming Enterprise will pay for the bonds of the Tribe's gaming employees; independent contractors are responsible for the cost of their own bonds.

(l) The Commission may recommend to the Nez Perce Tribal Executive Committee that a particular type of tribal gaming be operated through a management contract. The management contract must be in compliance with applicable federal law. The Commission shall require that the proposed operator comply with the requirements for licenses under this section of the ordinance. A proposed manager need not be a tribal member. Sole tribal approval of all management contracts shall remain with the Nez Perce Tribal Executive Committee.

(m) All tribal gaming operations are subject to monitoring and inspection by the Commission or agents of the Commission.

(n) The Commission shall issue regulations, which will control:

- (1) The possession of firearms by operators or employees. No firearms or weapons of any kind shall be allowed on gaming premises with the exception of armed armored car personnel and on-duty law enforcement

officers.

- (2) The security requirements for the operations.
- (3) The posting of rules of play.
- (4) The maximum limit, if any, which may be offered as a prize.
- (5) Rules for the conduct of the games, should the Commission deem that such rules are necessary for the proper conduct of gaming.
- (6) Any other regulations controlling the operation which are deemed necessary in writing by the Nez Perce Tribal Executive Committee. NPTEC shall provide written notice to the Commission, in a reasonably timely manner before additional regulations which may be required as the result of amendments or revisions to the Tribe's gaming compact take effect.

(o) Any person authorized by the Commission, an employee or independent contractor, who has a financial interest other than salary or wages or management responsibility in the conduct of tribal gaming activities must be licensed by the Commission including those persons who may serve on the Board of Directors or other governing body of a corporation, trust, partnership or other entity or who own ten (10%) or more of the stock of a corporation or like interest in profits or capital of any other business entity.

(p) The Commission shall issue a ninety (90) day temporary license based on Human Resources' approval of a completed employee application and satisfactory personal and employment reference checks by Human Resources. Negative information obtained by the Investigative Officer from the criminal and background checks shall be considered in the determination of whether to issue a permanent license.

(q) The Commission shall determine whether or not to issue a full year license within ninety (90) days after application. The Commission may issue a temporary license pending receipt of a response from the National Indian Gaming Commission pursuant to § 6-2-18 of this chapter.

(r) A license shall be valid for not more than three years and shall be renewed following a satisfactory criminal background check for the preceding three years. Only when extraordinary circumstances warrant an additional background investigation shall the Commissioner's investigation inquire into an applicant's activities earlier than the past licensing period. This section does not relieve a licensee of the obligation and responsibility of providing required update information to the Background Investigator, such as:

- (1) criminal charges, convictions; or
- (2) status changes, new addresses, etc.

(s) The Commission may charge a fee not in excess of that approved by NPTEC for each application of renewal.

(t) NPTEC has the sole authority to approve the Commission budget.

(u) Members of the Commission and Nez Perce Tribal Executive Committee members are prohibited from participating in bingo games.

(v) Members of the Commission and its staff are prohibited from participating in any gaming sponsored by the Nez Perce Tribal Gaming Enterprise.

§ 6-2-14 Inspection of Premises

(a) The premises where authorized gambling activities are being held shall be subject to inspection and audit at any reasonable time by persons designated by the Commission, with or without notice as follows:

- (1) if the items or records to be inspected or audited are located anywhere upon a premises, any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which time they are usually open;
- (2) or if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) above, then at any time between the hours of 8:00 a.m. and 9:00 p.m, Monday through Friday.

(b) The Commission shall be provided, at such reasonable intervals as the Commission shall determine, with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with this chapter or other applicable laws, rules or regulations.

KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

§ 6-2-15 Applications for Key Employee and Primary Management Official Positions
(section amended by NPTEC 9/9/03)

(a) Applications for individuals that have been offered employment by the Nez Perce Tribe's gaming enterprises for key employee and primary management official positions with the

Nez Perce Tribe's gaming enterprises shall be submitted to the Commission for licensing and background checks.

(b) The following notice shall be placed on the application form for a key employee or a primary management official 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 National Indian Gaming Commission members and staff who 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 investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire an individual in a primary management official or key employee position.

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

(c) Existing key employees and primary management officials shall be notified in writing that they shall either:

- (1) Complete a new application form that contains a Privacy Act notice; or
- (2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(d) The following notice shall be placed on the application form for a key employee or primary management official 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 terminating you from employment after you begin work. Also, you may be punished by fine or imprisonment. 18 U.S.C. § 1001.

(e) The Commission shall notify in writing existing key employees and primary management officials that they shall either:

- (1) Complete a new application form that contains a notice regarding false statements; or
- (2) Sign a statement that contains the notice regarding false statements.

Background Investigations

§ 6-2-16 Applications - Required Information (section amended by NPTEC 9/9/03)

(a) The Tribe shall require, in its initial investigation of each key employee and from each primary management official all of the following information:

- (1) Full name, other names used (oral or written), social security numbers, birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently and for the previous five (5) years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence addresses, and drivers license numbers;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and previous business relationships with any Indian tribes, including ownership interests in those businesses;
- (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name or address of the Court involved, and the date and disposition if any;
- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution

(excluding minor traffic violations), within 10 years of the date of the application, the name and address of the Court involved and the date and disposition;

- (10) For each criminal charge (excluding minor traffic charges), whether or not there was a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (8) or (9) of this section, the criminal charge, the name and address of the Court involved and the date and disposition;
- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (12) A current photograph;
- (13) Any other information the Tribe deems relevant;
- (14) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. 522.2(h).

(b) The Human Resources Director shall provide a written statement to the Background Investigator stating that three personal reference and three employment checks were performed, stating that no problems were discovered, or details of any problems discovered.

(c) The Human Resources Director shall provide the Gaming Commission with Employee Action Reports for key employees and primary management officials, including Employee Action Reports for new hires, terminations, and transfers. Such Employee Action reports shall include the employee's name, new position, and shall be sent to the Gaming Commission within one week of the employee action.

(d) The Tribe shall conduct an investigation sufficient to make a determination under § 6-2-19. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(e) Unless extraordinary circumstances apply, the Tribe shall require, for a tri-annual background investigation of an employee already issued a gaming license, information regarding only the past 36-month period after the issuance of the gaming license.

§ 6-2-17 Investigative Procedures for Background Checks (section amended by NPTEC 9/9/03)

- (a) A Background Investigator shall not conduct the background investigation for a

gaming license applicant if that Background Investigator has a conflict, or the appearance of a conflict, including the following:

- (1) The Background Investigator has applied for the same position held by a particular gaming license applicant; or
 - (2) The Background Investigator is considered “immediate family” as defined in the Gaming Enterprise Human Resources Manual, of a gaming license applicant.
- (b) The Nez Perce Tribe's Investigative Officer shall conduct the initial investigation by:
- (1) Verifying written or oral information submitted by the applicant;
 - (2) Inquiring into the applicant's prior activities, criminal record, if any, and reputation, habits and associations;
 - (3) Interviewing a sufficient number of knowledgeable people such as former employers, personal references, and others to whom referred; and
 - (4) Documenting the disposition of all potential problem areas noted and disqualifying information obtained.
- (c) The Investigative Officer shall utilize the employment and personal reference checks conducted by Human Resources.
- (d) The Investigative Officer shall then prepare and submit to the Commission an investigative report detailing:
- (1) Steps taken in conducting the background investigation; and
 - (2) Results obtained;
- (e) The Background Investigator shall use NIGC’s Notification of Results/Eligibility Determination electronic form, or the shortest form approved by NIGC, to report the details of the background investigation
- (f) Fingerprints of all applicants shall also be taken by the Nez Perce Tribal Police. Completed fingerprint cards will be returned to the Commission and placed in the applicant’s background file.

- (1) The Commission, shall send to the NIGC, at the Regional Office, Portland Area or to the Washington, D.C. office, whichever is designated, the names and fingerprint cards for those licensees who require an FBI criminal background check, with the appropriate funds to cover the costs of such inquiry.
- (2) Information obtained from NIGC as a result of the FBI fingerprint check shall be reviewed only by the Commission and the Tribe's Investigative Officer. No further dissemination of this information is authorized; and in fact, the Tribe is subject to the restrictions set forth in an MOU with NIGC forbidding use of such information for any other purpose. See NP 95-102.

§ 6-2-18 Eligibility Determination

(a) The Commission shall meet with the Investigative Officer, make a suitability determination based on all the information gathered from the various sources set forth above, including prior activities, criminal record, reputation, habits and associations, and the information received from NIGC resulting from the FBI fingerprint check; and submit this determination in written form to the National Indian Gaming Commission (NIGC) for review. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management position. (If the applicant is not hired and issued a license by the Tribe, NIGC shall be notified, but submittal of the determination and report shall be at the discretion of the Commission.) The report to NIGC shall also contain the information documenting investigative steps taken by the Investigative Officer, including those set forth above.

(b) The report to NIGC shall be sent within 60 days after an employee begins work with the Tribe. A response from NIGC shall be requested by the Commission within 30 days of receipt of the Commission's report.

(c) If the Chairman of NIGC requests additional information from the Commission regarding any employee who is a subject of a report, such information, if available shall be forwarded as soon as possible.

(d) When NIGC notifies the Commission that it has no objections to the issuance of a license to a particular applicant, the Commission may proceed with annual licensing of the applicant.

(e) If NIGC provides the Commission with a statement itemizing objections to the

issuance of a license to a particular applicant, the Commission must reconsider the application, taking into account the objections itemized by NIGC. The Commission, may then make a final licensing decision as to such applicant.

§6-2-19 Procedure for Submission of Applications and Reports for National Indian Gaming Commission Approval

(a) The Commission shall follow the following procedures when forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission (NIGC):

- (1) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the NIGC completed applications for employment and gaming license and conduct the background investigation and make the determination referred to in §6-2-18 above. (subsection amended by NPTEC 9/9/03)
- (2) The Commission shall forward the report referred to in (b) of this section to the NIGC within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the NIGC.
- (3) The gaming operation shall not employ as a key employee or a primary management official a person who does not have a license after 90 days.

(b) Pursuant to the procedures set forth in paragraph (a) above, the Commission shall forward to NIGC an investigative report on each background investigation.

- (1) An investigative report shall include all of the following:
 - (i) Steps taken in conducting a background investigation;
 - (ii) Results obtained;
 - (iii) Conclusions reached; and
 - (iv) The basis for those conclusions.
- (2) The Commission shall submit, with the report, a copy of the eligibility determination made under § 6-2-18.
- (3) If a license is not issued to the applicant by the Tribe, the Commission:

- (i) Shall notify NIGC; and
 - (ii) May forward copies of its eligibility determination and investigative report (if any) to NIGC for inclusion in the Indian Gaming Individuals Records System.
- (4) With respect to key employees and primary management officials, the Commission shall retain application for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee no less than three (3) years from the date of termination of employment.

§ 6-2-20 Issuance of Gaming Licenses

- (a) Response from National Indian Gaming Commission (NIGC)
- (1) If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies that Tribe that it has no objection to the issuance of a license by the Commission to the individual for whom the Commission has provided an application and investigative report to the NIGC, the Commission may issue a license to such applicant.
 - (2) The Commission shall respond to a request for additional information from the Chairman of the NIGC concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under the preceding paragraph until the Chairman of NIGC receives the additional information.
 - (3) If, within the thirty (30) day period described above, the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the NIGC, the Tribe shall reconsider the application, taking into account the objections itemized by the NIGC. The Tribe shall make the final decision whether to issue a license to such applicant.

§ 6-2-21 License Locations

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where any gaming is conducted under this ordinance.

§ 6-2-22 License Suspension

(a) If, after the issuance of a gaming license by the Commission, the NIGC receives reliable information indicating that a key employee or a primary management official is not eligible for employment, NIGC shall notify the Tribe.

(b) Upon receipt of such notification, the Commission shall suspend such license and shall notify in writing the licensee of the suspension, proposed revocation, and their right to request a hearing.

(c) No less than fourteen (14) days before the time of the hearing, the Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) The Commission shall provide, to the licensee, upon his written request, full disclosure of all information and evidence which has been the basis for the Commission's decision to suspend such license.

(e) After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify NIGC of its decision and shall notify the person in writing of its decision within fourteen (14) business days following the hearing as described in § 6-2-24(a) of this chapter.

(f) If the person does not receive written notice of decision by registered mail, return receipt requested or other carrier as evidenced by a return receipt, as outlined in this chapter within fourteen (14) business days of the hearing, the person may immediately file notice in the Nez Perce Tribal Court for an order requiring the Gaming Commission to issue a temporary license to work pending a rehearing on this matter.

§ 6-2-23 Dispute Resolution Process

(a) The Nez Perce Tribal Gaming Commission, as established in § 6-2-11 is authorized to oversee and regulate all gambling activities authorized by this ordinance, including decision-making authority in regard to any disputes that may arise by the gaming public. (subsection amended by NPTEC 11/13/01)

(b) Any person having a dispute with the Commission or any Gaming Operator or Management Company licensed by the Tribe may request that the Gaming Manager resolve the dispute. If dissatisfied with the result, the person may request a hearing with the Nez Perce Tribal Gaming Commission. Such a hearing shall be held within thirty (30) business days of receipt of a written request from the grievant. A decision shall be issued at the hearing or within fourteen (14) business days of the hearing.

§ 6-2-24 Appeal from Decisions of the Commission

(a) If the Commission denies a person a license, or if the Commission revokes a license which was previously granted, the Commission shall do so in writing, outlining the reasons for such decision, and deliver such writing to the person by certified mail, return receipt requested. If a person considers himself or herself aggrieved by such a decision, he or she may appeal to the Nez Perce Tribal Court within thirty (30) business days of the date of the mailing was received by the U.S. Postal Service or other carrier as evidenced by a dated receipt for same. The appeal shall be only on the record, and shall not be heard de novo. If the Court finds that the order of the Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Constitution of the Nez Perce Tribe or the constitutional rights of Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure or some other clear error of law, the Court shall vacate the same and remand the issuance or re-issuance of a license. Otherwise, the denial shall be upheld.

(b) If the grievant is dissatisfied with the decision issued by the Nez Perce Tribal Gaming Commission, he or she may appeal to the Nez Perce Tribal Court within thirty (30) business days of the issuance of the written decision from the Nez Perce Tribe Gaming Commission. The appeal shall be only on the record and shall not be heard de novo. If the Court finds that the order of the Nez Perce Tribe Gaming Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Constitution of the Nez Perce Tribe of Indians or the constitutional rights of Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure or some other clear error of law, the Court shall vacate the same and remand. Otherwise, the decision of the Nez Perce Tribe Gaming Commission shall be upheld.

(c) If the grievant is dissatisfied with the decision issued by the Nez Perce Tribal Court under either (a) or (b) above, he or she may appeal to the Nez Perce Court of Appeals in accordance with chapter 2-9 of the Nez Perce Tribal Code.

§ 6-2-25 Penalties for Violations

(a) Any person who shall violate any provisions of this ordinance or shall conduct gambling operations without a required license, shall commit fraud or deceit, or shall engage in professional gambling, shall be subject to one or more of the following:

- (1) A letter of warning;
- (2) A letter of reprimand;
- (3) A civil fine of up to a maximum of \$500.00 per occurrence per day;

(b) The Commission may refer violations under this chapter to the Tribal Prosecutor for possible civil or criminal prosecution in conformance with the Nez Perce Tribal Code.
(subsection amended by NPTEC 9/9/03)

§ 6-2-26 Exclusion of Individuals from Gaming Activities

(a) Any operator shall have the authority and discretion to exclude from gaming activities or gaming facilities, any individual who:

- (1) Appears to be under the influence of intoxicants;
- (2) Appears to be losing an unreasonable amount of money at gaming activities;
- (3) Appears to be violating rules or regulations governing gaming activities as established by the Commission or operator;
- (4) By virtue of his condition or activities, disturbs the peaceful participation of other individuals in gaming activities or disrupts the orderly conduct of the gaming activity;

(b) An operator may make reasonable inquiries of individuals in the course of determining whether any of the activities defined in paragraph (a) above are occurring;

(c) An operator who excludes any individual pursuant to this section shall not incur any liability, criminal or civil, as a result of doing so.

(d) Any person who is excluded from gaming by an operator pursuant to this section may petition the Commission for an order lifting the exclusion. The Commission shall have full discretion in determining whether to hear any such petition. The Commission shall further have discretion to impose such conditions as they deem appropriate in issuing any order lifting an exclusion.