



August 30, 2019

VIA FIRST CLASS MAIL AND E-MAIL

Charlene Nelson, Chairperson
Shoalwater Bay Indian Tribe
P.O. Box 130
Tokeland, Washington 98590
By e-mail: cnelson@shoalwaterbay-nsn.gov

Re: Amended Gaming Ordinance

Dear Chairperson Nelson:

This letter is to inform you that the Shoalwater Bay Indian Tribe's Gaming Ordinance enacted by the Shoalwater Bay Tribal Council's Resolution 05-17-19-20, received by the NIGC on May 31, 2019, is approved by operation of law.

Pursuant to the Indian Gaming Regulatory Act, the NIGC Chair has ninety days from the date of submission to either approve or disapprove a gaming ordinance.¹ Any ordinance not acted upon at the end of the ninety day period is considered to have been approved by the Chair to the extent it is consistent with the provisions of IGRA.² Because no action was taken by the Chair within the ninety day period, the Tribe's amended ordinance is considered approved to the extent it is consistent with IGRA. It is the opinion of the Office of General Counsel that the Gaming Ordinance is compliant with the requirements of IGRA and NIGC regulations.

If you have any questions, please feel free to contact NIGC Staff Attorney Tana Fitzpatrick at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig".

Michael Hoenig
General Counsel

cc: James Anderson, Shoalwater Bay Indian Tribe (janderson@shoalwaterbay-nsn.gov)

¹ 25 U.S.C. § 2710(e).

² *Id.*



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION #05-17-19-20

Updating / Amending 09-2018 Title 12 Gaming Code

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Tribe in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with its Constitution and By-laws; and

WHEREAS, The Shoalwater Bay Indian Tribe has an approved Title 12 Gaming Code [Resolution 09-14-18-43], passed in September 2018; and

WHEREAS, The Shoalwater Bay Tribal Council are now hereby amending the code with additions of gaming dispute resolution, and other updates required by NIGC.; and

THEREFORE BE IT RESOLVED, The Shoalwater Bay Tribal Council does hereby amend the existing Title 12 Gaming Code as of today's date, and this updated/amended code supersedes all other gaming codes/regulations.

CERTIFICATION

The above Resolution was passed at a regular Tribal Council Meeting held on the 17th day of May, 2019, at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 5 FOR 0 AGAINST and 0 ABSTENTIONS.

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council

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01-61135

Shoalwater Bay Indian Tribe Code of Laws



TITLE 12 GAMING

**Updated 05/17/2019
Tribal Council Resolution #05-17-19-20**

Enacted 09/14/2018
Tribal Council Resolution #09-14-18-43

**Shoalwater Bay Indian Tribe
Code of Laws**



**TITLE 12
GAMING**

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**SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS**



**TITLE 12
GAMING**

**Part 1
General Provisions**

12-1.01 Authority/Purpose.

The Shoalwater Bay Indian Tribal Council, pursuant to the Constitution of the Shoalwater Bay Indian Tribe, hereby enacts this ordinance to govern Class I, Class II, and Class III gaming activities occurring on Shoalwater Bay Indian Lands.

12-1.02 Definitions.

Unless specified otherwise, terms used herein shall have the same meaning as in the Indian Gaming Regulatory Act, (IGRA), 25 U.S.C. § 2701 *et seq.* and its regulations, 25 C.F.R. § 500 *et seq.*

a) "Class I Gaming" means:

- 1) 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;

b) "Class II Gaming" means:

- 1) 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 or other designations, in which the holder of the card 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, and;
- 2) Card games that are explicitly authorized by laws of the State of Washington, or are not explicitly prohibited by the laws of Shoalwater Bay Indian Tribe and the State of Washington and are played at any location in the State of Washington, but only if such card games are played in conformity with those laws and regulations (if any) of the State of Washington regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- 3) The term "Class II Gaming" does not include any banking cards games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

- 4) Notwithstanding any other provision of this Chapter, the term "Class II Gaming" includes those card games played in the State of Washington, that were actually operated in the State by an Indian Tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian Tribe in the State on or before such date.
- c) "Class III Gaming" means all forms of gaming that are not Class I Gaming or Class II Gaming.
- d) "Closely Associated Independent Contractor" means any contractor that shares common ownership, common officers, or common directors with any management principal, or a person related thereto.
- e) "Commission" means the Shoalwater Bay Tribal Gaming Commission.
- f) "Commissioner" means a Shoalwater Bay Tribal Gaming Commissioner.
- g) "Compact" means the Compact between the Shoalwater Bay Indian Tribe and the State of Washington for the Operation of Class III Gaming, approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710(d).
- h) "Complimentary" shall have the meaning as set forth in 25 C.F.R. §542.2(a).
- i) "Conditional License" means a Tribal Gaming License issued by the Agency to an applicant wherein conditions for maintaining such license exist for a specified period of time and the applicant is permitted to work or operate subject to the agreed upon conditions, and which is subject to immediate suspension or revocation in the event any such conditions are violated.
- j) "Gaming" means any activity in which a person stakes or risks something of value on the outcome of a contest of chance or a future contingent event, not under his or her control, or influence upon agreement, or understanding that the person, or someone else, will receive something of value in the event of a certain outcome, but shall not include bona fide business transactions.
- k) "Gaming Establishment" or "Gaming Premises" means any premises where gaming, other than Class I Gaming, is operated or conducted, and includes all buildings, improvements, equipment, and facilities used or maintained in connection with such gaming.
- l) "IGRA" means the Indian Gaming Regulatory Act, P.L. 100-497, codified at 25 U.S.C. § 2701-2721 and 18 U.S.C. § 1 166-1 168 and any amendments or additions thereto.
- m) "Indian Land" means:
 - 1) Any lands located within the exterior boundaries of the Shoalwater Bay Indian Reservation;
 - 2) Any lands title to which is either held in trust by the United States for the benefit of the Shoalwater Bay Indian Tribe, or held by the Shoalwater Bay Indian Tribe subject to a restriction by the United States against alienation and over which the Shoalwater Bay Indian Tribe exercises governmental power; or
 - 3) Any lands title to which is either held in trust by the United States for the benefit of the individual Indian, or held by an individual Indians subject to restriction by the United

States against alienation and over which Shoalwater Bay Indian Tribe exercises governmental power.

- n) Key Employee means a person who performs one or more of the following functions:
- 1) Approver of credit;
 - 2) Bingo caller;
 - 3) Cage Manager;
 - 4) Cage Shift Supervisor;
 - 5) Chief of Security;
 - 6) Count Team Member;
 - 7) Counting Room Supervisor;
 - 8) Croupier;
 - 9) Custodian of gambling devices, including person's with access to cash and/or accounting records within such devices;
 - 10) Custodian of gaming supplies and/or cash;
 - 11) Dealer;
 - 12) Department Supervisors;
 - 13) Director of Casino Operations;
 - 14) Director of Financial Operation (Controller);
 - 15) Floor Managers (Managers on Duty);
 - 16) Floor Personnel that handle gaming monies;
 - 17) Floor Supervisor;
 - 18) Line Cashier;
 - 19) Main Bank Cashier;
 - 20) Manager of Security Operations;
 - 21) Pit Manager;
 - 22) Security;
 - 23) Surveillance; and
 - 24) Shift Manager.

- 25) If not otherwise included, any other person whose total cash compensation is in excess of fifty-thousand dollars (\$50,000.00) per year shall also be considered to be a key employee; and
- 26) If not otherwise included, a "key" employee shall also include the four (4) most highly compensated persons in the gaming operation.
- o) "Licensee" means any person who has been issued a valid and current license pursuant to the provisions of this Gaming Ordinance.
- p) "National Indian Gaming Commission" (NIGC) shall mean the commission established under IGRA.
- q) "Net Revenue" means gross gaming revenues of a tribal gaming operation less (1) amounts paid out as, or paid for, prizes; and (2) total gaming-related operating expenses, excluding management fees.
- r) "Patron" means any person or group of persons who participate as players in gaming as defined by this Ordinance, or who are physically present on gaming premises.
- s) "Person" shall mean any natural person or entity, including but not limited to corporations, partnership and trusts.
- t) "Primary Management Official" (PMO) means:
 - 1) the person(s) having management responsibility for a management contract;
 - 2) any person who has authority to hire and fire employees or to set up working policy for the gaming operation;
 - 3) any person who exercises management authority over daily operation of gaming activities;
 - 4) the chief financial officer or other person who has financial management responsibility; or
 - 5) all owners, officers, and shareholders with greater than a ten percent (10%) ownership in the management contractor.
- u) "Regulation" means the regulations of the Commission under this Ordinance.
- v) "Reservation" means the Tribe's Reservation as defined in Article I of the Tribe's Constitution and including but not limited to all those lands defined as Indian Lands' under the IGRA.
- w) "Temporary License or Permit" means a license issued by the Commission prior to the completion of all necessary investigations and verifications pursuant to NIGC, the Compact and Tribal Gaming Commission regulations.
- x) "Tribal Council" means the governing body of the Shoalwater Bay Indian Tribe as provided in Article IV of the Tribe's Constitution.
- y) "Tribal Court" means the Tribal Court of the Shoalwater Bay Indian Tribe.

- z) "Tribal Gaming Commission" means the Shoalwater Bay Tribal Gaming Commission.
- aa) "Tribal Member" means any enrolled member of the Shoalwater Bay Indian Tribe.
- bb) "Tribal Gaming Agent" means an enforcement officer employed by the Tribal Gaming Commission and who is authorized by this Ordinance, including Commission delegation of authority, to enforce its provisions, IGRA and the Tribal/State Gaming Compact.
- cc) "Tribe" means the Shoalwater Bay Indian Tribe.
- dd) "Working days" means Monday through Friday except Federal or Tribal holidays.

12-1.03 Class I Gaming Authorized.

Class I Gaming activities hereby are authorized and no prior approval, license or permit from the Commission is needed to engage in Class I Gaming activities.

12-1.04 Class II Gaming Authorized.

Class II Gaming is hereby authorized. Class II Gaming shall be regulated by the Tribal Gaming Commission and shall only be conducted in conformity with the provisions of this Ordinance and IGRA. All Class II Gaming activity must first be authorized by the Commission and, if appropriate, by the NIGC, before such gaming activity lawfully can occur on Shoalwater Bay Tribal Lands.

12-1.05 Class III Gaming Activities.

- a) Authorized Class III Gaming activities that occur on Shoalwater Bay Tribal lands shall only be conducted in conformity with the requirements of this Ordinance, the IGRA and the Tribal-State Compact.
- b) All Class III Gaming activities must first be authorized by the Commission, and if appropriate, by the Washington State Gambling Commission ("WSGC"), before such gaming activity lawfully can occur on Shoalwater Bay Tribal lands.

12-1.06 Unauthorized Gaming Prohibited.

Class II and Class III Gaming by any person, party, or entity on Shoalwater Bay Tribal Lands, except as authorized pursuant to this Ordinance, is prohibited, and any person determined to have engaged in unauthorized gaming is subject to a civil fine not to exceed five-thousand dollars (\$5,000.00) per violation, in addition to potential criminal prosecutions for violating applicable Tribal criminal laws.

12-1.07 Severability.

In the event that any provision of this Ordinance is determined to be invalid or unenforceable, the remaining provisions of this Ordinance shall continue in full force and effect and their validity shall be unimpaired.

12-1.08 Sovereign Immunity.

In enacting this Ordinance, the Tribal Council does not waive the Tribe's Sovereign Immunity.

Part 2
Ownership of Class II and Class III Gaming Operations
Use of Revenues

12-2.01 Sole Proprietary Interest.

The Shoalwater Bay Indian Tribe shall have the sole proprietary interest in, authority over, and responsibility for, the conduct of any Class II and Class III Gaming operation authorized by this Ordinance.

- a) Nothing in this part shall limit the Tribe's ability to enter into a management contract wherein net revenues are divided between the Tribe and other parties to the contract.

12-2.02 Use of Net Revenues.

- a) Net revenues from Class II and Class III Gaming shall be used solely for the following purposes:
 - 1) To fund Tribal government operations, programs or businesses;
 - 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;
 - 5) To help fund operations of local government agencies impacted by gaming activities; or;
 - 6) Pursuant to 12-2.03.

12-2.03 Per Capita Payments.

- a) "Per Capita Payment" means the distribution of money or other thing of value to all members of the Tribe, or to identify groups of members, which is paid directly from the net revenues of any tribal gaming activity.
- b) If the Tribe elects to make per capita payments to tribal members from revenues derived from its gaming operations, it shall ensure that the following requirements of 25 C.F.R. Part 290 are met:
 - 1) The Tribe shall authorize and issue payments only in accordance with a revenue allocation plan submitted to and approved by the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).
 - 2) The Tribe shall ensure that the interests of minors and other legally incompetent persons who are entitled to receive any per capita payments under a Tribal per capita payment plan are protected and preserved, and that the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person, under a plan approved by the Tribal Council and the Secretary of the Interior. The Tribe must also establish criteria and a process for withdrawal of funds by the parent or legal guardian.

- 3) The Tribal Council shall designate or create a tribal court system, forum, or administrative process for resolution of disputes concerning the allocation of net gaming revenues and the distribution of per capita payments and will explain how it will correct deficiencies.
- 4) The Tribal Council shall ensure that the Tribal revenue allocation plan reserves an adequate portion of net gaming revenues from the tribal gaming activity to do one or more of the following purposes: fund Tribal government operations or programs; provide for the general welfare of the Tribe or its members; promote tribal economic development; donate to charitable organizations; or to help fund operations of local government.
- 5) The Tribal Council shall ensure that distributions of per capita payments are made according to specific eligibility requirements.
- 6) The Tribal Council shall ensure that Tribal members are notified of the tax liability for per capita payments and how taxes will be withheld.

Part 3

Establishment of the Shoalwater Bay Tribal Gaming Commission

12-3.01 Establishment of the Tribal Gaming Commission.

The Shoalwater Bay Tribal Gaming Commission hereby is established. The Tribal Gaming Commission is primarily responsible for the regulatory oversight of Class I, Class II, and Class III Gaming and licensing; adoption, approval and enforcement of all regulations applicable to Gaming Operations, Gaming Facilities and Gaming Activities as defined in IGRA and the Tribal-State Compact but shall not have management responsibility for Gaming Operations or Gaming Activities. The Tribal Gaming Commission shall be autonomous, non-partisan and non-political. The Tribal Gaming Commission shall be free to regulate in an independent capacity without undue interference from Tribal Leadership (Gaming Operations Management or Tribe's business division board); however, the Tribal Gaming Commission shall report to Tribal Council.

12-3.02 Membership, Appointment and Qualifications.

- a) The Tribal Gaming Commission shall consist of five (5) Commissioners each appointed by a majority vote of the Tribal Council.
- b) Appointment of Tribal Gaming Commissioners, two (2) shall be for a term of three (3) years and three (3) shall be for a term of two (2) years.
- c) In order to serve as a Tribal Gaming Commissioner, a person must:
 - 1) Be an enrolled member of the Shoalwater Bay Indian Tribe;
 - 2) Be twenty-one (21) years of age or older;
 - 3) Reside on or within two (2) hours driving time of the Shoalwater Bay Indian Tribe Reservation, or, if applicable, within two (2) hours driving time of a Tribal Gaming Establishment;
 - 4) Not have been convicted of a felony or a misdemeanor involving dishonesty within ten (10) years prior to the appointment.

- 5) Not have any direct or indirect financial interest in Class II or Class III Gaming Activities subject to this Ordinance. Membership in the Tribe shall not constitute a direct or indirect financial interest.
- 6) All candidates shall submit to a background investigation by the Commission Director to receive a Tribal Gaming License.
- 7) The proposed candidate shall pay all fees and costs as established by the Commission Director.
 - a. The proposed candidate shall pay all fees and costs as established by the Commission Director.
- 8) A Commissioner shall not be employed by the Tribal Gaming Operation or any other tribally licensed Class II or III gaming operation as defined by IGRA;
 - a. A person shall not be an elected official of tribe's governing council;
 - b. A person shall not be a member of the tribe's business division;
- 9) Otherwise qualify to serve as a Gaming Commissioner as determined by the Tribal Council, based upon a review of a background investigation, including a criminal history review;
- 10) The Commissioner's as appointed by council, shall be required to complete the National Indian Gaming Association (NIGA) certification or comparable certification within the first year of appointment to the commission.

12-3.03 Vacancies.

The Council shall appoint a person who meets the requirements of Section 12-3.02(c) to fill any vacancy on the Commission.

12-3.04 Compensation of Commissioners.

Commissioners shall be compensated at a rate to be established by the Tribal Council. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel, training and meeting expenses.

12-3.05 Selection of Chairperson – Powers.

- a) The Commission shall select a Chairperson from its membership, who shall serve a three (3) year term.
- b) The Chairperson shall preside over Commission meetings and shall have the power to convene special meetings of the Commission upon twenty-four (24) hours written notice to members of the Commission.
- c) The twenty-four (24) hour notice requirement may be waived by a majority vote of the Commission.

12-3.06 Voting.

Each Commissioner, including the Chairperson, shall have one (1) vote and a majority vote shall constitute the official decision of the Commission.

12-3.07 Quorum-Majority Vote.

- a) A quorum shall consist of three (3) members of the Commission.
- b) All decisions shall be made by a majority vote of the quorum present (or participating by telephone line, video conference, FaceTime, cell phone, etc.), unless indicated otherwise in this Ordinance.
- c) Proxy or assignments of voting shall be prohibited.

12-3.08 Meetings.

- a) Meetings shall be held annually or as needed as set forth in this Section.
- b) The Chairperson shall preside and exercise authority as delegated.
- c) Additional meetings shall be held as called by the Chairperson or by a majority vote of the Commissioners. Notice of meetings shall be communicated to each Commissioner by: first class mail, personal delivery, facsimile, electronic mail, or by documented telephone call at least five (5) business days prior to such meeting.
- d) Notice may be waived when meetings are called by unanimous consent of the Commission.
- e) Meetings that occur shall be noted.

12-3.09 Removal from Office.

- a) A Commissioner may only be removed from office by a majority vote of the Tribal Council for good cause, which includes:
 - 1) Neglect of duty, malfeasance, inefficiency, or conduct that jeopardizes the Integrity of the Commission;
 - 2) Occurrence or discovery of a condition that would exclude a person from appointment;
 - 3) Arrest and/or conviction of any crime;
 - 4) Acts or omissions contrary to the best interests of the tribe or commission.
- b) Removal should not be permitted for simple disagreement with Tribal leadership or gaming management over matters that involve a Tribal Gaming Commissioner's exercise of discretion in the performance of his or her duties.
- c) Prior to removal, a Commissioner shall be entitled, upon request, to a hearing before the Tribal Council, which shall allow for sufficient notice to the Commissioner and an opportunity for the Commissioner to be heard.

- d) After the conclusion of the hearing and consideration of all the evidence, the Tribal Council shall determine, by a majority vote, whether good cause exists to remove the Commissioner.
- e) Any person who is removed for cause pursuant to this section shall be disqualified for reappointment to the Tribal Gaming Commission for one (1) year.
- f) The removed Commissioner shall be barred from the Tribe's Gaming Operation(s) for no less than thirty (30) days upon removal unless a criminal act formed the basis for removal, in which case the Commissioner shall be barred permanently or for a lesser period as determined by a decision of the Tribal Council or, if applicable, a decision of the Tribal Court.

12-3.10 Appropriations.

The Shoalwater Bay Tribal Council shall appropriate funds to allow the Tribal Gaming Commission to exercise the powers and perform the responsibilities set forth in this Ordinance.

12-3.11 Communication with Tribal Council.

- a) The Shoalwater Bay Tribal Council and the Shoalwater Bay Tribal Gaming Commission shall hold regular meetings no less than bi-annually.
- b) Special meetings may be called by the Chair of either the Tribal Council or the Gaming Commission upon forty-eight (48) hours notice or sooner if requested pursuant to a majority vote of the Council and the Commission.
- c) Upon request of the Tribal Council, the Commission shall make quarterly reports, based on the Tribe's fiscal year, to the Council within thirty (30) days after the close of the month for which the information is being requested.
 - 1) Reports shall include a full and complete statement of gaming revenues paid to the Tribe, expenses and all other financial transactions of the Commission, and a summary of all licensing and enforcement actions.

12-3.12 Tribal Sovereign Immunity.

As an instrumentality of the Shoalwater Bay Indian Tribe, the Sovereign Immunity of the Tribe extends fully to the Tribal Gaming Commission, each individual Gaming Commissioner, and each agent and employee of the Commission.

Part 4

Powers and Responsibilities of the Commission

12-4.01 Powers of the Tribal Gaming Commission.

- a) The Commission shall perform and exercise all powers, and assume and discharge all responsibilities necessary and proper to carry out and effectuate the purposes of this Ordinance.
- b) In all decisions, the Commission shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity.

12-4.02 Responsibilities of the Tribal Gaming Commission.

The Commission's responsibilities shall include the following:

- a) To provide for the administration of all gaming regulatory functions;
- b) To promulgate regulations setting forth criteria for the licensure of employees of Class II and Class III Gaming establishments located upon Shoalwater Bay Tribal Lands, including the establishment of facility licensing fees;
- c) To promulgate regulations setting forth criteria for the issuance of gaming employee licenses, including but not limited to key employees and primary management officials, including the establishment of licensing fees;
- d) To promulgate regulations setting forth criteria for the issuance of vendor licenses, including the establishment of licensing fees;
- e) To deny any application, to limit, condition, suspend, revoke or restrict any license, make a finding of suitability or approval of a license, or a finding of suitability or approval of or the imposition of a fine upon any person licensed, for any cause deemed reasonable by the Commission;
- f) To conduct hearings concerning all licenses issued under this Ordinance and regulations promulgated thereunder;
- g) To conduct hearings upon complaints charging violations of applicable gaming laws;
- h) To hold hearings on patron complaints;
- i) Subject to applicable NIGC regulations concerning access to and confidentiality of information pertaining to key employees and primary management officials, to obtain all information from applicants, licensees (gaming and non-gaming) and other persons, entities and agencies associated with Class II and Class III Gaming activities occurring on Shoalwater Bay Indian Lands, which the Commission deems necessary to carry out its duties and effectuate its powers set forth in this Ordinance;
- j) To proscribe adequate requirements, at least as stringent as 25 C.F.R. Parts 556 and 558, to ensure that background investigations are conducted on all primary management officials and key employees of any Gaming Establishment and that oversight of such officials and their management is conducted on an ongoing basis;
- k) To identify and make necessary arrangements for a law enforcement agency (including the Commission) to take fingerprints for the purposes of conducting a criminal history check which shall, at a minimum, include a check through the Federal Bureau of Investigation and the National Criminal Information Center for each Key Employee and Primary Management Official applicant.
- l) To establish, impose and collect fees associated with testing equipment and devices offered for use in association with Class II and Class III Gaming activities;
- m) To inspect and examine all premises wherein gaming and associated activity is conducted or gambling devices or equipment are manufactured, sold, distributed, or stored;

- n) To summarily seize and remove from a gaming establishment (or wherever located) and impound such equipment or supplies for the purpose of examination, inspection, evidence or forfeiture;
- o) To demand access to and inspect, examine and audit all papers, books and records of applicants and licensees respecting any income produced by any gaming business, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Ordinance;
- p) To seize and impound any patron's winnings which the Commission may have reason to believe may have been won or obtained in violation of this Ordinance, pending a civil forfeiture hearing on such seizure;
- q) To issue cease and desist orders as provided in this Ordinance;
- r) For the purpose of administration and enforcement of this Ordinance the Commission, including its investigative personnel may, if deemed necessary by the Tribal Council, have the powers of a police officer of the Shoalwater Bay Police Department for purposes of enforcement of this Ordinance only;
- s) To issue subpoenas and compel the attendance of witnesses for hearings at any place within the Reservation, to administer oaths and to require testimony under oath;
- t) To issue any process or notice in the manner provided for service of process and notices in civil actions;
- u) To pay such transportation and other expenses of witnesses, as it may deem reasonable and proper;
- v) To apply for injunctive, declaratory or other relief in any court of competent jurisdiction to enforce the provisions of applicable gaming laws and any of the rules and regulations promulgated pursuant to applicable gaming laws;
- w) To recommend to the Shoalwater Bay Tribal Council amendments of existing gaming laws necessary to fulfill the purposes of this Ordinance and to otherwise remedy undesirable conditions in connection with the regulation, administration and/or operation of the Gaming Operations;
- x) To adopt and enforce a system of internal controls and standard operating procedures governing gaming activities;
- y) To enter into contracts for special investigations or single audits of the Gaming Operations, or any parts thereof;
- z) To the extent consistent with the requirements of this Ordinance, the IGRA, and the Compact, to cooperate or otherwise provide assistance in an investigation or audit requested by an authorized external regulatory agency, or the Shoalwater Bay Tribal Council;
- aa) Pursuant to the requirements set forth in this Ordinance, to exclude certain persons from Shoalwater Bay Indian Tribe gaming premises and provide for the establishment of a list of persons who are to be excluded from any Shoalwater Bay Indian Tribe gaming facilities;

- bb) To enter into Memoranda of Agreement or Understanding with Tribal entities in order to effectuate the purposes of this Ordinance;
- cc) To investigate and enforce violations of this Ordinance and regulations promulgated thereunder;
- dd) After consultation with the Tribal Council, issue such regulations as appropriate in order to implement the provisions of this Ordinance;
- ee) Pursuant to the authority set forth in this Ordinance, to hold such hearings as the Tribal Gaming Commission deems necessary in fulfilling its duties and exercising its powers, including hearing disputes against a gaming entity;
- ff) To recommend the hiring such professional, clerical, technical, and administrative personnel as may be necessary to carry out the provisions of this Ordinance;
- gg) To comply with any reporting requirements, including annual reports to the Tribal Council, requirements established under the Compact and requirements set forth in the IGRA and regulations promulgated there under;
- hh) To promulgate rules for each Class II, or Class III game allowed under this Ordinance governing the conduct of such games;
- ii) To correspond with the National Indian Gaming Commission and do whatever is necessary to complete compliance with the rules and regulations of that agency;
- jj) To ensure that all gaming activity is conducted in a manner which adequately protects the environment and the public health and safety;

12-4.03 Protection of the Environment and the Public Health and Safety.

- a) Class II, and Class III Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.
- b) The Commission shall issue a separate license to each place, facility or location on Indian lands where Class II and/or Class III gaming is conducted under this Ordinance.
- c) The Commission shall ensure compliance with this Section and applicable NIGC regulations, unless such regulations are declared invalid by a court of competent jurisdiction.

12-4.04 Promulgation of Regulations Governing Resolution of Disputes Between the Gaming Operations and the Public.

The Commission shall promulgate regulations governing the resolution of disputes between patrons and Gaming Operations.

At minimum, the following description of procedures for resolving disputes between the gaming public and the gaming operations management and/or management contractor:

- a) Either the employee manager or management contractor of the Gaming Operation or an alternate designated by either, as approved by the Tribal Gaming Commission, shall be present at all times during operational hours to resolve complaints by any patron player who claims to have been adversely affected by any act or omission of the Gaming Operation or Gaming Manufacturer or any employee thereof involving an outcome, prize, wager made, or any aspect

of the player's participation and to which asserts to have violated this Title, the Compact, IGRA or any other applicable gaming rules, laws or regulations, and may impose such remedial action as it deems appropriate to resolve or bring the Gaming Operation into compliance with such provisions.

- b) If the employee manager or their designated alternate are unable to resolve any dispute as provided in subsection a), upon request by the player, the dispute may be referred to Tribal Gaming Commission in an attempt to resolve the gaming dispute. Action by the Tribal Gaming Commission may be initiated by the player making a written request to the Chairperson of the Tribal Gaming Commission. A copy of Player Dispute Form will be provided to the player and shall contain the address or contact information of the Tribal Gaming Commission if the player wishes to initiate such action. The Tribal Gaming Commission may, in its sole discretion, conduct a hearing and receive evidence with regard to such complaint if it deems an evidentiary proceeding useful in the resolution of such complaint.
- c) Any Tribal Gaming Commission decision shall be final.

PART 5

REVIEW AND APPROVAL OF GAMING ACTIVITIES

12-5.01 Prohibition Against Unauthorized Gaming.

No Person duly authorized by the Commission to conduct Gaming shall engage, conduct or condone any game unless the Commission has authorized the game, a valid license has been issued and all fees paid by the Licensee, and procedures governing such game have been duly approved by the Commission. Each request for approval of a new game shall be filed with the Commission. The Commission will consider the request and if not inconsistent with this Ordinance authorize the game and submit its recommendation to the Tribal Council for approval of the game.

12-5.02 Grace Period.

The prohibition contained in 12-5.01 shall not apply to those games already being played as of the date of the enactment of this Ordinance; provided that the Licensee conforms to the then existing rules and any subsequent rules promulgated hereunder within five (5) days of such promulgation.

12-5.03 Authorization of Gaming.

The Commission may authorize the playing of any game not prohibited by the laws of the State of Washington. The Commission shall approve rules and procedures governing all authorized games, including rules governing Gaming Equipment, including without limitation chips, dice, cards and tiles. Any provision in a Compact with the State of Washington providing for notice to and comment from the State shall be complied with before the Commission authorizes any game.

12-5.04 Approval of Gaming Equipment.

The Commission shall have the discretion to review, and to reject or approve, all gaming equipment and other devices used in the gaming activity as to quality, design, integrity, fairness, honesty and suitability.

- a) The Commission may require a prototype or sample of any model of Gaming Equipment or other device used in the Gaming Activity to be placed in the custody of the Commission and retained by it as a control for comparison purposes.

- b) Any evidence that Gaming Equipment or other devices used in the Gaming Operation has been tampered with or altered in any way, which would affect the integrity, fairness, honesty or suitability of the equipment or device, shall be immediately reported to the Commission.

12-5.05 Posting of Rules.

The rules of each game offered at any duly licensed Gaming Premises shall be maintained in a location at the Gaming Premises and shall be clearly legible and available for public inspection upon request.

12-5.06 Gaming Rules and Procedures.

The management of a Gaming Premises may adopt rules and procedures governing the operations of all Gaming Activity with the approval of the Commission. Such rules and procedures shall be complied with until such time as modified with the approval of the Commission. Management may adopt emergency changes to such rules and procedures, however such changes shall be in writing and must be presented to the Commission for approval or rejection no later than at its next regularly scheduled meeting.

PART 6 EXCLUSION OR EJECTION OF INDIVIDUALS

12-6.01 Exclusion List.

The Commission may provide for the establishment of a list of persons who are to be excluded or ejected from any duly licensed Gaming Premises. The list may include any person whose presence in the Gaming Premises is determined by the Commission to pose a threat to the integrity of gaming activity, a threat to the health, safety or welfare of employees or patrons, interests of the Tribe, State of Washington or to licensed Gaming. Race, color, creed national origin, ancestry or sex must not be grounds for placing the name of a person on the list.

12-6.02 Notice and Opportunity to be Heard.

The Commission shall promulgate regulations providing due process to any person whose name the Commission is considering placing on the Exclusion list.

12-6.03 Prohibition Against Listed Individuals.

It shall be a violation of this Ordinance for any Licensee to knowingly fail to exclude or eject from a Gaming Premises any persons placed on the list referred to in 12-6.01. It shall be a violation of this Ordinance for any person whose name appears on the list referred to in 12-6.01 to enter into or engage in any game at a duly licensed Gaming Premises.

PART 7 CHEATING

12-7.01 Unlawful Acts.

It shall be a violation of this Ordinance for any Person to:

- a) Alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure, but before it is revealed to the players;

- b) 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 the game or knowledge that is the subject of the bet or wager;
- c) Aid anyone in acquiring such knowledge as set forth in Section (b) above, for the purpose of increasing or decreasing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome;
- d) Claim, collect or attempt to claim or take money or anything of value in or from a licensed game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
- e) Knowingly entice or induce another to go to any place where a Gaming Activity is being conducted or operated in violating of the provisions of this Chapter, with the intent that the other person play or participate in that Gaming Activity;
- f) To place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past-posting and pressing bets;
- g) To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets; or
- h) To manipulate, with intent to cheat, any component of Gaming Equipment in a manner contrary to the designed and normal operational purpose for the component, with knowledge that the manipulation affects or may affect the outcome of the game or with knowledge of any event that affects the outcome of the game.

12-7.02 Prohibition Against Electronic Aids.

Except as specifically permitted by the Commission, it shall be a violation of this Ordinance for any person to possess with the intent to use, or actually use, at any table game, either by himself, or in concert with others, any calculator, computer or other electronic, electrical or mechanical device to assist in projecting an outcome at the table game, to keep track or analyze the cards having been dealt, or to change the probabilities of the game or the playing strategies to be utilized.

PART 8 NATIONAL INDIAN GAMING COMMISSION & TRIBAL-STATE COMPACT

12-8.01 National Indian Gaming Commission - Regulations.

Notwithstanding any provision in this Ordinance or any regulation promulgated thereunder, the Commission is fully empowered to comply with all applicable regulations promulgated by the National Indian Gaming Commission, including but not limited to all requirements to report ordinances, contracts, license applications, background checks and other information to the National Indian Gaming Commission.

12-8.02 National Indian Gaming Commission - Assessment.

Notwithstanding any provision in this Ordinance or any regulation promulgated thereunder, the Commission is fully empowered to comply with all assessments authorized by the National Indian Gaming Commission. Such assessments shall be paid by the Tribe.

12-8.03 Compact with the State of Washington.

Notwithstanding any provision in this Ordinance or any regulation promulgated thereunder, the Commission is fully empowered to enforce the provisions of any Compact properly executed between the Tribe and the State of Washington; provided, however, that if any provision of the Tribal-State compact provides for action by the Tribe, the Commission is not authorized to, and shall not, contact the State's appointed agencies (or its agents) without the prior approval of the Tribal Council.

Part 9 Reports and Audits

12-9.01 Annual Report.

- a) On or before a date set by the Tribal Council for each year, the Tribal Gaming Commission shall provide in writing to the Tribal Council an Annual Report summarizing its activities during the prior twelve (12) month period and accounting for all receipts and disbursements.
- b) The Tribal Council may cause an executive summary of the Annual Report to be made available to members of the General Council.

12-9.02 Additional Reporting Requirements.

The Tribal Gaming Commission shall ensure the Tribe complies with all reporting requirements established under this Ordinance, the Compact and IGRA.

12-9.03 Annual NIGC Audit.

- a) The Commission shall arrange for an annual outside audit of authorized gaming and will provide a copy to the National Indian Gaming Commission pursuant to 25 U.S.C. § 2710(b)(2)(c), and 25 C.F.R. §§ 571.12 and 571.13.
- b) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of twenty-five thousand dollars (\$25,000.00) annually, except contracts for professional, legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection (a) above.

12-9.04 Enforcement Action Authorized.

The Commission may exercise any and all powers or duties set forth in this Ordinance to ensure the Tribe complies with reporting and audit requirements including but not limited to the issuance of civil penalties and adverse licensing actions.

Part 10 Enforcement

12-10.01 Notice of Violation.

- a) The Tribal Gaming Commission may issue a Notice of Violation to any person who engages in activities on property subject to the provisions of this Ordinance without a necessary license, in violation of the license or terms imposed thereon, or in violation of terms of suspension.

- b) The Tribal Gaming Commission may issue a Notice of Violation to any person, whether or not that person holds a license issued pursuant to this Ordinance, who violates of any provision of this Ordinance, any regulation promulgated there under or for any violation of the Compact, IGRA and applicable NIGC regulations.

12-10.02 Notice of Violation-Contents.

The Notice of Violation shall contain:

- a) A citation to the applicable law or regulation that has been or is being violated;
- b) A brief description of the circumstances surrounding the violation;
- c) If appropriate, measures required to correct the violation;
- d) If appropriate, a reasonable time for correction if the respondent cannot take measures to correct the violation immediately; and
- e) Notice of the right to seek adjudicatory review of the Notice of Violation by the Commission pursuant to this Ordinance and regulations promulgated hereunder.

12-10.03 Cease and Desist Orders.

- a) The Commission hereby is authorized to issue Cease and Desist Orders; subject to the following criteria:
 - 1) The Commission must find that there is a clear threat to the public, Gaming Operation employees, or to the integrity, security, honesty, and fairness of the operation and administration of gaming activity subject to this Ordinance;
 - 2) The Commission must serve copies of the cease and desist order upon the highest level Gaming Operations manager present at the facility and upon the Chair of the Tribal Council; and
 - 3) The Commission must afford the Gaming Operation subject to the Cease and Desist Order an administrative adjudicative hearing pursuant to this Ordinance within forty-eight (48) hours of the issuance of the order.

12-10.04 Limitations Period.

A Notice of Violation must be issued within two (2) years of the date upon which the Commission reasonably should have known the violation occurred.

Part 11 Penalties

12-11.01 Violations/Penalties.

- a) Any violation of this Ordinance or regulations promulgated there under shall be subject to a fine of no more than five-thousand dollars (\$5,000.00) for each separate count or violation, or prohibition from engaging any gaming activity, or both.

- b) Each day of violation shall constitute a separate count or violation under this Ordinance.
- c) A violator may also be required to pay court costs, storage fees, and auction or sales fees.
- d) All property used or which may be used in connection with activities in each and every separate violation of this Ordinance may become the property of the Tribe.
- e) Persons may be prohibited from trespassing on premises licensed under this Ordinance and licenses may be suspended or revoked.
- f) Gaming Establishments may be subject to closure.
- g) Winnings received in violation of this Ordinance are forfeited and become the property of the Tribe.

Part 12 Conflicts of Interest

12-12.01 Conflicts of Interest.

In order to ensure confidence of the Tribal Membership and the Public regarding the integrity of the Shoalwater Bay Gaming Operations, the following conditions and restrictions shall apply to the Shoalwater Bay Tribal Council, the Shoalwater Bay Police, the Shoalwater Bay Tribal Gaming Commission and Commission Staff, and the Shoalwater Bay Gaming Operations General Manager and his Assistant Managers:

- a) Persons subject to this Section shall not have any financial interest, direct or indirect, in any establishment or business involved in or with Shoalwater Bay Gaming Operations other than as a Tribal Member;
- b) Persons subject to this Section shall not receive any substantial gift, gratuity, employment or other thing of value from any person, corporation, association, or firm that contracts with or that provides services, supplies, materials or equipment used by the Shoalwater Bay Gaming Operations in the normal course of its business and/or which is licensed by the Commission; except that such entities or individuals may accept on an infrequent basis in the normal course of business such nominal or non-pecuniary item of insignificant value.
- c) Persons subject to this Section shall not participate in gaming activities at Shoalwater Bay Gaming Establishments.

Part 13 Licensing

12-13.01 Nature of Tribal Gaming Licenses.

- a) A Tribal Gaming License is a revocable privilege, and the issuance of a licensee shall not create any vested right.
- b) A Tribal Gaming License is personal to the Licensee or specific to the facility, and may not be re-assigned or transferred.

12-13.02 Licensing Regulations and Procedures.

The Tribal Gaming Commission shall promulgate licensing regulations and procedures which shall govern the issuance, renewal, denial, suspension and revocation of licenses.

12-13.03 Mandatory Licenses.

- a) The Commission shall require licenses for all persons, entities, and facilities for which a Tribal Gaming License is required under IGRA and the Compact, including:
 - 1) Class II and Class III gaming facilities;
 - 2) Key Employees;
 - 3) Primary Management Officials; and

12-13.04 Additional Licensing Authority.

The Commission may require additional licenses for persons, entities and facilities that the Commission determines are necessary to ensure the integrity of gaming activities and the protection of Tribal assets, including, but not limited to, individuals and entities that provide goods and services to Gaming Operations.

12-13.05 Prohibition Against Unlicensed Activities.

Engaging in any unlicensed activity for which a license is required pursuant to this Ordinance and licensing regulations promulgated hereunder constitutes a violation of this Ordinance, and any person or entity who engages in such unlicensed activity shall be subject to enforcement actions and penalties set forth herein.

12-13.06 Prohibition Against Disclosure of Applicant Information.

- a) All applicant information for Tribal Gaming Licenses and license renewals, and supporting data and information including all information relating to investigations of violations of this Ordinance is confidential, and shall not be disclosed to third parties, either during or after service on the Tribal Gaming Commission or as a Tribal Gaming Commission employee, except under the following circumstances:
 - 1) As ordered by a court of competent jurisdiction;
 - 2) Disclosures to the Washington State Gambling Commission or its authorized agents as authorized under the Compact;
 - 3) Disclosures to the National Indian Gaming Commission or its authorized agents required under IGRA and NIGC regulations;
 - 4) Review and discussion of such information in closed Tribal Gaming Commission hearings or appeals of Commission hearings to the Tribal Court; or
 - 5) Disclosures to Shoalwater Bay Gaming Operations for the purpose of license suitability determinations, provided that Shoalwater Bay Gaming Operations shall not disclose applicant information to third parties.

12-13.07 Penalty for Violations of Prohibition Against Disclosure.

Violations of Section 12-13.06 shall constitute good cause for removal of a Commissioner pursuant to this Ordinance and shall also constitute cause for termination of any Commission employee.

12-13.08 Key Employees/Primary Management Officials: License Application Forms.

- a) 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:
 - 1) In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information in this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and the 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 issuance, denial, or revocation of a gaming license, or investigation or activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Tribe being unable to license you in a primary management official or key employee position.
 - 2) The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.
 - 3) A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, section 1001).
 - 4) The tribe will maintain individual's complete application file containing all the information listed in 12-13.09 and 12-13.10.
- b) The Commission shall notify in writing existing key employees and primary management officials who have not completed an application containing the notices set forth in Subsection (a), above, that they shall either:
 - 1) Complete a new application form that contains both Privacy Act and false statement notices; or
 - 2) Sign a statement that contains the Privacy Act and false statement notices and consent to the routine uses described in that notice.

12-13.09 Key Employee/Primary Management Officials: Fingerprints.

Each applicant for a Key Employee or Primary Management Official shall be required to have fingerprints taken as part of the license application procedure. Fingerprints shall be taken by the Commission. Fingerprints will then be forwarded to the NIGC for processing through the FBI and NCIC to determine the applicant's criminal history, if any.

12-13.10 Key Employee/Primary Management Officials: Background Investigations.

- a) The Commission shall request from each primary management official applicant and from each key employee applicant all of the following information:
- 1) Full name, other names used (oral or written), social security number(s), 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 drivers license numbers;
 - 3) The names and current addresses of at least three personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this Section;
 - 4) Current business and residence telephone numbers;
 - 5) A description of any existing and previous business relationships with 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 and 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 ten (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 offenses), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(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 photograph taken within the last year; and
 - 13) Any other information the Commission deems relevant.

Part 14
Licensing Determinations/Adjudications

12-14.01 Licensing Determinations; Voting; Review of Preliminary Determinations.

- a) The Commission shall make a preliminary determination concerning approval, disapproval, suspension, or the imposition of limitations or conditions upon license issued pursuant to this Ordinance.
- b) If any applicant disagrees with the preliminary determination of the Commission, the applicant may file a written request for a hearing before the Commission within fifteen (15) days of the issuance of the preliminary determination.
- c) The Commission shall hold a hearing to review its decision within thirty (30) working days from the date the applicant files his/her written request with the Commission.
- d) At the hearing the burden shall be on the applicant to demonstrate that the Commission's preliminary decision was incorrect.
- e) Any Commission member that may gain financially (other than financial gain to the Tribe generally) from the granting or denial of a licensing application shall abstain from voting on such application.

12-14.02 Licensing Determinations: Specific Requirements for Key Employee and Primary Management Official Licensing Determinations.

- a) The Commission shall review an applicant's prior activities, criminal record, if any, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license.
- b) If the Commission, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Commission shall not license that person in a key employee or primary management official position.
- c) The requirements of this Section 12-14.02 shall be in addition to those requirements set forth in Section 12-14.01.

12-14.03 Commission Findings.

Following a hearing pursuant to Section 12-14.01, the Commission shall, within ten (10) working days, reach a final determination, which shall address:

- a) The accuracy of the preliminary certification of the facts;
- b) Whether the preliminary determination of the Commission should be affirmed, modified, reversed or vacated; and
- c) Whether or not any further action should be taken.

12-14.04 Notification of Commission Decision.

Within three (3) working days following the final determination, the Commission shall provide the applicant a copy of the written determination.

12-14.05 Right to Appeal.

- a) The applicant shall have the right to appeal the determination of the Commission to the Tribal Court.
- b) Such appeal must be filed with the Tribal Court in written form on or before the fifteenth (15th) day following the issuance of the final determination by the Commission.
- c) Adjudication of such appeal by the Tribal Court shall be final and no other appeal can be made.

12-14.06 Scope of Review: Timing.

- a) The Tribal Court shall review the determination of the Commission.
- b) Review shall be limited to the record of the proceeding below.
- c) The decision of the Commission shall be affirmed unless the Court determines that the decision is:
 - 1) Ultra virus;
 - 2) Arbitrary, capricious or an abuse of discretion;
 - 3) Contrary to the law; or
 - 4) Unsupported by substantial evidence.
- d) Such appeals shall be heard within ninety (90) days of filing the notice of appeal.

12-14.07 Procedures for Forwarding Notice of Results for Key Employees and Primary Management Official to the National Indian Gaming Commission.

- a) When a key employee or primary management official is employed to work at a Tribal Gaming Facility, the Commission shall conduct the background investigation and make the determination referred to in Section 12-14.01. The Commission shall forward to the National Indian Gaming Commission the notice of results of the background investigation, no later than sixty (60) days after the applicant begins work that includes:
 - 1) The applicant's name, date of birth, and social security number;
 - 2) Date on which the applicant began or will begin work as a primary management official or key employee;
 - 3) A summary of the information presented in the investigative report, including:

- a) License(s) that have previously been denied;
 - b) Gaming licenses that have been revoked, even if subsequently reinstated;
 - c) Every known criminal charge brought against the applicant within the last 10 years of the date of the application; and
 - d) Every felony of which the applicant has been convicted or any ongoing prosecution.
- 4) A copy of the eligibility determination made.
- b) Tribal gaming facilities shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

12.14.08 Report to the National Indian Gaming Commission.

- a) The Commission shall prepare and forward a report on each background investigation to the National Indian Gaming Commission. An investigative report shall include all of the following:
 - 1) Steps taken in conducting a background investigation;
 - 2) Results obtained;
 - 3) Conclusions reached; and
 - 4) The basis for those conclusions.
- b) The Commission shall forward the completed investigative report to the National Indian Gaming Commission within thirty (30) days after an employee begins work or within thirty (30) days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.
- c) The Commission shall submit, with the investigative report, a copy of the eligibility determination, unless the NIGC shall have advised the Tribe that the submission of the eligibility determination is not necessary.
- d) If a license is not issued to an applicant the Commission shall notify the NIGC and shall forward to the NIGC copies of the Commission eligibility determination and investigative report (if any) for inclusion in the Indian Gaming Individual Records System.
- e) The Commission shall retain applications for key employee and primary management official licensure, applications for employment and reports (if any) of background investigations and eligibility determination(s) for inspection by the NIGC Chairman or his or her designee for no less than three (3) years from the date of termination of employment.

12-14.09 Granting a Key Employee or Primary Management Official License.

- a) If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or primary management official for whom the Tribe has provided an investigative report to the NIGC, the Commission may issue a license to such applicant.

- b) All key employees and primary management officials of the gaming operation must have a gaming license issued by the Shoalwater Bay Tribe's Gaming Commission.
- c) The Commission is responsible for granting and issuing gaming licenses to key employees and primary management officials.
- d) The Commission may license a key employee or primary management official applicant after submitting a notice of results of the applicant's background investigation to the NIGC, as required by 12-14.07.
- e) The Commission shall notify the NIGC of the issuance of a license to a key employee or primary management official within 30 days of issuance.
- f) The Commission shall respond to a request for additional information from NIGC Chairman concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under Subsection (a) of this Section until the NIGC Chairman receives additional information.
- g) If, within the thirty (30) day period under Subsection (a) of this Section 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 Commission 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.
- h) If the Commission has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, notice and a hearing shall be provided to the licensee as required by 12-14.01.

12-14.10 Key Employee/Primary Management Official License Suspension.

- a) If, after the issuance of a gaming license, the Commission receives from the NIGC reliable information indicating that a key employee or a primary management official is not eligible for employment, the Commission shall immediately suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
- b) The Commission shall notify the licensee of a time a place for a hearing, pursuant to Section 12-14.01, on the proposed revocation of a license.
- c) After a revocation hearing, the Commission shall decide to revoke or to reinstate a primary management official or key employee gaming license. The Commission shall notify the NIGC of its decision within forty-five (45) days of receiving information from NIGC that primary management official or key employee is not eligible for licensing or employment.

12-14.11 Appeal of other Commission Action.

Other final actions of the Commission that are expressly subject to judicial review under this Ordinance shall be reviewed pursuant to Sections 12-14.04-.06.

Part 15 Rule Making

12-15.01 Prior Notice of Actions.

- a) In adopting, amending or repealing regulations, the Commission shall provide notice of the proposed action to the General Manager(s) of the Tribe's Gaming Operations and to the Chair of the Shoalwater Bay Tribal Council at least twenty (20) days prior to the Commission meeting at which the Commission is to consider the proposed action.
- b) The notice shall describe the general nature of the proposed action and advise how comments on the proposed action shall be received by the Commission.

12-15.02 Emergency Regulations.

In emergencies, the Commission may summarily adopt, amend or repeal any regulation, if at the time the Commission determines that such an action is necessary for the immediate preservation of the public peace, health, safety, morals and good order or general welfare together with a statement of facts constituting the emergency; provided the Commission shall schedule a hearing, held pursuant to Section 12-15.01, within ninety (90) days to determine whether the emergency regulation shall become a final regulation.

12-15.03 Final Regulations; Approval; Withdrawal.

Upon considering the record, including comments from interested parties, the Commission may:

- a) Repeal or modify an existing regulation;
- b) Withdraw a proposed regulation;
- c) Issue a proposed regulation as a final regulation;
- d) Issue the proposed regulation with amendments as a final regulation provided that the amendments do not significantly change the proposed regulation.

12-15.04 Judicial Review.

Final decisions of the Commission concerning the adoption, amendment, or repeal of regulations are subject to judicial review pursuant to this Ordinance.

Part 16 Management Contracts

12-16.01 Commission Approval Required.

- a) Any management contract entered into by the Tribe for the operation and management of Class II and Class III Gaming activity must be submitted to the Commission for approval, but, before approving any such contract, the Commission shall require and obtain the following information:
 - 1) The name, address and other pertinent background information for each person or entity (including persons compromising such entity) having a direct financial interest in or management responsibility for such contract, and, in the case of a corporation, those

individuals who serve on the board of directors of such corporation and each of its stock holders who (directly or indirectly) hold ten percent (10%) or more of its issued and outstanding stock and;

- 2) A description of any previous experience that each person listed to Subsection (a)(1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including the name and address of any licensing or regulatory agency with which such person had had a contract relating gaming and;
 - 3) A complete financial statement of each person listed pursuant to Subsection (a)(1).
- b) Any person listed pursuant to Subsection (a)(1) shall be required to respond to such written or oral questions that the Commission may propound in accordance with its responsibilities under this Ordinance.
 - c) For the purposes of this Ordinance, any reference to the management contract described in Section 12-16.01(a) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.
 - d) After the Commission has given its approval of a management contract, the Commission shall submit such management contract to the National Indian Gaming Commission for its approval.
 - e) No such contract shall be valid until the National Indian Gaming Commission has approved it, provided however, that a person or entity may perform pursuant to the terms of a management contract on an interim basis pending National Indian Gaming Commission approval.
 - f) In making the determination to approve management contracts, when the Tribe accepting competing bids or proposals involving gaming wherein the bids or proposals will provide substantially the same return to the Tribe and its membership, the Commission and the Council shall give preference to tribal members and cooperative associations of Tribal members over non-members.
 - 1) Such preference will be given to non-member Indians and cooperative associations of non-member Indians over non-Indians.

12-16.02 Approval of Management Contracts.

- a) The Commission shall approve any management contract entered into by the Tribe pursuant to this Part only if it determines that such contract is in compliance with the provisions of this Gaming Ordinance and provides at least, for:
 - 1) Adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Council on a monthly basis;
 - 2) Access to the daily gaming operations of the gaming to appropriate Tribal officials who shall have the right to verify the daily gross revenues and income made from any such Tribal gaming activity;
 - 3) A minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs;
 - 4) An agreed ceiling for the repayment of development and construction costs;

- 5) A contract term not to exceed five (5) years, except that at the request of the Tribe, the Commission may authorize a contract term that exceeds five (5) years but does not exceed seven (7) years if the Commission is satisfied that the capital investment required, and the income projections, for the particular gaming activity require additional time and;
- 6) Grounds and mechanisms for terminating such contract, but actual termination shall not require the approval of the Commission.
- b) Preference to Tribal members and non-member Indians in hiring employees for the Gaming Establishment and for provisions of the management contract shall be subject to the TERO Ordinance.

12-16.03 Percentage of Net Revenue Fees.

- a) A management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity may be approved by the Commission if such percentage fee is reasonable in light of surrounding circumstances.
- b) Except as provided in this Section such fees shall not exceed thirty percent (30%) of the net revenues.
- c) Upon request of the Council, the Commission shall approve a management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity that exceeds thirty percent (30%) but not forty percent (40%) of net revenues if the Tribal Council is satisfied that the capital investment required and the income projections for such Tribal gaming activity require the additional fee and such contract is otherwise in compliance with this Gaming Ordinance.

12-16.04 Contract Disapproval.

The Commission shall not approve any contract if it determines that:

- a) Any person listed pursuant to Section 12-16.01(a):
 - 1) Has been or subsequently is convicted of any felony relating to a gaming offense or:
 - 2) Has knowingly or willingly provided materially false statement of information to the Commission or Tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to Section 12-16.01(b); or
 - 3) Has been determined to be a person whose prior activities, criminal record, if any or reputation, bad habits and associations pose threat to the public interest or the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices methods and activities in the carrying on of the business and financial arrangements incidental thereto.
- b) The management contractor has, or attempted unduly to interfere or influence for its gain or advantage any decision or process of Tribal government relating to gaming activity;

- c) The management contractor has deliberately or substantially failed to comply with the terms of the management contract or the provisions of this Ordinance or the Indian Gaming Regulatory Act.

12-16.05 Modifying or Voiding Contract.

The Commission after notice and hearing shall have the authority to require appropriate contract modifications or may void the contract if the Commission subsequently determines that any of the provisions of this Chapter have been violated.

12-16.06 Conveying Interest in Land.

No management for the operation of a gaming activity regulated by this Ordinance shall transfer or in any other manner convey any interest in land or other real property unless specific statutory authority exists and unless clearly specified in writing in said contract.

12-16.07 Fee for Investigation.

The Commission may require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in this Part.

Part 17 Miscellaneous

12-17.01 Repeal.

All prior gaming ordinances and codes are hereby repealed.

12-17.02 Conflicts With Other Laws.

Except in the case of terms defined in this Ordinance and as provided in Section 11 (a) of the Compact, in the event that any provision of this Ordinance or implementing regulations conflicts or is inconsistent with IGRA, NIGC Regulations, the Compact (including its Appendices), or other applicable federal gaming law, such other gaming laws shall prevail.

12-17.03 Severability.

If any provision of this Ordinance, or its application to any purpose or circumstance, is held invalid by a court of competent jurisdiction, the full remainder of the provision, or the application of the provision through another person or circumstance, shall not be affected.

12-17.04 Effective Date/Applicability/Retroactivity.

- a) This Ordinance and any further amendments, additions or modifications thereto, as well as any implementing regulations, shall be effective upon the date of their adoption by the Council and the Tribal Gaming Commission.
- b) This Ordinance shall apply retroactively to all Tribal Gaming Licenses issued prior to the effective date and prospectively to all applications for Tribal Gaming Licenses submitted after the effective date of this Ordinance.

12-17.05 Maintenance of Ordinance and Regulations.

- a) The General Manager of the Tribe's Gaming Operation(s) shall be responsible for ensuring that all licensees have access to a current copy of the Gaming Code and Regulations promulgated thereunder, which shall be located at the premises used for the conduct of a licensed activity.
- b) All licensees have a continuing obligation to be familiar with this Code and each of the rules of the Commission.
- c) The Commission shall make available for inspection at its principal office one complete copy of the Code and regulations, and amendments thereto.

12-17.06 Jurisdiction.

Nothing herein shall be interpreted as Tribal consent to Washington State regulatory or adjudicatory jurisdiction.

12-17.07 Agent for Service of Process.

The Tribe hereby designates the Shoalwater Bay Gaming Commission Chairperson as agent for service of process, who may be contacted at: 2373 Old Tokeland Rd, Tokeland, WA 98590.



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION #09-14-18-43

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe according to its Constitution; and

WHEREAS, The Shoalwater Bay Tribal Council has the power to impose taxes on all persons, property, and activities within the Tribe's jurisdiction under Art. VI, Sec. 1(d) of the Constitution of the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Tribal Council has the power to license and regulate the conduct of business activities within the Tribe's jurisdiction under Art. VI, Sec. 1(e) of the Constitution of the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Tribal Council has the authority and the responsibility, under the Constitution and Bylaws of the Tribe, to enact regulations necessary for the protection of the health, security, and general welfare of the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Tribal Council approved the Shoalwater Bay Tribe Gaming Code (Title 12) by Resolution 07-19-12-38, which was enacted July 2012; and

WHEREAS, The Shoalwater Bay Tribal Council is amending the Gaming Code to be in continuing compliance to the Federal Indian Gaming Regulatory Act PL 100-497, 25, USC § 2701 and also to address the special interests of the Shoalwater Bay Indian Tribe; and

THEREFORE BE IT RESOLVED, that the Shoalwater Bay Tribe is hereby amending the existing Shoalwater Bay Title 12 Gaming Code, of July 2012 as of today's date. The amended Code will supersede all other regulations.

Res. 09-14-18-43

CERTIFICATION

The above Resolution was passed at a regular Tribal Council Meeting held on the 13th day of September 2018, at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 5 FOR and 0 AGAINST and 0 ABSTENTIONS.


Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council


Lynn Clark, Secretary
Shoalwater Bay Tribal Council



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION #05-17-19-20

Updating / Amending 09-2018 Title 12 Gaming Code

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Tribe in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with its Constitution and By-laws; and

WHEREAS, The Shoalwater Bay Indian Tribe has an approved Title 12 Gaming Code [Resolution 09-14-18-43], passed in September 2018; and

WHEREAS, The Shoalwater Bay Tribal Council are now hereby amending the code with additions of gaming dispute resolution, and other updates required by NIGC.; and

THEREFORE BE IT RESOLVED, The Shoalwater Bay Tribal Council does hereby amend the existing Title 12 Gaming Code as of today's date, and this updated/amended code supersedes all other gaming codes/regulations.

CERTIFICATION

The above Resolution was passed at a regular Tribal Council Meeting held on the 17th day of May, 2019, at the Shoalwater Bay Tribal Center at which a quorum was present by a vote of 5 FOR 0 AGAINST and 0 ABSTENTIONS.

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council