



August 17, 2018

Robert J. Welch, Jr., Chairman
Viejas Band of Kumeyaay Indians
1 Viejas Grade Road
Alpine, CA 91901

Re: Viejas Band Gaming Ordinance and Resolution No. 070518

Dear Chairman Welch:

I am writing with respect to the July 9, 2018 request of the Viejas Band of Kumeyaay Indians to the National Indian Gaming Commission to review and approve the Tribe's amended gaming ordinance. The amended gaming ordinance was adopted by Resolution No. 070518 of the Tribal Council.

Thank you for providing the amended gaming ordinance for our review. The ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. If you have any questions concerning this letter, please contact Staff Attorney Austin Badger at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, which appears to read "Jonodev O. Chaudhuri".

Jonodev O. Chaudhuri
Chairman

cc: Tracy Burris, Gaming Commissioner
Viejas Gaming Commission

Gabriel Llerandi, Staff Attorney
Viejas Office of the Attorney General



TRIBAL GOVERNMENT

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Victor E. Woods, Vice Chairman
Rene Curo, Tribal Secretary
Samuel Q. Brown, Tribal Treasurer
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**TRIBAL COUNCIL RESOLUTION
APPROVING AND ADOPTING TRIBAL GAMING ORDINANCE**

Resolution No. 070518

WHEREAS, the Viejas Band of Kumeyaay Indians, (appearing in the U.S. Federal Register as the *Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California*) (the "Viejas Band") is a self-governing federally recognized Indian Tribe exercising sovereign authority over the lands of the Viejas Indian Reservation;

WHEREAS, on January 16, 2013, the Tribal Council previously adopted a Tribal Gaming Ordinance pursuant to Resolution No. 011613 to govern gaming activities taking place on the Viejas Indian Reservation.

WHEREAS, the Tribal Council desires to adopt a new ordinance that shall supersede and replace the currently operative Tribal Gaming Ordinance; and

WHEREAS, the National Indian Gaming Commission expressed concerns regarding the tribal gaming ordinance approved by the Tribal Council on May 17, 2018 and submitted to the National Indian Gaming Commission by the Viejas Tribal Gaming Commissioner soon thereafter, but which never took effect, and

WHEREAS, the Tribal Council has reviewed the ordinance attached as Exhibit A and desires that it shall take effect upon approval by the Chairperson of the National Indian Gaming Commission.

NOW, THEREFORE BE IT RESOLVED THAT THE TRIBAL COUNCIL HEREBY CERTIFIES AND DULY APPROVES AND AUTHORIZES, AFTER MOTION AND UPON THE VOTE OF THE MAJORITY OF COUNCIL MEMBERS, THE FOLLOWING:

Tribal Council adopts and approves the ordinance attached as Exhibit A.

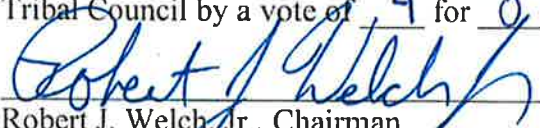
Tribal Council hereby directs the Commissioner of the Viejas Tribal Gaming Commission to submit to the Chairperson of the National Indian Gaming Commission for review and approval the ordinance attached as Exhibit A, and to take all such action that is necessary to make the ordinance effective.

The Chairperson of the Viejas Band, or in the Chairperson's absence, the Vice Chairperson, is hereby authorized to take any required action and to execute on behalf of the Viejas Band, any and all documents required to further the purposes of this resolution.

Upon approval of the ordinance attached as Exhibit A by the Chairperson of the National Indian Gaming Commission, this resolution shall supersede and replace all prior resolutions passed by Tribal Council related to the Tribal Gaming Ordinance.

CERTIFICATION

Resolution passed this 5th day of July, 2018, at a duly noticed meeting of the Viejas Tribal Council by a vote of 4 for 0 against, and 0 abstaining.



Robert J. Welch, Jr., Chairman

Absent
Victor E. Woods, Vice Chairman


Rene Curo, Tribal Secretary


Samuel Q. Brown, Tribal Treasurer

Absent
Adrian M. Brown, Councilman


Gabriel T. TeSam, Jr., Councilman


Kevin M. Carrizosa, Councilman

Exhibit A

**VIEJAS BAND OF KUMEYAAY INDIANS
TRIBAL CODE**

TRIBAL GAMING ORDINANCE

Enacted on XXXXX

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Section 1 – Definitions

In construing the terms of this Ordinance, except when otherwise plainly declared or clearly apparent from the context, words in the present tense shall include the future tense, words in the singular shall include the plural, and vice versa. Unless a different meaning is indicated, the terms used in this Ordinance shall have the same meaning as defined in IGRA.

1.01 Agreed Upon Procedures means the procedures that an independent certified public accountant shall employ in order to verify that the Gaming Operation is in compliance with the internal control standards in the manner provided for in 25 CFR 542.3(f).

1.02 Chairperson means the Review Board member selected annually from the Review Board's membership who shall chair all necessary hearings and meetings.

1.03 Calendar Day means any day of the year, including weekends and holidays.

1.04 Class I Gaming means:

- (A) Social games played solely for prizes of minimal value; or
- (B) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

1.05 Class II Gaming means:

- (A) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith):
 - (I) Which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
 - (II) In which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
 - (III) 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:
 - (I) Are explicitly authorized by the laws of the state of California; or
 - (II) Are not explicitly prohibited by the laws of the state of California 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 of

California regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such games.

(C) The term Class II Gaming does not include:

- (I) Any banking card games, including baccarat, chemin de fer, blackjack (21), or
- (II) Electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

1.06 Class III Gaming means all forms of gaming that are not Class I Gaming or Class II Gaming.

1.07 Collateral Agreement means any contract, whether or not in writing, that is related either directly or indirectly, to a Management Contract or to any rights, duties, or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any Person or entity related to a management contractor or subcontractor).

1.08 Commissioner means the chief administrator of the Gaming Commission appointed by the Tribal Council.

1.09 Compact means any agreement reached between the Viejas Band and the State of California pursuant to 25 U.S.C. §2710 (d) and approved by the Secretary of the Interior. Any such agreement shall affect the scope and regulation of Class III Gaming Activities only.

1.10 Gaming Activities means operating Class II Gaming and Class III Gaming authorized under this Ordinance.

1.11 Gaming Commission shall have the meaning set forth in Section 3 of this Ordinance.

1.12 Gaming Employee means any Person employed by the Gaming Operation engaged in the conduct of Class II or Class III Gaming Activity as well as any Primary Management Official or Key Employee.

1.13 Gaming Facility means any premises where Gaming Activities are operated or conducted.

1.14 Gaming License means a Tribal gaming license issued by the Gaming Commission.

1.15 Gaming Operation means the business enterprise owned by the Viejas Band that conducts Gaming Activities.

1.16 Gaming Resources means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment,

furniture, gambling devices and ancillary equipment, implements of Gaming Activities such as playing cards and dice, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and gaming consulting services. Gaming Resources does not include professional accounting and legal services.

1.17 Gaming Resource Supplier means any Person who directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Gaming Commission may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not influence over the Gaming Operation.

1.18 IGRA means the “Indian Gaming Regulatory Act”, Public Law 100 §497, 102 Stat. 2467, codified at 25 U.S.C. §§2701 et seq. (Oct. 17, 1988).

1.19 Indian Lands means:

- (A) Land within the limits of an Indian reservation; or
- (B) Land over which an Indian Tribe exercises governmental power and that is either:
 - (I) Held in trust by the United States for the benefit of any Indian Tribe or individual; or
 - (II) Held by an Indian Tribe or individual subject to restriction by the United States against alienation.

1.20 Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as:

- (A) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and
- (B) Having powers of self-government.

1.21 Key Employee means:

- (A) A Person who performs one or more of the following functions:
 - (I) Bingo caller, supervisor, cashier;
 - (II) Counting room supervisor; and count and drop personnel;
 - (III) Chief of security; and security personnel;

- (IV) Custodian of gaming supplies or cash;
 - (V) Floor manager;
 - (VI) Pit boss;
 - (VII) Dealer;
 - (VIII) Cashier;
 - (IX) Croupier;
 - (X) Approver of credit;
 - (XI) Any employee engaged in finance or accounting functions; or
 - (XII) Custodian of gambling devices including Persons with access to cash and accounting records within such devices;
- (B) If not otherwise included, any other Person whose total cash compensation is in excess of \$50,000 per year; or
- (C) If not otherwise included, the four most highly compensated Persons in the Gaming Operation.

1.22 Licensee means a Person that has been issued a Gaming License.

1.23 Management Contract means any contract, subcontract, or Collateral Agreement between an Indian Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a Gaming Operation.

1.24 MICS means the minimum internal control standards promulgated by the Gaming Commission.

1.25 Net Revenue means gross gaming revenues of a Gaming Operation less:

- (A) Amounts paid out as, or paid for, prizes; and
- (B) Total gaming-related operating expenses, excluding management fees.

1.26 NIGC means the National Indian Gaming Commission.

1.27 NIGC Chairperson means the chairperson of the NIGC.

1.28 Non-Gaming Employee means any employee of the Gaming Operation who is not a Gaming Employee, Primary Management Official or Key Employee. Non-Gaming Employees shall also be licensed by the Gaming Commission in accordance with any limitations, restrictions or regulatory requirements deemed appropriate by the Gaming Commission.

1.29 Ordinance means this Gaming Ordinance authorizing and setting the terms for Class II and Class III Gaming Operations on the Viejas Band's Indian Lands.

1.30 Person includes any natural person, corporation, limited liability company, partnership, association, Gaming Resource Supplier, or other form of business association.

1.31 Primary Management Official means:

- (A) The Person having management responsibility for a Management Contract;
- (B) Any Person who has authority:
 - (I) To hire and fire employees; or
 - (II) To set up working policy for any portion of the Gaming Operation; or
- (C) The chief financial officer or other Person who has financial management responsibility.

1.32 Regulations means the regulations of the Gaming Commission promulgated under or in furtherance of this Ordinance.

1.33 Review Board shall have the meaning set forth in Section 4 of this Ordinance.

1.34 Secretary means the Secretary of the Interior.

1.35 Tribal Council means the duly elected governing body of the Viejas Band.

1.36 Tribal Member means any individual who has been determined by the Viejas Enrollment Committee to be eligible for enrollment in the Viejas Band, or by having previously been qualified by the 1999 enrollment listing as set forth in the official records of the Viejas Enrollment Committee.

1.37 Viejas Band means the Viejas Band of Kumeyaay Indians.

Section 2 – Gaming Authorization; Ownership

2.01 Purpose. The Viejas Band hereby enacts this Ordinance to authorize and govern Gaming Activities on the Viejas Band's Indian Lands.

2.02 Gaming Authorized. Class II Gaming as defined in the Indian Gaming Regulatory Act, P. L. 100-447, 25 U.S.C. §2703 (7) (a) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 ("NIGC") (as published in the Federal Register at 57 FR 12382-12393, April 9, 1993) is hereby authorized. Additionally, all forms of Class III Gaming permitted in any Compact are authorized. The Gaming Commission shall promulgate Regulations for rules governing all authorized games, including Regulations governing the equipment (chips, dice, cards, tiles, devices, etc.) used in such game. Any provision in the Viejas Band's Compact with the State of California providing for testing, notice to, and comment from the State, shall be complied with before any game is authorized by the Gaming Commission. When there is reasonable cause to question the classification of a game (i.e. Class II or Class III) the Gaming Commission shall authorize such games to be conducted as Class II, unless or until the NIGC rules otherwise or until a court of competent jurisdiction has ruled otherwise.

2.03 Approval of Class II and Class III Gaming. No Person licensed by the Gaming Commission shall engage, conduct, or condone any Class II Gaming or Class III Gaming unless approved by the Gaming Commission and Regulations for rules governing such have been duly promulgated by the Gaming Commission. Each request for approval of any Class II Gaming or Class III Gaming shall be filed with the Gaming Commission. The Gaming Commission will consider the request and will either approve or deny the request based on consistency with this Ordinance and any other applicable laws or Regulations.

2.04 Approval of Gaming Equipment. The Gaming Commission shall review and approve all gaming equipment and other devices used in the Gaming Operation as to quality, design, integrity, fairness, honesty, and suitability.

- (A) The Gaming Commission may require a prototype or sample of any model of gaming equipment or other device used in the Gaming Operation to be placed in the custody of the Commissioner and retained as a control for comparison purposes.
- (B) The Gaming Commission may contract with any outside independent gaming test laboratory or other professional expertise it deems necessary or appropriate to ensure the integrity of gaming devices, equipment, supplies, etc.
- (C) Any evidence that gaming equipment or other devices used in the Gaming Operation have 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 Gaming Commission.

2.05 Posting of Game Rules. The rules of each authorized game offered at any Gaming Facility shall be posted in a conspicuous location and shall be clearly legible.

2.06 Other Gaming Related Activity. The Gaming Commission shall have full jurisdiction for regulatory compliance and enforcement of any other gaming related activity that the Viejas Band may elect to conduct. The Gaming Commission shall promulgate such Regulations as it

deems necessary to ensure the integrity of such activity and to ensure compliance with all applicable Federal laws and regulations. Gaming Commission approval with regard to compliance with applicable gaming laws and regulations shall be required for any contracts related to any such gaming related activities. For the purposes of this section, such gaming related activities shall include but not be limited to:

- (A) manufacture, development, assembly, sales, or distribution of any gaming machines, devices, equipment, software, or components thereof;
- (B) joint ventures with other tribes, entities, persons, etc., related to Gaming Activity;
- (C) management or service contracts with any other Indian Tribe, entities, Persons, etc., related to Gaming Activities; and
- (D) any financial loans, grants or other relationship with any Indian Tribe, entity, Person etc., related to Gaming Activity.

2.07 Unauthorized Gaming. Any Person who commits any act of unauthorized gaming on the Viejas Band's Indian Lands shall be in violation of this Ordinance. If the Gaming Commission should have reasonable cause to believe any such violation occurred, it may impose licensing sanctions, fines, prosecution and exclusion.

2.08 Ownership; Revenues to Benefit the Viejas Band. The Viejas Band shall have the sole proprietary interest in, and sole responsibility for, the conduct of the Gaming Activity. Such provision does not, however, limit the Viejas Band's ability to enter into a Management Contract wherein net profits are divided between the Viejas Band and other parties to the contract. The Viejas Band's share of Net Revenues will go entirely to the Viejas Band and will be used solely for the following purposes:

- (A) to fund Tribal government operations or programs;
- (B) to provide for the general welfare of the Viejas Band and its members;
- (C) to promote Tribal economic development;
- (D) to donate to charitable organizations;
- (E) to help fund operations of local government agencies; or
- (F) Net Revenues from the Gaming Operation may be used to make per capita payments to members of the Viejas Band pursuant to a plan approved by the Secretary.

Section 3 – Gaming Commission

3.01 Establishment and Authority of the Gaming Commission. The Gaming Commission is hereby established. The Gaming Commission shall exercise all powers necessary to effectuate the purposes of this Ordinance. The Gaming Commission may exercise any proper power and authority necessary to perform the duties assigned to it by this Ordinance, and is not limited by the enumeration of powers in this section. The Gaming Commission shall promulgate rules and Regulations for the operation of any Gaming Facility and shall hear and resolve all disputes regarding any provision of the Ordinance. In all decisions, the Gaming Commission shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of gaming and ancillary activities of the Gaming Operation. The Gaming Commission shall have the power and authority to: deny any application; limit, condition, suspend, or restrict any Gaming License; make a finding of suitability or approval of a Gaming License; or impose a fine upon any Person or entity licensed, for any cause deemed reasonable by the Gaming Commission.

3.02 Appointment of Commissioner. The Tribal Council shall appoint a Commissioner who shall be responsible for the day-to-day management of the affairs of the Gaming Commission as well as overseeing the Gaming Facility and Gaming Operation for compliance with all applicable Federal, State and Tribal gaming laws and Regulations. The Commissioner shall report directly and only to the Tribal Council. The Commissioner shall have no personal interest in the Gaming Activity. No one convicted of a felony of any kind or misdemeanor related to gambling or moral turpitude can serve as Commissioner. To ensure that the Commissioner and the Gaming Commission are shielded from tribal politics and insulated from any actual or perceived conflict of interest related to the regulation of Gaming Activity by the Gaming Commission (including, without limitation, licensing, investigation, surveillance, audit or enforcement), Viejas Tribal Members are not eligible to hold the position of Commissioner.

3.03 Commissioner's Contract. The Commissioner shall be hired on a contract. The terms of the contract will be negotiated with and approved by the Tribal Council. The Commissioner's compensation shall be part of the negotiations. Compensation for the Commissioner shall not be based, in whole or in part, on the profitability of the Gaming Operation.

3.04 Termination of Commissioner. The Commissioner shall be terminated immediately and without the necessity of a vote of the Tribal Council upon the Commissioner's conviction in a Federal or State court of competent jurisdiction for any felony, or for any misdemeanor related to gambling or moral turpitude, or upon conviction of any charge that the Tribal Council finds relates to the Commissioner's honesty or ability to fulfill his/her duties. If the Commissioner is convicted of violating any part of this Ordinance, he/she shall be immediately terminated. Additionally, the Commissioner may be terminated for inadequate performance of the duties required, or may additionally be terminated for associations or conduct that would tend to bring the Commissioner's integrity or Gaming Operation into disrepute.

3.05 Duties of Commissioner. The Commissioner shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Ordinance relating to the regulation of all Gaming Activity. In all decisions, the Commissioner shall act to promote and ensure integrity, security, honesty, and fairness of the operation and

administration of all Gaming Activity. The Commissioner's duties shall include but not be limited to the following:

- (A) Negotiating contracts for payments by the Viejas Band for the provision of security, surveillance, outside independent auditing services. Such contracts must be approved by the Tribal Council and shall not constitute a waiver of jurisdiction by the Viejas Band.
- (B) Correspond with the NIGC and do whatever is necessary to ensure compliance with the rules and regulations of that agency. Specifically, the Commissioner, with approval of the Tribal Council, shall arrange for an annual outside audit of authorized gaming and will provide a copy to the NIGC.
- (C) The Commissioner will assure that all gaming activity is conducted in a manner which adequately protects the environment and the public's health and safety;
- (D) The Commissioner will ensure that background investigations are conducted on all Primary Management Officials, Key Employees, Gaming Employees and Non-Gaming Employees of any Gaming Facility and that oversight of such officials and their management is conducted on an ongoing basis. The Commissioner will make suitability determinations on the granting of Tribal licenses for all of the Gaming Operation employees. The Commissioner shall immediately notify the NIGC of the issuance of such licenses for Primary Management Officials and Key Employees. The Commissioner will review all Gaming License applications and background investigations to ensure that no Person shall be eligible for employment if that Person's prior activities, criminal record (if any), or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming or jeopardize the integrity or reputation of the Viejas Band or its Gaming Operation. The Commissioner shall notify the NIGC of the results of such background checks before the issuance of such licenses to Primary Management Officials and Key Employees.
- (E) Hiring, pursuant to the approval of the Tribal Council, such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this Ordinance.
- (F) Inspect, review and copy all records, documents, equipment and facilities, or anything else necessary and pertinent to enforcement of any provisions of this Ordinance.
- (G) Making decisions and execute any sanctions on any Person subject to the jurisdiction of this Ordinance, as deemed necessary, appropriate and lawful.

3.06 Monthly Report. The Commissioner shall make at least monthly reports to the Tribal Council within thirty (30) Calendar Days after the close of the month for which the information is being required. The report shall at a minimum include a full and complete statement of auditing activities, expenses and all other financial transactions of the Gaming Commission and summary of all licensing and enforcement actions.

3.07 Prior Notice of Actions. In promulgating, amending, and repealing Regulations, the Gaming Commission shall give prior notice of the proposed action to all Licensees and other Persons whom the Commissioner has reason to believe have a legitimate and bona fide interest in such proposed action. Said notice shall inform such Persons as to the general nature of the proposed actions and advise them how they may submit comments on said proposed actions to the Gaming Commission. Upon receipt of comments from affected parties, the Commissioner shall schedule a meeting and present the proposed Regulations for approval and adoption. In emergencies, the Gaming Commission may summarily adopt, amend, or repeal any Regulations if, at the time, the Commissioner determines such 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. The Commissioner shall schedule such emergency action for a regular hearing as soon as possible, and not to exceed thirty (30) Calendar Days after any such emergency action.

3.08 Right of Inspection. The Commissioner and his/her agents, inspectors, and employees have the authority:

- (A) to inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are used, manufactured, sold or distributed;
- (B) to inspect all equipment and supplies in, upon or about a Gaming Facility, or inspect any equipment or supplies wherever located, which may or have been used in the Gaming Facility;
- (C) to summarily to seize and remove from a Gaming Facility (or wherever located) and impound such equipment or supplies for the purpose of examination, inspection, evidence, or forfeiture;
- (D) to demand immediate access to and inspect, examine and audit all papers, books, and records of applicants and Licensees, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Ordinance;
- (E) to seize and impound any patron's winnings which the Gaming Commission has reason to believe may have been won or obtained in violation of this Ordinance pending a civil forfeiture hearing on such seizure; and
- (F) The Review Board members and the Commissioner shall each have full power and authority to issue subpoenas and compel the attendance of witnesses for hearing at any place within the Viejas Band's Indian Lands, to administer oaths and to require

testimony under oath. Any process or notice may be served in the manner provided for service of process and notices in civil actions. The Review Board and the Commissioner may pay such transportation and other expenses of witnesses as it may deem reasonable and proper. Any Licensee failing to comply with any subpoena shall be subject to immediate revocation of their Gaming License.

3.09 Powers of Delegation. The Gaming Commission may organize itself into a functional division as it may deem necessary and from time to time alter such plan of organization as it may deem expedient. The Gaming Commission shall establish its own budget for operations, and acquire such furnishings, equipment, supplies, stationery, books, motor vehicles, and other things as it may deem necessary or desirable in carrying out its functions, and incur such other expenses within the limit of funds available to it, as it may deem necessary. Within the limits of a Tribal Council approved budget, the Gaming Commission shall employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Gaming Commission may require. At the Tribal Council's discretion, said budget may be reviewed and modified by the Tribal Council every six (6) months. Upon the end of the budget year, any surplus which might exist shall revert to the Tribal Government. The Commissioner shall keep and maintain a file of all applications for licenses under this section, together with a record of all actions taken with respect to such applications. The Commissioner shall keep and maintain such other files and records as he/she may deem desirable.

3.10 Confidentiality of Information. Each member of the Review Board and each employee of the Gaming Commission shall be required to sign a confidentiality agreement, and will be responsible for ensuring the strictest standards of confidentiality with all information. All information provided to the Review Board and Gaming Commission and all information obtained by the Review Board and Gaming Commission in the performance of their duties shall be kept confidential and shall not be disclosed to any Person or organization without the written consent of the Tribal Council. The Review Board and the Commissioner may refuse to reveal, in any court proceeding, the identity of any informant, or the information obtained from the informant, or both.

3.11 Independence of Gaming Commission. The Commissioner, Commission Employees, members of the Tribal Council and their immediate families shall receive no personal compensation, gift, reimbursement or payment of any kind from any Person doing or wishing to do business with the Viejas Band relating to gaming nor with any Person wishing to obtain an unfair advantage in any authorized wager on gaming. Any property received in violation of this provision, including cash payments, shall be immediately forfeited to the Viejas Band and the offending Persons shall be prosecuted to the fullest extent possible. Neither the Commissioner nor any Gaming Commission employees and their immediate families may gamble in the Gaming Facility nor shall the Commissioner or any Gaming Commission employees have any personal financial interest in any Gaming Facility, Gaming Operation, or Gaming Resource Supplier.

Section 4 – Review Board

4.01 Establishment of the Review Board. The Review Board is hereby established. The Review Board shall consist of four (4) members appointed by a majority vote of the Tribal Council. A Review Board member shall serve for three (3) years and may be removed from office prior to the end of their term by a unanimous vote of Tribal Council. In order to establish annually staggered terms, the first Review Board members shall be appointed by the Tribal Council as follows: one (1) member shall serve a three (3) year term, one (1) shall serve a two (2) year term, and one (1) shall serve a one (1) year term for the initial appointment terms only. Thereafter, all successive terms of appointment shall run for three (3) years. Vacancies shall be filled within thirty (30) Calendar Days by the Tribal Council.

4.02 Purpose and Authority of Review Board. The Review Board shall serve as the final appeal board to review any contested licensing action or fine imposed by the Gaming Commission. In addition, the Review Board may, at the request of a patron, review any appeal of a decision by the Gaming Commissioner related to a dispute over the play or operation of any Class III Gaming device or banked game.

4.03 Review Board Qualifications for Membership. Each Review Board member shall have a minimum of a four (4) year college degree and eight (8) years of experience in accounting, gaming management or gaming regulation, or eight (8) years of law experience, or an equivalent combination thereof. Each Review Board member shall be subject to the same background and licensing standards as currently required for top-level casino management positions according to this Ordinance and NIGC regulations and shall be required to sign a confidentiality agreement as required by Section 3.10. No Person shall be eligible to serve as a Review Board member who has been convicted or is currently being prosecuted for any crime of moral turpitude or any felony. Review Board members may not be concurrently employed in any Gaming Operation, may not concurrently hold any elected Tribal office, and may not be related to any Person employed by the Tribal Gaming Operation. Review Board members and their immediate family members may not engage in any Gaming Activity at any Gaming Facility. For the purpose of this section "relative" or "immediate family member" shall be defined as mother, father, (including step, adopted, or in-law for all), spouse, son, daughter, brother, sister, grandparent, niece, nephew, uncle, aunt, and first cousins.

4.04 Compensation for Review Board Members. Review Board members shall be paid a stipend at a rate to be established annually by the Gaming Commission budget, and approved by the Tribal Council. Initially the stipend shall be at the rate of \$350 per member per meeting. Review Board members shall be reimbursed for actual expenses incurred on Gaming Commission business, including necessary travel expenses. In no event shall compensation be based on a percentage of net profits from Gaming Operations of the Viejas Band.

4.05 Selection of Chairperson. The Review Board shall select annually from its membership a Chairperson, who shall chair all necessary hearings and meetings. If the Chairperson determines that a meeting must be continued or postponed, the Chairperson may set the time and date for additional meeting/hearing times. The Chairperson shall communicate the scheduling of all meetings/hearings with the Commissioner.

4.06 Meetings and Hearings. The Review Board shall not meet more than twice per month unless deemed necessary by the Chairperson or at special request of the Commissioner. Should additional meetings be necessary, the Chairperson and Commissioner shall concur on mutually agreeable dates and times. Meeting and hearings shall take place on the Viejas Reservation. Meetings and hearing proceedings shall have official minutes recorded by the secretary or administrative assistant of the Gaming Commission. Records of board meetings and hearings shall be exempt from state subpoena.

4.07 Quorum; Majority Vote. A quorum shall consist of all three (3) members of the Review Board. All decisions shall be made by a majority vote of the Review Board members.

4.08 Due Process; Appealing Commission Actions. Any Gaming Commission decision resulting in approving, disapproving, revoking, suspending, limiting or conditioning a Gaming License, or the imposition of other sanctions under this Ordinance shall be made by the Commissioner. Should an applicant or Licensee disagree with the determination of the Commissioner, the Commissioner shall schedule a hearing with the Review Board to review the decision, within thirty (30) Calendar Days from the date an applicant files his/her written appeal with the Gaming Commission.

4.09 Review Board Findings. No later than three (3) Calendar Days following a hearing, the Review Board shall make findings related to:

- (A) the credibility of witnesses and facts presented at the hearing;
- (B) whether the action taken by the Commissioner was authorized under the Ordinance; and
- (C) whether any other action recommended to the Review Board including, but not limited to fines and forfeitures, should be taken.

4.10 Notification of Review Board Decision. Within ten (10) Calendar Days following the Review Board making findings under Section 4.09, the Review Board shall inform the subject and the Gaming Commission in writing of its decision. The Review Board's decision shall be binding, final and not subject to further appeal.

Section 5 – Licensing

5.01 Gaming License Requirement. Any Person seeking to conduct, operate or manage any Gaming Activities shall apply for and receive all the required licenses from the Gaming Commission prior to engaging in such Gaming Activities. All Gaming Resource Suppliers who directly or indirectly, provide, have provided, or are deemed likely to provide at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any twelve (12) month period, shall apply for and receive all the required licenses from the Gaming Commission prior to providing Gaming Resources. All Gaming Employees shall apply for and receive all the required licenses from the Gaming Commission prior to employment. Any person seeking to conduct, operate, or manage Gaming Activities without first obtaining the required licenses shall be deemed in violation of

this Ordinance and shall be subject to fines and penalties as set forth herein. Nothing in this section shall prohibit a Person from being temporarily employed in a Gaming Activity or as a Gaming Employee after being hired for a short period of time, not to exceed thirty (30) Calendar Days, pending the grant of a temporary license in conformance with background investigation and licensing procedures adopted by the Gaming Commission.

5.02 Nature of a Gaming License. A Gaming License is a revocable privilege, and the issuance of a license shall not create any vested right. A Gaming License is personal to the Licensee and may not be reassigned or transferred.

5.03 Gaming License Regulations. The Gaming Commission shall promulgate Regulations governing the issuance, renewal, denial, suspension and revocation of Gaming Licenses. Such Regulations shall meet or exceed the requirements for licensing of Class III Gaming pursuant to the terms and conditions of the Compact.

5.04 Gaming License Fees. The Gaming Commission shall set fees for applications, background investigations and Gaming Licenses, subject to approval by the Tribal Council. All such fees shall be made payable to the Viejas Band and delivered to the Viejas Tribal Treasurer.

5.05 Eligibility Determination. The Gaming Commission shall review a Person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility for receipt of a Gaming License. If the Gaming Commission determines that licensing 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, or jeopardizes the integrity or reputation of the Viejas Band or the Gaming Operation, a Gaming License shall not be granted.

5.06 Issuance of a Gaming License.

(A) The Commission, upon completion of appropriate background investigation and suitability determination shall either grant or deny a Gaming License. The issuance of a Gaming License shall be done only provided that:

- (I) A completed Gaming License application has been received;
- (II) All applicable licensing fees have been paid; and
- (III) No objection has been raised by the NIGC or the State of California.

(B) The Gaming Commission may license a Primary Management Official or Key Employee applicant after submitting a notice of results of the applicant's background investigation to the NIGC.

5.07 Employee Licensing. All Gaming Employees, Non- Gaming Employees, Key Employees and Primary Management Officials shall apply for and be granted a Gaming License prior to employment in the Gaming Operation. The Gaming Commission shall ensure that the

policies and procedures set out in this section are implemented with respect to anyone employed at any Gaming Facility.

(A) Application forms:

- (I) The following notice shall be placed on the application form for a Gaming Employee, Non-Gaming Employee, Key Employee, or a Primary Management Official before that form is filled out by an applicant (the "Privacy Act Notice"):

"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 granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by 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 by the Tribe or the NIGC to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the NIGC in connection with the issuance, denial, 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 being unable to license you for a primary management official or key employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

- (II) The following notice shall be placed on the application form for a Key Employee or Primary Management Officials before that form is filled out by an applicant (the "False Statement Notice"):

"A false statement on any part of your Gaming License application may be grounds for denying a Gaming License or the suspension or revocation of a Gaming License. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)"

- (III) Existing Gaming Employees, Non-Gaming Employees, Key Employees and Primary Management Officials who have not filled out applications with the Privacy Act Notice and False Statement Notice shall be notified in writing that they shall either:

- (a) Complete a new application which contains the Privacy Act Notice and False Statement Notice; or

- (b) Sign a statement that contains the Privacy Act Notice and False Statement Notice.
- (B) Background Investigation: No Gaming License shall be granted to any Person or entity who has been determined to be a Person or entity whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or by the carrying on of the business and financial arrangements incidental thereto.
- (I) Gaming License Application Minimum Requirements:
 - (a) The Gaming Commission shall request from each applicant all of the following information:
 - (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (ii) Currently and for the previous ten (10) years; business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
 - (iii) The names and current address of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed in the application;
 - (iv) Current business and residence telephone numbers;
 - (v) A description of any existing and previous business relationships with Indian Tribes including ownership interests in those businesses;
 - (vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;
 - (vii) 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;

- (viii) 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;
- (ix) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within the (10) years of the date of the application, the name and address of the court involved and the date and disposition;
- (x) For each criminal charge (excluding minor traffic charges), whether or not there is conviction, if such criminal charge is within ten (10) years of the date of the application, the criminal charge, the name and address of the court involved and the date and disposition;
- (xi) 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;
- (xii) A current photograph;
- (xiii) Any other information the Gaming Commission deems relevant; and
- (xiv) Fingerprints consistent with procedures adopted by the Gaming Commission according to 25 C.F.R. §522.2 (h). Fingerprints shall be required for employees defined as Key Employees and Primary Management Officials only unless otherwise requested by the Gaming Commission.

5.08 Background Investigation of Gaming License Applicants Pursuant to Section 522.2 (b) of the Rules and Regulations of the NIGC. The Gaming Commission shall conduct an investigation sufficient to make a determination under Section 5.09 below. In conducting a background investigation, the Gaming Commission shall promise to keep confidential the identity of each Person interviewed in the course of the investigation.

- (A) Pursuant to any approved compact between the Viejas Band and the State of California any applicable procedures for Tribal licensing and/or State licensing or certification of all Gaming Employees for the conduct of Class III Gaming are hereby adopted and incorporated by reference.
- (B) The minimum procedures for conducting background investigations on applicants are:
 - (I) Criminal history check;

- (II) Civil history check;
 - (III) Financial and credit check;
 - (IV) Reference check;
 - (V) Previous business and employment check;
 - (VI) Relative check;
 - (VII) Business and personal associates check;
 - (VIII) Educational verification;
 - (IX) Document the disposition of all potential problem areas noted and disqualifying information needed; and
 - (X) Any other investigation deemed necessary or appropriate by the Gaming Commission.
- (C) The Commissioner is primarily responsible for the conduct of the background investigations and suitability determinations in consultation with the NIGC.
 - (D) The Gaming Commission shall be responsible for conducting, reviewing, and either approving or disapproving the investigative work.
 - (E) The Commissioner is responsible for notifying the results of the background investigations to the NIGC for Key Employees and Primary Management Officials within 60 days after the applicant begins work.
- (I) The reporting of results shall include the following information:
 - (a) The applicant's name, date of birth and social security number;
 - (b) The date on which the applicant began, or will begin, working as a Primary Management Official or key employee;
 - (c) A summary of the information presented in the investigative report, including:
 - (i) Licenses that have previously been denied;
 - (ii) Gaming licenses that have been revoked, even if subsequently reinstated;

- (iii) Every known criminal charge brought against the applicant within the last 10 years of the date of the application; and
 - (iv) Every felony offense of which the applicant has been convicted or any ongoing prosecution; and
 - (d) A copy of the eligibility determination made in accordance with Section 5.08
- (F) For the purposes of obtaining necessary fingerprints for processing, the Commissioner and designated agents shall have Tribal law enforcement authority.
- (G) Suitability determination and selection of Gaming Commission members is more specifically set forth later in this Ordinance.
- (H) The investigative reports shall set forth, in detail, the:
 - (I) Steps taken in conducting the background investigation;
 - (II) Results obtained;
 - (III) Conclusions reached; and
 - (IV) The basis for those conclusions.
- (I) When a Primary Management Official or key employee is employed by the Tribe, a complete application file, containing all of the information listed in Section 5.07(B), shall be maintained.

5.09 Suitability Determination; Gaming License Denial. The Commissioner may not grant a Gaming License to any Person who has been convicted of any felony or gaming offense. The Commissioner may deny a Gaming License to any Person, or may suspend or revoke the Gaming License of any Person who:

- (A) has knowingly and willfully provided false statements or information or omitted material information on the Gaming License application or background questionnaire; or
- (B) is determined to be a Person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto, or jeopardizes the integrity or reputation of the Viejas Band or its Gaming Operation; or

- (C) has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of this Ordinance, the Compact, or any provision of any Federal, State, or Tribal gaming laws/regulations, or when any such violation has occurred upon any premises occupied or operated by any such Person or over which such Person has substantial control;
- (D) knowingly causes, aids, abets, or conspires with another to cause any Person to violate any provision of this Ordinance, the Compact, or any provision of any Federal, State, or tribal gaming laws/regulations;
- (E) has obtained a state or tribal gaming license or certification by fraud, misrepresentation, concealment or through inadvertence or mistake;
- (F) has been convicted of, or forfeited bond upon a charge of, or plead guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payment or reports to any government, whether tribal, State, or the United States; or U.S. Government Agency at any level, or filed false reports therewith, or of any similar offense(s), or of bribing or otherwise unlawfully influencing a public official or employee of an Indian Tribe, a state, or the U.S. Government, or of any crime, whether a felony or misdemeanor, involving any Gaming Activity, misappropriation of funds or physical harm to individuals or moral turpitude;
- (G) makes a misrepresentation of, or fails to disclose a material fact to the Gaming Commission, federal, or state authorities;
- (H) is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under Section 5.09(F); provided that the Gaming Commission may defer decision upon the application during the pendency of such prosecution or appeal;
- (I) has had a gaming license issued by any state or Indian Tribe revoked or denied;
- (J) has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including suspension, revocation, denial of application or forfeiture of a gaming license;
- (K) has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of any state if such pursuit creates probable cause to believe that the participation of such Person in gaming or related activities would be detrimental to the proper operation of an authorized gaming or related activity in California. For purposes of this Ordinance, "occupational manner or context" shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

- (L) is a career offender or a member of a career offender organization or an associate of a career offender or career offender organization in such a manner which creates probable cause to believe that the association is of such a nature as to be detrimental to the proper operation of the authorized gaming or related activities in California. For the purpose of this section, "career offender" shall be defined as any Person whose behavior is pursued in an occupational manner or context for the purposes of economic gain utilizing such methods as are deemed criminal violations of tribal law, federal law or the laws and the public policy of California. A career offender organization shall be defined as any group of Persons who operate together as career offenders;
- (M) is a Person whose prior activities, criminal record, if any reputation, habits and associations pose a threat to the public interest of the Viejas Band or to the effective regulation and control of Gaming Activities, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods, and activities in the conduct of gaming, or the carrying on of the business and financial arrangements incidental thereto; or
- (N) fails to provide any information requested by the Gaming Commission within fourteen (14) Calendar Days of the request for the information.

5.10 Failure of Applicant to Disclose Material Information. An applicant for licensing shall make true and full disclosure of all information to the Gaming Commission necessary or appropriate to carry out the policies of the Viejas Band relating to licensing and control of the Gaming Operation. It is the duty of the applicant to disclose all information material to whether the applicant's involvement with gaming would jeopardize or compromise the Tribal interest, whether or not the applicant has been specifically requested to provide that information. It shall constitute a violation of this Ordinance to fail to disclose, to mislead or to misstate any such material information to the Gaming Commission.

5.11 Temporary Gaming Licenses. The Gaming Commission may issue a temporary Gaming License to any Person or entity applying for a Gaming License to work in or do business with the Gaming Operation which shall be valid pending the completion of a background investigation of such Person. In no event shall such temporary Gaming License be valid for longer than one hundred eighty (180) Calendar Days. In no event shall the Gaming Operation employ an individual in a Primary Management Official or Key Employee position who does not have a license after 90 days of beginning work at the Gaming Operation. The Gaming Operation shall not employ as a Key Employee or Primary Management Official a Person who does not have a Gaming License.

5.12 Parameters of Licenses.

- (A) Violation of any material provision of this Ordinance or any of the Gaming Commission's Regulations by a Licensee, its agent, or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Viejas Band and the inhabitants of the Viejas Reservation, and shall be deemed

grounds for refusing to grant or renew a Gaming License, suspension or revocation of a Gaming License, or shall constitute grounds for the imposition of sanctions by the Gaming Commission or Commissioner.

- (B) If the Gaming Commission elects to resolve disputes in a manner other than revocation of a Gaming License, such agreement shall be made in writing and supersede any conflicting provisions of this section, so long as the agreement provides a reasonable avenue for the Viejas Band to ensure a Licensee's compliance with all other aspects of this Ordinance.
- (C) Acceptance of a Gaming License or renewal on the part of the Licensee shall constitute the Licensee's agreement to be bound by all Regulations and conditions of the Gaming Commission and by the provisions of this Ordinance as the same are now, or may hereafter be amended or promulgated, and to cooperate fully with the Commissioner and Gaming Commission.
- (D) It is the responsibility of the Licensee to keep informed of the contents of such Regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse the violations.
- (E) All Gaming Licenses shall have a two (2) year duration and will require renewal thereafter in accordance with procedures set forth by the Gaming Commission.

5.13 Report to the NIGC

- (A) If a Gaming License is not issued to an applicant, the Gaming Commission:
 - (I) Shall notify the NIGC;
 - (II) Shall forward copies of its eligibility determination and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individual Records System; and
 - (III) Shall retain applications for licensing and employment and reports (if any) of background investigations for inspection by the NIGC Chairperson or his or her designee for no less than three (3) years from the date denial or revocation of a Gaming License, or termination of employment, whichever is later.
- (B) The Gaming Commission shall retain for no less than three (3) years from the date of termination of employment of a Primary Management Official or Key Employee:
 - (I) Applications for licensing;
 - (II) Investigative reports; and

(III) Eligibility determinations.

5.14 Granting a Gaming License to Key Employee or Primary Management Official.

- (A) If, within a thirty (30) Calendar Day period after the NIGC receives a report, the NIGC notifies the Viejas Band that it has no objection to the issuance of a Gaming License pursuant to a Gaming License application filed by a Key Employee or Primary Management Official for whom the Gaming Commission has provided an application and investigative report to the NIGC, the Gaming Commission may issue a Gaming License to such applicant. Within 30 days after the issuance of the license, the Gaming Commission shall notify the NIGC of its issuance.
- (B) The Gaming Commission shall respond to a request for additional information from the NIGC Chairperson concerning a Key Employee or Primary Management Official who is the subject of a report. Such a request shall suspend the thirty (30) Calendar Day period under Section 5.15(A) until the NIGC Chairperson receives the additional information.
- (C) If, within the thirty (30) Calendar Day period described above, the NIGC provides the Gaming Commission with a statement itemizing objections to the issuance of a Gaming License to a Key Employee or Primary Management Official for whom the Gaming Commission has provided an application and investigative report to the NIGC, the Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commissioner shall make the final decision whether to issue a Gaming License to such applicant.

5.15 Gaming License Suspension or Revocation

- (A) If, after the issuance of a Gaming License, the Gaming Commission receives from the NIGC or other source, reliable information indicating that a Licensee is not eligible for licensure, the Gaming Commission shall suspend such Gaming License and shall notify in writing the Licensee of the suspension and the proposed revocation.
- (B) The Gaming Commission shall notify the Licensee of a time and place for a hearing on the proposed revocation of the Gaming License.
- (C) After a revocation hearing, the Gaming Commission shall decide whether to revoke or reinstate the Gaming License. The Gaming Commission shall notify the NIGC of its decision within 45 days of receiving notice from the NIGC.

5.16 Special Rules Regarding Gaming Commission Employees. Gaming Commission employees shall not require licensing but must pass the background screening and suitability determination set forth in Sections 5.07 through 5.09 of this Ordinance. Gaming Commission

employees may not participate in matters relating to their own background investigations. Such background investigations shall be performed under the direction of the Commissioner.

Section 6 – Management Contracts

6.01 Licensing of Management Contractor Required

- (A) Any Management Contract entered into by the Viejas Band for the operation and management of Gaming Activity must provide that the management contractor obtain a Gaming License. Prior to issuing a Gaming License to a management contractor, the Gaming Commission shall require and obtain the following information:
 - (I) the name, address, and other additional pertinent background information on each person or entity (including all officers and management officials comprising such entity) having direct financial interest in, or management responsibility for the management contractor, and in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10% or more of its issued and outstanding stock;
 - (II) a description of any previous experience that each Person listed pursuant to Section 6.01(A)(I) has had with other gaming contracts with Indian Tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such Person has had a contract relating to gaming;
 - (III) Any further or additional information as may be required under the Compact;
 - (IV) Any further or additional information as may be required under existing rules and Regulations for Management Contracts required by IGRA;
- (B) Any Person listed pursuant to Section 6.01(A)(I) shall be required to respond to such written or oral questions that the Gaming Commission may propound.
- (C) For purposes of this Ordinance, any reference to the Management Contract shall be considered to include any Collateral Agreements to such Management Contract that relate to the Gaming Activity.
- (D) After the Gaming Commission has determined that a management contractor is suitable for licensure, and has given its approval of the Management Contract, the Gaming Commission shall submit such contract to the NIGC for approval. Any Management Contract shall be void until the NIGC has approved it.

6.02 Approval of Management Contracts. The Gaming Commission may approve a Management Contract entered into by the Viejas Band only if it determines that such Management Contract provides for:

- (A) adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared for the Tribal Council on a monthly basis;
- (B) access to the daily operations of the Gaming Operation to appropriate Tribal officials who shall also have a right to verify the daily gross revenues and income made from any such Gaming Activity;
- (C) a minimum guaranteed payment to the Viejas Band that has preference over the retirement of development and constructions costs;
- (D) an agreed ceiling for repayment of development construction costs;
- (E) a contract term not to exceed five (5) years, except that, upon the request of the Viejas Band, the Gaming Commission may authorize a contract term that exceeds five (5) years but does not exceed seven (7) years if the Gaming Commission is satisfied that the capital investment required, and the income projections for the particular Gaming Activities, require additional time;
- (F) adequate grounds and mechanisms for the Viejas Band to terminate the Management Contract, but actual termination shall not require the approval of the NIGC; and
- (G) a hiring preference to Tribal Members and members of other Indian Tribes for purposes of employment at the Gaming Facility.

6.03 Percentage of Net Revenue Fees

- (A) A Management Contract providing for a fee based upon a percentage of the Net Revenues of Gaming Activity may be approved by the Gaming Commission if such percentage fee is reasonable under the circumstances. Except as provided in this section, such fee shall not exceed 30% of the Net Revenue;
- (B) Upon request of the Tribal Council, the Gaming Commission may approve a Management Contract providing for a fee upon a percentage of the Net Revenue of the Gaming Activity that exceeds 30% but not more than 40% of the Net Revenues if the Gaming Commission and Tribal Council are satisfied that the capital investment required, and income projections, for such Tribal Gaming Activity require the additional fee.

6.04 Disapproval of Management Contracts

The Gaming Commission shall not approve any Management Contract if it determines that:

- (A) Any Person listed pursuant to CFR 25 Section 5.01(a)(i):
 - (I) is an elected member of the Tribal Council;
 - (II) has been or subsequently is convicted of any felony or gaming offense;
 - (III) has knowingly and willfully provided materially important false statements of information to the Gaming Commission or the Tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to CFR 25 Section 5.01(B); or
 - (IV) has been determined to be a Person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidents thereto;
- (B) The management contractor has, or has attempted to unduly interfere or to influence for its gain or advantage any decision or process of Tribal Council of the Gaming Commission relating to the Gaming Activity, including without limitation, the decision or process of negotiating and entering into a Management Contract; or
- (C) The management contractor has deliberately or substantially failed to comply with the terms of this Management Contract or the provisions of this Ordinance or any Regulations adopted pursuant to this Ordinance or IGRA.

6.05 Modifying or Voiding a Management Contract. The Gaming Commission, after notice and hearing, shall have the authority to require appropriate modifications or may void any Management Contract if it subsequently determines that any of the provisions of this Ordinance have been violated.

6.06 No Conveyance of an Interest in Land. No Management Contract shall transfer or, in any other manner, convey any interest in Tribal land or other real property of the Viejas Band, whether held in fee or in trust.

6.07 Fee for Investigation Cost. The Gaming Commission shall require a management contractor to pay a fee to cover the actual cost of the investigation, suitability determination, and contract review required under this Ordinance.

6.08 Dispute Resolution. If any dispute arises as to the proper compliance with or interpretation of this Section 6, the following procedures shall apply.

- (A) Notice. The party asserting noncompliance or seeking an interpretation shall serve written notice on the other party or parties. The notice shall identify the specific Ordinance provision alleged to have been violated or in dispute and shall specify in detail the factual basis for the alleged noncompliance or the proffered interpretation of the Ordinance provision for which interpretation is sought.
- (B) Voluntary Resolution. Representatives of the Viejas Band and the other party or parties shall meet within ten (10) Calendar Days following receipt of the notice in an effort to resolve the dispute.
- (C) Arbitration Procedures. If the dispute is not resolved to the satisfaction of the parties within thirty (30) Calendar Days after service of the notice set forth above, the dispute shall be adjudicated through arbitration in San Diego, California.
 - (I) The parties shall attempt to agree upon one arbitrator with expertise in the subject matter of the dispute.
 - (II) If the parties are unable to agree on an arbitrator, each party shall select an arbitrator within ten (10) Calendar Days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) Calendar Days of their appointment. If the two (2) arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) Calendar Days, the third arbitrator shall be appointed by the American Arbitration Association.
 - (III) The arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submission only.
- (D) Arbitration Costs. The cost of arbitration shall be borne equally by the parties, with one half of the expenses charged to the Viejas Band and one-half charged to the other party or parties. The parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.
- (E) Arbitration Decision. The decision of the majority of the arbitrator(s) shall be final, binding and not subject to appeal. Failure to comply with judgment upon the award entered in such arbitration proceeding shall be deemed a breach of the Ordinance.

Section 7 – Auditing, Fiscal Oversight, And Internal Controls

7.01 Audit

- (A) The Gaming Commission shall cause to be conducted annually an independent audit of Gaming Operations and shall submit the resulting audit reports to the NIGC.
- (B) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit.

7.02 Minimum Procedures for Control of Internal Fiscal Affairs. The Gaming Commission shall promulgate Regulations for internal controls and fiscal audits of all Gaming Operations. At a minimum, those Regulations shall:

- (A) Prescribe minimum procedures for safeguarding the Gaming Operation's assets and revenues, including recording of cash and evidences of indebtedness and mandatory count procedures. Such procedures shall establish a control environment, accounting system, and control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, and encourage adherence to prescribed policies;
- (B) Prescribe minimum reporting requirements to the Gaming Commission of information that is required by this Ordinance or Regulation;
- (C) Provide for the adoption and use of internal audits by Commission auditors and certified public accountants (CPA) licensed to practice accounting in the State of California;
- (D) Ensure that a uniform code of accounts and accounting classifications are formulated to assure consistency, comparability and effective disclosure of financial information. Such code shall require that records be retained that reflect statistical drop (amount of cash wagered by patrons), statistical win (amount of cash won by the Gaming Operation) and the percentage of statistical win to statistical drop, or provide similar information, for each type of game or each gaming device;
- (E) Prescribe the intervals at which such information shall be furnished;
- (F) Provide for the maintenance of documentation (i.e., checklists, transaction forms, programs, reports, etc.) to evidence all internal work performed as it relates to the requirements of this section; and
- (G) Provide that all financial statements and documentation referred to in Section 7.01(F) be maintained for minimum of five (5) years.

7.03 Gaming Commission Oversight of Internal Fiscal Affairs. The Gaming Commission shall, by regulation ensure the conduct of audits of the financial statements of all Gaming Operations at least annually. Such audits must:

- (A) be made by outside independent CPAs holding a permit issued by the State of California to practice public accounting, such accountants shall be selected by and contracted with the Gaming Commission;
- (B) include an opinion that the financial statement fairly and accurately present the financial condition of the Gaming Operation in accordance with generally accepted accounting principles (GAAP) and in accordance with the governmental standards of accounting and the gaming auditing standards established by the American Institute of Certified Public Accountants;
- (C) disclose whether the accounts, records and control procedures maintained by the Gaming Operation are as required by the Regulations promulgated by the Gaming Commission; and
- (D) provide for preliminary review of the internal control structure upon adoption of the policies and procedures by the entity, provide an opinion regarding the adequacy of controls, to disclose any deviation from prescribed rules and Regulations, and report such findings to the Gaming Commission and management.

7.04 Gaming Commission's Right to Conduct Audits. The Gaming Commission shall be able to retain its own staff auditors and accountants, or contract an accountant(s), to conduct its own audits of any Gaming Operation.

7.05 Minimum Internal Control Standards

- (A) The Gaming Commission shall comply with 25 CFR Part 542 by formally promulgating, and making applicable to the Gaming Operation, minimum internal control standards (MICS) that:
 - (I) Provide a level of control that meets or exceeds those set forth in 25 CFR Part 542, as a published or as revised by mutual agreement between the NIGC and the Viejas Band;
 - (II) Contain standards for currency transaction reporting that comply with 31 CFR Part 103; and
 - (III) Establish internal control standards for Class II and Class III Games.
- (B) In order to verify that the Gaming Operation is in compliance with the MICS, an independent CPA shall be engaged annually to perform "Agreed-Upon Procedures" in the manner provided for in 25 CFR 542.3(f).

- (C) Compliance. The Gaming Commission shall monitor and enforce compliance with the MICS in the manner provided for in 25 CFR 542.3(g).
- (D) Enforcement. Any failure to adopt MICS, perform Agreed-Upon Procedures, prevent or obstruct the exercise of any of the Gaming Commission's powers, or comply with the MICS, is a violation of this Ordinance and subject to enforcement action by the Gaming Commission.

Section 8 – Patron Disputes

The Gaming Commission shall promulgate regulations governing the administration and resolution of patron disputes related to the play or operation of any Gaming Activities in a manner consistent with IGRA and obligations set forth in the Compact.

Section 9 – Unlawful Acts; Enforcement

9.01 Unlawful Acts. It is unlawful 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 determined 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 of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager;
- (C) aid anyone in acquiring such knowledge under Section 9.01(B) 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 take, or attempt to claim, collect or take, money or anything of value in or from a gambling 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 to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this section, with the intent that the other Person play or participate in that gambling game;
- (F) 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) 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;

- (H) manipulate with intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, with knowledge or hope that the manipulation affects the outcome of the game or prize or with knowledge of any event that affects the outcome of the game or prize;
- (I) solicit funds or anything of value from any patron or employee;
- (J) unlawfully take or attempt to take any chips, coin(s), token(s) machine credits currency, or anything of value from any patron or employee on the premise;
- (K) refuse to leave the Gaming Facility when appropriately advised to do so by a member of management, security, or the Gaming Commission;
- (L) damage or attempt to damage either intentionally or negligently any property, gaming device or equipment, or any article belonging to the Viejas Band, patron, employee, or Tribal corporation;
- (M) make any wager either directly or indirectly in any Class II Gaming Activity, if such Person is under eighteen (18) years of age, or Class III Gaming Activity, if such Person is under twenty-one (21) years of age;
- (N) either intentionally or negligently cause injury or harm to any patron, or employee or threaten to do so;
- (O) possess any chips, tokens, cards, device, paraphernalia, etc., that could reasonably be concluded as useful in cheating, defrauding, manipulating, or altering any game, gaming device equipment, machine, computer, or supplies;
- (P) aid, conspire, collude or assist in any way with any other Person to win or have any unfair advantage to win or otherwise acquire anything of value unfairly;
- (Q) offer or attempt to offer anything of value to a Licensee in an attempt to induce the Licensee to act or refrain from acting in a manner contrary to the duties of the Licensee under applicable law; and
- (R) take any action which interferes with or prevents the Gaming Commission from fulfilling its duties and responsibilities under this Ordinance or other applicable law or regulation.

9.02 Prohibition against Electronic Aids. Except as specifically permitted by the Commissioner, no Person shall possess with the intent to use, or actually use, either by himself or herself, or in concert with others, any calculator, computer or other electronic or electromechanical device to assist in projecting an outcome of any Class II or Class III Game, to keep track of or analyze the cards having been dealt, to change the probabilities of any Class II or Class III Game, or the playing strategies to be utilized.

9.03 Prohibition against Embezzlement. Any delay, maneuver or action of any kind which in the opinion of the Commissioner is effectuated by any Licensee to unlawfully divert gaming or other proceeds properly belonging to the Viejas Band shall constitute grounds for taking sanctions against that Licensee. If the Gaming Commission finds an unlawful diversion was conducted or attempted, it shall sanction the Licensee.

9.04 Violations and Sanctions. Any Person who violates the terms of this Ordinance shall be subject to sanctions, fines, prosecution, exclusion, and any other action authorized by applicable law. A violation of this Ordinance may be punished by a fine of no more than \$5,000 for each separate count or violation. Each Calendar Day of violation shall constitute a separate count or violation under this Ordinance. Any Person violating this Ordinance may also be required to pay costs, storage fees, and auction or sales fees. All property used or which may be used in activities in each and every separate violation of this Ordinance may become the property of the Viejas Band; Persons may be prohibited from trespassing on premises licensed under this Ordinance, licenses may be suspended, revoked, or limited and Gaming Facilities may be closed. All such action shall be taken at the discretion of the Gaming Commission, subject to the right of appeal to the Review Board. Winnings found to have been received in violation of this Ordinance shall be forfeited and become the property of the Viejas Band.

9.05 Limitations Period. No fine shall be assessed, nor any action taken by the Gaming Commission, for any violation of this Ordinance unless such action is initiated within two (2) years of the Gaming Commission's discovery of the violation.

9.06 Due Process Regarding Enforcement Actions. The Gaming Commission shall promulgate Regulations protecting due process rights of all individuals subject to the enforcement of this Ordinance. Such Regulations shall, at a minimum:

- (A) provide standards for emergency or summary suspension of a Gaming License;
- (B) provide fair notice and opportunity for hearing before the Gaming Commission regarding any revocation or suspension of a Gaming License, and regarding any enforcement action taken pursuant to this Ordinance; and
- (C) provide the right to appeal, de novo, any Gaming Commission disciplinary or enforcement action to the Review Board.

Section 10 – Exclusion or Ejection of Individuals

10.01 List of Undesirables. The Gaming Commission may, by regulation, provide for the establishment of a list of Persons who are to be excluded or ejected from any Gaming Facility. The list may include any Person whose presence in the Gaming Facility is determined by the Gaming Commission to pose a threat to the interests of the Viejas Band, the gaming public, or to the Gaming Activity.

10.02 Prohibition against Listed Individuals. It shall be violation of this Ordinance for any licensed employee to knowingly fail to exclude or eject from the Gaming Facility any Person(s) placed on the list referred to in Section 10.01. It shall be a violation of this Ordinance for any Person whose name appears on the list referred to in Section 10.01 to enter into or engage in any game at a Gaming Facility, and any such presence shall be considered trespassing.

10.03 Prohibition against Facilitating Underage Gaming. It shall be a violation of this Ordinance for any Licensee to willfully and knowingly fail to exclude or eject from the Gaming Facility any Person who is under the age of eighteen (18) years and playing Class II Games or under the age of twenty-one (21) years and playing Class III Games.

Section 11 – Facility License; Public Health and Safety

11.01 Protection of the Environment and Public Health and Safety. Each Gaming Facility shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

11.02 Licensing of Gaming Facility. Each Gaming Facility must be licensed by the Gaming Commission. Prior to the issuance of a facility license, the Gaming Commissioner shall:

- (A) determine that the Gaming Facility is constructed in conformance with all applicable building codes;
- (B) ensure that Security and Surveillance systems are in place to adequately provide for the safety and security of employees and patrons and for the protection of Tribal assets; and
- (C) ensure that all employees are properly licensed and that the Gaming Facility is otherwise in compliance with all applicable gaming laws and regulations.

Section 12 – NIGC And Tribal-State Compacts

12.01 NIGC; Regulations. Notwithstanding any provision in this Ordinance or any regulation promulgated thereunder, the Gaming Commission is fully empowered to comply with all regulations promulgated by the NIGC, including but not limited to, all requirements to report ordinances, contracts, Gaming License applications, background checks, and other information to the NIGC. The Commissioner shall also serve as the designated agent as required under the NIGC regulations.

12.02 NIGC; Assessment. Notwithstanding any provisions in the Ordinance or any regulation promulgated thereunder, the Gaming Commission is fully empowered to ensure compliance with all assessments authorized by the NIGC. Such assessments shall be directed to be paid by the Gaming Operation.

12.03 Compact. Notwithstanding any provision in this Ordinance or any regulation promulgated thereunder, the Gaming Commission is fully empowered to comply with the provisions of the Compact.

Section 13 – Miscellaneous

13.01 Security. Each Gaming Facility must provide for reasonable security. All security personnel must be licensed by the Gaming Commission.

13.02 Surveillance. The Gaming Facility shall contain all surveillance equipment, supplies, and space as deemed necessary by the Gaming Commission for the reasonable protection of patrons, employees, and Tribal assets. All surveillance systems, equipment, rooms, etc., shall be under the control and jurisdiction of the Gaming Commission. All surveillance staff shall be employees of and report only to the Gaming Commission.

13.03 Maintenance of Ordinance and Regulations. Each Licensee shall obtain, maintain and keep current a copy of the Ordinance and Regulations promulgated thereunder, which shall be located at the Gaming Facility. That a Licensee may not have a current copy of the Ordinance, or each of the Regulations of the Gaming Commission, shall not in any way diminish the Licensee's obligation to abide by the Ordinance and Regulations.

13.04 Amendments. All provisions of this Ordinance are subject to amendment by the Tribal Council. All Regulations promulgated by the Gaming Commission are subject to proper revision, repeal, or amendment by the Gaming Commission.

13.05 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 circumstances, shall not be affected.

13.06 Captions. The captions and headings contained in this Ordinance are included for convenience only and shall in no way limit or affect the terms thereunder.

13.07 Sovereign Immunity. Except as expressly provided herein, nothing in this Ordinance shall be construed as a waiver of the sovereignty immunity of the Viejas Band, including without limitation, its officers, employees or Tribally-owned entities.

13.08 Consent to Jurisdiction. Any Person who applies for a License under this Ordinance, applies for employment in any Gaming Operation, enters into any gaming related contract or agreement with the Gaming Operation or Viejas Band, or enters a Gaming Facility, shall be subject to this Ordinance and shall be deemed to have consented to the enforcement authority of the Gaming Commission and the civil jurisdiction of the Viejas Band. Nothing in this section shall be interpreted to limit, in any way, the civil jurisdiction of the Viejas Band.

13.09 Agent for Service. The designated agent for notice of any official determination, order, or notice of violation by the NIGC as required by 25 C.F.R. §519.1 is the Commissioner of the Gaming Commission.

13.10 Law Enforcement. 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 Gaming 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. Nothing herein shall prohibit the Gaming Commission from accessing CLETS as provided by the Compact.

13.11 Effective Date and Repeal

This Ordinance shall take effect upon receipt of approval of the NIGC Chairperson. Upon receipt of such approval, this Ordinance shall repeal, supersede and replace any and all other Tribal Gaming ordinances, laws or resolutions previously adopted or enacted by the Tribal Council.