

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Chapter 16 TRIBAL GAMING** [13](#)

[ARTICLE I. - IN GENERAL](#)

[ARTICLE II. TRIBAL GAMING COMMISSION](#)

[ARTICLE III. - COMMISSION STAFF](#)

[ARTICLE IV. - LICENSE APPLICATIONS AND PROCEDURES](#)

[ARTICLE V. - BACKGROUND INVESTIGATIONS AND LICENSE DECISIONS](#)

[ARTICLE VI. - RULES OF PROCEDURE FOR HEARINGS](#)

[ARTICLE VII. - SOVEREIGN IMMUNITY](#)

[ARTICLE VIII. - AUDITING AND INTERNAL CONTROL](#)

[ARTICLE IX. - EXCLUSION OR REJECTION OF INDIVIDUALS](#)

[ARTICLE X. - PROHIBITED ACTS](#)

[ARTICLE XI. - NATIONAL INDIAN GAMING COMMISSION AND COMPACT](#)

[ARTICLE XII. - GENERAL REQUIREMENTS](#)

---

FOOTNOTE(S):

---

--- (1) ---

**Editor's note**— Ord. No. 710, ratified October 13, 2005, amended the Code by repealing former Ch. 16, §§ 16-1—16-1.11, 16-2.01—16-2.16, 16-3.01—16-3.04, 16-4.01—16-4.14, 16-5.01—16-5.11, 16-6.01—16-6.12, 16-7.01—16-7.03, 16-8.01—16-8.05, 16-9.01, 16-9.02, 16-10.01, 16-10.02, 16-11.01—16-11.03, and 16-12.01—16-12.15; and added a new Ch. 16. Former Ch. 16 pertained to similar subject matter, and derived from Ord. No. 238, ratified July 24, 1996; and Ord. No. 431, ratified October 25, 2000. [\(Back\)](#)

**Cross reference**— Tribal casino gaming enterprise, Ch. 16A; Tribal bingo enterprise, Ch. 16B. [\(Back\)](#)

**ARTICLE I. IN GENERAL**

[Sec. 16-1. Definitions.](#)

[Sec. 16-1.01. Short title.](#)

[Sec. 16-1.02. Purpose.](#)

[Sec. 16-1.03. Public policy.](#)

[Sec. 16-1.04. Class II Gaming authorized.](#)

[Sec. 16-1.05. Class III Gaming authorized.](#)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

[Sec. 16-1.05A. Class III casino credit issuance authorised.](#)

[Sec. 16-1.06. Location of gaming.](#)

[Sec. 16-1.07. Ownership of gaming.](#)

[Sec. 16-1.08. Use of gaming revenue.](#)

[Sec. 16-1.09. Unauthorized gaming.](#)

[Sec. 16-1.10. Conduct of games.](#)

[Sec. 16-1.11. Applicability of chapter.](#)

#### **Sec. 16-1. Definitions.**

Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, [102](#) Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701 et seq. (IGRA).

- (a) *Applicant* means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license described in or required by this chapter.
- (b) *Application* means a request for the issuance or renewal of a license described in or required by this chapter.
- (c) *Board of Advisors* or *Board* means either the Board of Advisors of the Tribal Casino Gaming Enterprise or the Board of Advisors of the Tribal Bingo Enterprise, which shall govern and oversee the management and operations of all gaming operations of the Tribe and all non-regulatory aspects of the Tribe's gaming operations.
- (d) *Capital/expansion reserve fund* means a gaming related reserve fund, together with interest earned thereon, established by a gaming operation or the Commission either (1) required by an NIGC-approved management contract or (2) specifically authorized for gaming related purposes by a Tribal Council ordinance.
- (e) *Chairman* means the Chairman of the National Indian Gaming Commission.
- (f) *Class I Gaming* means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.
- (g) *Class II Gaming* means Class II Gaming as defined at 25 U.S.C. 2703(7)(A), and any regulations promulgated thereunder.
- (h) *Class III Gaming* means Class III Gaming as defined in 25 U.S.C. 2703(8), and any regulations promulgated thereunder.
- (i) *Compact* means the Tribal-State Compact including all renewals, amendments, appendices, exhibits and other attachments thereto between the Eastern Band of Cherokee Indians and the State of North Carolina providing for the conduct of Tribal Class III Gaming by the Eastern Band of Cherokee Indians.
- (j) *Complimentary item* means a service or item provided at no cost, or at a reduced cost, to a customer of a gaming operation.
- (k) *Commission* means the Cherokee Tribal Gaming Commission.
- (l) *Commissioner* means an individual member of the Cherokee Tribal Gaming Commission.

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

- (m) *Council or Tribal Council* means the Tribal Council of the Eastern Band of Cherokee Indians.
- (n) *Distributable net revenue* means all revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less:
  - (1) Prizes and operating expenses;
  - (2) Payments owed to a management contractor;
  - (3) Debt service payments (including without limitation principal, interest, and related fees, costs, and expenses); and
  - (4) Contributions to duly authorized capital/expansion reserve funds.

Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Commission.

- (o) *Fiscal year* means the period beginning at 12:01 a.m. on October 1 of each year and ending at midnight, September 30 of the following year.
- (p) *Gaming* means any Class II Gaming or Class III Gaming activity, either individually or collectively, whether authorized or unauthorized.
- (q) *Gaming device* means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any gaming which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do or are capable of affecting, in any way, the playing of any gaming.
- (r) *Gaming establishment or gaming facility* means any premises where gaming is operated or conducted on the Tribe's Indian lands, and includes all buildings, improvements, appurtenances, equipment and facilities where gaming devices are stored or where gaming patrons are present.
- (s) *Gaming operation* means any business enterprise owned by the Tribe, the revenue of which is primarily derived from gaming or from any gaming establishment.
- (t) *Gaming vendor* means any person who manufactures, sells, leases, distributes, supplies or makes modifications to, any gaming device of the Tribe and all persons holding any direct or indirect financial interest in such gaming device supplier.
- (u) *Gross revenue* means all revenue of any nature derived directly or indirectly from a gaming operation.
- (v) *Indian lands* means:
  - (1) All lands within the limits of the Tribe's reservation; and
  - (2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or held by the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.
- (w) *Key employee* means:
  - (1) A person who performs one or more of the following functions:
    - (i) Bingo caller,
    - (ii) Counting room supervisor,
    - (iii) Chief of security,
    - (iv) Custodian of gaming supplies or cash,
    - (v) Floor manager,

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

- (vi) Pit boss,
  - (vii) Dealer,
  - (viii) Croupier,
  - (ix) Approver of credit, or
  - (x) Custodian of gambling terminals or other devices operated by the management of any gaming operation, including persons with access to cash and accounting records for such devices;
- (2) If not otherwise included, any other person whose total cash compensation from employment in any gaming operation exceed \$50,000.00 per year;
  - (3) If not otherwise included, the four most highly compensated persons in any gaming operation; or
  - (4) Any equivalent position in a gaming operation that the Commission designates by its rules as a key employee.
- (x) *License* means any authorization granted by the Commission, pursuant to this chapter, to any person which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.
  - (y) *Licensee* means any person who has been issued a valid and current license pursuant to the provisions of this chapter.
  - (z) *Management contract* means any contract, agreement or other document approved by the NIGC, including all collateral agreements, establishing a relationship between the Tribal government and any person, pursuant to which such person has managerial responsibilities in or for any gaming operation. Nothing in this chapter shall be deemed to modify or amend a management contract approved prior to the effective date of this chapter.
- (aa) *Management contractor* means a person or entity that has a management contract duly approved by the NIGC.
  - (bb) *Management entity or controlling shareholder* means:
    - (1) Any person having a direct financial interest in any management contract, including those persons who own five percent or more of any management entity's outstanding capital stock;
    - (2) When a trust is a party to a management contract, any beneficiary or trustee of such trust;
    - (3) When a partnership is a party to a management contract, any partner, general or limited, in such partnership;
    - (4) When a corporation is a party to a management contract, any person who is an officer or director of such corporation, or who holds five percent or more of the issued and outstanding capital stock of such corporation, either alone or in combination with a spouse, parent, child or sibling; or
    - (5) With respect to any nonnatural person with an interest in a trust, partnership or corporation that has an interest in a management contract, all beneficiaries, trustees, partners, or directors of, and five percent stockholders of, such nonnatural person.
  - (cc) *Management fees* means any monies paid from gaming revenue to any management contractor pursuant to an NIGC-approved management contract to operate a gaming establishment. Such term shall not include monies paid for the operating expenses of such gaming establishment.
  - (dd) *Net revenue* means gross revenue of a gaming operation less:

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (1) Amounts paid out as, or paid for, prizes; and
- (2) Total operating expenses, excluding management fees.
- (ee) *NIGC* means the National Indian Gaming Commission.
- (ff) *Operating expense* means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which by operation of generally accepted accounting principles, consistently applied, is so treated.
- (gg) *Ordinance* means this chapter which is the Tribal Gaming Ordinance of the Eastern Band of Cherokee Indians, as amended from time to time, and any rules promulgated under this chapter.
- (hh) *Patron* means any person who participates in gaming, or who is physically present on premises wherein or whereon gaming is conducted.
- (ii) *Person* means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.
- (jj) *Primary management officials* means:
  - (1) The person(s) having management responsibility over all or any part of any gaming operation;
  - (2) Any person who has authority:
    - (i) To hire and fire employees of a gaming operation; or
    - (ii) To establish working policy for a gaming operation;
  - (3) The chief financial officer or other person who has financial management responsibility for any gaming operation;
  - (4) Any person who is a controlling shareholder of a management contractor; or
  - (5) Any equivalent position in a gaming operation that the Commission designates by its rules as a primary management official.
- (kk) *Rules* means any rules governing the conduct of games or the control of internal fiscal affairs of gaming operations as may be promulgated by the Commission established pursuant to this chapter.
- (ll) *Tribe* means, and *Tribal* shall refer to, the Eastern Band of Cherokee Indians, which is recognized as:
  - (1) Eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians, and
  - (2) Possessing powers of self-government.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-1.01. Short title.**

This chapter shall be known and may be cited as the Tribal Gaming Ordinance.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-1.02. Purpose.**

The Tribal Council of the Eastern Band of Cherokee Indians enacts this chapter in order to regulate all forms of gaming on the Tribe's Indian lands.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-1.03. Public policy.**

- (a) All gaming which is conducted within the Tribe's Indian lands and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter.
- (b) The Tribal Council hereby finds and declares it to be the public policy of the Tribe that:
  - (1) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and that gaming is free from criminal and corruptive elements.
  - (2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices.
  - (3) All management entities or controlling shareholders, primary management officials, key employees, gaming establishments and suppliers of gaming goods and services must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

(Ord. No. 710, 10-13-2005)

**Sec. 16-1.04. Class II Gaming authorized.**

Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Indian lands; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this chapter, the rules and regulations of the Commission, IGRA, and the NIGC's regulations.

(Ord. No. 710, 10-13-2005)

**Sec. 16-1.05. Class III Gaming authorized.**

All forms of Class III Gaming that are listed in Exhibit 1 to the Addendum to the Restated Tribal-State Compact entered on November 28, 2011 and amended in May 2012 and fully approved and published by the Secretary of the Department of Interior are hereby authorized on lands within the Tribe's Indian lands; provided, however, that Class III Gaming shall be conducted in accordance with the provisions of this chapter, the rules and regulations of the Commission, IGRA, the NIGC's regulations, and the Compact.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

**Sec. 16-1.05A. Class III casino credit issuance authorised.**

Casino operations are hereby empowered to make credit worthiness decisions on players to issue casino credit to players that meet requirements which shall be at least as stringent as standard casino industry practice currently requires and the Tribal Gaming Commission promulgates in the Internal Control Standards. These standards shall set forth a level of protection for Tribal assets and for the safe and effective operation of casino credit.

(Ord. No. 244, 8-8-2012)

**Sec. 16-1.06. Location of gaming.**

The Commission shall ensure that:

- (1) Such gaming as it authorizes and licenses pursuant to this chapter is conducted on lands within the Tribe's Indian lands; and

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (2) Such gaming is not otherwise specifically prohibited by federal law.
- (3) There are up to three (3) locations permitted for Class III gaming to be conducted. The property considered as location #1 shall always be recognized as the casino located in the town of Cherokee on the Qualla Boundary alongside Soco Creek bordering Highway 19N; the second and third locations shall be approved by Tribal Council resolution and ratified by the Principal Chief following a full study by the TCGE Board of Advisors. All gaming locations shall meet all requirements under this Chapter and any requirements mandated by federal law and the Tribal-State Compact.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

#### **Sec. 16-1.07. Ownership of gaming.**

The Tribe shall have the sole proprietary interest in any gaming operation authorized by this chapter and hereby authorizes and directs the casino operations to make all payments and satisfy all obligations on behalf of the Tribe in its payment obligations contained under the Tribal-State Compact or Federal and Tribal law.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

#### **Sec. 16-1.08. Use of gaming revenue.**

- (a) Net revenue from tribal gaming shall be used only for the purposes set forth in this section.
  - (1) To fund tribal government operations and programs;
  - (2) To provide for the general welfare of the Tribe and its members;
  - (3) To promote tribal economic development; and
  - (4) To donate to charitable organizations.
- (b) The Tribe has elected to make per capita payments, in the amount of 50% of distributable net revenue from both Class II and Class III gaming activities, to enrolled tribal members, and shall authorize and issue such 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), as set forth in [chapter 16C](#) of the Cherokee Code.
- (c) Nothing in this section shall be construed to require that a gaming operation or the Commission distribute funds that are not distributable net revenue.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

#### **Sec. 16-1.09. Unauthorized gaming.**

Any person who commits any act of unauthorized gaming on the Tribe's Indian lands shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-1.10. Conduct of games.**

All gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

with such rules governing the conduct of games as may be promulgated by the Commission under this chapter.

(Ord. No. 710, 10-13-2005)

**Sec. 16-1.11. Applicability of chapter.**

Unless specifically indicated otherwise, all provisions of this chapter shall apply to both Class II Gaming and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

(Ord. No. 710, 10-13-2005)

**ARTICLE II. TRIBAL GAMING COMMISSION <sup>[2]</sup>**

[Sec. 16-2.01. Establishment.](#)

[Sec. 16-2.02. Independence.](#)

[Sec. 16-2.03. Licensing of Commissioners.](#)

[Sec. 16-2.04. Restrictions on Commissioners.](#)

[Sec. 16-2.05. No financial interest in gaming.](#)

[Sec. 16-2.06. Compensation of Commissioners.](#)

[Sec. 16-2.07. Meetings.](#)

[Sec. 16-2.08. Commission offices.](#)

[Sec. 16-2.09. Quorum.](#)

[Sec. 16-2.10. Organization.](#)

[Sec. 16-2.11. Recordkeeping.](#)

[Sec. 16-2.12. Reports.](#)

[Sec. 16-2.13. Budget.](#)

[Sec. 16-2.14. Powers.](#)

[Sec. 16-2.15. Promulgation of gaming rules and regulations.](#)

[Sec. 16-2.16. Complimentary items.](#)

[Sec. 16-2.17. Conflict resolution.](#)

**Sec. 16-2.01. Establishment.**

- (a) Composition of the Commission: The Tribal Gaming Commission shall be composed of three enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.
- (b) Appointment of Commissioners: Commissioners shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Commission shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the Commission.

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (c) Commissioners may hold other positions of employment and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter.
- (d) Except as provided in subsection (e), each Commissioner shall serve a term of five years, subject to removal, with cause, by a majority of the Tribal Council. Nothing in this chapter shall be construed to preclude a Commissioner from serving successive terms. There shall be a six-month probationary period for each new appointee to be reviewed by the Principal Chief and the Tribal Council.
- (e) To ensure continuity in the Commission and rotation of appointments, the existing Commissioners shall continue to serve, but their terms shall be adjusted so that they serve staggered terms. Upon the effective date of this amendment, the Principal Chief shall assign term expiration dates for each current Commissioner, such that one Commissioner's term expires every year beginning December 31, 2008. The established rotation shall continue for each Commission position for future new, renewal, or replacement appointments.
- (f) No Commissioner shall be finally approved until he or she has completed a background investigation pursuant to [section 16-2.03](#)
- (g) Before assuming office, each Commissioner shall take the oath of office administered to Tribal officers.
- (h) Resignation: A Commissioner may resign at any time by providing the Principal Chief and Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Principal Chief or Tribal Council to be effective.
- (i) Vacancies: A nomination to fill a vacancy in the Commission shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.
- (j) The Commission shall select annually, from its membership, a Commission Chair.  
(Ord. No. 710, 10-13-2005)

#### **Sec. 16-2.02. Independence.**

In all matters within its purview and responsibilities, the Commission shall be and shall act independently and autonomously from the Principal Chief and Tribal Council. No prior or subsequent review by the Principal Chief or Tribal Council of any actions of the Commission shall be required or permitted, except as otherwise explicitly provided in this chapter.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-2.03. Licensing of Commissioners.**

- (a) *Requirements; application.* Nominees for the position of Commissioner must meet the requirements of articles IV and V of this chapter and must first obtain a license from the Council prior to assuming office. Each nominee shall complete a license application and shall be subject to the same level of background investigation as required for a primary management official under this chapter. Such background investigation shall be performed at the direction of the Council by a duly appointed agent of the Council. Upon completion of the background investigation, the Council shall, by majority vote, either issue or deny a license to the nominee.
- (b) *Failure to meet license requirements or license violations.* If the Tribal Council has reason to believe that a licensed Commissioner fails at any time to meet the license requirements under this chapter or

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

that the Commissioner has violated this chapter, the rules, the compact, or the IGRA and regulations promulgated thereunder or any other applicable law, the Tribal Council shall direct an investigation to be conducted and may notice the Commissioner for a hearing before the Council. All investigations and hearings under this section shall be conducted as provided in sections 16-5 and 16-6 of this chapter, and a Commissioner shall have all of the rights and obligations given to a licensee or applicant therein, except that all hearings shall be conducted by and before the Council.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.04. Restrictions on Commissioners.**

To avoid potential conflicts of interest between the management and regulation of a gaming operation, the Tribe hereby declares that:

- (a) While actively serving in any of the following capacities, no Principal Chief or Vice-Chief, member of the Tribal Council or a Board of Advisors, no judge or justice, no Tribal employee, and no employee of the Commission or any gaming operation owned by the Tribe, may serve on the Commission;
- (b) No person who is ineligible to be a key employee or primary management official and no person convicted of a felony, embezzlement, theft, or any other money-related crime or honesty-related crime (such as fraud) may serve on the Commission;
- (c) Commissioners are prohibited from:
  - (1) Gambling in any gaming operation owned by the Tribe;
  - (2) Accepting complimentary items from any gaming operation;
  - (3) Providing contractual services of any kind to any gaming operation;
  - (4) Providing management services to any gaming operation pursuant to a management contract;
  - (5) Accepting gratuities or any other thing of value from any licensee or applicant; and
  - (6) Engaging in outside employment or activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities as determined by the Tribal Council.

For purposes of this subparagraph (c), complimentary items shall not include ceremonial gifts or meals provided at the expense of a Tribal gaming operation, provided that such items do not each exceed \$50.00 in value and are not offered as an inducement or reward for gambling in the operation.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.05. No financial interest in gaming.**

No Commissioner shall have any direct or indirect financial interest in any licensee. For purposes of this section, indirect financial interest shall not include ownership of any mutual fund or other non-self-directed investment fund which holds stock in a publicly traded company but shall include direct ownership of such stock.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-2.06. Compensation of Commissioners.**

Commissioners shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Commission's annual budget. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.07. Meetings.**

- (a) *Regular meetings.* The Commission shall meet at least once a month at the Commission's main office or at any other designated meeting place.
- (b) *Special meetings.* Special meetings shall be convened by the Commission Chair as necessary to carry out the official duties of the Commission. Notice of each special meeting shall be given by the Commission Chair by telephone or mail to each Commissioner. Notice shall be received at least 24 hours in advance of such meeting and shall include the date, time and place of the proposed meeting.
- (c) *Emergency meetings.* An emergency meeting may be called by the Chair of the Commission with less than 24 hours' notice; provided, however, that the Chair of the Commission shall use best efforts to ensure that all Commissioners are notified of such meeting, with as much prior notice as possible under the circumstances.
- (d) *Meetings open to the public.* All meetings of the Commission shall be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information which the Commission deems confidential pursuant to the provisions of this chapter.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.08. Commission offices.**

The Commission shall maintain an administrative office. Such office shall serve as the Commission's main business office and shall be the site at which the Commission records and documents are maintained and stored on a permanent basis. No individual except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission or an attorney for the Commission.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.09. Quorum.**

A quorum of the Commission shall consist of two Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this chapter.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.10. Organization.**

The Commission may organize itself into any functional division it deems necessary, and may alter such plan of organization as it deems expedient.

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.11. Recordkeeping.**

- (a) The Commission shall maintain complete records regarding the following:
- (1) Applications, financial statements, fingerprints, contracts, licenses, suspension and cancellation notices and correspondences of all applicants, including management entities or controlling shareholders, key employees, primary management officials, gaming establishments and suppliers of gaming goods and services (as required by [section 16-8.01\(g\)](#));
  - (2) Commission licenses;
  - (3) Meeting minutes from all Commission meetings;
  - (4) Compact compliance;
  - (5) Reports relating to customer disputes, complaints or other issues that affect the integrity of the gaming operation;
  - (6) Commission budget and expenditures;
  - (7) Council communications and correspondences;
  - (8) Gaming device list pursuant to [section 16-4.11](#) of this chapter; and
  - (9) Any other records or documents the Commission deems necessary or appropriate.
- (b) *Confidential records.* All information and data:
- (1) Required by the Commission to be furnished to them under this chapter or which may otherwise be obtained relative to the finances, earnings or revenue of any applicant or licensee;
  - (2) Pertaining to an applicant's criminal record, antecedents and background, which have been furnished to or obtained by the Commission from any source;
  - (3) Provided to the Commission by a governmental agency or an informer or on the assurances that the information will be held in confidence and treated as confidential; or
  - (4) Obtained by the Commission from a supplier relating to the manufacturing of gaming devices or gaming goods;

is confidential and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.12. Reports.**

The Commission shall make quarterly reports to the Principal Chief and Council within 30 days after the end of each quarter. Such reports shall contain the following information:

- (a) Number and types of licenses issued during the previous quarter;
- (b) Information regarding license denials, suspensions or revocations;
- (c) Report of any events of noncompliance, breach or violations of this chapter, the rules, the compact, IGRA, license or any other law or regulation; provided, however, that these reports are not the subject of or relating to a pending investigation being conducted by the Commission, or hearing before the Commission;
- (d) A report of the Commission expenditures for the prior quarter;

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (e) A summary of any Commission travel and training;
- (f) All other information which the Commission deems relevant in order to keep the council informed and current on all gaming regulatory matters.

Nothing in this section shall authorize or permit the Commission to provide the Council with any information pertaining to a pending investigation being conducted by the Commission or hearing before the Commission. All such information shall be kept confidential. Any willful or careless breach of this provision shall present due cause for removal of the person from office and a penalty of up to \$5,000.00 for each offense. Claims of such disclosure shall be presented to the Commission within 60 days of the act complained of, or within 60 days the disclosure becomes known, whichever is later.

In addition to the foregoing reports, the Commissioners shall meet upon request with the Principal Chief. Upon request, the Commission shall promptly and fully advise the Principal Chief and Tribal Council with respect to the business and affairs of the Gaming Commission and shall provide copies of requested records, books or documents, subject to the confidentiality provisions of this chapter.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-2.13. Budget.**

The Commission shall prepare a budget for its operations as necessary to pay salaries and other expenses, within the limit of funds available to it, which is to be included in the Executive Committee's proposed budget submitted annually to Tribal Council for approval. The budget shall be established within the following limits:

- (a) The Commission budget shall be partially funded as an operating expense of the Tribal Casino Gaming Enterprise (TCGE). The TCGE shall fund all actual direct expenses related solely to the Commission's regulation of the gaming activities of the TCGE. Such payment shall be the lesser of the actual regulatory cost or an amount which is two-thirds of one percent (0.66%) of the gross gaming revenue (win) but in no event more than \$3,000,000 for the fiscal year. For each year after fiscal year 2013, the capped amount shall increase 5% annually to account for growth and economy. Any surplus of such funds over actual expenses at the end of a fiscal year shall be refunded to the TCGE within 120 days of the end of the fiscal year. Upon completion of the TCGE audit, any excess funds will be returned immediately following the per capita distribution ordinance.
- (b) The Tribal Bingo Enterprise (TBE) shall fund all actual direct expenses related solely to the Commission's regulation of the gaming activities of the TBE.
- (c) If the Commission's budget needs exceed the amounts in subparagraphs (a) and (b) for any fiscal year, then the Commission shall utilize funds obtained through licensing fees and regulatory fines, or seek additional funding from the Tribal Council. Except as provided in subparagraph (d), below, any surplus remaining in such fees, fines or additional funding at the end of a fiscal year shall be distributed to the Tribe in accordance with [Chapter 16C](#)
- (d) The Commission shall have the authority to establish, fund, and maintain capital/expansion reserve funds for:
  - (1) Working capital in an amount recommended by the independent auditors; and
  - (2) For such other purposes as are specifically authorized for gaming regulatory purposes by a Tribal Council ordinance based a detailed plan for use of the funds submitted by the Commission.

(Ord. No. 710, 10-13-2005; Ord. No. 431, 11-2-2010; Ord. No. 244, 8-8-2012; [Ord. No. 360, 10-26-2012](#) )

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-2.14. Powers.**

In accordance with the terms of this chapter, the Commission shall have the power and duty to:

- (a) Conduct or cause background investigations to be conducted on primary management officials and key employees and other gaming employees;
- (b) Review and approve all investigative work conducted;
- (c) Report results of background investigations to the NIGC;
- (d) Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints;
- (e) Make suitability/eligibility determinations;
- (f) Issue licenses as authorized in this chapter, consistent with appropriate suitability determinations;
- (g) Initiate investigations and enforcement actions for licensee violations of this chapter, or any other applicable Tribal, State, or Federal laws or regulations applicable to a gaming operation;
- (h) Limit, cancel, revoke, terminate, condition, modify, suspend, or restrict any license, and impose civil fines or sanctions for any violation of a license or this chapter;
- (i) Inspect, examine, monitor and audit all gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of all gaming operations, for regulatory compliance purposes;
- (j) Ensure compliance with all applicable Tribal, Federal, and, if applicable, State laws, rules, and regulations regarding Indian gaming;
- (k) Hold hearings on patron gaming disputes, in compliance with procedures established in this chapter;
- (l) Comply with any and all reporting requirements under this chapter, the IGRA, the Tribal-State Compact, and any other applicable law;
- (m) Issue orders of temporary closure of gaming activities for violations of this chapter or of contractual obligations to the Tribe, the IGRA or the Compact or orders of permanent closure of gaming activities for violations of this chapter, Tribal gaming regulations or contractual obligations to the Tribe;
- (n) Initiate civil and criminal actions in court to enforce provisions of this chapter, Tribal gaming regulations or the IGRA;
- (o) Monitor all gaming activities conducted on the Tribe's Indian lands on a continuing basis;
- (p) Conduct such hearings as authorized pursuant to article VI, including administering oaths or affirmations to witnesses and issuing subpoenas to compel witnesses to appear at such hearings;
- (q) When information is received through audits or other investigations that indicates a violation of Tribal, federal or applicable state ordinances, laws or regulations, to treat as confidential and provide such information to the appropriate law enforcement officials;
- (r) Adopt regulations as authorized in [Section 16-2.15](#); and
- (s) Adopt Class II and Class III gaming license applications.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-2.15. Promulgation of gaming rules and regulations.**

The Commission may promulgate rules governing the conduct of all games authorized by the compact or IGRA, including rules governing the equipment, (chips, cards, tiles, etc.), used in such games. The rules of each authorized game offered at any duly licensed gaming establishment shall be posted in a conspicuous location in such gaming establishment. The Commission shall also have the authority to promulgate and issue regulations governing the following:

- (a) Regulations required by the NIGC's Minimum Internal Control Standards (but not necessarily limited to such standards) and article VIII of this chapter;
- (b) Regulations on the levying of fees associated with gaming license applications;
- (c) Regulations on the levying of fines and/or suspension or revocation of gaming licenses for violations of this chapter, or any other Tribal, Federal or, if applicable, State regulations regarding Indian gaming;
- (d) Regulations establishing licensing procedures for gaming employees who are not key employees or primary management officials; and
- (e) Regulations establishing licensing procedures for gaming vendors; vendors that are not gaming vendors as defined in [section 16-1](#) may be required to register with, provide basic information to, and pay a nominal registration fee to the Commission; and
- (f) Regulations establishing the criteria and procedures for removal of undesirable persons consistent with article IX of this chapter.

Except in an emergency, the Commission's rules and regulations shall be published as provisional rules or regulations for a 30-day comment period prior to final approval by the Commission. Members of a Board of Advisors, gaming employees, and representatives of a management contractor shall have the right to comment on the impacts of all provisional or final rules or regulations without adverse impact on either employment or licensure. Final rules requiring significant operational changes will also be subject to a minimum 14-day implementation period.

If a gaming operation believes that an existing or proposed rule or regulation unduly interferes with business operations, then the Board of Advisors and the Commission, and appropriate staff from each entity, shall meet together and attempt to reach agreement on a modification of that regulation. If the Board and Commission cannot reach an agreement, then either the Board or the Commission may initiate binding arbitration under the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. If the Arbitrator determines that the cost of the rule or regulation outweighs its benefit, then the arbitrator may determine that the rule or regulation is invalid and may order an appropriate modification of the regulation, *provided* that the rule or regulation must meet minimum standards required by the NIGC. The non-prevailing party shall pay the fees and expenses of arbitration.

Except as specifically delegated by the Tribal Council in this chapter under the procedures established in this section, the Commission shall not have authority to promulgate or issue rules or regulations.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-2.16. Complimentary items.**

- (a) The use of complimentary items shall be governed by regulations promulgated by the Commission under [section 16-2.15\(a\)](#), which shall, at a minimum, be in accord with the NIGC's Minimum Internal Control Standards, currently published at 25 C.F.R. § 542.17.
- (b) No key employee, primary management official, or actively serving Principal Chief, Vice-Chief, Tribal Council member, member of a Board of Advisors or the Commission, or Cherokee Judge or Justice,

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

shall be authorized to receive complimentary items. For purposes of this section, complimentary items shall not include ceremonial gifts or meals provided at the expense of a Tribal gaming operation, *provided* that such items do not each exceed \$50 in value and are not offered as an inducement or reward for gambling in the operation.

- (c) No actively serving Principal Chief, Vice-Chief, Tribal Council member, member of a Board of Advisors or the Commission, or Cherokee Judge or Justice, shall be authorized to carry a "comp book" or otherwise approve the issuance of complimentary items.
- (d) Complimentary items shall be included in the annual budget of a gaming operation and shall be subject to approval by the applicable Board of Advisors.

(Ord. No. 710, 10-13-2005)

**Sec. 16-2.17. Conflict resolution.**

The Commission is expected to work cooperatively with the Board of Advisors of a Tribal gaming operation, and shall meet with the Boards of Advisors on a regular basis to foster good business practices in compliance with applicable laws and regulations, resolve differences of opinion, and advance the interests of the Tribe. If a dispute arises with the Board of Advisors regarding whether an issue is regulatory or operational, then the Commission and the Board shall make every good faith effort to resolve the dispute and then shall utilize the arbitration provisions of [Section 16-2.15](#), if applicable and necessary.

(Ord. No. 710, 10-13-2005)

---

FOOTNOTE(S):

---

--- (2) ---

Cross reference— Tribal government, Ch. 117. [\(Back\)](#)

**ARTICLE III. COMMISSION STAFF**

[Sec. 16-3.01. Executive Director.](#)

[Sec. 16-3.02. Other Commission staff.](#)

**Sec. 16-3.01. Executive Director.**

- (a) The Commission shall have the authority to employ an Executive Director.
- (b) No person actively holding any Tribal elective office, and no sitting judicial official is eligible to serve as Executive Director.
- (c) The Executive Director must have at least five years of responsible administrative experience in public or business administration or possess broad management skills and have an MBA, J.D., or other higher degree of education.

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

- (d) The Executive Director shall serve in a full time capacity.
- (e) The Executive Director shall be subject to the same restrictions as imposed on Commissioners in [Section 16-2.04](#)
- (f) The Executive Director shall be compensated consistent with the salary structure adopted by the Tribal Council from time to time for Tribal employees.
- (g) The Executive Director shall have such authority as delegated by the Commission.
- (h) The Executive Director may be terminated for cause by a majority vote of the Commission.

(Ord. No. 710, 10-13-2005)

**Sec. 16-3.02. Other Commission staff.**

The Executive Director shall have the authority, subject to budget approval by the Commission, to employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as the execution of the Commission's duties may require. The Commission staff shall be compensated consistent with the salary structure adopted by the Tribal Council from time to time for Tribal employees.

(Ord. No. 710, 10-13-2005)

**ARTICLE IV. LICENSE APPLICATIONS AND PROCEDURES**

[Sec. 16-4.01. Gaming license required.](#)

[Sec. 16-4.02. Standard for license.](#)

[Sec. 16-4.03. Application for license.](#)

[Sec. 16-4.04. Required application forms.](#)

[Sec. 16-4.05. Fingerprint cards required.](#)

[Sec. 16-4.06. Withdrawal of application.](#)

[Sec. 16-4.07. Continuing duty to provide information.](#)

[Sec. 16-4.08. Term of license; license fees; parameters of license.](#)

[Sec. 16-4.09. Conditions of license.](#)

[Sec. 16-4.10. Facility license.](#)

[Sec. 16-4.11. Certification of gaming devices.](#)

[Sec. 16-4.12. Provisional license.](#)

[Sec. 16-4.13. Provisional employment pending issuance of license and during temporary license period.](#)

[Sec. 16-4.14. Assignment or transfer.](#)

**Sec. 16-4.01. Gaming license required.**

The Commission is hereby authorized to issue all licenses for the conduct of all gaming authorized under this chapter or any other license related to gaming which the Commission may, by rule require.

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (a) *Persons.* The following persons must obtain licenses as a precondition to employment in or management of any gaming operation:
- (1) Any management entity or controlling shareholder. Any person deemed a controlling shareholder must comply with the same licensing requirements as if such person were a primary management official; however, if any controlling shareholder is a nonnatural person, such controlling shareholder shall be subject to management entity licensing procedures;
  - (2) All primary management officials;
  - (3) All key employees;
  - (4) Gaming vendors. Any person who is a gaming vendor as defined in [Section 16-1](#) must comply with the same licensing requirements as if such person were a primary management official, and if any supplier is a nonnatural person, such supplier shall be subject to management entity licensing procedures, provided that vendors who are not gaming vendors may be required to register with, provide basic information, and pay a nominal registration fee to the Commission; and
  - (5) Other gaming employees subject to procedures adopted by the Commissions regulations pursuant to [Section 16-2.15\(d\)](#).
- (b) *Gaming facilities.* Each place, facility, or location where gaming is conducted must obtain a separate facility license from the Commission.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.02. Standard for license.**

Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, and any amendments thereto, and also according to requirements, at least as stringent, as those set forth in the compact.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.03. Application for license.**

- (a) No license shall be issued under this chapter except upon a sworn application filed with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing, at a minimum, of the following:
- (1) Satisfactory proof that the applicant is of good character and reputation, and is financially responsible;
  - (2) If applicable, a complete description of the premises at which gaming will be conducted;
  - (3) Agreement by the applicant to abide by all conditions of the license, this chapter, the rules, the compact and IGRA;
  - (4) A separately sworn statement that the applicant has never been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:
    - (i) Any felony, other than a felony conviction for an offense under subsection (b), (c), or (d), within the preceding ten years; provided, however, that this record limitation to the preceding ten years shall not apply to any applicant which is a management entity or controlling shareholder,
    - (ii) Any gaming-related offense,

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (iii) Fraud, misrepresentation or any other crimes of moral turpitude in any context, or
  - (iv) A violation of any provision of this chapter, the rules, or any other ordinance or rules of the Tribe or any state agency regulating or prohibiting gaming; and
- (5) The applicant's fulfillment of all applicable requirements of IGRA, all provisions of this chapter, including, but not limited to, those in chapter 5, and the compact.
- (b) No license shall be issued to any applicant who is determined by the Commission to be a person whose prior activities, criminal record, reputation, habits or 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, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.
- (c) The issuance of licenses shall also be subject to the provisions of section 16-5 of this chapter regarding background investigations.
- (d) The following notices shall be placed on the application form for a key employee, management entity, primary management official or supplier of gaming goods and services before such form is completed by an applicant:
- (1) 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 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 investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to license you for 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).

(Ord. No. 710, 10-13-2005; [Ord. No. 360, 10-26-2012](#) )

#### **Sec. 16-4.04. Required application forms.**

- (a) Each individual applying for a license, whether as a primary management official or key employee, and any person who is subject to a background investigation in connection with an entity application for a license, shall be required to complete the following forms:
- (1) Application for gaming license by individual, if applicable;
  - (2) Personal history record, with attached personal financial questionnaire, including statement of assets and statement of liabilities;
  - (3) Two complete fingerprint cards;
  - (4) Request to release information - individual.
- (b) Each individual in subsection (a) of this section applying for a license renewal shall supplement the personal history record and shall also be required to complete the following forms:

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (1) Application for gaming license by individual, if applicable;
  - (2) Request to release information - individual.
- (c) Each entity, including a management entity and supplier of gaming goods and services, applying for a license must complete the following forms:
- (1) Application for gaming license by entity;
  - (2) Request to release information - entity.
- (d) The Commission may request any additional forms or information from an applicant as it deems necessary or appropriate.
- (e) Pursuant to the compact the Commission shall create an individual file for each applicant which includes the applicant's personal history record and all background information compiled by the Commission.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.05. Fingerprint cards required.**

All applicants for a license as a key employee or primary management official are required to submit fingerprint cards. The Tribal Gaming Commission is hereby identified as the enforcement agency to take fingerprints. Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an applicant's fingerprint cards to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an applicant's fingerprint card to any additional Tribal, local or state criminal history check system or center as the Commission or the Executive Director deem necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the applicant's personnel file.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.06. Withdrawal of application.**

An application may not be withdrawn without the permission of the Commission. An applicant may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request for withdrawal.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.07. Continuing duty to provide information.**

Applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the application changes or becomes inaccurate in any way, the applicant or licensee shall promptly notify the Commission or Executive Director of such changes or inaccuracies.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.08. Term of license; license fees; parameters of license.**

- (a) Licenses, except provisional licenses (see [section 4.12](#) provisional license), shall be for a term not to exceed two years, and shall expire on December 31 of each renewal year.

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (b) In order for the Tribe to recover the costs of complying with federal, Tribal, and state regulatory processes applicable to Class II Gaming and Class III Gaming, annual license fees shall be imposed:
  - (1) In the amount of \$7,500.00 annually on each party, other than the Tribe, to a management contract;
  - (2) On any persons required to obtain a license, in accordance with a fee schedule to be established by the Commission; and
  - (3) In addition to the license fees imposed pursuant to subsection (b)(1) and (2) of this section, the Commission may impose such fees on licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will in the aggregate be sufficient to enable the Tribe and the Commission to recover its reasonable costs of enforcing this chapter. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular licensee or applicant.
- (c) Violations of any provision of this chapter or the rules, or relevant license provisions, by a licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and the inhabitants of the Tribe's Indian lands, and shall be deemed grounds for refusing to grant or renew a license, suspension or revocation of a license. Acceptance of a license, or renewal thereof by a licensee, constitutes an agreement on the part of the licensee to be bound by the provisions of this chapter and the rules as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission. It is the responsibility of the licensee to remain informed of the contents of this chapter, the rules and all other applicable regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations. A license issued hereunder is a privilege license and no right shall attach thereto.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.09. Conditions of license.**

All licensees shall comply with such reasonable conditions as may be fixed by the Commission including, but not limited to, the following conditions:

- (a) Facility licensees.
  - (1) The licensee shall at all times maintain an orderly, clean and neat gaming establishment, both inside and outside the premises of the gaming establishment;
  - (2) The gaming establishment shall be subject to patrol by the Tribe's security and law enforcement personnel and, when authorized, local and state law enforcement, and the licensee shall cooperate at all times with such security and law enforcement officials;
  - (3) The gaming establishment shall be open to inspection by authorized Tribal officials at all times during business hours;
  - (4) There shall be no discrimination in any gaming operations by reason of race, color, sex or creed; provided, however, that nothing herein shall prevent the licensee from granting preferences to Native Americans as permitted by law; and
- (b) Persons, management entities and suppliers of gaming goods and services licensed by the Commission shall comply with such conditions of the license as the Commission, in its reasonable discretion, may require.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-4.10. Facility license.**

The Commission may issue an annual facility license to a gaming establishment, if the gaming establishment:

- (a) Is a sound physical structure with adequate and safe plumbing, electrical, heating, cooling and ventilation systems in place and operational;
- (b) Has been inspected and approved for safety by a building and fire inspector designated by the Commission;
- (c) Is adequate in all respects to accommodate the gaming intended to be carried on within the structure;
- (d) Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Commission;
- (e) Meets all requirements of applicable federal, Tribal and state law; and
- (f) Has paid all applicable license fees and costs.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.11. Certification of gaming devices.**

All gaming devices purchased, leased or otherwise acquired by the Tribe must meet the technical equipment standards set forth in this Chapter and the Internal Control Standards issued by the Commission. The Commission shall maintain a complete list of all gaming devices (whether or not such devices are in use) located at any gaming establishment.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

#### **Sec. 16-4.12. Provisional license.**

The Commission may issue provisional licenses pending the satisfactory completion of all background investigations and other requirements of this chapter, IGRA, or the compact, and, if applicable, pending expiration of the 30-day NIGC review period provided for at 25 C.F.R. § 558. In no event shall a provisional license be valid for greater than 90 days, subject to the issuance of another provisional license if such background investigations are not completed so long as no information to date has been received which would otherwise disqualify the applicant for a license.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-4.13. Provisional employment pending issuance of license and during temporary license period.**

As provided in [section 16-4.12](#), primary management officials and key employees may be employed in gaming operations prior to the issuance of a license hereunder and during the period that a license shall be effective on a provisional basis, but such employment shall be provisional only and subject to the requirements of this section. Employment may begin prior to issuance of a license only if the Commission has made a preliminary finding of eligibility for employment in gaming operations, which shall require a preliminary determination that the primary management official or key employee in question is not a person whose prior activities, criminal record or reputation, habits or 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, or activities in the operation of gaming or the carrying on

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

of the business and financial arrangements incidental thereto. Provisional employment shall be terminated upon the occurrence of any of the following:

- (a) Denial of a relevant license by the Commission;
- (b) Unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional license, as described in [section 16-5.10](#); or
- (c) To the extent required under 25 C.F.R. § 558 and, at the end of 30 days after the starting date of provisional employment, if at the end of such period no license has been issued hereunder or if a license issued hereunder remains effective only on a provisional basis, as provided in [section 16-4.12](#); provided, however, that provisional employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews.

(Ord. No. 710, 10-13-2005)

**Sec. 16-4.14. Assignment or transfer.**

No license issued under this chapter may be assigned or transferred unless the proposed assignee or transferee would independently be qualified to hold the license proposed to be assigned or transferred and the Commission approves of such assignment or transfer.

(Ord. No. 710, 10-13-2005)

**ARTICLE V. BACKGROUND INVESTIGATIONS AND LICENSE DECISIONS**

[Sec. 16-5.01. Required background investigations.](#)

[Sec. 16-5.02. Standards for background investigations.](#)

[Sec. 16-5.03. Information required for background investigations.](#)

[Sec. 16-5.04. Completion of investigation.](#)

[Sec. 16-5.05. Issuance of license.](#)

[Sec. 16-5.06. Denial of a license application.](#)

[Sec. 16-5.07. Cancellation or suspension.](#)

[Sec. 16-5.08. Eligibility determination and procedures for forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission.](#)

[Sec. 16-5.09. Granting a gaming license.](#)

[Sec. 16-5.10. License revocation and suspension following receipt of information from NIGC.](#)

[Sec. 16-5.11. Show cause hearing for manager and primary management officials.](#)

**Sec. 16-5.01. Required background investigations.**

Background investigations shall be conducted by the Commission, or other agent retained by the Commission, under the supervision and direction of the Commission, on all persons specified in [section 16-4.01](#) of this chapter.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-5.02. Standards for background investigations.**

All background investigations shall be conducted to ensure that gaming operations shall not employ or contract with persons whose prior activities, 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 such gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 C.F.R. §§ 556 and 558, the compact, and this article. Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation as well as that submitted by the applicants. Any willful or careless breach of this requirement may result in a penalty ranging from censure, suspension removal from office and a fine of up to \$5,000.00. The Commission shall have jurisdiction to hear and decide upon any such claims.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.03. Information required for background investigations.**

- (a) Each person subject to a background investigation under [section 16-5.01](#) of this chapter shall be required to provide, subject to the Privacy Act of 1974, as amended, at a minimum, and in such form as designated in [section 16-4.04](#), or as may be prescribed by the Commission or the Executive Director, all of the following information:
- (1) Full name, other names used, social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
  - (2) Currently and for the previous ten years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
  - (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under subsection (a)(2) of this section;
  - (4) Current business and residence telephone numbers;
  - (5) A description of any existing and previous business relationships with any Native American Indian Tribe including, but not limited to, a description of the amount and type of ownership interest in those businesses;
  - (6) A description of any existing and previous business relationships with gaming including, but not limited to, a description of the amount and type of ownership interest 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 any gaming or gambling, whether or not such license or permit was granted;
  - (8) For each felony, whether or not there is 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 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 misdemeanor traffic charges, but including any DWI, reckless or careless driving charges), whether or not there is a conviction, if such criminal charge is within ten years of the date of the application and is not otherwise listed, the type of criminal charge, the name and address of the court involved and the date and disposition of such charge;

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
  - (12) A current photograph;
  - (13) Any other information the Commission deems relevant; and
  - (14) Fingerprints consistent with the provisions of [section 16-4.05](#)
- (b) Background investigations conducted by the Commission must be sufficient to make the determination described in [section 16-5.08](#)(a). In conducting a background investigation, the Commission or its agents, shall make every reasonable effort to maintain the confidentiality of the identity of each person interviewed in the course of the investigation. Willful or careless violations of this requirement are subject to penalty ranging from censure, suspension, removal from office and a fine of up to \$5,000.00.
- (Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.04. Completion of investigation.**

Upon completion of the investigation, the Commission may either (i) grant a license to the applicant, or (ii) deny the license application and notify the applicant that any provisional license is terminated. The Commission may notice the applicant for a hearing at any time during the investigation.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.05. Issuance of license.**

The Commission may issue a license only after it has determined that the following minimum requirements have been met:

- (a) The applicant has fully completed all required application forms and has provided the Commission with all other information that the Commission has requested;
- (b) The applicant meets all of the licensing requirements of this chapter;
- (c) The applicant meets all of the licensing requirements and criteria contained in the compact;
- (d) The Commission has reviewed the applicant's criminal history record and deems the applicant's criminal history to be satisfactory to hold a license; and
- (e) All applicable license fees and costs have been paid.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.06. Denial of a license application.**

The Commission may deny an applicant a license only after it has determined that the minimum requirements contained in [section 16-5.04](#) have not been met by the applicant or the applicant's application, or if the Commission determines that the applicant is a person whose prior activities, criminal record, reputation, habits or 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, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto. An applicant who has been denied a license may appeal the denial to the full Commission under [section 16-6.15](#).

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-5.07. Cancellation or suspension.**

Persons who have been granted a license shall be legally responsible for any violation of this chapter, any relevant license provisions, the rules, the compact or IGRA. Any license issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission, after a hearing as provided in article VI, for the breach of any of the provisions of the license, this chapter, or the rules or regulations of the Commission. In addition:

- (a) Unless otherwise stated in this chapter or the rules, a licensee's attorney has the right to be present and to participate in any proceeding concerning the cancellation, limitation, revocation, suspension, termination or modification of a license;
- (b) A license may be summarily suspended, without a prior hearing, only upon notice to that effect from the NIGC under [section 16-5.10](#), or upon receipt of clear evidence of criminal activity; and
- (c) All decisions of the Commission regarding the cancellation, limitation, revocation, suspension, termination or modification of licenses shall be made pursuant to the provisions of article VI of this chapter and shall be final.

(Ord. No. 710, 10-13-2005)

**Sec. 16-5.08. Eligibility determination and procedures for forwarding applications and reports for key employees and primary management officials to the National Indian Gaming Commission.**

- (a) The Commission shall review an applicant's prior activities, criminal record, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the gaming operation shall not employ that person.
- (b) When a key employee or primary management official commences work at a gaming operation, the Commission shall within a reasonable period of time forward to the NIGC a completed application for employment for such key employee or primary management official, and shall conduct all necessary background investigations. The Commission shall make the eligibility determination referred to in subsection (a) of this section.
- (c) A report shall be submitted to the NIGC within 60 days after a key employee or primary management official commences work at a gaming operation or within 60 days of the approval of this chapter by the Chairman. Such report shall, at a minimum, include all of the following:
  - (1) Steps taken in conducting the background investigation;
  - (2) Results obtained;
  - (3) Conclusions reached by the Commission;
  - (4) The Commission's basis for those conclusions; and
  - (5) A copy of the eligibility determination made pursuant to [section 16-5.08\(a\)](#).
- (d) Subject to the provisions of [section 16-4.12](#), no gaming operation shall continue to employ as a key employee or primary management official any person who does not have a license within 90 days of commencing work at a gaming operation.
- (e) If a license is not issued to an applicant, the Commission:
  - (1) Shall notify the NIGC; and

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (2) May forward copies of its eligibility determination and any relevant report regarding a background investigation of the applicant to the NIGC for inclusion in the Indian Gaming Individuals Records System.
- (f) With respect to key employees and primary management officials, applications for employment and reports of background investigations shall be retained by the Commission for inspection by the Chairman or his designee for no less than three years from the date of termination of employment of each key employee or primary management official.
- (Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.09. Granting a gaming license.**

- (a) If, within a 30-day period after the NIGC receives all required applications and reports, 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 a primary management official, the Commission may issue a license to such applicant.
- (b) The Commission shall respond in a timely manner to requests for additional information from the Chairman concerning key employees or primary management officials who are the subject of any report filed with the NIGC by the Commission. Any such request by the Chairman shall suspend the 30-day period referred to in this section until the Chairman receives the additional information requested.
- (c) If, within a 30-day period after the NIGC receives all required applications and reports, 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 submitted an application and all required reports to the NIGC, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a license to such applicant.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.10. License revocation and suspension following receipt of information from NIGC.**

- (a) If, after the issuance of a license, the Tribe receives information from the NIGC indicating that a management entity or controlling shareholder, key employee, or primary management official is not eligible for employment under [section 16-4.02](#) of this chapter, the Commission shall suspend such license, shall notify the licensee in writing of such suspension and the potential revocation of the licensee's license, and shall conduct a hearing in accordance with the rules regarding the proposed license revocation.
- (b) After a hearing, the Commission shall revoke or reinstate a license suspended pursuant to subsection (a) of this section. The Commission shall notify the NIGC of its decision. A decision of the Commission to revoke a license after the hearing called for by subsection (a) of this section shall be final and there shall be no appeal. A management entity whose license has been revoked or suspended pursuant to this section may not operate a gaming operation.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-5.11. Show cause hearing for manager and primary management officials.**

Excepting the provisions of [section 16-5.10](#) and notwithstanding the foregoing, in the event that the Tribal Gaming Commission obtains reliable information that the duly licensed manager and/or a primary

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

management official may have breached any provision of this chapter, the compact, IGRA, or its license, the Tribal Gaming Commission shall issue a notice for show cause to the licensee prior to any action of suspension or the giving of notice of a revocation hearing with respect to its/their licenses. The notice for show cause shall describe the alleged breach, shall describe the steps necessary to effect a cure and shall provide the licensee with an opportunity to meet with the Tribal Gaming Commission to discuss the matter. The discontinuance or correction of the alleged breach shall constitute a cure thereof, except where such alleged breach constitutes a criminal violation by the manager or the primary management official. If the alleged breach is not corrected or discontinued as required herein, then the Tribal Gaming Commission shall institute the notice and hearing procedure set forth above.

(Ord. No. 710, 10-13-2005)

#### **ARTICLE VI. RULES OF PROCEDURE FOR HEARINGS**

[Sec. 16-6.01. Scope.](#)

[Sec. 16-6.02. Hearings.](#)

[Sec. 16-6.03. Notice of hearing.](#)

[Sec. 16-6.04. Ex parte communications.](#)

[Sec. 16-6.05. Appearance through counsel.](#)

[Sec. 16-6.06. Discovery procedures for enforcement hearings.](#)

[Sec. 16-6.07. Confidential materials.](#)

[Sec. 16-6.08. Subpoenas.](#)

[Sec. 16-6.09. Hearing procedures.](#)

[Sec. 16-6.10. Evidence.](#)

[Sec. 16-6.11. Determinations by the Commission.](#)

[Sec. 16-6.12. Sanctions.](#)

[Sec. 16-6.13. Request for rehearing.](#)

[Sec. 16-6.14. Final decision.](#)

[Sec. 16-6.15. Appeals of other adverse decisions.](#)

#### **Sec. 16-6.01. Scope.**

All license hearings, enforcement hearings and exclusion hearings conducted pursuant to this chapter shall be governed by this article.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.02. Hearings.**

- (a) The Commission shall afford a licensee the opportunity for a hearing prior to taking final action resulting in the revocation of the license or the imposition of any penalties which the Commission is authorized to impose pursuant to these rules and the chapter.

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (b) Nothing in this section shall limit the Commission's authority to summarily suspend or revoke a license prior to a hearing pursuant to [section 16-5.07](#)(b) of this chapter.
- (c) The Commission and its staff will deal respectfully with all persons (including without limitation employees and agents of entities) subject to the hearing by:
  - (1) Explaining and protecting the due process rights of each person under investigation throughout the course of the hearing;
  - (2) Maintaining the confidentiality of all information obtained in the course of an investigation, except for disclosure that is required by law;
  - (3) Treating all persons involved in the hearing or investigation in a professional, fair, and courteous manner, and disciplining Commission employees who fail to do so;
  - (4) Allowing all persons at the hearing to represent themselves or to have someone else represent them, stopping and rescheduling a hearing if a person requests time to seek such representation during the course of the hearing, and allowing all persons subject to the hearing to make sound recordings; and
  - (5) Notifying each person that the Commission has the discretion to impose fines and/or penalties and may waive fines and/or penalties if:
    - (i) The person can show he or she relied in good faith on incorrect guidance from a Commission employee; or
    - (ii) The person acted promptly and in a good faith to fully correct the results of any improper action; or
    - (iii) For other good cause in the Commission's discretion.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.03. Notice of hearing.**

The Commission shall provide written notice to the licensee of the hearing at least seven days prior to the date set for the hearing. The day the licensee receives the notice shall be considered a full day's notice under this section. The notice shall be sent by registered or certified mail, or may be personally served upon the licensee. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the actions being considered by the Commission including, but not limited to:

- (1) Whether the Commission will be examining any alleged violations of the chapter, the compact, the IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements; or
- (2) Whether any other sanctions or penalties will be considered.

The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.04. Ex parte communications.**

- (a) No ex parte communication relative to the actions being considered by the Commission, or a threat or offer of reward shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the licensee, or any legal representative or counsel of the licensee.
- (b) Nothing in this section shall prohibit the applicant, licensee or its authorized agent from communicating with the Commission's legal counsel, its investigators or other authorized agents.

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (c) Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.
- (d) For purposes of this section only, the actions being considered by the Commission shall be those matters identified in the written notice as provided in [section 16-6.03\(a\)](#) of this chapter, as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.
- (e) The Commission shall have the power to impose any sanction pursuant to this article upon its determination that a licensee has made an ex parte communication in violation of this section.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.05. Appearance through counsel.**

- (a) Parties to all hearings governed by this article may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.
- (b) When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.
- (c) When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.
- (d) Any attorney appearing before the Commission must be duly admitted and licensed by the Eastern Band of Cherokee Indians Bar.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.06. Discovery procedures for enforcement hearings.**

- (a) The Commission's legal counsel and the licensee shall exchange a list of persons that each party intends to call as witnesses no later than five business days before a scheduled enforcement hearing. The day the list is received shall be considered a full day's notice under this section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this section may be prohibited from testifying at a hearing in the Commission's discretion.
- (b) The Commission's legal counsel and the licensee shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made to the opposing party no later than five business days before a scheduled enforcement hearing. The day the documents are received shall be considered a full day's notice under this section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-6.07. Confidential materials.**

- (a) Prior to making any documents available to the Commission's legal counsel or designated agent, the licensee may designate any document it believes to contain confidential information as subject to a confidentiality claim by so marking the document prior to providing a copy of the document to the Commission's legal counsel.
- (b) Documents provided to the Commission's legal counsel or designated agent which have been marked in accordance with paragraph (a) above, and any nonpublic information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the compact), without first providing the licensee with the opportunity to seek a ruling by the Commission that the document or nonpublic information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission in an executive session meeting. If the request for such a ruling is made during a public hearing session, the hearing session shall be adjourned and Commission shall conduct an executive session meeting in order to hear and rule upon the applicant's or respondent's request. The licensee may present to the Commission in executive session written and oral argument regarding the confidentiality claim, along with any facts the licensee believes to be relevant to such argument.
- (c) In determining whether a document marked in accordance with subsection (a) above should be made part of the public record of the Commission proceedings on the application, the Commission will balance the applicant's claimed confidentiality concerns against the materiality of the information to the application, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the licensing decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.
- (d) In the event that the Commission rules during executive session that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings on the application, the document and/or information contained therein will be made part of the public record unless the applicant withdraws the document from the Commission's possession. In the event the applicant chooses to withdraw the document from the Commission's possession, the Commission will then weigh the withdrawal along with the other evidence in making its determination on the application. Withdrawal of documents from the application process shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself for denial of the license.
- (e) In the event that the Commission rules during executive session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in camera in making its determination on the application.
- (f) At the conclusion of the Commission proceedings on the license application, the Commission will return to the applicant all documents marked as "Subject to a Confidentiality Claim" pursuant to paragraph (c) above that were not (i) made part of the public record of the gaming license application or (ii) designated as "Confidential" and considered by the Commission in camera.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-6.08. Subpoenas.**

- (a) The Commission has the power and discretion to issue subpoenas and to impose such reasonable penalties for noncompliance.
- (b) Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

(Ord. No. 710, 10-13-2005)

**Sec. 16-6.09. Hearing procedures.**

- (a) The Chair of the Commission or designee shall preside over all hearings, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.
- (b) The Commission may require any person including, but not limited to, any licensee, or any agent, employee or representative of any licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. Testimony shall be recorded and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:
  - (1) The refusal to grant a license to the person summoned, and /or that person's principal, or employer;
  - (2) The revocation or suspension of a license held by the person summoned, and/or that person's principal, or employer; or
  - (3) The inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.
- (c) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.
- (d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.
- (e) Persons shall be permitted to speak only when recognized by the Chair.
- (f) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.
- (g) Any party to the hearing may conduct cross examinations reasonably required for a full and true disclosure of the facts.
- (h) All hearings held under this chapter shall be open to the public, unless the licensee requests a closed hearing or the subject matter of the hearing is of a confidential nature in the Commission's discretion.
- (i) The Commission, in its discretion, has the power to sequester witnesses.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-6.10. Evidence.**

- (a) In hearings governed by this article, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
- (b) All evidence, including records and documents in the possession of the Commission or which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- (c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact, but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.
- (d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.
- (e) The record in a hearing governed by these rules shall include:
  - (1) All applications, intermediate rulings and exhibits and appendices thereto.
  - (2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to [section 16-6.07](#) of this chapter.
  - (3) A statement of matters officially noticed.
  - (4) Questions and offers of proof, objections, and rulings thereon.
  - (5) Any decision, opinion, findings or report by the Commission.
  - (6) The transcript prepared by a duly certified court reporter or a verbatim transcript from an audio recording of the proceedings.

(Ord. No. 710, 10-13-2005)

**Sec. 16-6.11. Determinations by the Commission.**

- (a) The Commission shall make all determinations of issues before it by a majority vote of the Commission.
- (b) All determinations made by the Commission involving the grant, denial, cancellation or revocation of a license, a finding of a violation of this chapter, the rules, the compact, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.
- (c) A copy of any resolution reached pursuant to [section 16-6.11\(b\)](#) of this chapter shall be served upon the licensee by registered or certified mail, or may be served personally.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-6.12. Sanctions.**

If any party or its attorney fails to comply with any provision of this chapter, the rules, the compact, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements including, but not limited to, any agreement regarding any matter including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission, upon motion or upon its own initiative, may in its discretion impose upon such party or attorney, or both, appropriate sanctions in regard to the failures as are just including, but not limited to, the following:

- (a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these rules or any order of the Commission;
- (b) An order that designated facts shall be taken to be established;
- (c) An order that the disobedient party may not support or oppose designated claims or defenses;
- (d) An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;
- (e) A finding against the disobedient party; or
- (f) Any sanction otherwise set forth in this chapter.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.13. Request for rehearing.**

The Commission may, in its discretion, grant rehearing upon written request from a licensee, only upon a showing of substantial new evidence affecting the outcome of the decision.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.14. Final decision.**

The Commission's decision after a hearing, or rehearing if applicable, shall be final, and no further appeal may be had.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-6.15. Appeals of other adverse decisions.**

The foregoing procedures govern hearings on actions taken against a licensee. An applicant for a license or any other person who has not already received a hearing before the Commission and is directly affected by a decision made under this chapter, shall have the right to appeal that decision to the full Commission. Any such appeal must be filed with the Commission in writing on or before the tenth day following receipt by the affected person of a written adverse decision. In any case which comes before the Commission on appeal, the Commission shall hear the appeal de novo. The Commission's decision on appeal shall be final, and no further appeal may be had.

(Ord. No. 710, 10-13-2005)

### **ARTICLE VII. SOVEREIGN IMMUNITY**

[Sec. 16-7.01. Sovereign immunity of the Commission.](#)

[Sec. 16-7.02. Waiver of sovereign immunity.](#)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

[Sec. 16-7.03. Limited waiver for injunctive or declaratory relief.](#)

**Sec. 16-7.01. Sovereign immunity of the Commission.**

The Tribal Gaming Commission, as an instrumentality of the Tribe, retains all of the Tribe's rights, privileges, and immunities, including sovereign immunity from suit.

(Ord. No. 710, 10-13-2005)

**Sec. 16-7.02. Waiver of sovereign immunity.**

The Commission shall have the power to:

- (a) Waive the right of the Commission to exercise sovereign immunity in contracts, agreements or undertakings to which the Commission is a party, provided that any such waiver of sovereign immunity is strictly limited to enforcement of obligations of the Commission and is enforceable only against the assets and revenue of the Commission; and provided further, that all assets held for or transferred in accordance with this chapter to other accounts or purposes of the Tribe, including revenue of any gaming operation, shall be exempt from such enforcement.
- (b) If in any case the Commission exceeds the foregoing limitations on its power and authority to waive sovereign immunity, it shall be deemed to have waived its sovereign immunity only to the extent permitted in this subsection.
- (c) Nothing in this subsection shall be deemed to impair or invalidate a waiver of sovereign immunity duly approved under applicable prior law.
- (d) Limited waiver of sovereign immunity and jurisdiction for suit by a management contractor against the Commission for review of the Commission rulings or decisions shall be as set forth in the provisions of the approved management contract.

(Ord. No. 710, 10-13-2005)

**Sec. 16-7.03. Limited waiver for injunctive or declaratory relief.**

The Commission's sovereign immunity is hereby expressly waived in any suit filed against the Commission in the Cherokee Court wherein relief is limited to injunctive or declaratory relief against the Commission.

(Ord. No. 710, 10-13-2005)

**ARTICLE VIII. AUDITING AND INTERNAL CONTROL**

[Sec. 16-8.01. Minimum procedures for control of internal fiscal affairs.](#)

[Sec. 16-8.02. Annual independent audit.](#)

[Sec. 16-8.03. Reserved.](#)

[Sec. 16-8.04. Prohibition against embezzlement.](#)

[Sec. 16-8.05. Noncompliance.](#)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-8.01. Minimum procedures for control of internal fiscal affairs.**

Subject to the provisions of [Section 16-2.15](#), the Commission shall promulgate rules or regulations governing the control of internal fiscal affairs of all gaming operations. At a minimum, such rules shall require the consistent application of generally accepted accounting principles, and shall:

- (a) Prescribe minimum procedures for the safeguarding of a gaming operation's assets and revenue, including recording of cash and evidence of indebtedness, and mandatory count procedures. Such rules shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the gaming operation, ensure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- (b) Prescribe minimum reporting requirements to the Commission;
- (c) Provide for the adoption and use of internal audits conducted in accordance with generally accepted accounting principles by internal auditors licensed or certified to practice public accounting;
- (d) Formulate a uniform code of accounts and accounting classifications to ensure the consistency, comparability and effective disclosure of financial information. Such a 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 in each gaming operation;
- (e) Prescribe the intervals at which such information shall be furnished;
- (f) Provide for the maintenance of documentation, (i.e., checklists, 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 this section be maintained for a minimum of five years.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-8.02. Annual independent audit.**

The applicable Board of Advisors and the Commission shall jointly engage independent auditors for annual audits of the financial statements of all gaming operations. The Commission shall also engage independent auditors for annual audits of its internal operations. Such independent audits must apply and require the consistent application of generally accepted accounting principles, and shall:

- (a) Be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of North Carolina;
- (b) Include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the North Carolina State Council of Accountancy and the American Institute of Certified Public Accountants;
- (c) Disclose whether the accounts, records and control procedures maintained by the operation being audited conform with the IGRA, the Tribal-State Compact, the regulations of the NIGC, and the ordinances and regulations of the Tribe;
- (d) Provide a review of the internal financial controls of the audited entity to disclose any deviation from the requirements of this chapter and the rules and report such findings to the Commission and the management of the audited gaming operations
- (e) Provide such other information as the Commission deems necessary or appropriate: and

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (f) Provide that all gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, are specifically included within the scope of the annual audits.

The auditors shall be paid from operational funds of the entity subject to the audit. The auditors shall have access to all books and records, all cash management procedure manuals, all internal control manuals, and all other records, documents, papers and employees, as they deem necessary. For each audit, the auditors shall provide a draft management letter and shall permit a reasonable time within which to respond to the letter with changes to the operations which address the concerns expressed in the draft management letter. The results of the certified audit shall be provided to the applicable Board, the Tribal Gaming Commission, the Principal Chief and Tribal Council, the NIGC, and such other governmental agencies as may be required by law.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-8.03. Reserved.**

#### **Sec. 16-8.04. Prohibition against embezzlement.**

Any delay or action of any kind which, in the opinion of the Commission, is effectuated by any licensee to unlawfully or improperly divert gaming or other proceeds properly belonging to the Tribe, shall constitute grounds for taking disciplinary action against that licensee. If the Commission finds an unlawful diversion was attempted, it may sanction the licensee, report the matter to appropriate law enforcement and gaming regulatory agencies for further action and take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines, and/or the revocation, suspension, or limitation of, or refusal to renew, any license.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-8.05. Noncompliance.**

Failure to comply with any of the requirements of this article, or the rules promulgated hereunder may be found to constitute a violation of this chapter.

(Ord. No. 710, 10-13-2005)

### **ARTICLE IX. EXCLUSION OR REJECTION OF INDIVIDUALS <sup>[3]</sup>**

[Sec. 16-9.01. Prohibition against certain individuals.](#)

[Sec. 16-9.02. Right to exclude or remove.](#)

#### **Sec. 16-9.01. Prohibition against certain individuals.**

It shall be a violation of this chapter for any licensee to knowingly fail to exclude or eject from the gaming area of a gaming establishment any individual who:

- (a) Is visibly under the influence of liquor, a drug or other intoxicating substance;
- (b) Is not permitted in the gaming area based on age according to the Compact;
- (c) Is displaying disorderly conduct;

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

- (d) Is a person known to have committed a gaming related felony;
- (e) Is known to have a reputation for cheating or manipulation of games; or
- (f) Has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from gaming establishments by a resolution of the Commission.

(Ord. No. 710, 10-13-2005)

**Sec. 16-9.02. Right to exclude or remove.**

If the Commission deems it in the best interest of the Tribe, the Commission may exclude or remove any persons from the premises of any gaming operation. Any person so excluded shall be entitled to an appeal as provided for by [Section 16-6.15](#) and shall have the rights provided to an applicant therein. The management staff of any gaming operation shall also have the authority to exclude or remove any person from the gaming establishment, and all such actions shall be reported to the Commission within 24 hours of the taking of such action.

(Ord. No. 710, 10-13-2005)

---

FOOTNOTE(S):

---

--- (3) ---

**Cross reference**— Exclusion powers of Tribe, Ch. 2. [\(Back\)](#)

**ARTICLE X. PROHIBITED ACTS**

[Sec. 16-10.01. Enumeration.](#)

[Sec. 16-10.02. Prohibition against electronic aids.](#)

**Sec. 16-10.01. Enumeration.**

In addition to other civil and criminal acts that may be regulated or prohibited by this chapter, the compact, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized gaming under this chapter and shall subject any perpetrator to Commission action including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and license suspension or revocation:

- (a) Altering or misrepresenting the outcome of gaming or other event on which wagers have been made after the outcome of such gaming or event has been determined but before such outcome is revealed to the players;
- (b) Placing or increasing a bet or wager after acquiring knowledge of the outcome of the gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

- (c) Aiding anyone in acquiring such knowledge referred to in subsection (b) of this section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
- (d) Claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such game;
- (e) Knowingly to entice or induce another to go to any place where gaming is conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in such gaming;
- (f) Reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (g) Manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;
- (h) Defrauding the Tribe, any licensee or any participant in any gaming;
- (i) Participating in any gaming on the Tribe's Indian lands that is not authorized under this chapter and the compact;
- (j) Knowingly providing false information or making any false statement with respect to an application for employment or for any license, certification or determination provided for in this chapter;
- (k) Knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Commission or the Executive Director in connection with any contract for services or property related to gaming;
- (l) Knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;
- (m) Offering or attempting to offer any thing of value, to a licensee in an attempt to induce the licensee to act or refrain from acting in a manner contrary to the official duties of the licensee under this chapter, the rules, Tribal and Federal law or IGRA;
- (n) Acceptance by a licensee of any thing of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the licensee to act or refrain from acting, in a manner contrary to the official duties of the licensee under this chapter, the rules, Tribal and Federal law or IGRA;
- (o) Falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a gaming operation in ways other than is provided in approved internal control procedures;
- (p) Taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this chapter, the rules, or IGRA; and
- (q) Entering into any contract, or making payment on any contract for the delivery of goods or services to a gaming operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

(Ord. No. 710, 10-13-2005)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

**Sec. 16-10.02. Prohibition against electronic aids.**

Except as specifically permitted by the Commission, no person shall possess, with the intent to use in connection with gaming, either individually, or in concert with others, any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such gaming.

(Ord. No. 710, 10-13-2005)

**ARTICLE XI. NATIONAL INDIAN GAMING COMMISSION AND COMPACT**

[Sec. 16-11.01. Regulation of the Commission.](#)

[Sec. 16-11.02. Assessment.](#)

[Sec. 16-11.03. Compact with the State of North Carolina.](#)

**Sec. 16-11.01. Regulation of the Commission.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with all regulations promulgated by the NIGC including, but not limited to, reporting requirements relating to ordinances, contracts, license applications, background checks, and other information.

(Ord. No. 710, 10-13-2005)

**Sec. 16-11.02. Assessment.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of gaming operation revenue as an operating expense.

(Ord. No. 710, 10-13-2005)

**Sec. 16-11.03. Compact with the State of North Carolina.**

Notwithstanding any provision in this chapter or the rules, the Commission is hereby fully empowered to comply with the provisions of the compact including, but not limited to, any licensing, approval, or monitoring requirements contained in the compact.

(Ord. No. 710, 10-13-2005)

**ARTICLE XII. GENERAL REQUIREMENTS**

[Sec. 16-12.01. Security and surveillance.](#)

[Sec. 16-12.02. Environment and Public Health and Safety.](#)

[Sec. 16-12.03. Amendments.](#)

[Sec. 16-12.04. Severability.](#)

[Sec. 16-12.05. Words and terms.](#)

PART II - CODE OF ORDINANCES

Chapter 16 TRIBAL GAMING

[Sec. 16-12.06. Repeal.](#)

[Sec. 16-12.07. Unclaimed property or winnings.](#)

[Sec. 16-12.08. Patron disputes.](#)

[Sec. 16-12.09. Patron rights regarding disputes.](#)

[Sec. 16-12.10. Gaming Commission action on patron disputes.](#)

[Sec. 16-12.11. Agent for service of process.](#)

[Sec. 16-12.12. Consent to jurisdiction.](#)

[Sec. 16-12.13. Comity and concurrent jurisdiction.](#)

[Sec. 16-12.14. Reserved.](#)

[Sec. 16-12.15. Enforcement provisions.](#)

**Sec. 16-12.01. Security and surveillance.**

Each gaming establishment must provide for full security and surveillance within the gaming establishment at all times. All security personnel in a gaming establishment must be licensed by the Commission. The security and surveillance departments shall interact when necessary to carry out their official duties and to coordinate their activities in order to effectuate the best protection for the gaming patrons and the Tribal and management interests and assets of the enterprise.

(Ord. No. 710, 10-13-2005)

**Sec. 16-12.02. Environment and Public Health and Safety.**

The construction, maintenance and operation of any gaming operation shall be in a manner which protects the environment, public health and safety, and shall comply with all applicable Tribal and federal laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. § 580.

(Ord. No. 710, 10-13-2005)

**Sec. 16-12.03. Amendments.**

All provisions of this chapter are subject to amendment by the Council. All rules and regulations promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this chapter shall be effective upon the date of passage by the Council, subject to approval by the NIGC.

(Ord. No. 710, 10-13-2005)

**Sec. 16-12.04. Severability.**

If any provision of this chapter, or any portion of any provision to this chapter, is found to be invalid by any court of competent jurisdiction, the full remainder of such provisions shall not be affected.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-12.05. Words and terms.**

Tense, number and gender. In interpreting the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context:

- (a) Words in the present tense shall include the future tense;
- (b) Words in masculine, feminine and neuter genders shall include all genders; and
- (c) Words in the singular shall include the plural, and words in the plural shall include the singular.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.06. Repeal.**

To the extent that they are inconsistent with this chapter, all prior gaming laws, rules, ordinances or regulations of the Tribe are hereby repealed.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.07. Unclaimed property or winnings.**

Any property or winnings, including any unexpired coupons, tickets with a cash value or cash equivalents, which are due and payable to a participant in any gaming activity, and which remain unclaimed at the end of a gaming session, shall be held in safekeeping for the benefit of such participant. Such winnings shall be held for 30 days or such longer period as the Commission deems reasonable in consideration of all relevant facts and circumstances. The Commission or management contractor shall make such efforts as the Commission deems reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such property or winnings shall revert to the ownership of the gaming operation and shall be transferred to the account or place designated by the Board of Advisors.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.08. Patron disputes.**

Any person who has any dispute, disagreement or other grievance with the gaming operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order:

- (a) A member of the staff of the gaming operation;
- (b) A supervisor in the area of the relevant gaming operation in which the dispute arose;
- (c) A manager in the area of the relevant gaming operation in which the dispute arose;
- (d) A director in the area of the relevant gaming operation in which the dispute arose;
- (e) A vice-president in the area of the relevant gaming operation in which the dispute arose;
- (f) The general manager of the relevant gaming operation; and
- (g) The Commission.

(Ord. No. 710, 10-13-2005)

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

#### **Sec. 16-12.09. Patron rights regarding disputes.**

When a person brings a dispute for resolution by the Commission pursuant to [section 16-12.08\(g\)](#), the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in [section 16-12.08](#). Resolution of any dispute by the personnel of a gaming operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the gaming operation, to the Commission.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.10. Gaming Commission action on patron disputes.**

Patrons who have complaints against the gaming facility, a gaming employee, or a management contractor shall have as their final remedy the right to file a petition for relief with the Commission. Any patron complaint must be submitted to the Commission within 30 days after exhaustion of all management review options provided in [Section 16-12.08](#). Complaints shall be submitted in writing, and at the discretion of the Commission, the patron may be allowed to present evidence. The Commission may hold a hearing within 30 days of receipt of petitioner's complaint and the patron may have counsel present at such hearing. The decision of the Commission shall be in writing, shall be issued within 14 days of submission of the matter to the Commission, and shall be provided to the general manager of the gaming operation and to the complainant. All claims by patrons shall be limited to a maximum recovery of \$500.00 per occurrence, and a cumulative limit of \$1,000.00 per patron in any 12-month period, except disputes relating to a patron's entitlement to a game prize, which shall be limited to the amount of such prize.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.11. Agent for service of process.**

The Commission Chairman shall be designated agent for service of process for the Tribal Gaming Commission of the Eastern Band of Cherokee Indians. The Chairman shall promptly report any such service to the Commission, and shall promptly provide the Commission with a copy of any complaints or other documents served.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.12. Consent to jurisdiction.**

Any person who applies for a license under this chapter, applies for employment in any gaming establishment, enters into any contract or agreement related to gaming, or participates in any gaming on the Tribe's Indian lands, shall be deemed to consent to the civil jurisdiction of the Tribe, the Commission and the Tribal Court. Nothing in this section shall limit the jurisdiction of the Tribe, the Commission or the Tribal Court under any circumstances not explicitly contemplated in the section.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.13. Comity and concurrent jurisdiction.**

The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the

## PART II - CODE OF ORDINANCES

### Chapter 16 TRIBAL GAMING

Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdictions.

(Ord. No. 710, 10-13-2005)

#### **Sec. 16-12.14. Reserved.**

#### **Sec. 16-12.15. Enforcement provisions.**

- (a) All matters and occurrences which indicate that a criminal act under the Tribal Code, federal law or state law may have occurred in or around any gaming establishment shall be immediately reported to the appropriate law enforcement agency and the Commission.
- (b) All matters and occurrences contrary to this chapter, rules or regulations promulgated by the Commission which are not covered under a criminal code shall be deemed to be a civil violation. The Commission is hereby authorized to establish a civil violations list of penalties and fines which shall be imposed by the Commission for all such civil violations with the violator afforded the rights to a hearing as provided in article VI herein.

(Ord. No. 710, 10-13-2005)