HO-CHUNK NATION CODE (HCC)
TITLE 5 – BUSINESS AND FINANCE CODE
SECTION 1 – AMENDED & RESTATED GAMING ORDINANCE

AMENDMENTS ENACTED BY LEGISLATURE: 1-28-08

Amendments Approved by NIGC: February 7, 2008

CITE AS: 5 HCC § 1

This Ordinance supersedes the Amended and Restated Gaming Ordinance of the Ho-Chunk Nation HCC #94-001 enacted by Legislative Resolution 5/11/99L and amended by Legislative Resolution 8/3/05 B and last amended by Legislative Resolutions 12-18-07 A & 1-28-08 D.

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1. Authority.

a. Article V, Section 2(a) of the Constitution gives the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(f) of the Constitution gives the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel.

c. Article V, Section 2(h) of the Constitution gives the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(q) of the Constitution gives the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.

e. The Indian Gaming Regulatory Act ("IGRA") 25 U.S.C. §§ 2701-2721 provides the statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.

2. Purpose. The purpose of this Ordinance is to:

a. Provide a statutory basis for the operation of gaming by the Nation as a means of promoting tribal economic development, self-sufficiency and a strong tribal government.

b. Provide a statutory basis for the regulation of gaming by the Nation to ensure gaming is shielded from organized crime and other corrupting influences; ensure that the Nation is the primary beneficiary of the gaming operations; and ensure that gaming is conducted fairly and honestly by both operators and players.

c. Foster a spirit of cooperation with federal officials in the regulation of gaming.

d. Foster a spirit of cooperation with state officials in the conduct of Class III gaming pursuant to any Tribal/State Gaming Compact.

e. Foster a spirit of cooperation with gaming employees affected by the Ordinance.

f. Establish the Ho-Chunk Nation Gaming Commission ("Commission") as the independent regulatory authority charged with oversight and enforcement of gaming regulatory matters under the Nation's laws.

g. Establish the Ho-Chunk Nation Gaming Commission as an entity charged with providing training to licensed employees to ensure that licensed employees actions are in conformance with IGRA, any Tribal/State Gaming Compact, and other gaming regulatory matters under the Nation's laws.

h. Provide appropriate regulations and rules which will be enforced throughout the jurisdiction of the Nation to ensure the close control by the Ho-Chunk Nation Legislature ("Legislature") of all phases of the conduct of gaming operations on the Nation's lands.

3. Policy.

a. The Nation will have the sole proprietary interest in and responsibility for the conduct of any gaming activity authorized by this Ordinance or conducted on the Nation's lands.

b. The regulations and rules set forth in this Ordinance will govern all gaming activity conducted on the Nation's lands. To the extent that the Nation's existing or subsequently amended *Employee Relations Act* (6 HCC § 5) or other employment manuals, policies and procedures are inconsistent with this Ordinance, this Ordinance will supersede such regulations, manuals, policies and procedures pertaining to gaming activity. Nonetheless, the Gaming Commission shall not enforce matters that have already been handled or are covered pursuant to the requirements of the unacceptable conduct of an employee as provided for in the Nation's *Employee Relations Act* (6 HCC § 5), unless the unacceptable conduct is so egregious that it impacts on the integrity of the license.

c. This Ordinance may be amended by an affirmative vote of eight (8) members of the Legislature at any time at a duly called meeting at which a quorum is present.

4. Effect of Headings. Section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent or the provisions of any Section of the Ordinance.

5. Liberal Interpretation. The provisions of the Ordinance, being necessary for the welfare of the Nation and its members, shall be liberally construed to affect the purpose and objective hereof, but in all cases, consistent with the provisions of the IGRA.

6. Severability. The provisions of this Ordinance are severable; if any part or provision hereof shall be held void by a court of competent jurisdiction or federal agency, the decision of the court or agency so holding will not affect or impair any of the remaining provisions of this Ordinance. Citation of potential court action in this Section will not be deemed a waiver of the Nation's sovereign immunity from suit.

7. Definitions. Except where otherwise defined in this Ordinance, words used will have their commonly understood meaning:

a. "Applicant" means any person or entity having an application on file with the Commission in connection with any gaming operation.

b. "Application" means:

(1) All forms and information required by the Commission for issuance of a gaming license; and

(2) Any other registration requirements deemed necessary by the Commission for purposes of vendor certification.

c. "Attorney General" means the individual designated as the Executive Director of the Department of Justice of the Ho-Chunk Nation pursuant to the Constitution and the laws of the Nation.

d. "Charitable gaming" means any authorized gaming conducted by a Ho-Chunk Nation organization on the Nation's lands for the benefit of the general welfare programs or for the benefit of Tribal Members.

e. "Class I gaming" is defined in accordance with the IGRA, 25 U.S.C. §2703(6) and means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

f. "Class II gaming" is defined in accordance with the IGRA, 25 U.S.C. §2703 (7) and means:

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

(a) Which is played for prizes, including monetary prizes, with cards bearing numbers or other designations; and

(b) In which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(c) In which the game is won by the first person covering the previously designated arrangement of numbers or designations on such cards, including (if played, in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.

(2) Card games that:

(a) Are explicitly authorized by the laws of the state; or

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

g. "Class III gaming" is defined in accordance with the IGRA, 25 U.S.C. §2703 (8) and means all forms of gaming that are not Class I or Class II gaming.

h. "Collateral agreement" means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between the Nation (or any of its members, entities or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

i. "Commission" or "Gaming Commission" means the Ho-Chunk Nation Gaming Commission established pursuant to Sections 13 and 14 of this Ordinance.

j. "Compact" means any Tribal/State Gaming Compact concerning Class III gaming entered into pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d).

k. "Court" means the Ho-Chunk Nation Trial Court.

l. "Department of Justice" means the Ho-Chunk Nation Department of Justice, its subdivisions and authorized officials, agents, and representatives.

m. "Executive Manager" or "General Manager" means the individual who has overall responsibility for day-to-day management of operations in a gaming facility.

n. "Executive session" means the portion of a meeting or hearing not open to the public.

o. "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given and in which not all parties subject to the hearing are present, but it will not include requests for status reports on any matter or proceeding covered by this Ordinance.

p. "Fitness" means the state of being qualified or competent to perform a given job function.

q. "Game" or "Gaming" means any activity in which a person places valuable consideration at risk, based on the outcome of any event concerning chance, skill, speed, strength, endurance, sport, or any combination thereof, wherein an award of value may be granted or lost depending on said outcome.

r. "Gaming activity" means all activities performed by any person for the purpose of conducting or assisting with the conducting of any game or gaming, including

promotions, marketing, or any direct or indirect assistance at the site/facility or remotely. The term "gaming activity" includes such things as marketing, transportation of chips or cash, maintenance or repair of gaming related machinery, but excludes associated commercial activity such as hospitality and retail activity that does not involve the performance of gaming activity (i.e., food and beverage, hotel, gift shop sales, and similar operations).

s. "Gaming facility" means the building and associated real property within which the Nation conducts Class II or Class III gaming, but will not include any adjacent or attached non-gaming enterprises such as hotels, retail shops and eating establishments.

t. "Gaming operation" means an economic entity that is licensed by the Nation to operate Class II or III games, receives revenue, issues the prizes and pays the expenses of operating said Class II or III games.

u. "Gaming-related contract" means any agreement under which the Nation procures gaming materials, supplies, equipment or services which are unique to the operation of gaming and not common to ordinary tribal operations (such as accounting or legal services); the term includes, but is not limited to:

(1) Management contracts related to Class II or Class III gaming.

(2) Management consultation services regarding the administration, supervision, or training of one or more functions related to Class II or Class III gaming management, activities, or operations.

(3) Contract security services related to Class II or Class III gaming.

(4) Prize payout agreements or annuity contracts related to Class II or III gaming.

(5) Procurement (including lease) of Class II or Class III gaming materials, supplies, equipment or services involving marketing, maintenance or repair of gaming related equipment, tickets and other gaming supplies or materials, the receiving or recording of a player's gaming selections or wagers, and the determination of winners.

(6) Financing of facilities in which gaming is operated, except financing by a state or federally chartered financial institution.

v. "General Manager" or "Executive Manager" means the individual who has overall responsibility for a gaming operation.

w. "IGRA" means the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. §2701, et seq., including any amendments thereto. Where appropriate, "IGRA" also means regulations duly promulgated by the NIGC under the IGRA, which are valid interpretations of the IGRA.

x. "Key employees" means:

(1) All persons performing one or more of the following functions in any of the gaming operations:

(a) Persons employed to supervise or perform Class II gaming activities;

(b) Persons employed to supervise or perform count room activities;

(c) Persons employed to perform security, surveillance, or compliance activities;

(d) Custodian of gaming supplies, cash, or cash equivalent;

(e) Floor manager;

(f) Persons employed to supervise or perform table game activities;

(g) Croupier;

(h) Approver of credit;

(i) Custodian of gaming devices including persons with access to cash and accounting records within such devices;

(j) Person having possession, control or access to keys or other means of access to secure areas of a gaming facility;

(k) Couriers transporting cash or gaming receipts;

(l) Persons authorized to make on-site repairs; adjustments, or alterations to any piece of gaming equipment;

(m) Persons employed to supervise or perform marketing or promotional activities;

(n) Persons employed to perform information technology (IT/MIS) activities;

(o) Bingo caller;

(p) Chief of security;

(q) Pit boss; or

(r) Dealer.

(2) The Executive Director of the Department of Business, Executive Managers and other persons who have the chief responsibility for the management of gaming operations including persons employed to work primarily in a location outside the gaming facilities who have responsibility for the operation of gaming within a facility; maintains or examines gaming data, analysis, or audits; persons who have access to, or responsibility for, gaming revenue and expenses; or persons who maintain or have responsibility for the conduct of gaming employee background records.

(3) Any person who has immediate financial management responsibility for any gaming operation.

(4) If not otherwise included, any other person identified in, and governed by any of the Nation's Class II or Class III gaming operation internal control manual.

(5) If not otherwise included, any other person employed in the gaming operation whose total compensation exceeds $50,000 per year.

(6) If not otherwise included, the four most highly compensated persons in each gaming operation, or

(7) Any other person who the Legislature may classify by resolution as a key employee.

y. "Legislature" means the Ho-Chunk Nation Legislature, the governing body of the Nation whose members were duly elected and sworn in pursuant to the Constitution and laws of the Nation.

z. "License" means a privilege granted for a limited time to a person or entity to perform certain acts; a License will not convey any property or liberty interest to the licensee.

aa. "Management contract" means any contract, subcontract or collateral agreement between the Nation and a contractor or between a subcontractor if such contract or agreement provides for the management of all or part of any gaming operation. Management encompasses many activities (e.g., planning, organizing, directing, coordinating, and controlling). The performance of any one of such activities with respect to all or part of a gaming operation constitutes management for the purpose of determining whether any contract or agreement for the performance of such activities is a management contract. A management contract will typically have, but is not limited to, the following types of activities or requirements with respect to the gaming operation: maintenance of adequate accounting procedures and preparation of verifiable financial reports on a monthly basis; payment of a minimum guaranteed amount to the Nation; development and construction costs incurred or financed by a party other than the Nation; term of contract that establishes an ongoing relationship; compensation based on percentage fee (performance); and provision for assignment or subcontracting of

responsibilities.

bb. "Nation" means the Ho-Chunk Nation, any of its subdivisions, enterprises, agencies or instrumentality, subdivisions of such enterprises, agencies or instrumentality, corporations chartered under federal, state, or tribal law which are not wholly owned by any of the foregoing, and authorized officials, agents and representatives of any of the foregoing.

cc. "Nation's lands" solely for purposes of this statute means:

(1) All lands held in trust by the United States for the benefit of the Nation as of October 17, 1988; and

(2) All lands which may be acquired in trust by the United States for the benefit of the Nation after October 17, 1988, over which the Nation exercises governmental power, and which meet the requirements of sec. 20 of the IGRA, 25 U.S.C. §2719.

dd. "NIGC" means the National Indian Gaming Commission established pursuant to the IGRA, 25 U.S.C. § 2704.

ee. "Net revenues" means gross revenues of a gaming operation less amounts paid out as, or paid for, prizes and total gaming-related operating expenses excluding management fees.

ff. "OIGRC" means the *Office of Indian Gaming and Regulatory Compliance*, a division of the State of Wisconsin Department of Administration, and its successors.

gg. "Ordinance" means this Ho-Chunk Nation *Gaming Ordinance* (5 HCC § 1).

hh. "Owner or Controlling Person" means:

(1) Any natural person having a direct financial interest in any management contract;

(2) When a trust is a party to a management contract, any beneficiary or trustee;

(3) When a partnership is a party to a management contract, any partner;

(4) When a corporation is a party to a management contract, any person who is an officer or director or who holds at least five percent (5%) of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child, or sibling; or

(5) With respect to any entity with an interest in a trust, partnership or corporation that has an interest in a management contract, all beneficiaries, trustees, partners, directors or five percent (5%) shareholders of such entities.

ii. "Person" means any individual and any partnership (general and limited), association, corporation, or other legal entity.

jj. "President" means the President of the Ho-Chunk Nation.

kk. "Premises" or "Licensed Premises" means any place, facility, or location on the Nation's lands at which Class II or Class III gaming is conducted.

ll. "Primary Management Official" means any person designated in any management contract pursuant to Section 8, subparagraph c as having management responsibility of all or any part of any gaming operation:

(1) Any person who has the authority:

(a) To hire and fire employees of a gaming operation; or

(b) To set up working policy for a gaming operation; or

(2) The chief financial officer or other person who has immediate financial management responsibility for any gaming operation.

mm. "Provisional License" means an initial gaming license issued pending the satisfactory completion of all background investigations required under this Ordinance, the IGRA, the Compact, or any agreement to which the Nation is a party; and pending review by the NIGC as provided for in regulations promulgated by the NIGC in the Code of Federal Regulations, 25 C.F. R. 558.

nn. "Quorum" means a majority of the Members of the Gaming Commission and represents the number of Gaming Commission Members who must be present before a decision may be reached by the Gaming Commission. Unless the Legislature passes a Resolution lowering the number of Gaming Commissioners necessary to constitute a quorum, any three (3) Commissioners present at a duly called meeting will constitute a quorum.

oo. "Relative of" or "Directly related to" means any person's spouse or spousal relationship partner, child, sibling, parent, grandparent, or grandchild. For the purpose of this Ordinance, this meaning will include relatives by adoption and step-relatives.

pp. "Respondeat superior" means the doctrine that an employer or supervisor of an employee is responsible for the actions of the employee while the employee works within the scope of employment. The definition of respondeat superior is further limited for purposes of imposing sanctions on supervisors as provided in Section 14, subparagraph g.

qq. "Suitability" means a standard whereby the Gaming Commission looks to an applicant's, licensee's, or vendor's prior activities, criminal record, if any, or reputation,

habits and or associations to determine whether or not these prior actions pose a threat to the public interest or to the effective regulation and control of gaming conducted under this Ordinance, or create or enhance the dangers of unsuitable, unfair, or illegal practices, and methods, and activities in the conduct of such gaming.

rr. "Treasurer" means the individual designated as the Executive Director of the Treasury Department of the Ho-Chunk Nation.

ss. "Trial Court" or "Court" means the Ho-Chunk Nation Trial Court.

tt. "Vendors" means any person or legal entity including, but not limited to: a merchant; retail dealer; supplier; importer; wholesale distributor who transfers property; goods or other services by sale or lease to a gaming facility, whether gaming or non-gaming related; provided, that the definition of "Vendor" will not include those above persons or entities who provide entertainment services at a gaming facility or operation.

8. Authorization of Gaming Activities.

a. Class I and Class II Gaming. The Nation is hereby authorized to conduct all forms of Class I and Class II gaming on the Nation's trust lands.

b. Class III Gaming.

(1) The Nation is hereby authorized to conduct the following types of Class III gaming on the Nation's lands:

(a) Electronic games of chance with video facsimile displays;

(b) Electronic games of chance with mechanical displays;

(c) Authorized Table Games;

(d) Pull tabs or break open tickets when not played at the same location where bingo is being played; and

(e) Any other type of Class III gaming conducted pursuant to the terms of the Compact.

(2) The Compact is hereby incorporated within and enacted as an integral part of this Ordinance with respect to all forms of Class III gaming as if set forth in full herein; provided, however, that nothing in the adoption of the Compact herein will be deemed to affect the operation by the Nation of any Class I or Class II gaming, whether conducted within or without the gaming facilities, or to confer upon any state any jurisdiction over such Class I or II gaming conducted by the Nation on the Nation's lands.

c. Contracts and Agreements. The Nation is hereby authorized to enter into any contracts or other agreements to further its gaming interests, including management contracts. Each management contract will designate the person or persons having responsibility for management of all or part of any gaming operation:

(1) Management contracts and other gaming-related contracts will:

(a) Contain such provisions as are required under the IGRA, 25 U.S.C. § 2711, and the Compact;

(b) Be submitted to the NIGC or other appropriate federal regulatory body for approval as required by the IGRA;

(c) Be submitted to the OIGRC or other appropriate state regulatory body, if required by the Compact; and

(2) Management Contracts will not be entered into, unless the Legislature first approves the Contract by passing a Resolution.

(3) Except as provided in the contract, all such contracts will be effective pending review or receipt of required approvals by the NIGC, or any other appropriate federal regulatory body.

9. Conformance with IGRA. This Ordinance will be constructed in a manner which conforms to the IGRA in all respects, and if inconsistent with the IGRA in any manner, the provisions of the IGRA will govern:

a. Class I Games. The Legislature hereby authorizes the Commission to adopt standards of operation and management for all Class I gaming on the Nation's lands.

b. Class II Games. The Legislature will adopt standards of operation and management for Class II gaming and, pending such adoption, may impose such interim standards as it may determine necessary to protect the integrity of such games. The standards of operation and management for Class II gaming will provide, at a minimum, that:

(1) No person under the age of eighteen (18) will be permitted to participate in any non-charitable Class II gaming as a player or contractor, provided, that all persons may participate in charitable Class II gaming approved by the Gaming Commission, and any person may be employed by any Class II gaming operation if at least sixteen (16) years of age.

(2) The rules by which the game will be conducted and the predetermined winning patterns will be established in advance of the game and will be visibly displayed or available in pamphlet form in the gaming facility.

c. Class III Games. The standards of operation and management for Class III games will be those set forth in the Compact. The Legislature may adopt standards of operation and management for Class III games that are no less stringent than, or not otherwise inconsistent with, the Compact.

10. Authorized Use of Gaming Revenue.

a. The net revenues from any gaming activities will be exclusively devoted to the purpose(s) authorized by the Legislature.

b. The net revenues are to be used for the following purposes only:

(1) To fund tribal government operations or programs;

(2) To provide for the general welfare of the Nation and its members;

(3) To promote tribal economic development;

(4) To donate to charitable organizations; or

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

c. Per capita payments will only be made pursuant to the Nation's *Per Capita Distribution Ordinance* (2 HCC § 12) as approved by the Secretary of the Interior as required under the IGRA.

11. Powers and Duties of the Executive Branch.

The Executive Branch of the Ho-Chunk Nation will have primary responsibility for managing the business affairs of the Nation's gaming operations. In addition to other activities specifically assigned to the Executive Branch in this Ordinance, the Executive Branch and its officers and designated agents will have the following powers and duties:

a. The Executive Branch and/or its designated agents will be responsible for making any decisions called for on behalf of the Nation for the gaming operations subject to the Legislature's constitutional authority to review such actions.

b. The Executive Branch and/or its designated agents will be responsible for ensuring compliance with the public health, welfare, safety and environmental standards required by the Compact and all applicable standards enacted by the Legislature.

c. The Executive Branch and/or its designated agents will ensure that all purchases and contracts by or on behalf of any of the Nation's gaming operations will be subject to

the Nation's *Material Management Policies and Procedures Manual* (5 HCC § 9) and other policies and subsequent amendments thereto, provided that any contract or purchase also comply with applicable law or Compact terms and conditions.

d. The Treasurer of the Ho-Chunk Nation will:

(1) Participate in the Nation's annual process for the development and approval of budgets of such gaming operations, except as limited under any management contract or other gaming-related contracts, in order to assist the Legislature to evaluate proposed budgets and approve final budgets.

(2) Prescribe standard accounting practices and procedures to be observed by the chief financial officers of the Nation's gaming operations.

(3) The Treasurer will reconcile the Nation's quarterly fee assessment reports made to the NIGC with the annual audit of the gaming operations and shall make such reconciliation available to the NIGC upon request. Prior to the Treasurer reconciling the Nation's quarterly fee assessment reports, the Department of Business will provide all necessary information to the Treasurer to prepare these reports.

e. The President, Treasurer, and the Executive Director of the Department of Business will perform such activities as are delegated by the Ordinance.

12. Powers and Duties of the Legislature.

a. The Legislature will adopt policies, guidelines and regulations for Class II and Class III gaming on the Nation's lands, including any amendments to this Ordinance.

b. The Legislature will refer any apparent violations of the Nation's laws of general applicability, such as, but not limited to, the *Employment Relations Act* (6 HCC § 5) the *Appropriations and Budget Process Act* (2 HCC § 4), *Finance Manual* (5 HCC § 5), or law impacting on the Nation's Contracting Authority in the operation of the Nation's gaming facilities to the Office of the President and the Executive Director of the Department of Business for their consideration and action as they may determine appropriate.

c. The Legislature, or its authorized designee, will initiate an annual external audit, and will engage a qualified certified public accounting firm to conduct financial and compliance audits for each of the Nation's gaming operations. The Legislature will refer the results of the external audit to the Gaming Commission for compliance.

d. Supervision of Gaming Commission. The Vice President or Vice President pro tempore will have supervision and authority pertaining to the Gaming Commission's daily administrative functions, such as, but not limited to, signature authority for time sheets, disbursement vouchers, mileage and per diem submittals, leave applications, and

supervision over personnel matters.

e. Jurisdiction.

(1) The Ho-Chunk Nation Legislature will have the jurisdiction to review all decisions of the Commission denying a License under Section 17, subparagraph c (2) where an applicant has petitioned for such review in accordance with the provision set forth in Section 12, subparagraph (f).

(2) The Legislature may, in its discretion, waive by legislative resolution any requirements set forth in Section 17, subparagraph c (2) for any applicant when the applicant has met the requirements established pursuant to Section 17, subparagraph c (4). The Legislative decision regarding any waiver cannot be appealed to the Trial Court.

(3) The Legislature will have the power to overturn the granting of any license by passing a Resolution at any time provided the Legislature has conducted a hearing consistent with the procedures in Section 15. If overturned by the Legislature, a license issued by the Commission will have no force or effect. Any such denial may be appealed to the Trial Court.

f. Legislative Appeal Provisions.

(1) Filing Appeal. An applicant (appellant) may file a petition for review with the Legislature requesting that it review a decision of the Commission with a duplicate copy to the Attorney General. The petition must be filed within forty-five (45) days of the decision, unless additional time is granted by the Legislature, and will identify the decision being appealed and contain a short statement of the reason for the appeal.

(2) Appearance through Counsel.

(a) Parties to all hearings governed by this Section of the Ordinance may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless attendance has been waived, in writing, by the Legislature.

(b) When a party has appeared through an attorney, service of all notices, decisions, and other papers, including verbal communications, will thereafter be made upon the attorney, unless the party requests or permits otherwise in writing.

(c) When a party is represented by an attorney, the attorney will sign all papers on behalf of the party.

(3) Review of the Record. Upon receiving a petition for review, which conforms to the requirements of this Section, the Legislature will notify the Commission, which will have thirty (30) days to transmit the record of its decision and to respond to the petition. The Legislature, within thirty (30) days of the receipt of the Commission's record, will consider the petition and either grant or deny the petition for review. The

Vice President or Vice President pro tempore will preside when the petition is considered.

(4) Statements. If the petition for review is granted, the applicant (appellant) may file a statement in support of the appeal with the Legislature within ten (10) days after the applicant (appellant) has been notified by the Legislature. The Legislature will provide a copy to the Commission and the Department of Justice. The Commission will have ten (10) days to file a written statement in response. The Legislature may extend the time allowed at its own discretion.

(5) Hearings. The Legislature will schedule a hearing within thirty (30) days of receipt of the Commission's statement. The applicant (appellant) will be afforded the right to be present and to participate on his or her behalf. The Legislature will limit the hearing to a review of the record of the Commission's proceedings, the applicant's (appellant's) petition statement, or oral arguments, if any, and any other written statements provided.

(6) Decisions.

(a) Decisions of the Legislature will be made by a majority vote and will be based upon a review of the record of the Commission's proceedings, oral arguments, if any, and any written statements submitted.

(b) The Legislature will give proper deference to the administrative expertise of the Commission and to the Commission's determinations of credibility.

(c) The Legislature will not set aside or modify any decision unless it finds that the decision was arbitrary and capricious, unsupported by substantial evidence, or contrary to law.

g. Ex Parte Communication, Threat, or Offer of Reward Prohibited.

(1) Ex parte communication, threat, or offer of reward relative to any matter(s) being considered by the Legislature will be prohibited between an applicant or licensee, its legal counsel, representative, agent or employee and any member of the Legislature, member of the Commission, or the Nation's President before a decision is rendered by the Legislature.

(2) For the purposes of this Section only, "any matter(s) being considered" means those matters identified in a written notice as provided in Section 15, subparagraph a (5) (b) as well as any other matters that are actually considered by the Legislature during a hearing. All matters identified in the written notice will be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Legislature during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.

(3) Any member of the Legislature, the Commission, or the President who receives an ex parte communication, threat, or offer of reward will immediately report such communication in writing to the Attorney General of the Department of Justice or its authorized agents and not participate in the hearing. The Legislator or President shall not participate in the hearing unless his or her inability to participate would make it impossible for the Legislature to obtain a Quorum.

(4) Nothing in this Section will prohibit the applicant, licensee or its authorized agent from communicating with the Department of Justice or its authorized agents.

(5) The Legislature will have the power to impose any sanction consistent with those contained in Section 15, subparagraph a (14) upon its determination that an applicant or licensee, its legal counsel, agent, representative or employee has violated this Section.

13. Gaming Commission

a. Establishment of Commission. The Ho-Chunk Nation Gaming Commission is hereby established as an independent regulatory authority responsible for oversight, training, and enforcement of gaming regulatory matters under Ho-Chunk Nation law. The Commission will consist of five (5) members appointed by a majority vote of the Legislature acting at a duly convened meeting at which quorum is present.

b. Qualifications. In order to qualify for appointment to the Commission, an applicant must:

(1) Be an enrolled member of the Nation.

(2) Be at least 25 years of age or older.

(3) Have at least a high school diploma, or equivalent.

(4) Possess working experience in the gaming industry.

(5) Have a minimum of five (5) years of any combination of the following:

(a) Post-secondary education.

(b) Gaming training.

(c) Gaming experience in one or more of the following areas:

1 Gaming regulation.

2 Gaming operations.

3 Gaming licensing.

4 Auditing.

5 Gaming law or Indian law.

6 Administrative hearings or decision-making.

7 Background investigations.

8 Surveillance.

9 Law enforcement.

10 Business administration or business management.

11 Information Technology (IT/MIS).

(6) Submit to and successfully comply with criminal and civil background investigations and meet the Nation's suitability standards which will be at least as stringent as the standards established for key employees and primary management officials.

(7) Have no prior criminal record of conviction of, or entry of a plea of guilty or no contest to, any of the following in any jurisdiction, unless pardoned:

(a) A felony.

(b) Any gaming-related offense.

(c) Any crime of dishonesty, including, but not limited to, fraud, misrepresentation, theft or deception in any form.

(d) A violation of any provision of Wis. Stat. chs. 562 or 565, any rule promulgated by the State of Wisconsin Division of Gaming, this Ordinance, or any other Ordinance of the Nation regulating or prohibiting gaming.

(8) Be a person whose prior activities, criminal record, if any, or reputation, habits and associations will not 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.

(9) Submit to and successfully comply with the Ho-Chunk Nation Drug, Alcohol and Controlled Substance Policy (*Employment Relations Act*, 6 HCC § 5, Ch. VI).

(10) Willingness and ability to perform duties of the Gaming Commission.

(11) Possess the physical capabilities requiring extensive travel, working varied hours, including evening and weekends; and perform a minimum of forty (40) hours a week.

(12) Possess a valid driver's license, dependable transportation and proper insurance.

(13) Not be a relative of any member of Legislature.

(14) Not be a primary management official, or owner or controlling person with respect to any management contract, and will not be a relative of a primary management official, or owner or controlling person with respect to any management contract.

(15) Not be employed by any of the Nation's gaming operations during his or her term of office.

c. Term. The Commissioners will each serve for a term of four (4) years commencing on July 1st of the year of appointment.

(1) At least sixty (60) days prior to the expiration of a Commissioner's term in office, the Legislature will post the seat as open.

(2) The current Commissioner is eligible to apply and be appointed to the open seat.

(3) If the Legislature does not complete the appointment to the open seat, the current Commissioner may continue to serve past the expiration of his or her term until such time as the current or new Commissioner is appointed and takes office.

d. Meetings and Quorum. Meetings duly convened by the Commission will require a Quorum of Gaming Commission Members. Meetings shall be subject to the Ho-Chunk Nation *Open Meetings Act* (2 HCC § 2) except as otherwise provided in this Ordinance.

e. Employment Status and Compensation. Commissioners will be Exempt Employees of the Nation for the purposes of compensation and employee benefits. Compensation will be established annually by the Commission and as approved by the Legislature in accordance with the *Employment Relations Act* (6 HCC § 5) and *Budget and Appropriations Act* (2 HCC § 4). Commissioners will not be compensated based on a percentage of gaming revenue to ensure the Commission is not improperly influenced.

f. Vacancies. A vacancy on the Commission through death, resignation, incapacity, or removal from office will be filled by a majority vote of the Legislature at a duly

convened meeting. The newly appointed Commissioner will complete the unexpired term of the Commissioner being replaced.

g. Removal.

(1) Removal will be initiated upon a petition being presented to the Legislature by any member of the Legislature or the President. Such removal will be for the following:

(a) Malfeasance; for purposes of this Section "Malfeasance" shall mean:

1 the commission of an act that is positively unlawful;

2 the doing of an act which a person ought not do at all;

3 the unjust performance of some act which the party had the right to commit;

4 any wrongful conduct, which affects, interrupts, or interferes with the performance of official duty; or

5 an act for which there is no authority.

(b) Dereliction or neglect of duty;

(c) Unexcused absence from three (3) consecutive meetings of the Commission;

(d) Failure to continue to meet the qualifications for appointment to the Commission;

(e) Willful and persistent misconduct reflecting on the dignity and integrity of the Nation; or

(f) Failure to comply with any provisions of the Nation's Constitution and/or laws of the Nation.

(2) Upon determination by the Legislature that a petition for removal will be considered, the Commissioner subject to the removal petition will be provided a written notice for removal by the Legislature and the Commissioner will be afforded the right to respond in person and/or writing, which explanation will be considered by the Legislature prior to a vote on the removal question. While the removal petition is pending, the Commissioner will be placed on Administrative Leave.

(3) The petition for removal will be served upon the Commissioner within seven (7) days after issuance of the petition for removal. All removal questions will be

considered by the Legislature in open session within thirty (30) days after issuance of the petition. The Commissioner's attorney will have the right to be present and to participate on his or her behalf. Failure to appear by the Commissioner or the Commissioner's representative will not bar hearing the petition or the termination of the Commissioner.

(4) Upon a petition being presented to the Legislature, a Commissioner may be removed by an affirmative vote of more than two thirds (2/3) of the seated members of the Legislature acting at a duly convened meeting. For instance, when there are eleven (11) seated Legislators the two thirds (2/3) requirement shall be satisfied by an affirmative vote of eight (8) members of the Legislature.

(5) Judicial review by the Trial Court of such determinations may be obtained by bringing an appeal in Trial Court within fifteen (15) days after the date the determination was served on the party/ies.

h. Office of the Tribal Inspector. The Office of the Tribal Inspector is established within the office of the Gaming Commission. Tribal Inspectors will be selected and supervised by the Commission and have the following powers and duties:

(1) The Office of the Tribal Inspector has the power to conduct audits, observations and investigations as provided in the Ordinance. The Tribal Inspector may retain outside auditors, investigators, and other agents to assist in conducting these audits and investigations.

(2) The Tribal Inspector will have full access to all areas related to the gaming operations for inspections, audits, observations, and investigations at any time without notice to management. While performing its designated duties under this Ordinance, the Tribal Inspector will strive to avoid interfering with the day-to-day operations of the gaming facilities.

14. Powers and Duties of the Gaming Commission. The Commission will be responsible for enforcing this Ordinance and will ensure compliance with this Ordinance, IGRA, the Compact, any licenses issued, and any orders of the Commission or Legislature. In addition to other duties specifically delegated to the Commission in this Ordinance, the Commission will have the following powers and duties:

a. The Commission may recommend gaming-related policies and guidelines to the Legislature and other appropriate regulatory authorities, including any amendments to the Ordinance.

b. The Commission will monitor all Class I, Class II and Class III gaming on the Nation's lands, and all monthly reports and annual audits of such activities to insure that such activities conform to the provisions of this Ordinance, IGRA, the Compact and other applicable laws and report such findings to the Treasurer.

c. The Commission will have the authority and responsibility to interpret this Ordinance and its rules. If an enforcement action is taken against a licensee by the Commission, the Ho-Chunk Nation Court will have final authority to interpret this Ordinance and its rules.

d. Except as otherwise provided, the Commission will make determinations on an application for a gaming license in accordance with this Ordinance.

e. The Commission will refer any apparent violations of this Ordinance, Orders of the Commission, IGRA, the Compact, or violations of license conditions to the Department of Justice and/or the Office of the Tribal Inspector for investigation.

f. The Commission will refer any apparent violations of the Nation's laws of general applicability, such as the *Employment Relations Act* (6 HCC § 5) and the *Appropriations and Budget Process Act* (2 HCC § 4), in the operation of the Nation's gaming facilities to the Office of the President and the Executive Director of the Department of Business for their consideration and action as they may determine appropriate. The Commission will also notify the Vice President or Vice President pro tempore in his or her capacity as their administrative supervisor.

g. The Commission may enjoin or otherwise prevent any violation of this Ordinance, any Order of the Commission, any license condition or other laws relating to gaming on the Nation's lands and/or seek to impose penalties or fines for such violation(s) in accordance with Section 25. To enforce violations the Commission shall be able to apply the doctrine of respondeat superior. Any person may be found responsible and liable for violations due to the action or inaction of the person or person's employees, agents, or officers. The Gaming Commission will only use the doctrine of respondeat superior to seek to impose sanctions on a supervisor if it can be shown that:

(1) after the Gaming Commission has informed the supervisor in writing of the violation, the supervisor has failed within a reasonable time to instruct his or her employees, agents, or officers of appropriate action to remedy the violation in the future; or

(2) the violation committed by the supervisor's employees, agents, or officers is so egregious that the supervisor should have known about the violation and taken corrective action.

h. Nothing in this Section will prevent the Commission from attempting to obtain voluntary compliance through warning, conference or any other appropriate means.

i. If the Commission determines to enjoin or prevent a violation pursuant to this Ordinance, the Ho-Chunk Nation Court will be empowered to impose fines or penalties against a licensee. With respect to the fines, the Gaming Commission will develop and make public criteria to determine general categories of licensee violations and a

recommended fine to be imposed based on when a licensee is found to have violated that general category.

j. The Commission will use the Department of Justice as its counsel, or such other counsel to whom the Department of Justice may refer such matters.

k. Except as otherwise provided in this Ordinance or any management contract, the Commission will comply with all policies, guidelines, laws, resolutions and regulations of the Legislature.

l. The Commission will have such other powers as are delegated to it from time to time by the Legislature.

m. In accordance with the *Appropriations and Budget Process Act* (2 HCC § 4), the Commission will prepare and recommend an annual budget for the purpose of allocating funds to the Commission for its necessary activities and expenses, which must be approved by the Legislature. The Commission may, in accordance with any approved budget, employ such staff from time to time as it deems necessary to fulfill its responsibilities under this Ordinance.

15. Practice and Procedures for Commission Hearings.

a. Commission Hearing Provisions:

(1) The hearings of the Commission will be subject to the Nation's *Open Meetings Act* (2 HCC § 2), unless otherwise provided for in this Ordinance.

(2) Upon written request, the Commission will afford an applicant an opportunity for a hearing prior to any final action by the Commission denying a license application.

(3) The burden of proving fitness and suitability for a license will be on the applicant.

(4) Notice to Applicant. The Commission will provide written notice to the applicant or licensee of the hearing at least ten (10) business days (Monday – Friday) prior to the date set for the hearing. The notice will be sent by certified mail, or may be personally served upon the applicant. The notice will state the date, time and place of the hearing. The notice will also state the purpose of the hearing, including, but not limited to:

(a) Whether the Commission is holding the hearing for the purpose of obtaining further information; or

(b) Whether the Commission will be considering the grant or denial of the license application.

(5) Ex Parte Communications, Threat, or Offer of Reward Prohibited.

(a) Ex parte communication, threat, or offer of reward relative to any matter(s) being considered by the Commission will be prohibited between an applicant, its legal counsel, representative, agent or employee and any member of the Commission, Legislature or the Nation's President before a decision is rendered by the Commission.

(b) For the purpose of this Section only, "any matter(s) being considered by the Commission," means those matters identified in the written notice as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice will 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.

(c) Any member of the Commission, Legislature, or the President who receives an ex parte communication, threat, or offer of reward relative to any matter(s) being considered by the Commission will immediately report such communication in writing to the Attorney General of the Department of Justice. The Commissioner shall not participate in the hearing unless his or her inability to participate would make it impossible for the Commission to obtain a Quorum.

(d) Nothing in this Section will prohibit the applicant or its authorized agent from communicating with the Department of Justice or its authorized agents.

(e) The Commission will have the power to impose any sanction pursuant to this Ordinance upon its determination that an applicant, his or her legal counsel, agent, representative or employee has violated this Section.

(6) Appearance through Counsel.

(a) Parties to all hearings governed by this Section of the Ordinance may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless 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, including verbal communications, will thereafter be made upon the attorney, unless the party requests or permits otherwise in writing.

(c) When a party is represented by an attorney, the attorney will sign all motions, notices, requests, and other papers on behalf of the party.

(d) An attorney retained to represent an applicant, his or her representative, agent or employee, will file proof of eligibility to practice law in the Ho-Chunk Nation with the Commission prior to the scheduled hearing.

(7) Discovery.

(a) The Department of Justice and the applicant (respondent) will exchange a list of persons that each party intends to call as witnesses no later than seven (7) business days (Monday-Friday) before a scheduled hearing. Each witness will be identified by name, if known, position, and business address. If no business address is available, a home address for the witness will 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 Department of Justice and the applicant (respondent) will exchange a copy of all documents or tangible evidence that they intend to offer as evidence in support of the party's case in chief. This exchange will be made to the opposing party no later than three (3) business days (Monday-Friday) before a scheduled hearing. Failure to make available any document or tangible evidence in accordance with this Section may, in the Commission's discretion, be grounds to deny the admission of such document or tangible evidence.

(8) Confidential Materials.

(a) Prior to making any documents available to the Department of Justice, the applicant (respondent) may designate any document he or she 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 Department of Justice.

(b) No document provided to the Department of Justice or the Commission, which has been marked in accord with Section 15, subparagraph a (8) (a) above, and no non-public information contained with the document will be made a part of the public record of the Commission proceedings or otherwise disclosed by the Commission to any person other than its authorized agents (or except as may be required under any laws, regulations, court order, or the Compact), without first providing the respondent with the opportunity to seek a ruling by the Commission that the documents and/or non-public information contained therein should not be made public. The request for such a ruling and any discussion relating to the document will be heard and ruled upon by the Commission in an executive session, the hearing session will be adjourned and the Commission will conduct an executive session meeting in order to hear and rule upon the respondent's request. The applicant (respondent) may present to the Commission, in executive session, written and oral arguments regarding the confidentiality claim, along with any facts the applicant (respondent) believes to be relevant to such argument.

(c) When weighing the public's right to be informed of the information before the Gaming Commission, the Commission in executive session will evaluate the

evidence present as "Subject to a Confidentiality Claim" as follows:

1 the Commission will balance the applicant's (respondent's) claims of confidentiality against the materiality of the information to the license application or renewal decision;

2 the Commission will balance the Ho-Chunk public's right to know the information against the applicant's (respondent's) claim of confidentiality;

3 the Commission will balance its own accountability as a public service regulatory body to create a public record for the licensure against the applicant's (respondent's) claim of confidentiality; and

4 the Commission will consider all facts and circumstances relevant to making a proper ruling, this will include but is not limited to the public's safety, tradition and custom of the Ho-Chunk Nation, the standard evidentiary privileges which includes but is not limited to doctor-patient privilege, clergy privilege, and/or attorney-client privilege.

(d) After considering the record "Subject to a Confidentiality Claim" in executive session and determining that the record will be made a part of the public record of the applicant's (respondent's) application or licensure, renewal proceedings, the Commission will rule in public session on the record as to which documents are "Subject to a Confidentiality Claim."

(e) If the Commission rules against the Confidentiality Claim and the applicant (respondent) continues to contest that the record or document should continue to be "Subject to a Confidentiality Claim," the applicant (respondent) will be permitted to:

1 withdraw his or her license application or licensure application from consideration by the Commission; or

2 withdraw the record or document from the Commission's proceeding.

(f) If the applicant (respondent) selects the option provided in Section 15, subparagraph a (8) (e) 2 above, the Commission when making the licensure decision will weigh the withdrawal of the record or document along with other evidence in making the determination. Withdrawal of the documents from the application process ordinarily will be considered with disfavor and, depending on the facts and circumstances of the public record, the Commission may deem the withdrawal of the record or document to be sufficient cause in and of itself for denial of the license application or licensure renewal.

(g) 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, but will be considered in the license application or renewal, the record or

document shall be designated "Confidential," sealed, and will not be made part of the public record. The Commission may consider the document and information contained within the confidential record or document, in camera in making its determination.

(h) At the conclusion of the Commission's proceedings, the Commission will return to the applicant (respondent) all documents marked as "Subject to a Confidentiality Claim" which were not:

1 made part of the public record; or

2 designated as "Confidential" and considered by the Commission in camera.

(i) The Legislature will apply these principles with respect to:

1 any license application or renewal required to be considered initially by the Legislature, due to the fact that the license applicant is seeking a waiver of any requirements set forth in Section 17, subparagraph c (2) of the Ordinance;

2 any appeal to the Legislature from any denial of a license by the Commission pursuant to Section 17, subparagraph f of the Ordinance.

(9) Subpoenas. The Commission is hereby authorized to issue subpoenas within its jurisdiction of authority when considering license applications or renewals.

(a) Subpoenas may be issued to cause a witness to appear and give oral testimony, or to produce documents or other tangible evidence.

(b) If a party wishes to have a subpoena issued by the Commission within its jurisdiction of authority, a properly prepared subpoena will be furnished by the party, including information necessary for service of process, at least three (3) calendar days prior to the hearing. When service has been completed, the Commission will provide proof of service to all parties.

(c) If a party or Commission wishes to include witnesses who are not within the Commission's jurisdiction of authority, but wishes to personally request the appearance of the intended witness(es) on his or her behalf, the party is required to provide notice of the intended witness(es).

(d) If a party does not timely request a subpoena, the party will not be entitled to a postponement because of the absence of the witness(es).

(e) If the subpoena has been timely issued, the Commission may, in its discretion, postpone the hearing due to the absence of the witness(es).

(10) Postponement. The Commission may postpone a hearing upon the request

of a party, upon agreement of all parties, or at the Commission's discretion for good cause, and on such terms as the Commission deems just.

(11) Hearing Procedures.

(a) The Commission will preside over all hearings, call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission has the authority to require any person including, but not limited to, any agent, employee or representative of any person, to appear and testify before the Commission with regard to any matter within the Commission's jurisdiction at such time and place as it may designate. Such testimony will be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. Testimony will be recorded by a duly certified court reporter 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 will 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 suspension or revocation 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 will exercise its discretion to limit the testimony of witnesses where that testimony is irrelevant, argumentative or repetitive.

(d) Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

(e) The Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

(f) Persons will be permitted to speak only when recognized by the Commission.

(g) The Commission will 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.

(h) All hearings held under this Ordinance will be open to all members of the Ho-Chunk Nation and to such other persons who, in the discretion of the Commission or the Attorney General of the Department of Justice, should be allowed to attend.

(i) The Commission, in its discretion, has the power to sequester witnesses.

(12) Evidence.

(a) In hearings governed by the Ordinance, the Commission will not be bound by technical rules relating to evidence and witnesses. The Commission will admit all testimony that tends to prove a relevant issue to the hearing, but will exclude immaterial, irrelevant or unduly repetitious testimony. The Commission will give effect to the rules of privilege unless such privilege is waived. The submission of evidence or taking of testimony shall be controlled by basic principles of relevancy, materiality and whether or not the evidence or testimony relates to a relevant issue of the hearing. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and will be noted.

(b) All evidence, including records and documents in the possession of the Commission or which the Commission desires to avail itself, will be duly offered and made a part of the record in the case. Each party will be afforded and made a part of the record in the case. Each party will 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 will be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they will 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 will be given an opportunity to compare the copy to the original.

(e) The record in a hearing governed by this Ordinance will include:

1 All applications, pleadings, intermediate rulings and exhibits and appendices thereto;

2 Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence under Section 15, subparagraph a (8) (f) of this Ordinance;

3 A statement of matters officially noticed;

4 Questions and offers of proof, objections and ruling thereon;

5 Any proposed findings or decisions and exceptions;

6 Any decision, opinion or report by the Court; and

7 The transcript prepared by a duly certified court reporter.

(13) Determination by the Commission.

(a) The Commission will make all determinations of issues before it.

(b) All significant determinations made by the Commission will be documented in a written decision and will require a Quorum at a duly called meeting of the Commission. Significant determinations include the grant, denial, renewal, or failure to renew a license.

(c) A copy of any decision reached pursuant to this Section will be served upon the applicant (respondent) by registered or certified mail, or may be served personally.

(14) Sanctions. The Commission may impose the following sanctions:

(a) An order prohibiting the use of any witness, document or tangible evidence which should have been disclosed, produced, exhibited or exchanged pursuant to this Ordinance, the Commission's Rules of Practice and Procedure, or any order of the Commission;

(b) An order that designated facts will be taken as established;

(c) An order that the disobedient party may not support or oppose designated claims or defenses;

(d) An order striking 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; and

(e) A finding against the disobedient party.

(15) Appeals. Decisions of the Commission denying or not renewing a license can only be appealed to the Legislature.

16. Practice and Procedures for Enforcement Hearings

a. Enforcement Hearings:

(1) Upon the Legislature enacting an Administrative Law Commissioner Establishment Act, all enforcement hearings shall be heard as provided for in the Administrative Law Commissioner Establishment Act.

(2) Until the Legislature enacts an Administrative Law Commissioner Establishment Act, all enforcement hearings shall be heard by the Ho-Chunk Nation Trial Court.

(3) In the case of a proposed penalty which does not involve any suspension or revocation of a license, the Commission will:

(a) Notify the licensee by certified mail of the proposed penalty and the basis thereof. Such letter will inform the licensee that the Commission cannot, without the licensee's consent, impose a penalty without a hearing before:

1. The Administrative Law Commissioner, upon the Legislature enacts the Administrative Law Commissioner Establishment Act.

2. The Ho-Chunk Nation Trial Court, if the Legislature has not enacted the Administrative Law Commissioner Establishment Act; and

(b) Allow the licensee the option of paying the penalty without a hearing or contesting the basis for imposing the penalty. The licensee will have seven (7) days to state whether or not he or she is willing to pay the penalty without a hearing.

(4) Nothing in this Section will limit the Commission's authority to suspend a license summarily without a hearing pursuant to this Ordinance, but only upon a determination by the Commission that the licensee has intentionally defrauded a patron and/or the Nation through the licensee's actions.

(5) The burden of proving fitness and suitability for a license will be on the licensee.

(6) If a person or entity is charged with violation of this Ordinance, a license condition, the Compact, the IGRA or any other applicable laws, regulations or agreements concerning the regulation of gaming including, but not limited to, any agreement relating to gaming with the Ho-Chunk Nation, the Department of Justice Attorney acting as attorney for the Commission will carry an initial burden of establishing sufficient evidence to raise a presumption that there was a violation unless this evidence is later rebutted (prima facie case). If the Administrative Law Commissioner, if applicable, or the Ho-Chunk Nation Trial Court finds that there is sufficient proof to prove the case unless contrary evidence is provided (a prima facie case has been established), the burden to rebut the charge will shift to the person or entity.

(7) Notice of Hearing.

(a) An enforcement action begins by the Department of Justice filing a Complaint with the Administrative Law Commissioner, if applicable, or the Ho-Chunk Nation Trial Court. If Section 16, subparagraph a (2) (b) is applicable to the enforcement action, the Complaint may only be filed after the seven (7) days provided for in that Section. The Complaint will contain short, plain statements of the alleged violations by the licensee, the facts and circumstances giving rise to the action, and a demand for any enforcement action to be imposed. The Complaint must contain the full names and addresses of all parties and any counsel, as well as a telephone number at which the complainant may be contacted. The Complaint shall be signed by the Department of Justice attorney.

(b) Unless the Administrative Law Enforcement Act provides otherwise, all enforcement actions shall be conducted pursuant to the Ho-Chunk Nation Rules of Civil Procedure.

(8) Decision.

(a) Until the Legislature enacts an Administrative Law Commissioner Establishment Act, the Ho-Chunk Nation Trial Court shall issue a written decision within sixty (60) days of the filing of the complaint, unless the licensee seeks an extension of time that delays the hearing process.

(b) Upon the Legislature enacting an Administrative Law Commissioner Establishment Act:

1. The Administrative Law Commissioner shall issue a written decision within sixty (60) days of the filing of the complaint, unless the licensee seeks an extension of time that delays the hearing process.

2. If pursuant to the Administrative Commission Establishment Act there is an appeal, the Trial Court shall issue a decision within thirty (30) days of the appeal being filed with the Trial Court.

17. Licensing.

a. Licensing Requirements. Licenses issued hereunder will be issued according to requirements that are as stringent as those set forth in regulations promulgated by the NIGC in 25 C.F.R. parts 556 and 558, including any amendments thereto; and also, in the case of Class III gaming, according to requirements that are as stringent as those set forth in the Compact.

b. License Required.

(1) Persons. The following persons are required to obtain a gaming license, and to maintain the standards required by this Ordinance in obtaining such license, as a condition to employment in any gaming operations on the Nation's lands:

(a) Owner or controlling person;

(b) Primary management official;

(c) Key employees; and

(d) Any other employee or class of employees as determined by the Legislature.

(2) Vendor. In accordance with Section 18 of this Ordinance, all vendors (gaming and non-gaming) will be subject to licensing by the Commission as a condition to conducting business with the Ho-Chunk Nation's gaming operations.

(3) Facilities. The Nation will issue a separate license to each place, facility, or location on the Nation's lands where gaming is conducted under this Ordinance.

(4) Any individual Class II gaming license issued by the Nation will be valid for any Class II gaming facility located on the Nation's lands; and any individual Class III gaming license issued by the Nation will be valid for any Class III gaming facility located on the Nation's lands.

(5) The licensing requirements under this Ordinance are in addition to any state certificates required under the Compact.

c. Licensing Standards.

(1) No license will be issued 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:

(a) Satisfactory proof that the applicant is of good character and reputation, and is financially responsible.

(b) A description of the premises at which the games are to be conducted, with proof of the contractual or other basis upon which the applicant will conduct the games, or be employed, at such premises.

(c) The applicant has fulfilled any applicable requirements of IGRA and the Compact.

(d) Agreement by the applicant to accept and abide by all conditions of the license as provided in this Ordinance.

(2) No person will be employed in the operation or conduct of gaming nor will the Nation permit a gaming-related contractor to employ any person in the course of

performance under the contract, if that person has been convicted of, or entered a plea of guilty or no contest to, any of the following offenses, unless the person has been pardoned:

(a) Any felony conviction within the ten (10) years prior to the application;

(b) Any conviction for any gaming-related offenses;

(c) Any conviction for fraud, misrepresentation, theft, or deception in any form; or

(d) A violation of any provision of Chs 562 or 565, Wis. Stats., a rule promulgated by the Wisconsin Division of Gaming, this Ordinance or any other tribal law regulating or prohibiting gaming.

(3) No person will be employed in the operation or conduct of gaming, and the Nation will not permit a gaming-related contractor to employ any person in the course of performance under the contract, if that person has been determined by the Legislature or the Commission to be a person whose prior activities, criminal record, if any, 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 of the business and financial arrangements incidental thereto. The alleged violation of the laws of general application of the federal, state, or Nation not principally enacted to regulate gaming, such as the Nation's *Employee Relations Act* (6 HCC § 5) and the Nation's *Appropriations and Budget Process Act* (2 HCC § 4) will not be the basis of non-suitability unless such conduct is part of a pattern of consistent intentional disregard for the laws of the Federal, State or Nation. For purposes of the preceding sentence a person shows a pattern of consistent intentional disregard for the laws of the federal, state, or Nation when the person knows or should know of his or her obligation and chooses to consistently ignore such obligation.

(4) Legislative Waiver. Except in the case of owners or controlling persons or persons designated in any management contract as having management responsibility of all or any part of any gaming operations, the Legislature may in its discretion, waive by legislative resolution any requirements set forth in Section 17, subparagraph c (2) for any applicant when the applicant has demonstrated on the record before the Commission evidence of sufficient rehabilitation and present fitness to hold a license. A recommendation to grant a waiver will be submitted by the Commission to the Legislature for their consideration and final decision. The applicant, with or without legal representation, will have the right to be in attendance and to participate on his or her behalf. Decisions of the Legislature to grant or to deny a waiver under this subparagraph cannot be appealed to the Trial Court.

(5) The issuance of licenses hereunder also will be subject to the provisions of Section 19 regarding background investigations.

(6) The following notices will be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

(a) Privacy Notice. In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used 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 hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

(b) Disclosure of Social Security Number. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application. The Commission will keep your SSN private and not reveal your SSN on any documents that are public or are part of a public record, unless ordered by a Court or federal agency.

(c) Notice Regarding False Statements. A false statement on any part of your application may be grounds for not hiring an individual, or for firing an individual after he or she begins work. Also you may be punished by fine or imprisonment as provided in U.S. Code, Title 18, Sec. 1001.

(7) No license will be issued to, or held by, a person who has been determined by the Commission or Legislature to have knowingly and willfully provided materially important false information to the Gaming Commission, or has refused to respond to questions offered pursuant to the licensing and background requirements established by or required by this Ordinance, the Compact, or the NIGC, 25 C.F.R. parts 556 and 558.

d. Procedures. All applications will be considered by the Commission in accordance with this Ordinance.

e. Authority to Grant or Deny an Application for Gaming License.

(1) The Commission will grant or deny all applications for a license, except that the Commission will deny an application for a license where the applicant does not meet the restrictions under Section 17, subparagraph c (2), in which case, in the discretion of the applicant, the applicant may proceed to make a record of findings by the Commission as to the applicant's sufficient rehabilitation and present fitness to hold a license.

(2) Any license will be effective upon the date the Commission grants it. This license will be provisional as set forth in Section 17, subparagraph g pending the satisfactory completion of all background investigations and pending expiration of the thirty (30) day period for review by the NIGC provided for in regulations promulgated by the NIGC in 25 C.F.R. part 558, including any amendments thereto; provided, however, that the Commission must provide written notice to the Legislature of the granting of any licenses, and the Legislature will have the power to overturn the granting of any license on its own motion at any time provided the Legislature has conducted a hearing consistent with the provisions established in Section 12. If overturned by the Legislature, a license issued by the Commission will have no force or effect. Any such denial may be appealed to the Trial Court.

f. Appeal of Denial of License. An applicant may appeal any denial of a license as provided for in Section 12 of this Ordinance, except that a denial of a license in accordance with Section 17, subparagraph c (2) will be appealed in accordance with Section 17, subparagraph c (4) only.

g. Effectiveness of License. Any license granted hereunder will be effective on a provisional basis pending the satisfactory completion of all background investigations required under this Ordinance, the IGRA, the Compact, or any agreement to which the Nation is a party, and pending expiration of the thirty (30) day period for review by the NIGC provided for in regulations promulgated by the NIGC in 25 C.F.R., part 558, including any amendments thereto, if applicable. Upon the satisfactory completion of all required background investigations and such review by the NIGC, such license will continue to be effective until it expires. If background investigations or NIGC review are not satisfactorily completed a provisional license will have no further force or effect.

h. Term of License; License Condition; and License Fees.

(1) Licenses will be for a term of two (2) years, and will expire on the anniversary of the date that the license is granted.

(2) Every licensee has the responsibility to assure that there exists a continuous disclosure of facts and information relating to his or her suitability to hold a gaming license. Failure to disclose pertinent information as to suitability on a continuing basis, pursuant to Section 17, subparagraph c (2) and/or Section 20 in its entirety will be cause for penalties imposed, up to and including suspension or revocation of a gaming license. Licensees shall submit these facts and information as to suitability within thirty (30) calendar days.

(3) In order to recover the costs to the Nation of complying with the tribal, state, and federal regulations, license fees will be imposed as follows:

(a) License fees in the amount of $25,000.00 per year will be imposed on each party with a management contract with the Nation.

(b) License fees will be imposed on any persons required to obtain a tribal license in accordance with fee schedule to be established by the Legislature.

i. Conditions of License. Any licensee who receives a license issued pursuant to this Ordinance will not purposefully disregard any reasonable conditions as may be established by the Commission including, but not limited to, the following conditions:

(1) Facility Licenses:

(a) The licensed premises will be subject to patrol by the Nation's security force and local law enforcement, and the licensee will cooperate at all times with such security and law enforcement officials.

(b) The licensed premises will be open to inspection by duly authorized tribal officials at all times during the regular business hours.

(c) There will be no discrimination in the operations under the license by reason of race, color, or creed, gender, religion provided, however, that nothing herein will prevent the licensee from granting preferences to Indians as permitted by law.

(d) The licensing requirements under this Ordinance are in addition to any state certificates required under the Compact.

(2) Individual or Entity. Persons and entities licensed by the Commission will not purposefully disregard such conditions of the license as the Commission, in its reasonable discretion, may require. Persons and entities licensed by the Commission will not be considered to have purposefully disregarded a condition of the license unless the Commission can show:

(a) The action was done to defraud, deceive, or take advantage of the Nation for the benefit of the person and/or entity;

(b) The person was informed in writing by the Commission or his or her supervisor that the action was a violation of the conditions of his or her license; or

(c) The entity was informed in writing by the Commission or an Official of the Nation that the action was a violation of conditions of the entity's license.

j. Required Notifications. The Commission will promptly notify the NIGC or other appropriate federal regulatory body of the issuance or denial of licenses, as required under IGRA and applicable regulations of the NIGC.

k. Suspension or Revocation. The licensee will be legally responsible for any intentional violation of the Ordinance or the license provisions. Any license issued hereunder may be suspended or revoked by the Commission for the intentional breach of

any of the provisions of the license, this Ordinance, or any rules promulgated pursuant to this Ordinance, as provided in Section 25 and as follows:

(1) Suspensions. A license may be summarily suspended for up to thirty (30) days without prior hearing for good cause by a majority vote of the Commission. For purposes of the preceding sentence the Commission may only find good cause to suspend a license if the licensee has intentionally defrauded the Nation through his or her actions. Yet, if the IGRA requires a license to be suspended, it shall be suspended if a revocation hearing arises as a result of the Commission receiving a notice from the NIGC. The licensee will not participate in, or conduct any gaming-related activity during the period of suspension. There will be no right of appeal of any suspension decision.

(2) Revocation and Appeals. All decisions of the Court regarding revocation of licenses will be final, except that a license revoked by the Commission pursuant to an objection itemized by the NIGC as provided in Section 19, subparagraph f may not be appealed. No gaming activity will be conducted by a person whose license has been revoked by the Trial Court during the pendency of an appeal proceeding to the Ho-Chunk Nation Supreme Court.

l. Provisional Employment Pending Issuance of License. Primary management officials and key employees may be employed in the gaming operations on the Nation's lands prior to the issuance of a license hereunder and during the period that a license will be effective on a provisional basis as provided in Section 17, subparagraph g, but such employment will be provisional only and subject to the requirements of this paragraph. Any person who or entity that is required to apply for a waiver under Section 17, subparagraph c (2) is not eligible for a provisional license or employment in a Nation's gaming operation unless the Legislature grants a waiver. Preliminary Employment may begin prior to issuance of a license. Preliminary employment must be terminated upon the occurrence of any of the following:

(1) Denial of a license by the Commission or the Legislature;

(2) Unsatisfactory completion of background investigations or NIGC review resulting in nullification of provisional license, as described in Section 17, subparagraph g; or

(3) To the extent required under regulations promulgated by the NIGC in 25 C.F.R., part 558, including any amendments thereto, if at the end of ninety (90) days after the starting date of provisional employment no license has been issued hereunder, or if a licensed issued hereunder remains effective only on a provisional basis, as provided in Section 17, subparagraph g.

m. Gaming License Identification Requirements. All licensed employees of the Nation's gaming operations will:

(1) Wear his or her gaming license on the upper exterior portion of their body

while on employment duty; and

(2) Maintain his or her gaming license in good condition and appearance. No gaming license will be intentionally defaced, altered or obstructed in any way. Any unauthorized duplication or alteration of a license is hereby prohibited.

n. All provisions and preconditions for the issuance of a license persist as ongoing requirements for existing license holders. This will mean that any discovery of events or conditions that might be cause for the denial of a license, upon discovery, may be grounds for suspension, revocation, or other appropriate sanction as deemed reasonable and necessary by the Commission.

18. Vendor License Provisions.

a. All vendors, whether classified as gaming or non-gaming will be subject to licensing by the Commission as a condition precedent to conducting business with the Ho-Chunk Nation gaming operations. The following are excluded from the provisions of this Section:

(1) Persons or entities who provide professional legal and accounting services.

(2) Persons or entities who provide entertainment services at a gaming facility or operation.

(3) Insurance companies excluding annuity companies.

(4) All state and federally chartered financial institutions.

(5) Law enforcement agencies.

(6) Utility providers.

(7) Federal and state government agencies.

(8) Non-profit organizers who can provide proof of tax exempt status.

(9) Travel agencies.

(10) Providers of trainings and seminars.

(11) Public or private accredited institutions of education.

(12) Food and beverage providers.

(12) Any other persons or entities as determined by the Legislature.

b. Any classified non-gaming vendor, supplier, or general contractor conducting business with the Nation's gaming facilities in an amount equal to or exceeding $100,000.00 in any year will register with the Commission and pay a biennial administrative fee of $100.00. Non-gaming vendors conducting business with the Nation's gaming facilities in amounts between $10,000.00 and $100,000.00 in any year will register with the Commission and pay a biennial administrative fee of $50.00. Any classified non-gaming vendor conducting business with the Nation's gaming facilities in an amount below $10,000.00 in any year will be exempt from any licensing fee and the payment of any biennial administrative fees.

c. Any other vendor conducting business with the Nation's Class II or Class III gaming facilities as determined by the Legislature will be subject to these provisions.

d. Application and Procedures for License.

(1) Standard. The standard and procedure for considering and issuing vendor licenses will be those set out in Sections 13 through 17 of this Ordinance. Any other matters pertaining to licensing will be governed by other applicable provisions of this Ordinance.

(2) Determination by Other Jurisdictions. In addition, the Commission may consider issuing licenses to gaming vendors possessing valid licenses from other tribal or state jurisdictions until such time that the Nation completes its own background investigation. In the event that other jurisdictions suspend, revoke, or refuse to renew a license or certificate to a gaming vendor, the Commission will consider the determination of that jurisdiction and may suspend, revoke, or refuse to renew any license issued by the Commission.

e. Submission of a Vendor License Application. In order to obtain a vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include its officers, directors, management, owners, partners, non-institutional stockholders who either own five percent (5%) or more of the stock or are the five (5) largest stockholders, and the on-site supervisor or manager under the agreement with the Nation, if applicable.

f. Contents of the Vendor Application.

(1) Applications for vendor licenses must include, at a minimum, the following:

(a) Name of business, business address, business phone, federal tax ID number (or Social Security Number if a sole proprietorship), main office address if different from business address, any other names under which the applicant has done business, and the type of service the applicant will provide;

(b) whether the applicant is a partnership, corporation, limited liability

company, sole proprietorship, or other entity;

(c) if the applicant is a corporation: the state of incorporation or name of tribe incorporated in, and the qualification to do business in the state or a tribe if the gaming operation is in a different state than the state of incorporation;

(d) trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;

(e) general description of its activities;

(f) whether the applicant will be investing in or loaning money to the gaming operation and, if so, how much;

(g) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(h) a list of Indian tribes with which the vendor has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities. If the vendor has had extensive interaction with Indian tribes, the list will include the ten (10) largest contracts;

(i) names, addresses, and phone numbers of three (3) business references with whom the company had regularly done business in the last five (5) years;

(j) the name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(k) if the business has ever had a license revoked or denied for any reason and a written justification of the reason for the license being revoked along with the circumstances involved;

(l) a list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition, if any;

(m) a list of the business's funding sources and any liabilities of $50,000.00 or more;

(n) a list of the principals of the business, their Social Security Number, address, telephone number, title, and percentage of ownership in the company; and

(o) any further information the Nation deems relevant.

(2) The following notice will be placed on the application form for a vendor and its principals: "Inclusion of false or misleading information in the vendor application

may be grounds for denial or revocation of the Nation's vendor license."

(3) A vendor may submit a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit (in writing) any changes in the information since the other license application was filed and any information requested by the Nation not contained in the other application.

g. Vendor Background Investigation. Background investigations will be conducted as part of the licensing process.

h. Vendor Background Investigation Report. The report will cover each of the steps taken in the completed background investigation of the vendor and its principals and submitted to the Gaming Commission. A copy of the report shall be forwarded to the Vice President or Vice President pro tempore of the Legislature.

i. Term of Licenses and License Fees.

(1) Licenses will be for a term of two (2) years, and will expire on the anniversary of the date of issue.

(a) The Compliance Department will notify all vendors of this requirement no less than one-hundred twenty (120) days prior to the expiration date of the license of the vendors. The notification will be sent by certified mail to the last known address of the vendor.

(b) All vendors will submit a written notice of intent to renew their vendor license to the Commission with the required license fee no less than sixty (60) days prior to the expiration date of the license.

(c) Failure to file a written notice of intent to renew the vendor license, sixty (60) days prior to the date of expiration will cause the Commission to issue a letter of expiration. The letter of expiration will be sent by certified mail to the last known address of the vendor.

(2) In order to recover the costs to the Nation of complying with the tribal, state and federal regulatory processes applicable to Class II and Class III gaming, biennial license fees will be imposed upon the filing of any application for a gaming vendor license, and upon every license renewal thereafter. Any actual costs and expenses associated and incurred with additional background and suitability investigations will be assessed to the vendor as per an actual cost billing. The schedule of fees for licensing of gaming vendors will be as follows:

(a) Existing vendors will be assessed a non-refundable license fee based on the amount of business with the Nation's gaming facilities. A fee of $200.00 or one (1%), whichever is greater, will be charged based on the gross dollar amount received from the previous fiscal year.

(b) Classified gaming vendors who have not previously conducted business with the Nation's gaming facilities will be assessed a fee of $200.00 or one (1%), whichever is greater, according to the gross dollar amount of the initial proposal of business with the Nation's gaming facilities. At the end of the Nation's fiscal year, the amount of the fee will be adjusted based on the actual gross dollar amount of business conducted by the classified gaming vendor.

(c) The Gaming Commission will not take any final action to approve any vendor license application, unless all license and investigative fees and costs have been paid in full.

19. Background Investigations.

a. Required Background Investigations. Background investigations will be conducted on all persons or entities specified in Section 17, subparagraph b of this Ordinance:

(1) Except for as provided for in Section 19, subparagraph a (2) below, records of the background investigations will be retained for at least seven (7) years after the record is created.

(2) With respect to key employees and primary management officials, reports of background investigations, will be retained:

(a) Pursuant to the Compact entered into with the State of Wisconsin for at least seven (7) years after the record is created; and

(b) For inspection by the Chairperson of the NIGC, or his or her designee, for no less than three (3) years from the date of termination of employment.

b. Standards for Background Investigations. All background investigations will be conducted under the supervision and direction of the Department of Justice to ensure that the Nation in its gaming operations will not employ or contract with persons whose prior activities, criminal record, if any, 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, and activities in the conduct of such gaming. Such investigations will be conducted according to requirements that are as stringent as those set forth in regulations promulgated by the NIGC in 25 C.F.R. parts 556 and 558, including any amendment thereto, and as set forth in the Compact, and as provided in Section 19, subparagraph c, below. In the case of investigations of primary management officials and key employees, the report required under regulations promulgated by the NIGC in 25 C.F.R. part 558, including any amendments thereto, will be prepared and submitted to the NIGC. Such report will contain the eligibility determination described in such regulations. All background

investigations will otherwise meet the standard of such investigations imposed under the IGRA and/or the Compact, as applicable. Nothing herein will prevent the conduct of a more comprehensive background investigations than those required under the IGRA, the NIGC, or the Compact.

c. Required Information.

(1) Each person subject to a background investigation under Section 19, subparagraph a, above, will be required to provide all of the following information:

(a) Full name, other names used (oral or written), Social Security Number(s) (pursuant to Section 17, subparagraph c (6) (b)), birth date, place of birth, citizenship, gender, all languages spoken or written;

(b) Business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers for the current and past five (5) years;

(c) 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 Section 19, subparagraph c (1) (b) above;

(d) Current business and residence telephone numbers;

(e) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(f) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(g) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(h) For each felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(i) For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition if any;

(j) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to Section 19, subparagraph c (1) (h) or

(i) above, the criminal charge, the name and address of the court involved and the date and disposition;

(k) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational/professional license or permit including, but not limited to, whether or not such license or permit was granted;

(l) A current photograph; and

(m) Fingerprints consistent with procedures adopted by the Nation according to 25 C.F.R. § 522.2(h).

(2) The Nation will conduct an investigation sufficient to make determinations of suitability.

(3) In conducting background investigations, the Nation, or its agents, will keep confidential the identity of each person interviewed in the course of the investigation.

d. Report to the NIGC.

(1) Applications and/or reports will be forwarded to the NIGC according to the regulations promulgated by the NIGC. Pursuant to 25 CFR 556.5, an investigative report shall include all of the following:

(a) Steps taken in conducting a background investigation;

(b) Results obtained;

(c) Conclusions reached; and

(d) The bases for those conclusions.

(2) If a license is not issued to an applicant, the Commission will notify the NIGC and may forward copies of its eligibility determination and investigation report, if any, to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(3) With respect to key employees and primary management officials, applications for employment and reports of background investigations, if any, will be retained:

(a) Pursuant to the Compact entered into with the State of Wisconsin for at least seven (7) years after the record is created; and

(b) For inspection by the Chairperson of the NIGC, or his or her designee, for no less than three (3) years from the date of termination of employment.

e. Granting a Gaming License.

(1) If, pursuant to 25 C.F.R. §558.4, within the thirty (30) day period after the NIGC receives a report and notifies the Commission 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 for whom the Commission has provided an application and investigative report to the NIGC, the Commission will issue a license to such applicant.

(2) Pursuant to 25 C.F.R. §558.3, during a thirty (30) day period beginning when the NIGC receives a report from the Nation, the Chairperson of the NIGC, or his or her designee, may request additional information from the Commission concerning a key employee or a primary management official who is the subject of a report. The Commission will respond to a request for additional information from the Chairperson of the NIGC, or his or her designee, concerning a key employee or a primary management official who is the subject of a report. Such a request will suspend the thirty (30) day period until the Chairperson of the NIGC, or his or her designee, receives the additional information.

(3) Pursuant to 25 C.F.R. §558.4(b), if, within the thirty (30) day period after the NIGC receives a report, the NIGC provides the Commission with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Commission has provided an application and investigative report to the NIGC, the Commission will reconsider the application, taking into account the objections itemized by the NIGC. The Commission will make the final decision whether to issue a license to such applicant.

(4) Pursuant to the requirements of 25 C.F.R. §558 (b), a key employee or primary management official may maintain a provisional license until the Gaming Commission makes a determination as to whether or not to grant his or her license.

f. License Suspension and Revocation Following Receipt of Information from NIGC.

(1) If, after the issuance of a gaming license, the Nation receives from the NIGC reliable information indicating that a key employee or a primary management official is not eligible for employment under Section 19, subparagraph b above, the Commission will suspend such license and will notify in writing the licensee of the suspension and the proposed revocation.

(2) The Commission will conduct a hearing in accordance with Section 15 on a proposed revocation pursuant to Section 19, subparagraph f (1) above.

(3) After a hearing, the Commission will determine whether to revoke or to reinstate a gaming license. The Commission will notify the NIGC of its decision. The decision of the Commission to revoke the license will be final and there will be no appeal.

(4) If a vendor violates a licensing requirement in the vendor's contract with the Nation, the contract with the vendor will be revoked.

20. Conflicts of Interest Prohibited.

a. No member of the Legislature, Commission, Treasurer of the Nation, or the President of the Nation will:

(1) Be employed by any gaming operations, be a primary management official or owner or controlling person with respect to any management contract.

(2) Participate in the approval, denial or renewal of any application for a gaming license by, or participate in the revocation or suspension of any license granted hereunder to, any relative of such member of the Legislature, the President, or the Commission.

(3) Engage in any business, transaction or professional activity or incur any obligation of any nature which conflicts with the proper discharge of his or her official duties in administering this Ordinance; provided that a member of the Legislature who may engage in a conflicting activity or incur a conflicting obligation that is not otherwise disqualified under Section 20, subparagraph a (1) above, will promptly disclose that activity or obligation to the Legislature and refrain from voting on any matter regarding which such activity or obligation may constitute a conflict.

(4) Participate as a player of any games at any of the Nation's gaming facilities. The preceding prohibition contained within Section 20, subparagraph a. (4) shall not apply to Legislators or the President playing:

(a) Bingo within the bingo halls of the Nation's gaming facilities; or

(b) Charitable Games.

b. No Attorney of the Department of Justice or Surveillance Department Personnel will participate as a player on any games at any of the Nation's gaming facilities.

c. Pursuant to the requirements of the Compact between the State of Wisconsin and the Nation, the Legislature also adopts the following provisions for Casinos located in Wisconsin:

(1) No person employed by the Nation will participate in games at any site of employment or, in the case of management contractors, at any site on the Nation's Lands where gaming is conducted; or

(2) No employee of the Nation in any of its gaming operations will own, be employed by or have any direct or indirect pecuniary interest in any management contract or other gaming-related contract of the Nation. However, nothing in this paragraph will

prevent the Nation from employing a person with a direct or indirect financial interest in a gaming-related contract which has been submitted to the Bureau of Indian Affairs ("BIA") or other federal regulatory body for review and approval during the period of such review, provided that any such employment will terminate upon approval of the contract by the BIA or other federal regulatory body.

d. An employee, upon separation from employment with any of the Nation's gaming facilities, will not participate as a player in any gaming activity at the gaming facility from which the person was terminated from employment for a period of fifteen (15) days from the date of separation; provided, further that an out-going Gaming Commissioner, Legislator, President, Surveillance Department employee, and Department of Justice Attorney will not participate as a player in any gaming activity at any gaming facility for a period of fifteen (15) days from the date of their separation from employment.

21. Accounting, Monthly Reports and Annual Audits.

a. The Treasurer will maintain or contract for the maintenance of a permanent single entry or double entry bookkeeping system for the purpose of recording all receipts and expenditures in connection with the conduct of games and the disbursement of profits derived thereof. Such bookkeeping system will consist of a columnar book maintained on a calendar or fiscal year basis. The use of suitable computerized accounting system(s) may substitute for a manual system of books. If such a computerized accounting system is used, however, printed copies of all information will be in the possession of the Commission and the Legislature. The permanent books of account or records will include inventory records of gaming supplies and will be sufficient to establish information including, but not limited to, the amount of gross and net income, deductions and expenses, and receipts and disbursements and will be kept at all times available for inspection by the National Indian Gaming Commission's authorized representatives. Such books of account or records will be retained for at least seven (7) years after the record is created.

b. No later than fifteen (15) days after the end of each month, the Executive Managers of each of the gaming operations will prepare and submit to the Commission and to the Legislature, through the Department of Treasury, a comprehensive report for the month completed of the gaming operations for which such Executive Manager has overall responsibility. Monthly reports will be made on a form prescribed by the Treasurer. The Executive Manager will retain a copy of the report for the permanent records of the Nation. The report will include, but not be limited to:

(1) An itemized statement of the gross receipts.

(2) An itemized statement of expenditures, including amounts paid for salaries and benefits, prizes, supplies and equipment, and other expenses.

c. The monthly report will be signed by the Executive Manager with overall responsibility for the operations.

d. In compliance with 25 U.S.C. §2710 (b) (2) (C) and (D), all gaming operations are subject to an audit by independent certified public accountants conducted in accordance with generally accepted accounting principles and with the "Accounting and Audit Guide-Casinos" submitted to the Legislature and the Commission. Copies of the annual audit will be provided to the NIGC, the OIGRC, and the Wisconsin State Auditor within one-hundred twenty (120) days after the end of the fiscal year. All gaming-related contracts that result in purchases of supplies, services or concessions for more than $25,000.00 in any year, except contracts for professional legal or accounting services will be specifically included within the scope of such audit.

22. Public Safety Standards.

a. The construction and maintenance of any gaming facility, and the gaming operations, will be conducted in a manner which adequately protects the environment and the public health and safety and for that purpose will comply with the requirements of the Compact and all applicable health, safety and environmental standards enacted by the Nation. Those public health and safety standards for public buildings, electrical wiring, fire protection, plumbing and sanitation that are set forth in Wis. Stat. ch. 101 (Department of Commerce – Regulation of Industry, Buildings and Admin. Code, chs COMM 14 (Fire Prevention), 16 (Electrical), 28 (Smoke Detectors), 77 (Theaters and Assembly Halls), and 81-87 (Plumbing), as they may be amended from time to time, will be deemed to be incorporated by this Ordinance as the laws of the Nation applicable to the Nation's gaming facilities located in the State of Wisconsin.

b. Pursuant to the requirements of the Compact, the Department of Labor will engage a state certified inspector to conduct inspections of all facilities for Class III gaming on a periodic basis, but not less than annually, and will promptly repair or correct any and all instances of non-compliance with Section 22, subparagraph a, above. An inspection report shall be prepared by the Tribe in connection with each inspection and copies of said reports shall be forwarded to the OIGRC (formerly known as the Lottery Board).

23. Miscellaneous Provisions.

a. Right to Exclude Any Person from Premises at Any Time. Any person may be excluded from the premises at the discretion of an appointed designee of an Executive Manager, the Executive Manager, and the supervisor(s) of an Executive Manager.

b. Minimum Age.

(1) Class II Gaming Facilities. No person under the age of eighteen (18) years will be permitted on any of the Class II gaming floors at any time, except those agents, employees, or contractors of the Nation who are actively engaged in employment duties

or are performing authorized services for or on behalf of the Nation. A Class II gaming operation may not employ any person under the age of sixteen (16) years.

(2) Class III Gaming Facilities. No person under the age of twenty-one (21) years will be permitted on any of the Class III gaming floors at any time, except those agents, employees, or contractors of the Nation who are actively engaged in employment duties or are performing authorized services for or on behalf of the Nation. A Class III gaming operation may not employ any person under the age of eighteen (18) years.

(3) If any underage person, pursuant to Section 23, subparagraph b (1) and (2), plays and otherwise qualifies for the prize or winnings, the prize or winnings will not be paid and the estimated amount wagered during the course of the game will be returned to the underage person.

(4) Any underage person (minor) may pass to and from any of the Nation's Class II and III gaming facility hotels, retail shops, and eating establishments on the premises when accompanied by a supervising adult.

c. Permissible-Alcoholic Beverages. No person will have in his or her possession any alcoholic beverages on any premises, except for such beverages as are purchased from the Nation or its authorized agents for on-premises consumption in accordance with licensing and other requirements of the Compact and laws of the Nation such as the *Alcohol Beverage Control Ordinance* (5 HCC §4), with possession and consumption of such beverages to be confined to such areas as are specifically defined by the Legislature.

d. Prohibited Substances. No person will have in his or her possession any substance prohibited by federal or state laws while on any Ho-Chunk Nation premises.

e. Persons Under the Influence of Alcohol or Prohibited Substances. No person who is visibly intoxicated will be permitted to participate in any gaming activity.

f. Firearms or Other Weapons. No person, including the Nation's Security Department personnel, will possess or be permitted to possess any firearm or other weapons within any Ho-Chunk Nation gaming facility. This provision will not apply to law enforcement officers who are acting in an official capacity and have jurisdiction; or to an armored car representative employed by the Nation for the transfer of funds to or from financial institutions, or upon notice or special conditions set by the Commission for specific purposes or events.

g. Disorderly Conduct. No person will engage in conduct which is violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly under circumstances in which the conduct tends to cause or provide a disturbance on any Ho-Chunk Nation lands.

h. Nation's Property. No person may intentionally cause damage to any of the Nation's physical property without authorization from the Nation, nor may any person intentionally steal or defraud the Nation of property.

i. Enforcement. Any person who violates any provision of this Section will be asked to leave the premises. Authorized law enforcement officers or security personnel will be called to escort persons who refuse to leave the premises. In addition, any person who violates any provisions in this Section, as with any provision of this Ordinance, will be subject to penalties provided under Section 25.

24. Patron Disputes.

a. Patron Rights Regarding Disputes.

(1) The Gaming Commission will provide procedures for impartial resolution of a patron's dispute.

(2) Any person who has a dispute concerning the conduct of a game(s) may raise such dispute with the following persons and in the following order:

(a) A member of the staff of the gaming facility.

(b) The supervisor in the area in which the dispute arose.

(c) The Executive Manager of the gaming facility.

(d) The Gaming Commission.

(3) At each level, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegation.

(4) At each level, if the dispute remains unresolved, the complainant will be given a copy of the impartial dispute resolution procedures required under Section V.E. of the Compact, and informed of the right to take the dispute to the next higher level as set forth in Section 24, subparagraph a (2), above.

(5) Resolution of any dispute by staff of the gaming facility will always involve two or more staff members.

(6) All disputes, whether resolved or not, will be the subject of a detailed report by all staff involved to their supervisor. A copy of the detailed report(s) will be forwarded to the Executive Manager and to the Commission.

b. Gaming Commission Action on Patron Disputes. All unresolved disputes which are submitted to the Gaming Commission will be decided by the Commission based on

information provided by the complainant, any witnesses for or documents provided by the complainant, or by the Executive Manager of the gaming facility or any other person who has relevant information to provide. The decision of the Commission will be in writing and issued within fourteen (14) days of the completed investigation of the dispute. Copies will be provided to the Executive Manager of the gaming facility and the complainant.

25. Enforcement, Penalties and Investigations.

a. Enforcement. Any person will be subject to penalties as provide in Section 25, subparagraph (b) below, if such person:

(1) Violates any provision of this Ordinance, or any applicable tribal, state and federal regulations.

(2) Makes any false or misleading statements or omissions in any and all documentation filed with the Commission or in connection with any matter provided for hereunder;

(3) Gives false testimony in any matter provided for hereunder before the Commission, the Legislature, or the Court; or

(4) Fails to observe license conditions imposed by the Commission or Legislature, or decisions of the, Legislature, or Court rendered pursuant to this Ordinance.

b. Penalties. The Commission through an enforcement action as provided in Section 16 will be empowered to impose any of the following penalties or fines:

(1) Termination, suspension or exclusion from employment in any gaming operations or other employee discipline;

(2) Exclusion from attendance at any gaming facilities;

(3) Licensees shall be subject to the following fines:

(a) Except for individuals or entities listed in the Section 25, subparagraph b (4) (b) immediately below, not more than ten percent (10%) of the licensee's yearly gross wages from the Nation. The maximum penalty of ten percent (10%) of the licensee's yearly gross wages from the Nation will not be imposed for each violation, but for all violations being considered by the Court per case brought with respect to the licensee. The Gaming Commission will develop, and make public, criteria to determine general categories of licensee violations and a corresponding percentage to be imposed based on when a licensee is found to have violated that general category.

(b) An Executive Manager, owner or controlling person or a party to a management contract will be subject to a fine of not more than $25,000.00 for each violation, and actual damages to the Nation or its gaming operations.

(4) Exclusion from the Nation's lands if not a member of the Nation; or

(5) Suspension, revocation, or other condition to an existing gaming license.

c. Investigations.

(1) The Department of Justice of the Ho-Chunk Nation has the power to conduct investigations as provided in this Section. The Department of Justice may retain outside counsel and other agents to assist it in conducting its investigation. All references to the Department of Justice hereafter include the Department of Justice and/or any designated agent of that Department.

(2) The Department of Justice may investigate without limitation the background and suitability of any applicant or licensee to ensure that the applicant's or licensee's prior activities, criminal record, if any, or reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the danger of unsuitable, unfair or illegal practices and methods, or activities in the conduct of gaming.

(3) The Department of Justice may also investigate, without limitation, any suspected violation of the Ordinance, the Compact, the IGRA, the conditions of any license issued by the Commission, any violation of an order by the Commission, the Legislature, or the Trial Court or any other applicable laws, regulations or agreements, including, but not limited to any agreement with the Ho-Chunk Nation.

(4) No applicant or licensee will neglect or refuse to produce records or evidence or to give information upon written request by the Department of Justice within seven (7) days of receipt of such request. No applicant or licensee will interfere with any proper and lawful efforts by the Department of Justice to obtain such information. Every applicant, licensee, and all licensed manufacturers, distributors and vendors will make their business premises, books and records available for inspection by the Department of Justice for purposes of conducting its investigation. Failure of any person or entity to comply with this Section may result in the denial or revocation of a license, or the imposition of other penalties and sanctions.

26. Existing Procedures. All proceedings commenced before the effective date of this Ordinance, or any Amendments to it, will be conducted under the Ordinance then in effect.

27. Effective Date. This Ordinance, and any Amendments to it, supersedes prior Gaming Ordinances, resolutions, and motions pertaining thereto and will take effect on:

a. The passage of a resolution by the Ho-Chunk Nation Legislature to amend the Ordinance; and

b. The approval of the Amendments to the Gaming Ordinance by the Chairman of the NIGC as provided for by 25 U.S.C. §2710 (e). The date of passage of the Resolution by the Legislature and approval of the Amendments by the Chairman of the NIGC will be notated within the Legislative History of the Ordinance.

Legislative History

10/7/89	WWBC adopts amended and restated Gaming Ordinance of the Ho-Chunk Nation.
6/26/92	WWBC Resolution No. 6/26/92E to amend and supersede the Gaming Ordinance adopted on October 7, 1989.
11/11/92	WWBC Resolution No. 11-11-92 G, to amend and supersede the Gaming Ordinances adopted on October 7, 1989 and June 26, 1992.
4/26/93	WWBC Resolution No. 4/26/93A, (Attachment hereto as "Appendix A").
4/9//94	WWBC Resolution No. 4/9/94-C, to amend and supersede the Gaming Ordinance adopted on November 11, 1992, and subsequent amendments thereto.
6/8/94	WWBC Resolution No. 6/8/94B to amend Sections 1104 and 1105.
6/14/95	Legislature Res. No. 6/14/95C to amend Sections 1102 (a) (i) and (ii).
10/24/95	Legislature Res. No. 10/24/95A to amend by adding Section 1301(a).
2/20/96	Legislature Res. No. 2/20/96B.
9/6/96	Legislature Res. No. 9/6/96A to amend Sections 901(a) and (d).
12/17/96	Amendments by Res. No. 2/20/96B and 9/6/96A are approved by NIGC.
4/14/98	Legislature Res. No. 4/14/98I to amend Section 1203(a) (iv)(c) by addition of (i).
5/11/99	Legislature Res. No. 5/11/99L, Amendments A – I, to amend and supersede the Gaming Ordinance adopted on September 6, 1996 and subsequent amendments thereto.
3/7/00	Legislature Res. No. 3/7/00B to amend Section 213(a), classification of key employee positions.
6/22/00	Legislature Res. No. 6/22/00B to amend Sections 210, 213(b), 803, 1201(a), (b) and (c).
6/22/00	Legislature Res. No. 6/22/00D to amend Sections 801(a) and (b), Section 803, and Section 1201.
5/20/02	Legislative Res. No. 5/20/02F to amend Sections 230 and 1301(a).
8/3/05	Legislature Res. No. 8/3/05B to amend Section 802.
8/30/05	Legislative Off-Site.
10/4/05	Legislature approves the Ordinance for 45-Day Public Review and Comment.
11/28/05	Public Review and Comment period ends.
1/11/06	Final Draft of Ordinance sent to Gaming Commission for final review.
7/5/06	Legislature approves 45-Day Public Review and Comment Period.
8/18/06	Public Review and Comment period ends.
1/22/07	Legislative Off-Site.
5/8/07	Legislature approves the Ordinance for 45-Day Review and Comment.
7/19/07	Development Committee made a Motion to hold a Legislative Off-site on August 15, 2007 to review the Ordinance. The only comments received during the 45-Day Review and Comment period were from the Gaming Commission.
8/15/07	Pursuant to the Legislative Organization Act (2 HCC §11), the Legislature conducts an Off-Site.
9/6/07	Pursuant to the Legislative Organization Act (2 HCC §11), the Legislature conducts an Off-

	Site.
10/05/07	Meeting held between Gaming Commission and Legislature to discuss changes to Off-Site.
10/15/07	Meeting held with Legislative Staff and Gaming Commission to go over technical changes to Gaming Ordinance recommended by the Gaming Commission.
10/18/07	Development Committee refers proposed changes to the full Legislature.
12/18/07	Legislature passes Resolution 12-18-07 A Amending and Restating Gaming Ordinance and submitting proposed Amendments to the NIGC for its approval.
1/28/08	Legislature passes Resolution 1-28-08 D amending Gaming Ordinance to address concerns of NIGC with respect to proposed definition of Nation's Lands and requirements of information to be submitted as part of reports to NIGC.
02/07/08	National Indian Gaming Commission Chairman, Philip N. Hogan, sends letter stating NIGC approves Amendments to Amended and Restated Gaming Ordinance.