

**TRIBAL CODE**  
**CHAPTER 42:**  
**GAMING ORDINANCE**

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## HISTORY NOTE

### Current Ordinance:

Effective date: December 9, 1994.

Adopted by Tribal Resolution No. 93-143, November 2, 1993.

Section 42.224 was amended prior to the ordinance taking effect by Resolution No. 94-152, December 2, 1994.

Approved , as amended, by the Chairman of the National Indian Gaming Commission under 25 CFR Part 522 on December 9, 1994.

Reenacted as part of the Tribal Code July 5, 1995, Resolution No. 95-89.

### Amendments:

Tribal Resolution 2010-29, adopted January 26, 2010, amends §42.801, identifying St. Ignace parcel as eligible for gaming. **Approved by NIGC on March 30, 2010.**

Tribal Resolution 2009-197, adopted September 22, 2009, amends §42.404 Commission Chairperson.

Tribal Resolution 2008-51, adopted February 26, 2008, amends §42.405(1) and §42.405(4). Calling of Special Meetings.

Tribal Resolution 2006-101, adopted August 28, 2006, amends §42.801 to add subsection 2(c) identifying St. Ignace parcel taken into trust in 2000. **Denied by NIGC on September 1, 2006.**

Tribal Resolution 2006-98, adopted August 15, 2006, amends §42.801. Rescinded by 2006-101.

Tribal Resolution 2005-20, adopted February 15, 2005, amended §42.412 (2) to disallow Gaming Commissioners, etc. from gaming in the Sault Ste. Marie Tribes' gaming establishments.

Tribal Resolution 99-55, adopted April 26, 1999, amended "42.303,42.304 by deleting Management by Economic Development Commission and substituting in "42.303, 42.304 Management by Tribal Gaming Authority.

Tribal Resolution 98-25, adopted March 3, 1998, amended "42.412, 42.420,42.503,42.511,42.601,42.716. Tribal resolution 97-54, adopted June 3, 1997 amended former "42.401,42.404,42.405. Upon approval from NIGC.

Tribal resolution 5-15-86, adopted May 20, 1986, provided for limited non-Indian employment by amending former '42.504.

Tribal resolution 7-26-86B, adopted July 26, 1986, amended former '42.703.

Tribal resolution 1-15-87, adopted January 20, 1987, amended former '42.703.

Tribal resolution 3-21-88, adopted March 21, 1988, amended former '42.203 to authorize raffles and pull tabs.

Tribal resolution 5-28-88B, adopted May 28, 1988, amended former '42.201 to provide for the Kewadin Shores Casino.

Tribal resolution 4-9-91, adopted April 9, 1991, and reaffirmed by the Board of Directors on April 23, 1991, amended former " 42.504, 42.702 and 42.703.

**Compact:**

A Tribal-State Compact for the Conduct of Tribal Class III Gaming by the Tribe was executed on August 20, 1993.

The Compact was approved by the Secretary of the Interior under 25 USC '2710(d)(8) on November 19, 1993, and notice was published in the Federal Register on November 30, 1993, 58 FR 63262.

**Prior Ordinances:**

**1. Bingo Control Ordinance:**

The Bingo Control Ordinance, Tribal Code Chapter 43, was adopted by Tribal Resolution 2-19-85 on February 19, 1985. It was repealed by '42.107 of the current ordinance.

**Amendments**

Tribal Resolution 12-04-89A, adopted December 4, 1989, amended " 8D, 43.103 and 43.403 to allow non-tribal members to conduct bingo.

**2. Millionaire Party Gaming Ordinance:**

The Millionaire Party Gaming Ordinance, Tribal Code Chapter 42, was adopted by Tribal Resolution 11-04-85C on November 4, 1985. It was repealed by '42.107 of the current ordinance.

**Cases:**

United States v. Dakota, 666 F Supp 959 (WD Mich 1985) - casino operated by Fred Dakota enjoined as violative of the Organized Crime Control Act.

United States v. Dakota, 796 F2d 186 (6th Cir 1986) - affirms above decision.

United States v. Bay Mills Indian Community, 692 F Supp 777 (WD Mich 1988) - suit by US to enjoin casino gaming by Michigan tribes dismissed; US remedy is criminal prosecutions.

United States v. Bay Mills Indian Community, 880 F2d 415 (6th Cir. 1989) - grants dismissal of appeal in the above case after a settlement by the parties.

Sault Ste. Marie Tribe v. Michigan, No. 92-1683 (6th Cir 9/15/93), 1993 US App LEXIS 23460 - gaming case under IGRA regarding bad faith in negotiating a compact; appeal of dismissal of the state from the case on 11th Amendment grounds was dismissed as interlocutory.

**TRIBAL CODE**  
**CHAPTER 42:**  
**GAMING ORDINANCE**

**SUBCHAPTER I: PRELIMINARY MATTERS**

**42.101 Scope.**

This Chapter governs the conduct of gaming within the jurisdiction of the Tribe, provides for the operation of Tribal licensed gaming establishments, prohibits non-complying gaming activities and provides remedies for violations of this Chapter.

**42.102 Purpose.**

The Board of Directors hereby finds that the gaming industry is vitally important to the economy of the Tribe and the general welfare of its members. The continued growth and success of gaming is dependent upon public confidence and trust that gaming is conducted honestly, and that gaming is free from criminal and corruptive elements. Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments. Therefore, all establishments where gaming is conducted and where gaming devices are operated must be licensed, controlled and operated to protect public safety, morals, good order and general welfare, and to foster the stability and success of gaming.

**42.103 Authority.**

The authority for this Chapter is Article VII, Sections 1(d), (g), (h), (k) and (m) of the Tribal Constitution; the Organized Crime Control Act, 18 U.S.C. '1855(e); and the IGRA.

**42.104 Interpretation and Relation to Other Laws.**

(1) In its interpretation and application the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe.

(2) This Chapter is enacted pursuant to and intended to be in conformity with the IGRA, NIGC regulations and the Tribal-State Compact. The applicable provisions of IGRA, NIGC regulation and the Compact control over any conflicting provision of this Chapter.

#### **42.105 Severability and Non-Liability.**

(1) If any section, provision, or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter will remain unaffected.

(2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this Chapter. The Tribe by adoption of this Chapter does not waive its sovereign immunity in any respect.

#### **42.106 Implied Consent.**

Entry upon Indian land without the permission of the Tribe is prohibited. Such permission where given is expressly conditioned upon the consent of the person entering such land to the jurisdiction of the Tribe for purpose of enforcing this Chapter. Entry made in any manner which is not in conformity with the provisions of this Chapter is made without consent. Any person who enters upon Indian land shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this Chapter.

#### **42.107 Effective Date.**

This Chapter shall take effect upon its approval or substitute approval by the Chairman of the NIGC under 25 CFR Part 522.

#### **42.108 Repealer.**

(1) The following Tribal ordinances, together with all amendments and additions to those ordinances, are hereby repealed in their entirety:

(a) the Millionaire Party Gaming Ordinance, adopted November 4, 1985 by Tribal Resolution 11-04-85C; and

(b) the Bingo Control Ordinance, adopted February 19, 1985 by Tribal Resolution 2-19-85.

(2) When this Chapter imposes greater restrictions than those contained in other previously enacted Tribal ordinances, codes, or resolutions, the provisions of this Chapter shall govern.

### **SUBCHAPTER II: DEFINITIONS**



#### **42.201 General Provisions.**

In construing the provisions of this Chapter, unless otherwise plainly declared or clearly apparent from the context:

- (1) words in the present tense shall include the future tense;
- (2) words in the masculine, feminine and neuter genders shall include all genders;  
and
- (3) words in the singular shall include the plural, and in the plural shall include the singular.

#### **42.202 Board of Directors.**

"Board of Directors" means the Board of Directors of the Tribe.

#### **42.203 Class I Gaming.**

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

#### **42.204 Class II Gaming.**

"Class II Gaming" means:

- (1) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith):
  - (a) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;
  - (b) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are shown or electronically determined;  
and
  - (c) in which the game is won only by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo; and,
- (2) those card games actually operated by the Tribe on or before May 1, 1988, to

the extent of the nature and scope of the card games on or before such date.

(3) card games that are:

(a) explicitly authorized by the State of Michigan; or

(b) are not explicitly prohibited by the laws of the State of Michigan and are played at any location in the State of Michigan;

but only if such card games are played in conformity with those laws and regulations (if any) of the State of Michigan regarding hours and periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(4) The term "class II gaming" does not include:

(a) any banking card games which are not included in sub. (2); or

(b) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

**42.205 Class III Gaming.**

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

**42.206 Commission.**

"Commission" means the Tribal Gaming Commission.

**42.207 Commissioner.**

"Commissioner" means one of the members of the Commission.

**42.208 Director.**

"Director" means the Director of the Commission appointed by the Board of Directors as provided in '42.407.

**42.209 Electronic Games of Chance.**

"Electronic Games of Chance" means gambling games of chance featuring coin drop and payout as well as printed tabulations, whereby the software of the device predetermines the presence or lack of a winning combination and payout. Electronic games of chance are

defined as a microprocessor-controlled electronic device which allows a player to play games of chance, which may be affected by an element of skill, activated by the insertion of a coin or currency, or by the use of a credit, and awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash.

**42.210 Game and Gambling Game.**

"Game" and "Gambling Game" means any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, blackjack (21), seven-and-a-half, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission, but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.

**42.211 Gaming and Gambling.**

"Gaming" and "Gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined by this Chapter.

**42.212 Gaming Consultant.**

"Gaming Consultant" means any person paid by the Tribe, the Commission, a licensed gaming establishment, or a management contractor for professional, consulting or advisory services related to gaming, or to perform any of the functions of a primary management official or key employee, as an independent contractor and not an employee. However, the term does not include an attorney with a contract approved under 25 USC '81 or '476.

**42.213 Gaming Device.**

"Gaming Device" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria for random selection, which affects the operation of any game or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined.

**42.214 Gaming Employee.**

(1) "Gaming Employee" means any person connected directly with the operation of a licensed gaming establishment, including:

(a) accounting or internal auditing personnel who are directly involved in any record keeping or the examination of records associated with revenue from gaming;

(b) boxmen;

(c) cashiers;

(d) change personnel;

(e) counting room personnel;

(f) dealers;

(g) employees of manufacturers or distributors of gaming devices operated on any gaming establishment who have keys for slot machines or who accept and transport revenue from the slot drop;

(f) floor men;

(g) hosts or other persons empowered to extend credit or complimentary services;

(h) keno runners;

(I) machine mechanics;

(j) security personnel;

(k) shift or pit bosses;

(l) shills;

(m) supervisors or managers; and

(n) ticket writers.

(2) "Gaming employee" does not include bartenders, cocktail waitresses or other persons engaged exclusively in preparing or serving food or beverages.

**42.215 Gross Revenue.**

"Gross revenue" means the total revenue from all sources of a gaming operation before operating expenses but after all gaming wins. The rules and regulations of the American Institute of Certified Public Accountants defining gross revenues in a gaming operation are adopted by this Chapter as if fully set forth herein. This definition may be further defined by regulations promulgated by the NIGC.

**42.216 IGRA.**

"IGRA" means the Indian Gaming Regulatory Act, Pub.L. 100-497, 102 Stat. 2467, the main provision of which are codified at 25 USC '2701 et seq., and any subsequent amendments.

**42.217 Indian Land.**

"Indian land" means:

- (1) land within the limits of the Reservation; or
- (2) land over which the Tribe exercises governmental power and that is either:
  - (a) held in trust by the United States for the benefit of the Tribe or a member of the Tribe; or
  - (b) held by the Tribe or a member of the Tribe subject to restriction by the United States against alienation.

**42.218 Key employee.**

"Key employee" means:

- (1) A person who performs one or more of the following functions:
  - (a) bingo caller;
  - (b) counting room supervisor;
  - (c) chief of security;
  - (d) custodian of gaming supplies or cash;
  - (e) floor manager;
  - (f) pit boss;
  - (g) dealer;

(h) croupier;

(I) approver of credit; or

(j) custodian of gaming devices including persons with access to cash and accounting records within such devices.

(2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year.

(3) If not otherwise included, the four most highly compensated persons in the gaming operation.

**42.219 License.**

"License" means any license issued under Subchapter V of this Chapter.

**42.220 Licensed Gaming Establishment.**

"Licensed Gaming Establishment" means any premises licensed under '42.503 or '42.504 in or upon which gaming takes place.

**42.221 Licensee.**

"Licensee" means any person to whom a license has been issued under the provisions of this Chapter.

**42.222 Management Contract.**

"Management Contract" means any contract, subcontract or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or a part of a licensed gaming establishment that has been approved under Subchapter VI of this Chapter.

**42.223 Native American or Indian.**

"Native American" or "Indian" means any person who is subject to federal criminal jurisdiction under the Major Crimes Act, 18 USC '1153.

**42.224 Net Revenue.**

"Net Revenue" means gross gaming revenues of an Indian gaming operation less:

- (1) amounts paid out as, or paid for, prizes; and
- (2) total gaming-related operating expenses, excluding management fees.

**42.225 NIGC.**

"NIGC" means the National Indian Gaming Commission, established by IGRA, 25 USC '2704.

**42.226 Operating Expense.**

"Operating expense" means any expense incurred in the daily operation of a licensed gaming establishment, including items specifically designated as operating expenses in a management contractor regulation adopted by the Commission.

**42.227 Patron.**

"Patron" means any person or group of persons on Indian land who participate as players in games as defined by this Chapter, or use a gaming device, or who are physically present on premises in or upon which such games are being played or such devices are used.

**42.228 Person.**

"Person" means any association, partnership, corporation, limited liability company, firm, trust or other form of business association as well as a natural person.

**42.229 Primary Management Official.**

"Primary Management Official" means:

- (1) the person having management responsibilities for a management contract;
- (2) any person who has authority;
  - (a) to hire and fire employees; or
  - (b) to set up working policy for a licensed gaming establishment; or
- (3) the chief financial officer or other person who has financial management responsibility.

**42.230 Reservation.**

"Reservation", when not qualified, means the Sault Ste. Marie Tribe of Chippewa Indians Indian Reservation and any other lands designated for the Tribe as reservation lands by the Secretary of the Interior.

**42.231 Tribal Court.**

"Tribal Court" means the Tribal Court of the Sault Ste. Marie Tribe of Chippewa Indians, as established by Tribal Code Chapter 80.

**42.232 Tribal-State Compact or Compact.**

"Tribal-State Compact" or "Compact" means the agreement between the Tribe and the State of Michigan providing for the conduct of Class III gaming under 25 USC '2710(d) executed on August 20, 1993, together with any subsequent amendments or agreements.

**42.233 Tribe.**

"Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

**SUBCHAPTER III: OWNERSHIP AND OPERATION OF LICENSED GAMING ESTABLISHMENTS.**

**42.301 Tribal Ownership of Licensed Gaming Establishments.**

Each licensed gaming establishment shall be wholly owned by the Tribe. No part or share of the proceeds of the operation of a Tribal gaming establishment shall inure to the benefit of any person except as provided in a management contract approved in accordance with Subchapter VI. No gaming employee shall have any interest in the ownership or leasing of any property, gaming device or premises used by a licensed gaming establishment.

**42.302 Revenues to Benefit Tribe.**

(1) The Tribe shall have the sole proprietary interest and responsibility for the conduct of any gaming, subject to any management contract approved under Subchapter VI under which net profits are divided between the Tribe and other parties to the contract.

(2) A licensed gaming establishment shall be operated so as to produce the maximum amount of net revenue to the Tribe.

(3) The net revenue shall be used solely for one or more of the following purposes:

(a) to fund Tribal governmental operations or programs;



- (b) to provide for the general welfare of the Tribe and its members;
- (c) to promote Tribal economic development;
- (d) to donate to charitable organizations;
- (e) to help fund operations of local government agencies;
- (f) for per capita payments to Tribal members upon adoption of a plan to do so by the Board of Directors and approval of the plan by the Secretary of the Interior under 25 USC § 2710(b)(3).

**42.303 Management by Tribal Gaming Authority.**

(1) Subject to the provision of any management contract, each licensed gaming establishment shall be operated as a Tribal enterprise under the supervision and management of Sault Ste. Marie Tribal Gaming Authority, as provided in its Charter, Tribal Code Chapter 94.

(2) Within the limitations imposed by this Chapter; the Sault Ste. Marie Tribal Gaming Authority Charter, Tribal Code Chapter 94; and other provisions of Tribal law, and subject to the provision of any management contract, the Tribal Gaming Authority shall:

- (a) exercise exclusive control over the management and conduct of the business and operations of each licensed gaming establishment, including rules of play for the games played;
- (b) contract and incur liability for and on behalf of the licensed gaming establishment;
- (c) borrow for or on behalf of the licensed gaming establishment money which in its discretion and judgment be necessary for the conduct of the business, and pledge or encumber business assets to secure the repayment of money so borrowed;
- (d) make all contracts for and on behalf of the licensed gaming establishment in the conduct of its business;
- (e) employ, discipline and discharge employees and establish personnel policies and terms and conditions of employment;
- (f) carry on and transact or supervise and control all of the other gaming business of the Tribe; and

(g) establish procedures for resolving disputes between the gaming public and the licensed gaming establishment or management contractor.

#### **42.304 Gaming Managers.**

The Tribal Gaming Authority shall employ one or more gaming managers to operate the licensed gaming establishments. The Tribal Gaming Authority may delegate to a gaming manager such of its powers and duties as it deems appropriate, subject to its supervisory authority. Any person employed as a gaming manager upon the effective date shall continue in that capacity, provided such person obtains a license as required by Subchapter V.

### **SUBCHAPTER IV: TRIBAL GAMING COMMISSION**

#### **42.401 Establishment and Composition of the Commission.**

(1) The Tribal Gaming Commission is hereby created. The Commission shall consist of the members of the Board of Directors holding office from time-to-time, except as provided in subsection (3) below.

(2) A Commissioner shall hold office by virtue of his position as a member of the Board of Directors, and shall hold office as a Tribal Gaming Commissioner only during his tenure as a member of the Board of Directors.

(3) A member of the Board of Directors may decline to serve as a Tribal Gaming Commissioner by filing a signed statement of declination with the Secretary of the Board of Directors. Positions so vacated shall not be filled and shall not be counted in determining the requirement for a quorum pursuant to Section 42.405 (2).

(4) The principal office of the Commission shall be maintained in Sault Ste. Marie, Michigan.

#### **42.402 General Powers and Duties of Commission.**

The Commission shall have the powers and duties granted or imposed by this Chapter, which shall include the following:

(1) To inspect and examine all premises wherein gaming is conducted or gambling or gambling devices, equipment or supplies are manufactured, sold or distributed.

(2) To inspect all gaming devices, equipment and supplies in, upon or about a licensed gaming establishment, or inspect any gaming devices, equipment or supplies wherever located, which may or have been used in the licensed gaming establishment.

(3) To summarily seize and remove and impound such gaming devices, equipment or supplies for the purpose of examination or inspection.

(4) To demand access to and inspect, examine and audit all papers, books, and records of all applicants and licensees or affiliates of an applicant or licensee respecting any income produced or expenditures made by any licensed gaming establishment, and require verification of income and all other matters affecting the enforcement of any provision of this Chapter vested in the Commission.

(5) To demand access to and inspect, examine and audit all papers, books, and records of any and all business conducted in a licensed gaming establishment whether or not a license is required to conduct such business.

(6) To refer to federal, state or Tribal prosecutors or the NIGC the results of any investigation for possible prosecution, institution of civil remedial forfeiture proceedings, or other remedial action.

(7) To conduct hearings authorized by this Chapter and to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any person making false oath in any matter before the Commission is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action. The Commission may pay such transportation and other expenses of witnesses as it may deem reasonable and proper.

(8) To promulgate regulations as authorized in this Chapter.

(9) To meet at least quarterly with the Director.

(10) To organize itself into such functional divisions as it may deems necessary or expedient from time to time.

(11) To receive and investigate complaints from patrons and other persons of violations of this Chapter or Commission regulations.

(12) To employ staff and consultants in carry out its duties, and to make other expenditures consistent with its budget approved under '42.411.

(13) To keep and maintain a file of all applications for licenses, together with a record of all action taken with respect to such applications.

(14) To keep and maintain such other files and records as deemed necessary, to be open to public inspections as deemed appropriate.

(15) To review and oversee implementation of internal controls adopted by management as required by '42.715.

(16) To take other action necessary and incidental to the enumerated powers and duties.

#### **42.403 Compensation for Commissioners.**

Commissioners shall be compensated at a rate to be established annually by the Commission and approved by the Board of Directors. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses. In no event shall compensation be based on the profitability of gaming operations.

#### **42.404 Commission Chairperson.**

The Chairman of the Board of Directors shall serve as Chairman of the Tribal Gaming Commission. The Chairman shall chair meetings of the Commission pursuant to its bylaws should there be any. Where the Chairman can not chair a meeting the Vice-Chairman of the Board of Directors shall chair the meeting and then the Secretary of the Board of Directors and finally the Treasurer of the Board of Directors. The Chairman, or a majority of the Commissioners, shall have the power to convene special meetings of the Commission. The Chairman shall vote only in the event of a tie.

#### **42.405 Meetings.**

(1) The Commission shall hold quarterly meetings on the first Tuesday of each quarter, starting with March 4, 2008, and the first Tuesdays of June, September and December 2008 and thereafter. Regular meetings shall be open to the general membership of the Tribe. Meetings shall be conducted according to bylaws adopted by the Commission and approved by the Board of Directors for that purpose.

(2) A quorum shall consist of a simple majority of the Commissioners then holding office. All decisions shall be made by a majority vote of the Commissioners attending a meeting, provided a quorum is present, unless otherwise provided in this Chapter.

(3) Matters dealing with personnel, security, particular applicants or licensees, enforcement, or the fiscal integrity of the licensed gaming establishment shall be conducted in executive session and shall not be open to the public.

(4) Regardless of Chapter 14, Section 14.103, a special meeting may be convened by:

- (a) The Chairperson given 48 hours written notice; or
- (b) The Commissioners, upon majority consent, with 48 hours written notice.

(5) The Commission shall cause to be made and kept a record of all proceedings at its regular and special meetings. Those records shall be open to inspection by the Board of Directors.

**42.406 Quarterly Report.**

The Commission shall make quarterly reports to the Board of Directors within thirty (30) days after the close of the quarter. The report shall include a summary of all licensing and completed investigative actions and a financial report on the Commission budget.

**42.407 Appointment of Director.**

The Board of Directors, with the advice and consent of the Commission, shall appoint a Director who shall be responsible for the day-to-day management of the affairs of the Commission. A detailed background investigation shall be conducted on the Director before his appointment and the Commission shall maintain oversight of the director on an ongoing basis. Preference shall be given to applicants with experience in legal gaming or law enforcement. The Director shall meet the requirements of '42.505(3). The Director shall not have any personal interest in any Tribal gaming operations.

**42.408 Director's Contract.**

The Director shall be hired on a contract for a period of at least two (2) years. The terms of the contract, including compensation, shall be approved by the Board of Directors. Compensation for the Director shall not be based, in whole or in part, on the profitability of the gaming operations.

**42.409 Termination of Director.**

The Director shall be terminated immediately and without the necessity of a vote or hearing upon conviction of or entry of a plea of guilty or no contest to any criminal offense. Otherwise, the Director shall be suspended or terminated upon the same grounds and under the same terms, conditions and procedures as are set forth in '42.515, except suspensions and initiation of termination proceedings shall be the function of the Commission, and the hearing and decision shall be the function of the Board of Directors.

**42.410 Duties of Director.**

The Director shall, subject to the supervision of the Commission, perform all duties, exercise all powers, and assume and discharge all responsibilities imposed by this Chapter or delegated by the Commission. The Director's duties shall include but not be limited to the following:

- (1) Serve as the chief executive officer of the Commission and supervise its staff.
- (2) Negotiate contracts for the provision of services necessary for the operation of the Commission as approved by the Commission and expend funds for its operation within its budget.
- (3) Arrange for an annual outside audit of authorized gaming and provide a copy to the NIGC and the Board of Directors.
- (4) Provide for an adequate system which ensures that the background investigations required by this Chapter are conducted in a manner which complies with this Chapter and with NIGC regulations.
- (5) Make a decision on all applications for licenses, subject to appeal to the Commission.
- (6) Provide for investigations and oversight of licensees, make decisions on suspension of licenses, and initiate license revocation proceedings.
- (7) Provide for investigation of complaints relating to activities which fall within the regulatory authority of the Commission.
- (8) Send notice to the NIGC of all actions or matters for which such notice is required by this Chapter, IGRA or NIGC regulations.
- (9) Prepare reports and make recommendations to the Commission about any other matter within the Commission's jurisdiction.

#### **42.411 Commission Budget.**

- (1) The Commission shall prepare an annual budget for operations, including the Director, staff, consulting services, equipment, supplies and such other items as are deemed necessary or desirable in carrying out its functions.
- (2) The budget shall be submitted to the Board of Directors for approval. The Board of Directors shall appropriate such sums as are reasonable and necessary to allow the Commission to perform its duties. The Board of Directors may review and modify the budget from time to time.

#### **42.412 Restrictions on Commissioners and Director.**

(1) The Director and the Commissioners may hold another Tribal position or engage in any business which does not conflict with their responsibilities under this Chapter. However, neither the Director nor any Commissioner may be engaged in or have any pecuniary interest in any business which is subject to the provisions of this Chapter or which does business with any licensed gaming establishment.

(2) A Gaming Commissioner, a Gaming Commission staff member, or a Director or a member of the Director's household, shall not be able to gamble in any Sault Ste. Marie Tribe of Chippewa Indians' gaming establishment licensed pursuant to this Chapter, or have any personal financial interest in any gambling by any patron in an establishment licensed pursuant to this Chapter.

#### **42.413 Applications and Investigations.**

(1) Each license application from a primary management official, key employee or gaming consultant shall contain all of the information required by 25 CFR '556.4(a). The application form shall contain the privacy notice and the notice regarding false statements required by 25 CFR '556.2 and '556.3, respectively.

(2) The Director shall conduct a background investigation on each primary management official, key employee or gaming consultant sufficient to make a licensing determination under '42.505.

(3) The Director shall investigate the qualifications of each applicant under this Chapter before any license is issued or any approval of acts or transactions for which Director or Commission approval is required or permission granted, and shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming establishment to ensure that licenses are not issued to or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation by, unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner.

#### **42.414 Licensing Decisions.**

The Director shall make the decision regarding the approval, disapproval, suspension, initiation of revocation proceedings regarding, or imposition of limit or condition upon a license. Any licensing decision made by the Director may be appealed to the Commission as provided in '42.415.

#### **42.415 Right to a Hearing.**

(1) Any person aggrieved by a decision or determination made by the Director or by the Commission without a hearing may appeal that decision or determination to the

Commission by filing a written notice of appeal with the Commission within ten (10) days after the decision or determination is made.

(2) The Commission shall hold a hearing to review the matter within thirty (30) days after receipt of a notice of appeal. At the hearing, the burden shall be upon the aggrieved party to show why the decision or determination was incorrect. The Commission shall issue regulations providing procedures for such hearings.

(3) The Commission shall make its decision and issue written findings and conclusions within eight (8) working days after the hearing.

(4) The decision of the Commission shall be final, and no further appeal may be had. The Tribal Court shall not have jurisdiction to hear appeals of Commission decisions, nor to review the Commission actions in any other way.

#### **42.416 Confidentiality.**

The Commission and the Director may refuse to reveal in any court proceeding the identity of any informant, or the information obtained from the informant, or both the identity and the information.

#### **42.417 Commission Regulations.**

The Commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this Chapter, as it may deem necessary or desirable in the public interest in carrying out the duties of the Commission as defined by this Chapter. Commission regulations shall be submitted to the Board of Directors for review and shall not take effect until approved by resolution of the Board of Directors, except as provided in '42.418(2). These regulations must at a minimum include the following:

(1) The method and form of application which any applicant for a license must follow and complete before consideration of the application by the Director.

(2) The information to be furnished by any applicant or licensee concerning his or her antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present and any additional information required by the IRGA, NIGC regulations, the Tribal-State Compact, or this Chapter.

(3) The information to be furnished by a licensee relating to employees.

(4) Fingerprinting of an applicant or licensee or employee of a licensed gaming establishment and other methods of identification as the Commission deems appropriate.

(5) The manner and method of collection and payment of fees and issuance of licenses.



(6) Requiring an applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the Commission.

(7) Prescribing the manner and procedure of all hearings conducted by the Commission.

(8) Protecting due process rights of all individuals subject to the enforcement of this Chapter by the Commission. Such regulations shall, at a minimum:

(a) provide standards for emergency or summary suspension of license; and

(b) provide fair notice and opportunity for hearing regarding any revocation or suspension of license, and regarding any enforcement action taken pursuant to this Chapter by the Director or the Commission.

**42.418 Prior Notice of Actions.**

(1) In adopting, amending, and repealing regulations, the Commission shall give prior notice of the proposed action to all licensees and other persons whom the Commission or Director has reason to believe have a legitimate and bona fide interest in such proposed action. The notice shall inform such persons as to the general nature of the proposed action and advise them as to the manner in which comments on the proposed action shall be received by the Commission.

(2) In emergencies, the Commission may summarily adopt, amend or repeal any regulation if at the time the Commission determines such action is necessary for the immediate preservation of the public peace, health, safety, morals, and good order or general welfare, together with a statement of facts constituting the emergency. Such regulation shall take effect immediately but shall expire ten days after the date of adoption unless reviewed and approved by the Board of Directors within that ten day period. The Commission shall schedule such emergency action for regular comment and action within sixty (60) days after any such emergency action.

**42.419 Request for Commission Action.**

Any person who is determined by the Commission or Director to be a bona fide interested party may file a petition in a manner and form approved by the Commission requesting the adoption, amendment or repeal of a regulation. Upon receipt of the petition, the Commission shall within thirty (30) days deny the request in writing or proceed with the requested action.

**42.420 Independence of Commission.**

The Commission is constituted as an independent regulatory agency of the Tribe. It shall not be subject to political direction or influence in the performance of its duties from the Board of Directors or any member of the Board or officer of the Tribe.

**42.421 Relation to Gaming Management.**

Neither the Commission nor the Director has any role in the management of any licensed gaming establishment. Aside from the specific duties of the Commission and Director as defined in this Chapter all decisions, policies and actions with regard to the operation of any licensed gaming establishment are the prerogative and responsibility of gaming management as described in Subchapter III of this Chapter.

**42.422 Legal Advisor.**

The Board of Directors shall appoint an attorney as legal advisor for the Commission. Such attorney shall represent the Commission in any proceedings to which the Commission is a party.

**42.423 Approval of Gaming Devices.**

The Commission may, in its discretion, review and approve all gaming devices used in any licensed gaming establishment to assure compliance with the minimum standards imposed in '42.704.

**42.424 List of Undesirables.**

(1) The Commission shall, by regulation, provide for the establishment of list of persons who are to be excluded or ejected from any licensed gaming establishment. The list may include any person whose presence is determined by gaming management to pose a threat to the interests of the Tribe or to licensed gaming.

(2) The Commission shall promulgate regulations providing fair notice and opportunity to be heard to any individual whose name has been placed on the list by gaming management. Such regulations must provide the person an opportunity to show cause why the person's name should be deleted from the list.

**SUBCHAPTER V: LICENSES**

**42.501 Types of Licenses.**

(1) Each gaming establishment on Indian land shall obtain a license. Any person wishing to conduct class II or class III gaming on Indian land shall apply for a license authorizing such gaming.

(2) Any person who has been hired for a position in or is employed in any licensed gaming establishment as a primary management official or a key employee, and all gaming consultants shall apply for a license authorizing such employment or consulting.

(3) Any gaming device supplier shall apply for and obtain a license before supplying, assembling, or installing any gaming device, equipment or supply to or in a licensed gaming establishment.

(4) Any person seeking to conduct, operate or manage any gaming on Indian land shall apply for, and receive, all required licenses prior to engaging in such activity, except as provided in '42.511.

#### **42.502 Class I Gaming.**

Class I gaming may be conducted on Indian land without a license. The Commission may investigate such activity to insure that it meets all requirements for class I gaming, and may promulgate regulations concerning such gaming.

#### **42.503 Licensing of Class II Gaming.**

(1) A separate license shall be required for each place, facility, or location on Indian land at which any class II gaming is conducted.

(2) The Director or Commission may license a Tribally owned class II gaming establishment if:

(a) such establishment is located on land as provided in '42.801;

(b) the State of Michigan continues to permit such gaming for any purpose by any person, organization or entity, and such gaming is not otherwise specifically prohibited on Indian land by federal law;

(c) subject to any management contract approved under Subchapter VI, the Tribe has the sole proprietary interest and responsibility for the conduct of such gaming;

(d) net revenues from such gaming are used in accordance with '42.302(3);

(e) such gaming activity is subject to annual outside audits, which may be encompassed within existing independent Tribal audit systems, and provided to the Board of Directors;

(f) all contracts for supplies, services or concessions for any aggregated amount in excess of \$25,000 annually relating to such class II gaming (except contracts for legal or accounting services) are also subject to independent audits;

(g) the construction and maintenance of the gaming facility, and the operation of the gaming, is conducted in a manner which adequately protects the environment and the health and safety of the public;

(h) background investigations are conducted on all primary management officials, key employees and gaming consultants of the class II gaming operation in the manner provided in '42.413 and this Subchapter; and

(i) oversight of primary management officials, key employees and gaming consultants, and their management, is conducted on an ongoing basis.

#### **42.504 Licensing of Class III Gaming.**

(1) The Director or Commission may license class III gaming if such gaming is conducted in conformity with the IGRA, NIGC regulations, the Tribal-State Compact, and this Chapter. In addition, the applicant shall meet and comply with all of the requirements of '42.503(2). Any gaming establishment wishing to conduct class III gaming must be licensed.

(2) A class III licensed gaming establishment may lawfully conduct the following games:

(a) craps and related dice games;

(b) wheel games, including "Big Wheel" and related games;

(c) roulette;

(d) banking card games that are not otherwise treated as class II gaming in Michigan pursuant to 25 USC '2703(7)(c), and non-banking card games played by any Michigan tribe on or before May 17, 1988;

(e) electronic games of chance; and

(f) keno.

(3) Additional class III games may be played by the licensee only if they have been authorized under '3(B) of the Tribal-State Compact.

#### **42.505 Licensing of Primary Management Officials, Key Employees, and Gaming Consultants.**

(1) Any person determined by the Director to be qualified to receive a license shall be issued a license. No license shall be issued unless a background investigation has been completed on the applicant.

(2) The Director shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a primary management official, key employee or gaming consultant for a license.

(3) No license shall be granted to any person who:

(a) is under the age of 18; or

(b) has been convicted of or entered a plea of guilty or no contest to a gambling related offense, fraud or misrepresentation; or

(c) has been convicted of or entered a plea of guilty or no contest to any offense not specified in sub. (b) within the immediately preceding five years. This provision shall not apply if that person has been pardoned by the Governor of the state where the conviction occurred or, if a Tribal member, is determined to be a person who is not likely again to engage in any offense or criminal course of conduct and the public good does not require that the applicant be denied a gaming license; or

(d) is determined to have participated in organized crime or unlawful gambling or whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

#### **42.506 Licensing of Gaming Device Suppliers.**

(1) Any person who supplies gaming devices to any licensed gaming establishment shall have a license issued by the Director or Commission. A person is a gaming device supplier if the person sells, leases, assembles or installs any gaming device, equipment or supplies for use at any licensed gaming establishment.

(2) Prior to entering into any lease or purchase agreement, the licensed gaming establishment or the proposed gaming device supplier, and all persons holding a direct or indirect financial interest in the gaming device supplier or the lease or purchase agreement, shall provide to the Director such information as the Commission shall prescribe to permit the Director to conduct a background investigation on those persons or entities. The Director shall be provided any additional information that the Director may request.

(3) The Director shall review the information submitted and determine from the applicant's prior activities, criminal record, if any, and reputation, habits and associations whether to make a finding of the eligibility of the gaming device supplier for a license. No license shall be issued if the applicant, or any manager or person holding direct or indirect

financial interest in the supplier or the proposed lease or purchase agreement is determined to have:

- (a) participated in or have involvement with organized crime; or
- (b) been convicted of or entered a plea of guilty or no contest to a gambling related offense, fraud or misrepresentation; or
- (c) been convicted of or entered a plea of guilty or no contest to any other felony offense within the immediately preceding five years, unless that person has been pardoned.

**42.507 Non-Transferability of License.**

Any license issued pursuant to the provisions of this Subchapter is valid only for the person or establishment at the place of business shown on its face. It is not assignable or otherwise transferable.

**42.508 Granting of License.**

(1) Subject to appeal to the Commission as provided in Subchapter IV, all licenses shall be issued by the Director.

(2) No license shall be issued to a person whose license has previously been revoked pursuant to this Chapter, or to whom the issuance or renewal of a license has been denied, except with the unanimous approval of the Commission members.

**42.509 Consultation with Law Enforcement.**

The Director shall consult with appropriate law enforcement officials concerning any application for a license before the license is issued.

**42.510 Fees.**

The Commission shall set a fee for applications, background investigations and licenses. All such fees shall be made payable to the Tribe.

**42.511 Ninety Day Limitation; Grace Period.**

(1) No licensed gaming establishment shall employ a primary management official or key employee who does not obtain a license within ninety (90) days of being hired or upon the clearance of the fingerprints from the background checks submitted to the Federal Bureau of Investigation. No such person may begin employment without having had completed an application for a license. No gaming consultant shall perform any services for

a licensed gaming establishment prior to issuance of a license. If any information is received that would disqualify the applicant from receiving a license, the applicant will no longer be employed.

(2) Notwithstanding any other provision of this Chapter, primary management officials, key employees and gaming consultants employed by the Tribe in gaming prior to the effective date of this Chapter shall not be required to have a license upon the effective date. All such persons shall apply for a license within ten (10) working days after the effective date. The Director shall make a determination whether to grant a license within ninety (90) days of the effective date; provided, that if the Director needs additional time, a temporary license may be issued to an applicant for thirty (30) days, so long as such action will not endanger the effective regulation of gaming under this Chapter.

(3) Notwithstanding any other provision of this Chapter, gaming facilities operated by the Tribe on the effective date of this Chapter shall not be required to be licensed upon the effective date. Each Tribal facility shall apply for a license within five (5) working days after the effective date. The Director shall make a determination to grant a license within thirty (30) days of the effective date. Upon issuance of the license the gaming facility shall comply fully with all provisions of this Chapter.

#### **42.512 Reports to NIGC; Processing of Applications.**

(1) At the time a primary management official or key employee is employed by a licensed gaming establishment, the Director shall forward to the NIGC a completed application containing the information required by '42.413(1).

(2) Before issuing a license to a primary management official or key employee, and in no event more than sixty (60) days after an employee begins work or of the effective date of this Chapter, the Director shall forward to NIGC an investigative report on the background investigation for that employee, together with a copy of the determination on eligibility for licensing. The investigative report shall include the following:

- (a) steps taken in conducting a background investigation;
- (b) results obtained;
- (c) conclusions reached; and
- (d) the basis for those conclusions.

(3) No license shall be issued until the happening of the first of these events:

(a) receipt of notification that the NIGC has no objection to the issuance of a license; or

(b) the expiration of the thirty (30) day period for NIGC review under 25 CFR '558.3(c).

(4) If, within the thirty (30) day period provided for NIGC review under 25 CFR '558.3(c), NIGC provides the Director with a statement itemizing objections to the issuance of the license, the Director shall reconsider the application, taking into account the objections itemized by NIGC. The Director may refer the matter to the Commission for reconsideration. The Director or the Commission shall make the final decision whether to issue a license to the applicant.

(5) If the Director or Commission does not license an applicant, the Director shall notify NIGC of that action.

#### **42.513 Disclosure by Applicant.**

The burden of providing eligibility to receive any license is on the applicant. An applicant for licensing shall make true and full disclosure of all information to the Director as required by this Chapter, necessary and appropriate in the public interest or as required in order to carry out the policies of the Tribe relating to licensing and control of the gaming industry. It is the duty of the applicant to disclose all information material to whether the applicant's involvement with gaming would jeopardize or compromise the Tribal interest, whether or not the applicant has been specifically requested to provide that information.

#### **42.514 Violations by Licensee.**

(1) Violation of any material provision of this Chapter or of any Commission regulation by a licensee or its agent or employee shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the Tribe, and shall be deemed grounds for refusing to grant or renew a license or suspension or revocation of a license.

(2) Acceptance of a license or renewal on the part of the licensee shall constitute the licensee's agreement to be bound by all of the regulations and conditions of the Commission and Director and by the provisions of this Chapter and any amendments hereafter promulgated, and to cooperate fully with the Director and Commission. It is the responsibility of the Licensee to keep informed of the contents of such regulations, amendments, provisions, and conditions, and ignorance will not excuse violations.

(3) The management of any licensed gaming establishment shall report to the Director any known or suspected violation of this Chapter, regulations under this Chapter or any criminal activity, whether related to gaming or otherwise, by any person licensed under



this Subchapter as soon as the information becomes known to management. The report must be made regardless of whether disciplinary action or referral for prosecution is contemplated.

#### **42.515 Suspension or Revocation of License.**

(1) If, after issuance of a license, the Director receives reliable information that a person licensed under this Chapter has violated or been charged with a violation of any criminal law, any provision of this Chapter or regulation promulgated under this Chapter, or is otherwise not eligible for a license, the Director shall conduct an investigation to determine whether revocation proceedings should be initiated.

(2) The person's license shall be suspended and revocation proceedings shall be initiated if:

(a) the person has been convicted of or pled guilty or no contest to any criminal offense; or

(b) the information came to the Director by notification from the NIGC pursuant to 25 CFR '558.5; or

(c) the person has been charged with a criminal offense related to gambling, fraud or activities arising during the course of employment.

(3) In all other cases, the Director may suspend the person's license pending completion of the investigation if circumstances warrant. The Director shall notify the licensee in writing of any suspension.

(4) In any case governed by sub. (2) and in other cases if the Director determines that circumstances warrant, the Director shall notify the licensee of a proposed revocation of the license. The notice shall include the time and place for a hearing on the proposed revocation before the Commission.

(5) At the hearing, the burden shall be on the licensee to establish continued eligibility for a license. After the hearing, the Commission shall make one of the following dispositions:

(a) revoke the license;

(b) reinstate the license; or

(c) reinstate the license with conditions or limitations.

(6) The decision of the Commission is final. The Commission may revoke a license regardless of whether:

- (a) the licensee has been disciplined or discharged by the licensed gaming establishment;
- (b) criminal or civil remedial forfeiture proceedings have been initiated; **o**
- (c) if criminal charges were brought, they resulted in a conviction or acquittal.

## **SUBCHAPTER VI: MANAGEMENT CONTRACTS**

### **42.601 Commission Approval Required.**

(1) Any management contract entered into by the Tribe or by any licensed gaming establishment for the operation and management of class II or III gaming activity must be submitted to the Commission for approval and a finding of suitability. Before approving such contract, the Commission shall require and obtain the following information:

- (a) The name, address of each of the following:
  - (i) each person with management responsibility for a management contract;
  - (ii) each person who is the director of a corporation that is a party to a management contract;
  - (iii) each member of the Board of Directors of a corporation that is a party to a management contract;
  - (iv) each stockholder of a corporation who holds either directly or indirectly 10% or more of its issued and outstanding stock;
  - (v) each person who has a direct or indirect financial interest in an entity that is a party to a management contract; and
  - (vi) each person who has a direct or indirect financial interest in a management contract.
- (b) For each of the individuals identified in sub. (a), the management contractor shall provide to the Commission:
  - (i) full name, other names used, social security number(s), birth date, place of birth, citizenship and gender;
  - (ii) a current photograph, driver's license number, and which state(s) issued a driver's license;

(iii) business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) until the present;

(iv) the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence for the past five (5) years;

(v) current residence and business addresses and telephone numbers;

(vi) a description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

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

(viii) 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;

(ix) for each gaming related offense and for each felony for which there is an ongoing prosecution or a conviction, or for which a plea of guilty or no contest was entered, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) a complete financial statement showing all sources of income for the previous three years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) the management contractor shall arrange with an appropriate federal, state or Tribal law enforcement authority to supply the Commission with a completed fingerprint form (form FD-258) which is supplied by the NIGC for each of the individuals identified in sub. (a).

(2) The management contractor shall supply any further or additional information as may be required by the IGRA, NIGC regulations or the Tribal-State Compact.

(3) The management contractor and any other person listed in sub. (1)(a) shall be required to respond to such written or oral questions as the Commission may propound in accordance with its responsibilities under this section.

(4) For purposes of this Chapter, any reference to the management contract described in sub. (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

#### **42.602 Requirements for Approval.**

The Commission may approve any management contract entered into by the Tribe or a licensed gaming establishment under this Subchapter only if it determines that such contract provides at a minimum:

(1) That all gaming covered by the contract will be conducted in accordance with the IGRA, NIGC regulations, the Tribal-State Compact and this Chapter.

(2) For the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(a) include an adequate system of internal accounting controls;

(b) include the preparation of financial statements in accordance with generally accepted accounting principles.

(3) For immediate access to the gaming operation, including its books and records, by appropriate Tribal officials who shall have a right to verify the daily gross revenues and income made from any gaming activity.

(4) For verifiable financial reports that are prepared by or for the Board of Directors on a monthly basis.

(5) For a minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs.

(6) For an agreed ceiling for repayment of development and construction costs.

(7) For a contract term not to exceed five years, except that, upon the request of the Tribe, a contract term of not more than seven years may be approved where the capital investment required and the income projections for the gaming activity require the additional time.

(8) For grounds and mechanisms for terminating such contract.

(9) For preference to Native Americans in the hiring of employees for the licensed gaming establishment in accordance with '42.708.

(10) For a fee based upon a percentage of the net revenues of a licensed gaming establishment that is reasonable in light of surrounding circumstances. Such fee shall not exceed thirty (30%) of the net revenues except that a management fee of not more than forty percent (40%) of net revenues may be approved when requested by the Tribe only if the capital investment required and income projections for such gaming activity require the additional fee.

#### **42.603 Contract Disapproval.**

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

(1) Any person listed in '42.601(1)(a):

(a) is an elected member of the Board of Directors; or

(b) has been or subsequently is convicted of any felony or gaming offense;  
or

(c) has knowingly and willfully provided materially important false statements or information to the Commission or Tribal officials or has refused to respond to questions propounded under '42.601(1)(b); or

(d) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements thereto;

(2) the management contractor has, or has attempted to, unduly interfere with or influence for its gain or advantage any decision or process of Tribal government relating to gaming activity; or

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the provisions of the IGRA, NIGC regulations, the Tribal-State Compact or this Chapter.

#### **42.604 Modify or Voiding Contract.**

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

(2) If the Tribe elects to agree contractually to resolve disputes in a manner other than by revocation of a management contract, such contractual agreement shall supersede sub. (1), so long as the agreement provides a reasonable avenue for the Tribe to insure a contractor's compliance with all other aspects of this Chapter.

**42.605 Conveying Interest in Land.**

No management contract transfer or in any manner convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

**42.606 Fee for Costs of Investigation.**

The Commission shall require a potential contractor to pay a fee to cover the cost of investigation necessary to reach a determination required in '42.602.

**42.607 Approval by Board of Directors.**

No management contract shall be approved by the Commission unless first reviewed and approved by resolution of the Board of Directors.

**42.608 Submission to NIGC.**

After the Commission has given its approval of a management contract, the Commission shall submit such contract to the NIGC for its approval. Any such contract shall not take effect until the NIGC has approved it.

**42.609 Notice to State of Michigan.**

If the Tribe enters into a management contract for the operation of any class III gaming or component thereof, the State of Michigan shall be given fourteen (14) days prior written notice of such contract.

**SUBCHAPTER VII: GENERAL PROVISIONS**

**42.701 Accounting Records.**

All accounting records at any licensed gaming establishment shall be kept on a double entry system of accounting, maintaining detailed supporting, subsidiary records. The

licensed gaming establishment shall maintain the following records for not less than three (3) years:

(1) revenues, expenses, assets, liabilities and equity for each licensed gaming establishment;

(2) daily cash transactions for each class III game, including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

(3) all markers, IOU's, returned checks, hold checks or other similar credit instruments;

(4) individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

(5) contracts, correspondence and other transaction documents relating to all vendors and contractors;

(6) records of all Tribal gaming enforcement activities;

(7) internal audits prepared by internal auditors on behalf of the licensed gaming establishment and provided to the Commission;

(8) personnel information on all class III gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

#### **42.702 Independent Audit.**

Every licensed gaming establishment shall be audited by independent certified public accountants. Such audit must include an opinion that the financial statement fairly and accurately presents the financial condition of the gaming operation in accordance with generally accepted accounting principles. The audit report must be provided to the Board of Directors.

#### **42.703 Notices to Patrons.**

(1) The rules of each class III card game shall be posted in a prominent place in each card room and must designate:

(a) the maximum rake-off percentage, time buy-in or other fee charged;

(b) the number of raises allowed;

(c) the monetary limit of each raise;

(d) the amount of ante; and

(e) other rules as may be necessary.

(2) In each licensed gaming establishment where class III gaming is conducted the gaming establishment shall post in a prominent position a notice to patrons at least two (2) feet by three (3) feet in dimension with the following language:

NOTICE

THIS FACILITY IS REGULATED BY ONE OR MORE OF THE FOLLOWING:

THE NATIONAL INDIAN GAMING COMMISSION, BUREAU OF INDIAN AFFAIRS OF THE U.S. DEPARTMENT OF THE INTERIOR, AND THE GOVERNMENT OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS.

THIS FACILITY IS NOT REGULATED BY THE STATE OF MICHIGAN.

**42.704 Minimum Standards for Gaming Devices.**

No class III gaming device, equipment or supplies may be purchased, leased or otherwise acquired by a licensed gaming establishment unless:

(1) the gaming device supplier has obtained a license under '42.506;

(2) the class III gaming device, equipment or supplies meet the technical equipment standards of either the State of Nevada or the State of New Jersey; and

(3) the gaming device has been reviewed and approved by the Commission under '42.423, if the Commission has required such approval.

**42.705 Installation of Gaming Equipment.**

A gaming device supplier shall provide, assemble, and install all class III gaming devices, equipment and supplies in a manner approved and licensed by the Commission.

**42.706 Compliance with Bank Secrecy Act.**

Any licensed gaming establishment shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508 84 Stat. 1122, 31 USC '5311-5314, as amended.

**42.707 Sale of Alcoholic Beverages.**

(1) All licensed gaming establishments shall comply with the Tribal Liquor Control Ordinance, Tribal Code Chapter 41. In addition, the Board of Directors hereby adopts the



following rules and regulations, applicable to licensed class III gaming establishments only, under its authority granted in Tribal Code '41.113:

Those laws of the State of Michigan, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas:

- (a) sale to a minor; and
- (b) sale to a visibly intoxicated individual; and
- (c) sale of adulterated or misbranded liquor; and
- (d) hours of operation; and
- (e) all similar substantive provisions.

(2) The above laws, which are defined by reference to the substantive areas of the laws of the State of Michigan referred to above, shall apply to licensed class III gaming establishments in the same manner and to the same extent as such laws apply elsewhere in the State of Michigan to off-reservation transactions.

(3) The Tribe, for resale at all licensed class III gaming establishments, shall purchase spirits from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by "Class C" licensees, as those licensees are defined by Michigan law.

#### **42.708 Native American Preference.**

Preference in the hiring of all employees at licensed gaming establishments or the Commission shall be given to Native Americans in accordance with the Tribe's employment preference policy.

#### **42.709 Employee Benefits.**

The Tribe shall provide to any employee who is employed in conjunction with the operation of any licensed gaming establishment at which class III gaming is conducted pursuant to the Tribal-State Compact, such benefits to which the employee would be entitled by virtue of Michigan Public Act No. 1 of 1936, as amended (being MCL 421.1 et. seq.), and Michigan Public Act No. 317 of 1969, as amended (being MCL 418.101 et. seq.) if the employee's employment services were provided to an employer engaged in a business enterprise which is subject to, and covered by, the respective Public Acts of the State of Michigan.

#### **42.710 Altered Gaming Devices.**

Any evidence that any gaming device, equipment or supply used in the conduct of gaming has been tampered with or altered in any way which would affect its integrity, fairness, honesty or suitability shall be immediately reported to the Commission.

**42.711 Minimum Age of Gaming Participants and Patrons.**

(1) No person under the age of 18 may participate in any class III game or any class II game other than bingo.

(2) No person under the age of 16 may participate in bingo.

(3) No person under the age of 16 may be physically present during the play of bingo, except children over 12 years of age when accompanied by a parent.

(4) No person under the age of 18 may be physically present on or in those portions of the premises of a licensed gaming establishment where class III gaming or class II gaming other than bingo or pull tabs is being played. Persons under the age of 18 may be physically present on or in those portions of the premises of a licensed gaming establishment where such gaming is not being played or in the restaurant area of such premises.

(5) This section establishes minimum age requirements. Nothing in this section shall prevent the management of any licensed gaming establishment from imposing minimum ages higher than those established in this section.

**42.712 Visibly Intoxicated Patron.**

A licensed gaming establishment may exclude or eject any individual who appears visibly intoxicated.

**42.713 Compliance with Federal Law and Regulations.**

The Director, the Commission, and each Commissioner, licensed gaming establishment, licensee and management contractor shall comply with all provisions of the IGRA, NIGC regulations, the Tribal-State Compact, and any other applicable provision of federal law or regulations related to gaming.

**42.714 Environment, Health and Safety.**

All gaming under this Chapter shall be conducted in a manner which adequately protects the environment and the health and safety of the public.

**42.715 Internal Controls.**

Each gaming manager and management contractor shall develop and implement a system of internal controls which will protect and ensure the integrity, security, safety, honesty and fairness of gaming and an effective and honest accounting of all revenues. The internal controls shall be subject to the review and oversight of the Commission.

**42.716 Background Checks on Vendors and Lessors.**

(1) The Gaming Commission shall conduct a background check on any vendor or lessor.

(a) provides any equipment, supplies or services, directly or indirectly, to a licensed gaming establishment; and

(b) is not required to be licensed under Subchapter V; and

(c) is paid in excess of \$25,000 in any one year period for the provision of such equipment, supplies or services.

(2) No gaming manager or management contractor shall contract with or purchase any equipment, supplies or services from any lessor or vendor if the background check reveals that such vendor or lessor, or any manager of or person holding a direct or indirect financial interest in the vendor or lessor or the proposed lease or contract:

(a) has been convicted of or pled guilty or no contest to any felony offense within the immediately preceding five years; or

(b) has participated in or has involvement with organized crime or unlawful gaming; or

(c) whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming.

**42.717 Offers and Gifts to Officials and Employees.**

(1) No person doing business or seeking to do business with the Tribe, a licensed gaming establishment, or a management contractor relating to gaming or the operation of a licensed gaming establishment shall give, provide, or offer to give or provide to any person listed in sub. (2) any of the following:

(a) any personal compensation, cash or payment of any kind;

(b) any gift, object, service or other thing whose value exceeds \$100; or

(c) any number or series of gifts, objects, services or things of value within a one year period whose aggregate value exceeds \$500.

(2) The prohibition in sub. (1) shall apply to the following persons as recipients or offerees:

- (a) the Director;
- (b) a Commissioner;
- (c) a member of the Board of Directors;
- (d) a member of the Economic Development Commission;
- (e) a primary management official of any licensed gaming establishment; or
- (f) a member of the immediate family of any of the above.

(3) No person listed in sub. (2) shall accept or receive anything listed in sub. (1) (a) - (c) if the person knows that the giver or offeror is violating sub. (1).

(4) No person shall offer, give or receive any compensation, cash, gift, service or any other thing of value with the intent that the offeror or giver gain unfair advantage in any authorized wager or gaming.

## **SUBCHAPTER VIII: ENFORCEMENT AND PENALTIES**

### **42.801 Permitted Activity.**

Class II and III gaming conducted in conformity with this Chapter is permitted at tribally owned licensed gaming establishments located on the following lands:

(1) Indian Lands as defined by the Indian Gaming Regulatory Act and Part 42.217 of this chapter, unless prohibited by 25 USC § 2719 (a); or

(2) Indian lands acquired by the Secretary of the Interior in trust on or before October 17, 1988; or

(3) land which is acquired by the Secretary of the Interior in trust for the benefit of the Tribe after October 17, 1988 and the land;

- (a) is located within or contiguous to the boundaries of the reservation as they existed on October 17, 1988;

- (b) otherwise meets the requirements of 25 USC § 2719(b)(1) or (b)(2)
- (c) *Includes, but is not limited to, the parcel of Indian lands known as Lot 2, Section 19, Town 41 North, Range 3 West, and the South ½ of the Southwest ¼ of said Section 19, Town 41 North, Range 3 West, lying Southerly of a line described as beginning at a point 650 feet Northerly along the centerline of Mackinac Trail and South line of Section 19, thence Northeasterly to the Southeast corner of the Northwest ¼ of the Southwest ¼ of Section 19, Town 41 North, Range 3 West, Michigan Meridian, Michigan located at 3015 Mackinac Trail, St. Ignace, Michigan.*

#### **42.802 Prohibited Activity - Generally.**

All gaming except for that authorized by '42.801 is prohibited.

#### **42.803 Exceptions.**

(1) Class I gaming on Indian land is permitted and is not regulated by this Chapter, except as provided in '42.502.

(2) This Chapter does not apply to the conduct of games by the Michigan Bureau of State Lottery, its agents and licensees, when such gaming is conducted in accordance with State law.

#### **42.804 Enumeration of Unlawful Acts.**

It shall be unlawful and a violation of this Chapter for any person to:

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

(2) Place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or knowledge of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager.

(3) Aid anyone in acquiring such knowledge as set forth in sub. (2), for the purpose of increasing or decreasing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome.

(4) Knowingly entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this Chapter, with the intent that the other person play or participate in that gambling game.

(5) Claim, collect, take, or attempt to claim, collect, or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect, or take an amount greater than the amount won.

(6) Violate any regulation of the Commission.

(7) Conduct, participate in, permit, promote, or further in any way any gaming which is prohibited under '42.802 and not excepted under '42.803.

(8) Impede or obstruct the Director, Commission or any special agent or law enforcement officer in any investigation, proceeding or other exercise of authority or duty authorized by this Chapter.

(9) Fail to disclose or report to the Director or Commission, or attempt to conceal or mislead regarding, any fact or matter when this Chapter requires the reporting of such fact or matter.

(10) Make any material false statement in any application, report or submission to the Director or Commission that is required by this Chapter.

(11) Violate any restriction upon the Director and Commissioners imposed by '42.412.

(12) Breach any obligation of confidentiality imposed by this Chapter.

(13) Enter into any lease or purchase agreement for any gaming device, equipment or supplies with a gaming device supplier does not hold a license under '42.506.

(14) Enter into or engage in any game at a licensed gaming establishment when one's name is in the list prepared under '42.424, or fail to exclude or eject any person so listed from any licensed gaming establishment.

(15) Conduct, participate in, permit, promote or further in any way any class III game not authorized under '42.504.

(16) Perform services as a primary management official, key employee, gaming consultant or gaming device supplier without a license, or while such license is suspended, except as provided in '42.511.

(17) Employ, contract with, or pay for services as a primary management official, key employee or gaming consultant any person without a license issued under '42.505, or whose license has been suspended, except as provided in '42.511.

(18) Operate or participate in the operation of any gaming establishment which is not licensed under '42.503 or '42.504, except as provided in '42.511.

(19) Use or permit the use of, any class III gaming device, equipment or supply which does not meet the minimum standards prescribed in '42.704.

(20) Provide, assemble or install any class III gaming device, equipment or supply in violation of '42.705.

(21) Fail to comply with the Bank Secrecy Act as required in '42.706.

(22) Purchase, sell, supply or consume any alcoholic beverage in violation of '42.707.

(23) Tamper with or alter any gaming device, equipment or supply in any way which would affect the integrity, fairness, honesty or suitability of the device, equipment or supply.

(24) Participate in any gaming or be physically present on or in the premises of a licensed gaming establishment if the person is less than the minimum age set in '42.711, or fail to exclude or eject from a licensed gaming establishment any such person.

(25) Violate any prohibition relating to offers or gifts to officials and employees contained in '42.717.

(26) Violate any other duty, obligation, responsibility or prohibition of this Chapter.

Nothing in this section shall prevent the prosecution of any person for the violation of any provision of the Law and Order Code or any provision of Tribal law contained in any other chapter of the Tribal Code.

#### **42.805 Jurisdiction and Procedure.**

(1) Jurisdiction is hereby conferred upon the Tribal Court over criminal and civil enforcement actions for violation of '42.804.

(2) A violation committed by a Native American shall constitute a crime, and proceedings shall be governed by Chapters Two and Four of the Law and Order Code, Tribal Code Chapters 71 and 72.

(3) A violation committed by a person who is not a Native American shall constitute a civil infraction subject to civil remedial money penalty, civil forfeiture of property, or both. Proceedings shall be governed by Chapter Seven of the Law and Order Code, Tribal Code Chapter 81, and the Civil Remedial Forfeiture Code, Tribal Code Chapter 84.

#### **42.806 Enforcement.**

(1) The provisions of this Subchapter shall be enforced by Tribal law enforcement officers, and by anyone authorized or deputized to enforce this Chapter or Tribal law generally by ordinance or resolution of the Board of Directors.

(2) The Commission shall have the authority to authorize special agents to perform services reasonably necessary to conduct investigations and surveillance within the scope of Commission authority or monitor and assure compliance with the provisions of this Chapter for which the Commission has responsibility. When acting as a special agent, a person shall be accorded the privileges and protections of a Tribal law enforcement officer. The activities of special agents shall be under the supervision and the direction of the Director, unless otherwise determined by the Commission. Nothing in this subsection shall limit the normal law enforcement functions of any special agent, nor of other Tribal law enforcement officers.

(3) Any person authorized to enforce this Chapter, and any employee of a licensed gaming establishment authorized by management to perform the function, may seize and impound any patron's winnings if there is reason to believe that they were won or obtained in violation of this Chapter, pending disposition of the winnings under the Civil Remedial Forfeiture Code, Tribal Code Chapter 84.

#### **42.807 Remedies.**

(1) A violation of '42.804 by a Native American shall be punished by a fine of up to Five Thousand Dollars (\$5,000), or up to one (1) year in jail, or both. Each day of a violation shall constitute a separate count or offense.

(2) A violation of '42.804 by a person who is not a Native American shall be remedied by a civil remedial money penalty of up to Five Thousand Dollars (\$5,000). Each day of a violation shall constitute a separate violation.

(3) In addition to the remedies in sub. (1) or (2), any property used in the commission of any violation may be forfeited under the provisions of the Civil Remedial Forfeiture Code, Tribal Code Chapter 84. Any vehicle employed in transporting a violator to or from the location of the violation shall be deemed to have been used in the commission of such violation. Any winnings of a patron won or obtained in violation of this Chapter shall also be subject to civil remedial forfeiture.

(4) In addition to any other remedy imposed, the Tribal Court shall order payment of \$25.00 in court costs.

(5) The Tribal Court may order any person found to have committed a violation to be added to the list of undesirables banned from any licensed gaming establishment under '42.424.



(6) If a violator obtained winnings as a result of the violation or otherwise obtained money to which the violator was not entitled, or a licensed gaming establishment lost revenue as a result of the violation, such sum may be ordered to be repaid to the Tribe, Commission or licensed gaming establishment as restitution, or the Tribe, Commission or licensed gaming establishment may seek a civil judgment for such sum, together with costs and a reasonable attorneys fee.

(7) The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:

- (a) any applicable contractual remedy;
- (b) any disciplinary action taken against a violator as an employee;
- (c) any license action or other enforcement action taken by the Director or Commission; and
- (d) any prosecution or other enforcement action under federal or state law or under the provisions of any other chapter of the Tribal Code.

#### **42.808 Limitation Period.**

No remedial action shall be taken under this Subchapter unless such action is commenced in the Tribal Court within the greater of:

- (1) two (2) years of the commission of the violation; or
- (2) one (1) year of the discovery of the commission of the violation, provided that such discovery is within five (5) years of the commission of the violation.

#### **42.809 Parties to a Violation.**

(1) Any person who is concerned in the commission of a violation remediable under this Subchapter is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to a remedial action under this Subchapter.

(2) A person is concerned in the commission of a violation if such person:

- (a) directly commits the violation; or
- (b) aids and abets the commission of a violation; or
- (c) is a party to a conspiracy with one or more others to commit the violation or advises, hires, counsels or otherwise procures another to commit the violation.

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