

ARTICLE II. - TRIBAL GAMING COMMISSION

Footnotes:

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Cross reference— *Tribal government, Ch. 117.*

Sec. 16-2.01. - Establishment.

- (a) Composition of the Commission: The Tribal Gaming Commission shall be composed of three enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.
- (b) Appointment of Commissioners: Commissioners shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Commission shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the Commission. A Commission appointment shall not create a property interest.
- (c) Commissioners may hold other positions of employment and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter.
- (d) Except as provided in subsection (e), each Commissioner shall serve a term of three years, subject to removal, with cause, by a majority of the Tribal Council. There shall be a six-month probationary period for each new appointee to be reviewed by the Principal Chief and the Tribal Council.
- (e) To ensure continuity in the Commission and rotation of appointments, the existing Commissioners shall continue to serve, but their terms shall be adjusted so that they serve staggered terms. The three year terms shall continue as follows: Seat A's term shall expire 12/31/2018; Seat B's term shall expire 12/31/2019; and Seat C's term shall expire 12/31/2020 for future new, renewal or replacement appointments shall specify which seat is being considered.
 - (1) Term limits: No individual shall serve on the Commission more than two terms.
- (f) No Commissioner shall be finally approved until he or she has completed a background investigation pursuant to section 16-2.03.
- (g) Before assuming office, each Commissioner shall take the oath of office administered to Tribal officers.
- (h) Resignation: A Commissioner may resign at any time by providing the Principal Chief and Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Principal Chief or Tribal Council to be effective.

(i) Vacancies: A nomination to fill a vacancy in the Commission shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.

(j) The Commission shall select annually, from its membership, a Commission Chair.

(Ord. No. 710, 10-13-2005; Ord. No. 563, Exh. A, 6-27-2019; Ord. No. 63, Exh. A, 1-30-20)

Sec. 16-2.02. - Independence.

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

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

Sec. 16-2.03. - Licensing of Commissioners.

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

(b) *Failure to meet license requirements or license violations.* If the Tribal Council has reason to believe that a licensed Commissioner fails at any time to meet the license requirements under this chapter or that the Commissioner has violated this chapter, the rules, the compact, or the IGRA and regulations promulgated thereunder or any other applicable law, the Tribal Council shall direct an investigation to be conducted and may notice the Commissioner for a hearing before the Council. All investigations and hearings under this section shall be conducted as provided in sections 16-5 and 16-6 of this chapter, and a Commissioner shall have all of the rights and obligations given to a licensee or applicant therein, except that all hearings shall be conducted by and before the Council.

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

Sec. 16-2.04. - Restrictions on Commissioners.

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

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

For purposes of this subparagraph (c), complimentary items shall not include admission to events and shows sponsored by the casino, ceremonial gifts or meals provided at the expense of a Tribal gaming operation, provided that such items do not each exceed \$100.00 in value and are not offered as an inducement or reward for gambling in the operation.

(Ord. No. 710, 10-13-2005; Ord. No. 23, 2-28-2014; Ord. No. 167, 7-8-2014)

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

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

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

Sec. 16-2.06. - Compensation of Commissioners.

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

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

Sec. 16-2.07. - Meetings.

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

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

Sec. 16-2.08. - Commission offices.

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

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

Sec. 16-2.09. - Quorum.

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

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

Sec. 16-2.10. - Organization.

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

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

Sec. 16-2.11. - Recordkeeping.

(a) The Commission shall maintain complete records regarding the following:

- (1) Applications, financial statements, fingerprints, contracts, licenses, suspension and cancellation notices and correspondences of all applicants, including management entities or controlling shareholders, key employees, primary management officials, gaming establishments and suppliers of gaming goods and services (as required by section 16-8.01(g));
- (2) Commission licenses;
- (3) Meeting minutes from all Commission meetings;
- (4) Compact compliance;
- (5) Reports relating to customer disputes, complaints or other issues that affect the integrity of the gaming operation;
- (6) Commission budget and expenditures;
- (7) Council communications and correspondences;
- (8) Gaming device list pursuant to section 16-4.11 of this chapter; and
- (9) Any other records or documents the Commission deems necessary or appropriate.

(b) *Confidential records.* All information and data:

- (1) Required by the Commission to be furnished to them under this chapter or which may otherwise be obtained relative to the finances, earnings or revenue of any applicant or licensee;
- (2) Pertaining to an applicant's criminal record, antecedents and background, which have been furnished to or obtained by the Commission from any source;
- (3) Provided to the Commission by a governmental agency or an informer or on the assurances that the information will be held in confidence and treated as confidential; or
- (4)

Obtained by the Commission from a supplier relating to the manufacturing of gaming devices or gaming goods;

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

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

Sec. 16-2.12. - Reports.

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

- (a) Number and types of licenses issued during the previous quarter;
- (b) Information regarding license denials, suspensions or revocations;
- (c) Report of any events of noncompliance, breach or violations of this chapter, the rules, the compact, IGRA, license or any other law or regulation; provided, however, that these reports are not the subject of or relating to a pending investigation being conducted by the Commission, or hearing before the Commission;
- (d) A report of the Commission expenditures for the prior quarter;
- (e) A summary of any Commission travel and training;
- (f) All other information which the Commission deems relevant in order to keep the council informed and current on all gaming regulatory matters.

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

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

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

Sec. 16-2.13. - Budget.

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

- (a) The Commission budget shall be partially funded as an operating expense of the Tribal Casino Gaming Enterprise (TCGE). The TCGE shall fund all actual direct expenses related solely to the Commission's regulation of the gaming activities of the TCGE. Such payment for the Harrah's Cherokee Casino Resort shall be the lesser of the actual regulatory cost or an amount which is 0.66 percent of the gross gaming revenue (win) but in no event more than \$3,000,000.00 for the fiscal year. Such payment for the Harrah's Cherokee Valley River Casino & Hotel shall be the lesser of the actual regulatory cost or an amount which is 0.66 percent of the gross gaming revenue (win) but in no event more than \$1,500,000.00 for the fiscal year. For each year after fiscal year 2013, the capped amounts shall increase five percent annually to account for growth and economy. Any surplus of such funds over actual expenses at the end of a fiscal year shall be refunded to the TCGE within 120 days of the end of the fiscal year. Upon completion of the TCGE audit, any excess funds will be returned immediately following the per capita distribution ordinance.
- (b) The Tribal Bingo Enterprise (TBE) shall fund all actual direct expenses related solely to the Commission's regulation of the gaming activities of the TBE.
- (c) If the Commission's budget needs exceed the amounts in subparagraphs (a) and (b) for any fiscal year, then the Commission shall utilize funds obtained through licensing fees and regulatory fines, or seek additional funding from the Tribal Council. Except as provided in subparagraph (d), below, any surplus remaining in such fees, fines or additional funding at the end of a fiscal year shall be distributed to the Tribe in accordance with Chapter 16C.
- (d) The Commission shall have the authority to establish, fund, and maintain capital/expansion reserve funds for:
 - (1) Working capital in an amount recommended by the independent auditors; and
 - (2) For such other purposes as are specifically authorized for gaming regulatory purposes by a Tribal Council ordinance based a detailed plan for use of the funds submitted by the Commission.

(Ord. No. 710, 10-13-2005; Ord. No. 431, 11-2-2010; Ord. No. 244, 8-8-2012; Ord. No. 360, 10-26-2012 ; Ord. No. 167, 7-8-2014)

Sec. 16-2.14. - Powers.

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

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

- (r) Adopt regulations as authorized in Section 16-2.15; and
- (s) Adopt Class II and Class III gaming license applications.

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

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

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

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

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

If a gaming operation believes that an existing or proposed rule or regulation unduly interferes with business operations, then the Board of Advisors and the Commission, and appropriate staff from each entity, shall meet together and attempt to reach agreement on a modification of that regulation. If the Board and Commission cannot reach an agreement, then either the Board or the Commission may initiate binding arbitration under the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. If the Arbitrator determines that the cost of the rule or regulation outweighs its

benefit, then the arbitrator may determine that the rule or regulation is invalid and may order an appropriate modification of the regulation, provided that the rule or regulation must meet minimum standards required by the NIGC. The non-prevailing party shall pay the fees and expenses of arbitration.

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

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

Sec. 16-2.16. - Complimentary items.

- (a) The use of complimentary items shall be governed by regulations promulgated by the Commission under section 16-2.15(a), which shall, at a minimum, be in accord with the NIGC's Minimum Internal Control Standards, currently published at 25 C.F.R. § 542.17.
- (b) No key employee, primary management official, or actively serving Principal Chief, Vice-Chief, Tribal Council member, member of a Board of Advisors or the Commission, or Cherokee Judge or Justice, shall be authorized to receive complimentary items. For purposes of this section, complimentary items shall not include admission to events and shows sponsored by the casino, ceremonial gifts or meals provided at the expense of a Tribal gaming operation, provided that such items do not each exceed \$100.00 in value and are not offered as an inducement or reward for gambling in the operation.
- (c) No actively serving Principal Chief, Vice-Chief, Tribal Council member, member of a Board of Advisors or the Commission, or Cherokee Judge or Justice, shall be authorized to carry a "comp book" or otherwise approve the issuance of complimentary items.
- (d) Complimentary items shall be included in the annual budget of a gaming operation and shall be subject to approval by the applicable Board of Advisors.

(Ord. No. 710, 10-13-2005; Ord. No. 23, 2-28-2014; Ord. No. 167, 7-8-2014)

Sec. 16-2.17. - Conflict resolution.

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

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