

GAMING COMMISSION ORDINANCE
Ordinance # 04-400-04

Article I. Purpose; Findings

1.01. *Purpose.* The Tribal Council of the Little River Band enacts this ordinance for the purposes of creating a regulatory agency to carry out licensing and oversight responsibilities regarding gaming activities governed by the Gaming Ordinance, # 02-400-01, and as may be directed in this ordinance.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

b. the regulation and licensing of gaming activities is an important regulatory function that can be best carried out through the creation of a regulatory commission by a separate ordinance under authority of Article IV, Section 7(f).

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This ordinance is adopted by the Tribal Council through resolution # 02-0508-09.

a. Amended by resolution # 05-0406-135 - regarding removal of management contract references and coordinating definitions with the Gaming Ordinance.

b. Amended by resolution # 06-0621-420 - increasing the number of members from three to five.

c. Emergency Amendments by resolution # 08-0826-274 – allowing for a variation in the number of Commissioners from no less than three to no more than five and establishing that a quorum consists of the majority of duly appointed Commissioners remaining on the Commission; establishing mandatory appointment when there are less than three sitting Gaming Commissioners.

d. Permanent Adoption of emergency amendments by Resolution #09-0121-_____.

2.02. *Amendment.* This Ordinance may be amended from time to time as set forth in the Constitution or in procedures adopted by the Tribal Council.

2.03. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General.* In this Ordinance, except where otherwise specifically provided or the context otherwise requires, or as may be defined in the Gaming Ordinance, # 02-400-01, the following terms and expressions shall have the following meanings.

Article IV. Creation of Gaming Commission

4.01. *Establishment.* The Tribal Council hereby creates a Gaming Commission as the regulatory agency of the Tribe as defined in section 3.26 of the Gaming Ordinance. The Gaming Commission is delegated the right to exercise one or more of the substantial governmental functions of the Tribe as defined in this ordinance. In creating the Gaming Commission, it is the purpose and intent of the Tribal Council that the Gaming Commission ensure the integrity, honesty and fairness of all gaming activities conducted on the Tribe's Reservation and that such gaming activities be conducted in conformance with Tribe-State Gaming Compact, Gaming Ordinance, this ordinance, federal, applicable state and Tribal laws, and any regulations promulgated by the Gaming Commission, the Indian Gaming Regulatory Act, and any applicable Class III gaming compact or Class III gaming rules.

4.02. *Sovereign Immunity of the Gaming Commission.* The Gaming Commission is clothed by federal and tribal law with all the privileges and immunities of the Tribe including sovereign immunity from suit in any state, federal or tribal court, except as may be specifically provided for in the Gaming Ordinance for the purposes of hearings and appeals of licensing determinations and the issuance of fines.

a. Nothing in this ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Gaming Commission from suit.

b. Nothing in this ordinance shall be deemed or construed to be a consent of the Gaming Commission to the jurisdiction of the United States or any state or of any other tribe with regard to the business or affairs of the Gaming Commission.

4.03. *Waiver of Sovereign Immunity of the Gaming Commission.* The sovereign immunity of the Gaming Commission may be waived only by express resolution of the Tribal Council. Neither the power to sue and be sued provided in section 6.01(k), nor the consent to jurisdiction and waiver of sovereign immunity regarding licensing determinations or the issuance of fines, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to levy of any judgment, lien or attachment upon property of the Tribe, whether or not under the control and management of the Gaming Commission.

4.04. *Sovereign Immunity of the Tribe.* All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Gaming Commission are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance, nor any action of the Gaming Commission, shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe; or to be a consent of the Tribe to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Gaming Commission or the Tribe; or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit with respect to any lands in the Tribe's Reservation, or to be a consent to the alienation, attachment or encumbrance of any such land.

4.05. *Assets of the Gaming Commission.* The Gaming Commission shall have only those assets specifically assigned to it by the Tribal Council or acquired in its name by the Tribe. No activity of the Gaming Commission nor any indebtedness incurred by it shall implicate or in any way involve assets of the Tribe not assigned in writing to the Gaming Commission.

Article V. Appointment of Gaming Commissioners; Qualifications

5.01. *Number of Gaming Commissioners.* The Gaming Commission shall be composed of not less than three but no more than five Commissioners.

5.02. *Quorum; Reduced Number of Gaming Commissioners.* If there are fewer than five members of the Gaming Commission, a majority of the remaining duly appointed Commissioners shall constitute a quorum. If the number of Gaming Commissioners on the Gaming Commission is reduced to less than three due to the death, resignation or removal of the other members of the Gaming Commission; quorum shall consist of all the Gaming Commissioners remaining on the Gaming Commission.

5.03. *Appointment of Gaming Commissioners.*

a. The members of the Gaming Commission shall be appointed by the Ogema and approved by the Tribal Council. Members may be reappointed for additional terms without limitation. The term of office is four years.

b. *Future Appointments.* At least 4 weeks prior to any meeting during which appointments to the Gaming Commission will be made, the Ogema shall publicize that he/she will be making such nominations for appointments and is seeking applications from individuals to be considered for appointment.

c. *Less than Three Gaming Commissioners; Mandatory Appointment.* If the number of individuals on the Gaming Commission is reduced to less than three due to death, resignation or removal of the

other members of the Gaming Commission the mandatory appoint provision described in this subsection shall become effective. The Ogema shall, within 120 calendar days from the date the number of Gaming Commissioners is reduced to less than three members, appoint the number of individuals necessary to raise the number of Gaming Commissioners sitting on the Gaming Commission to at least three. The Tribal Council shall approve any individual nominated pursuant to this provision so long as they satisfy all of the qualifications for Gaming Commissioners set forth in this Ordinance.

5.04.. *Qualifications of Commissioners.* Any enrolled member of the Tribe, at least twenty-one years of age or older who is not an elected member of the Tribal Council or the Ogema, or an appointed member of the Tribal Court, or employee reporting directly to the Office of Ogema, the Tribal Court, or Tribal Council, but does not include program employees, who is qualified to serve as a Commissioner under sections 5.05 and 5.06 may be appointed to serve on the Gaming Commission. Each newly appointed Commissioner must attend training on the Indian Gaming Regulatory Act, regulations promulgated by the National Indian Gaming Commission, federal revenue laws relating to gaming, the Gaming Ordinance, any regulations adopted by the Gaming Commission, and gaming operations and structures.

5.05.. *Background Investigation.* Before any applicant may be appointed to serve on the Gaming Commission, the Ogema shall perform or arrange to have performed a comprehensive background check on each prospective member. The results of the background checks shall be submitted to the Tribal Council when the Ogema submits his/her request for appointment. No person shall serve as a Commissioner if:

- a. *Activities.* That person's prior activities within the past 15 years, including criminal records, reputation, habits or associations:
 1. Pose a threat to the public interest; or
 2. Threaten the effective regulation and control of gaming; or
 3. Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming; or
- b. *Criminal Convictions.*
 1. *Felony; Gaming Offense.* That person has been convicted of, or entered a plea of guilty or no contest to any gaming related offense, fraud or misrepresentation at any time;
 2. That person has been convicted of or entered a plea of guilty or no contest to any offense not specified in paragraph (b)(1) within the immediately preceding five years; or
 3. *Misdemeanor.* Has been convicted or entered a plea of nolo contendere to a misdemeanor involving dishonesty or moral turpitude within the past 5 years; or
- c. That person has a present financial interest in the conduct of any gaming enterprise in which the person has the ability to change or affect the conduct of any gaming enterprise; or
- d. That person is an employee of the Gaming Commission;
- e. That person has a member of his immediate family and residing in the same household, who is employed as a key employee or primary management official by any gaming enterprise.
- f. Fails to disclose a conflict of interest, as defined in section 5.06.

In the event a disqualifying event, as defined in paragraph (c), (d) or (e) of this section, occurs after the date a person's appointment to the Gaming Commission has been confirmed by the Tribal Council, that Commissioner may continue to serve on the Commission for up to 120 days after the date the disqualifying event occurred so that the Ogema may begin the process of submitting a new candidate for appointment to the Gaming Commission. In the event of any other disqualifying event, as defined in this section, the Tribal Council may take immediate steps to remove that Commissioner.

5.06. *Conflict of Interest.* Persons nominated for appointment to the Gaming Commission must, prior to his/her appointment, disclose the names and addresses of his/her immediate family members, whether such immediate family members are employed at any gaming enterprise regulated by the Gaming Commission, and whether he/she or a member of his/her immediate family has a financial interest in any gaming service business. Gaming Commissioners are prohibited from participating in making decisions, which involve balancing personal financial interests or the interests of members of that Commissioner's immediate family, other than interests held in common by all Tribal members, against the interests of the Gaming Commission or the Tribe. Failure to disclose a conflict of interest, or to refrain from participating in decisions that involve a conflict of interest, shall be grounds for removal of a Commissioner pursuant to section 5.0706.

5.07.06. *Removal of Members or Vacancies.*

a. *Removal; Causes For.* A Commissioner may be removed for the following reasons, and as may be set forth in the Commissions Ordinance, # 01-100-06:

1. serious inefficiency,
2. neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or
3. for any conduct which threatens the honesty and integrity of the Gaming Commission or otherwise violates the letter or intent of this Ordinance.

b. *Removal; Process.* A Commissioner may be removed as set forth in the Removal Rules and Procedures Ordinance, # 01-100-07, or by a resolution in favor of removal supported by seven members of the Tribal Council for the reasons set forth in section 5.07(a).

c. *Vacancies.* If any Commissioner shall die, resign, be removed or for any reason be unable to serve as a Commissioner, the Gaming Commission shall notify the Ogema who shall declare the position vacant and shall appoint another person to fill the position in accordance with the Commissions Ordinance.

Article VI. Powers and Responsibilities of Gaming Commission

6.01. *Powers of the Gaming Commission.* In furtherance, but not in limitation, of the Gaming Commission's purposes and responsibilities, and subject to any restrictions contained in this ordinance or other applicable law, the Gaming Commission shall have and is authorized to exercise by majority vote, the following powers:

- a. To regulate all day-to-day gaming activity within the jurisdiction of the Tribe to ensure the integrity thereof, which includes, but is not limited to the adoption, review and approval of internal controls, procedures, processes, policies and other documents which relate to the operation of the gaming enterprise and businesses conducted under the gaming enterprise.
- b. To promote the full and proper enforcement of all tribal civil and criminal gaming laws.
- c. To issue, deny, suspend or revoke any gaming license necessary to operate, manage, conduct business with or be employed at any gaming activities authorized by this ordinance, or other tribal laws, and to establish a schedule of fees as may be necessary to defray expenses of license processing and background investigations.
- d. To conduct or cause to be conducted, background investigations of persons or business entities applying for any gaming license.
- e. To enact and enforce such regulations consistent with this ordinance regarding its activities as the Gaming Commission may deem necessary and proper to effectuate the powers granted by this ordinance and duties imposed by applicable law.
- f. To arrange for and direct such inspections and investigations as it deems necessary to ensure compliance with this ordinance, the Gaming Ordinance, any federal law, or other gaming related law, and regulations. In undertaking such investigations, the Gaming Commission may request the assistance of gaming staff, federal, state and tribal law enforcement officials, legal counsel and other third parties.
- g. To administer oaths, conduct hearings, and by subpoena compel any licensee or license applicant, any person employed by a gaming enterprise, and any person doing business with a gaming enterprise to appear before it and to provide such information, documents or other materials as may be in their possession to

assist in any investigation conducted by the Gaming Commission relating to the enforcement of gaming laws and regulations.

h. To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents and financial statements of any gaming enterprise operating, or suspected to be operating, within the jurisdiction of the Tribe.

i. When necessary or appropriate, to request the assistance and utilize the services of the courts, law enforcement and government officials and agencies, and private parties, in exercising its powers and carrying out its responsibilities.

j. To close, after notice and a hearing, any game or games which are operating in violation of tribal or federal law.

k. To sue or be sued in courts of competent jurisdiction within the United States subject to the provisions of this ordinance and other laws relating to sovereign immunity; provided, that no suit shall be brought by the Gaming Commission without the prior explicit written approval of the Tribal Council.

l. Where it is in the best interest of the Tribe, to develop a cooperative working relationship with federal, state and other Indian tribes, agencies and officials.

m. To investigate any aspect of any gaming enterprise in order to protect the public interest in the integrity of gaming and to prevent improper and unlawful conduct. The Gaming Commission shall investigate any report of a failure of any gaming enterprise to comply with this Ordinance, the Gaming Ordinance, or any tribal laws, or any regulations adopted by the Gaming Commission, IGRA, or the Compact. The Gaming Commission may issue an order requiring any gaming enterprise to take any corrective or remedial action deemed necessary.

n. To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Gaming Commission's authorized activities.

o. To make application and accept grants and other awards from private and governmental sources in carrying out or furthering the purposes of the Gaming Commission.

p. To exercise all authority delegated to it or conferred upon it by law and to take all action which shall be reasonably necessary and proper for carrying into execution the foregoing powers and all of the powers vested in this ordinance as permitted by the purposes and powers herein stated, which are deemed to be in the best interests of the Tribe and in compliance with applicable law.

q. Pursuant to the tribal law, to initiate a suspension or revocation proceeding of a liquor license issued to a gaming enterprise.

r. Record-keeping requirements, the Gaming Commission shall approve the accounting system and record keeping controls of each gaming enterprise conducting Class III gaming

6.02. *Additional Powers and Duties.*

a. The Gaming Commission shall require the general manager of each gaming facility licensed by the Tribe to prepare a plan for the protection of public safety and the physical security of patrons of gaming facilities, setting forth the respective responsibilities of the Gaming Commission, the security department of the gaming facility(ies), and any applicable or appropriate police agency(ies). Such plan, and any subsequent modifications thereof, shall be submitted to the Gaming Commission annually for its review and approval.

b. The Gaming Commission shall enforce all tribal health and safety standards applicable to gaming facilities licensed by the Tribe.

c. The Gaming Commission shall establish a list of persons barred from gaming facilities because of their criminal history or association with career offenders or career offender organizations which pose a threat to the integrity of gaming.

d. The Gaming Commission shall publish and distribute copies of this ordinance, Gaming Commission regulations, and any Tribal Council, Gaming Commission or Tribal Court decisions regarding gaming matters.

- e. The Gaming Commission shall maintain and keep current a record of new developments in the area of Indian gaming.
- f. The Gaming Commission shall obtain and publish a summary of federal revenue laws relating to gaming and to ensure compliance with the same.
- g. The Gaming Commission shall arrange for training of Gaming Commissioners, Gaming Commission employees and others in areas relating to the regulation of gaming.
- h. The Gaming Commission shall consult with and make recommendations to the Tribal Council regarding changes in gaming laws.

6.03. *Annual Budget.* The Gaming Commission shall prepare an annual operating budget for all Gaming Commission activities and present it to the Ogema and the Tribal Council in accordance with budget and appropriation procedures established by the Constitution and ordinances adopted by the Tribal Council.

a. *Expenditures.* Any and all expenditures from the Gaming Commission budget shall be in conformance with the policies of the Tribe in regards to the expenditure of tribal funds. Provided that, the Tribal Council shall determine on an annual basis the appropriate spending level authority of the Gaming Commission which shall be reduced to writing and submitted to the Tribal Council for adoption and approval by resolution. Provided further, that whenever Tribal Council approval is necessary to make an expenditure or to enter into an agreement, that approval shall be approved by the Tribal Council by resolution and approvals for expenditure of funds shall not be unreasonably withheld.

b. *Budget Not to be Amended.* The annual budget approved by the Ogema and the Tribal Council for the Gaming Commission shall not be amended to reduce the budget. Provided that, the Ogema and the Tribal Council may make amendments to supplement the budget of the Gaming Commission in accordance with approved processes.

6.04. *Gaming Commission Regulations.*

a. Gaming Commission shall promulgate regulations consistent with this ordinance and necessary to carry out the orderly performance of its duties and powers which shall include, but shall not be limited to the following:

1. Internal operational procedures of the Gaming Commission and its staff;
2. Interpretation and application of gaming related laws and regulations as may be necessary to carry out the Gaming Commission's duties and exercise its powers;
3. A regulatory system for all gaming activity, including accounting, contracting, and surveillance, to ensure the integrity, honesty and fairness of all gaming activities;
4. The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Gaming Commission.

b. No regulation of the Gaming Commission shall be of any force or effect unless it is adopted by the Gaming Commission by written resolution and filed with the Tribal Council Recorder, which shall then be placed on the Tribal Council agenda for approval.

c. The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all Gaming Commission regulations adopted pursuant to and consistent with this ordinance and other requirements for the adoption of regulations as may be set in place by the Tribal Council.

6.05. *Right of Entrance.* The Gaming Commission and properly authorized employees and representatives of the Gaming Commission may enter upon any premises of any gaming enterprise for the purpose of making inspections and examining the accounts, books, papers, and documents, of any such gaming enterprise during any operating period of the gaming enterprise. The general manager of each gaming enterprise shall facilitate such inspection or examinations by giving every reasonable aid to the Gaming Commission and to any properly authorized officer or employee or representative of the Gaming Commission. A Commissioner or a Gaming Commission employee shall visit each gaming enterprise for the purpose of monitoring its gaming enterprise, such visits may be unannounced.

6.06. *Investigations.* The Gaming Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation

and premises of any gaming enterprise subject to the provisions of this ordinance, the Gaming Ordinance, or regulations of the Gaming Commission. In conducting such investigation, the Gaming Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without first affording any affected party notice and an opportunity for a hearing pursuant to Gaming Commission regulations.

6.07. *Hearings; Examiner.* Pursuant to regulations, the Gaming Commission may hold any hearing it deems to be reasonably required in the administration of its powers and duties.

The Gaming Commission may designate one of its members to act as examiner for the purpose of holding any such hearing or the Gaming Commission may appoint another person to act as examiner under section 6.08. The Gaming Commission hearing regulations shall, at a minimum, afford any affected party, and all people interested therein as determined by the Gaming Commission, the right to appear personally before the Gaming Commission, the right to be represented by counsel at the affected party's own expense, the right to face and question witnesses against the affected party, and the right to present oral or documentary evidence in support of the affected party's support.

6.08. *Appointment of Examiner.* The Gaming Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Gaming Commission, or any member thereof, has power or authority to hold. Examiners appointed under this section shall not have the power to make findings or issue orders.

6.09. *Gaming Commission Employees.* Subject to the approval of an appropriation of funds therefore, the Gaming Commission may employ such staff as may be required to fulfill the Gaming Commission's responsibilities under this Ordinance. Employees of the Gaming Commission shall be required to obtain a gaming employee license and shall be required to maintain that license throughout their employment.

6.10. *Gaming Commission Department Organization.* The Gaming Commission shall be required to submit to the Tribal Council, for acceptance, the organizational chart of the Gaming Commission Department on an annual basis. At a minimum, the organization of employees of the commission shall include departments or responsibilities that include surveillance; compliance; and background investigations/licensing which shall be identified in regulations of the Gaming Commission.

6.11. *Personnel Procedures.* The Director over the Gaming Commission Department shall hire and manage employees in accordance with the Tribe's personnel ordinances or regulations. The Gaming Commission shall be responsible for employment related decisions as the final appeal body, or the final decision maker under the Tribe's personnel laws or regulations.

Article VII. Audit Required; Report to National Indian Gaming

7.01. *Annual Audit.* In accordance with the Gaming Ordinance, the Gaming Commission shall conduct or have conducted an independent audit of all gaming enterprises on an annual basis and shall submit the resulting audit reports to the Tribal Council and the National Indian Gaming Commission.

7.02. *Audit to Include Gaming Service Contracts.* The Gaming Commission shall identify, prior to beginning an audit and retaining an audit, which vendor contracts shall be specifically included within the scope of the audit if inclusion is deemed necessary to protect the public interest in the integrity of Indian gaming. Provided that, all contracts with gaming vendors and service vendors shall be included in the audit.

Article VIII. Licensing

8.01. *Licensing Regulations.* In accordance with the Gaming Ordinance, the Gaming Commission shall promulgate rules, approve forms, and provide notice for licensing.

8.02. *Hearing Processes.* As identified in this ordinance, and in accordance with the Gaming Ordinance, the Gaming Commission shall promulgate procedures for holding hearings. Provided that, the rules of evidence as adopted by the Tribal Court shall apply to hearings held by the Gaming Commission.

8.03. *Fees.* The Gaming Commission shall promulgate, after public notice and comment, the fee schedule for the next fiscal year.