



Little River Band of Ottawa Indians

2608 Government Center Drive

Manistee, MI 49660

(231) 723-8288

Resolution #19-0206-032

*Accepting for Filing the Revised Gaming Commission Regulation
#R400-04:GC-14 Chapter 14 – Hearings*

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which, became effective upon approval by the Assistant Secretary-Indian Affairs on May 3, 2004; and

WHEREAS, the Tribe adopted amendments to the Constitution on July 11, 2016 which became effective upon approval by the Assistant Secretary-Indian Affairs on August 24, 2016; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(I) to take action, not inconsistent with the Constitution or Federal law, which is necessary and proper to carry out the sovereign powers of the Tribe; and

WHEREAS, the Tribal Council has, pursuant to Gaming Commission Ordinance #04-400-04, created a Gaming Commission and delegated to such Commission the authority to regulate all gaming activities authorized by the Tribe and to enforce all Tribal and federal laws governing the conduct of Tribally-licensed gaming activities; and

WHEREAS, Section 6.04 (a) of the Gaming Commission Ordinance permits the Gaming Commission to promulgate regulations and internal operational procedures of the Gaming Commission and its staff; and

WHEREAS, Gaming Commission Regulation #R400-04:GC-14 Chapter 14 – Hearings was approved by the Gaming Commission on December 15, 2009 and were very outdated; and

WHEREAS, the Gaming Commission revised and approved the regulation on January 22, 2019 by Gaming Commission Resolution #GC19-0122-02; and

WHEREAS, the Gaming Commission Regulation *Chapter 14 – Hearings* is now being forwarded to Tribal Council for filing in accordance with Gaming Commission Ordinance #04-400-04 – Section 6.04 (b).

NOW THEREFORE IT IS RESOLVED THAT that Gaming Commission Regulation #R400-04:GC-14 Chapter 14 – Hearings is hereby accepted for filing by the Little River Band of Ottawa Indians Tribal Council.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Open Session of the Little River Band of Ottawa Indians Tribal Council held on February 6, 2019, at the Government Center in Manistee, Michigan, with a quorum being present for such vote.



Joseph Riley II, Tribal Council Speaker

Sandra Lewis, Tribal Council Recorder

Attest:

Distribution: Council Records
Gaming Commission

Gaming Commission Regulations
Regulation #R400-04:GC-14

Chapter 14 - Hearings

Section 1. Purpose; Authority

- 1-1. *Purpose.* The purpose of these Hearing Regulation is to provide consistency and uniformity in hearings held by the Gaming Commission and to set forth the rules governing the conduct of the hearing and the participants.
- 1-2. *Authority.* Tribal Gaming Ordinance #10-400-01 and Gaming Commission Ordinance #04-400-04, state that the Gaming Commission shall develop and promulgate regulations governing the conduct of hearings it holds for applicants or licensees who have either been denied a license, or who have had their license revoked or suspended.

Section 2. Definitions

- 2-1. *General.* For purposes of this Regulation, certain terms are defined in this section. The word “shall” is always mandatory and not merely advisory. Unless defined elsewhere, terms defined in this Chapter, the Gaming Ordinance and the Gaming Commission Ordinance are defined for the purposes of all Gaming Commission Regulations.
- 2-2. *Hearings Examiner.* In accordance with Gaming Commission Ordinance Section 6.07 and 6.08, a Hearings Examiner may be appointed. The Hearing Examiner shall be any person appointed by the Gaming Commission qualified in the law or possessing knowledge or expertise in the subject matter of the hearing which the Gaming Commission, or any member thereof, has the power or authority to hold. The examiner shall not have the power to make findings or issue orders.
- 2-3. *Party.* Any person or entity which has an interest in a proceeding before the Commission may be referred to as a Party in this Regulation.

Section 3. Hearing Requests; Types

- 3-1. *Eligible Review.* All hearings pertaining to the denial, suspension, or revocation of a license held before the Gaming Commission will be conducted in accordance with this Regulation. This Regulation may also be utilized for patron complaint hearings and in hearings before the Commission commenced for investigative purposes.
- 3-2. *Hearing Requests.* All requests for hearing shall be in writing and submitted to the following address:

2840 Orchard Highway, Suite A
Manistee, MI 49660

a. *Licensing Hearing Requests.*

1. *License Applicants.* Any applicant denied a license (employee or vendor) may request a hearing before the Commission by written request submitted within fourteen (14) calendar days following receipt of notice of the action by the Commission. For the purposes of counting the notice shall be deemed received the day of issuance. The day the notice is received by the applicant is not counted as part of the fourteen days. Within twenty-one (21) calendar days following receipt of a notice requesting a hearing, the Commission will schedule and convene a hearing before a quorum of the Commission.
2. *Post License Revocation.* In all cases where the Commission determines that a revocation is warranted, the Commission shall notify the licensee of the proposed license revocation. The notice shall be served in the manner described in Section 12.04 of the Gaming Ordinance; Section 9-1(d)(1) of the Non-Gaming Employee Licensing Regulation; and Section 9-1(e)(1) of the Gaming Employee Licensing Regulation. A hearing shall be set within seven (7) days of the date on the notice of the proposed license revocation.

- b. *Patron Complaints.* For patron complaints which involve an amount in controversy at or above \$2,500.00 a patron may request a hearing before the Commission by written request submitted within fourteen (14) calendar days following receipt of notice of the Executive Director's decision. A hearing shall be set within fourteen (14) calendar days of the date on the notice of the proposed license revocation.

- c. *Investigative Hearings.* The Commission will provide reasonable written notice of a hearing. The purpose of investigative hearings is to collect information or evidence regarding a matter of the Commission has authority to investigate.

Section 4. Notice.

- 4-1. *Notice.* All notices regarding the denial, suspension, or revocation of a license and associated documents shall be served by carrier with return receipt requested or by personal service. Verification of proof of service is required.
- 4-2. *Proof of Service.* Proof of service shall be provided by a certificate or affidavit of service. A certificate or affidavit of service shall be signed by the person serving the notice or document, shall specify the date of service, and shall specify whether service was accomplished by certified mail or personal service.

Section 5. Appearances.

- 5-1. *In person.* Applicants, licensees, or patrons shall appear for the hearing in person. Applicants, licensees or patrons may bring a representative or attorney of their choice and at their own expense; however, they will be expected to testify on their own behalf.

- 5-2. *Appearance through an Advocate.* Parties to proceedings governed by this Regulation may appear personally or through an advocate. If a party appears through an advocate, the party also must attend hearings unless excused by the Gaming Commission or its Chairperson. Parties retaining an advocate shall retain the advocate at their own cost.
- a. When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney.
 - b. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests and other papers on behalf of the party.
 - c. The Gaming Commission reserves the right to directly question the licensee, applicant, or patron at a hearing.

Section 6. Hearing Rules.

- 6-1. *Delegation to Chairperson.* The Chairperson of the Gaming Commission may issue rulings on discovery matters, scheduling matters, protective orders, continuances, the admissibility of evidence and other procedural or pre-hearing matters. The Chairperson's rulings are subject to consideration by the entire Gaming Commission upon the request of any Commissioner or upon the request of a party or person affected by the ruling. The failure of such person or party to request such relief shall be deemed to consent to the ruling and a waiver of any objection for purposes of judicial review.
- 6-2. *Admissibility of Evidence and Witnesses.* The Commission will follow the rules of evidence of the Tribal Court of the Little River Band of Ottawa Indians.
- 6-3. *Communications with Gaming Commissioners.* Neither party, either Gaming Commissioners or licensee, shall communicate, directly or indirectly, with each other. Unless required for the disposition of ex parte matters authorized by law or by the Gaming Commission:
- a. A member of the Gaming Commission (this does not include Gaming Commission staff) shall not communicate, directly or indirectly in connection with any issue of fact or law related to a proceeding under this Regulation with any party or their representative except upon notice and opportunity to all parties to participate;
 - b. This Section shall not preclude Gaming Commission staff from having necessary contact with applicants, licensees, and patrons at any stage of the proceedings under this Regulation.
 - c. Communications in the meaning of this Section does not include the issuance of rulings of the Chairperson in accordance with Section 6-1.
- 6-4. *Discovery and Exchanges.* At least five (5) calendar days before the hearing, the parties shall request the opportunity to review:

- a. Copies of all documents then reasonably available to a party which are intended to be offered as evidence in support of the party's case;
- b. Identify, describe or make available for review all tangible things, other than documents, then reasonably available to a party which are intended to be offered as evidence in support of the party's case and upon request, arrange for the opposing party to inspect, view, or review the evidence under the supervision of the parties; and
- c. Exchange written lists of persons each party then intends to call as a witness in support of that party's case. Each witness shall be identified by name, position, business address, and a brief description for which the witness will be called.

It shall be the continuing obligation of the parties to produce documents, witness lists and other matters governed by this Section as such become identified by and available to the parties. The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the Chairperson in accordance with Section 6-1, for resolution by way of motion to compel discovery, motion for protective order, or other appropriate motion. The filing of such motion shall not extend the time to complete discovery nor provide probable cause for a continuance of the hearing on the merits unless the Chairperson otherwise orders. Either party may request a pre-hearing conference to coordinate discovery and exchanges. Absent unusual circumstances, the Gaming Commission will not participate in the pre-hearing conference. At the request of the parties, the Chairperson may participate.

- 6-5. *Continuances.* Continuances of hearings may be granted by the Gaming Commission. The party requesting a continuance must provide the request in writing to the Gaming Commission office. The request for continuance must provide the specific reasons for the request. A party may be required to provide supporting documentation affirming the specific reason (i.e., death, hospitalization of self or immediate family member, etc.).
- 6-6. *Confidential and Privileged Materials.* If any document or other material required to be produced by this Regulation is the subject of a privilege or is confidential under the law or is subject to a confidentiality agreement, the document shall be marked "confidential" before disclosure or use in a hearing on the merits. Parties shall not further disseminate confidential or privileged materials except to counsel of record in the action and necessary staff persons employed by counsel. This Section does not require the parties to produce privileged or confidential documents or evidence the parties do not intend to introduce at a hearing on the merits.
- 6-7. *Subpoenas.* The Gaming Commission or its Chairperson shall issue subpoenas, including subpoenas for production of documents and other tangible things, upon the request of a party, only for the following purposes:
 - a. To compel a non-party to appear and give oral testimony at a deposition;

- b. To compel any person to appear at the hearing on the merits of the case to give oral testimony alone, or to produce documents or other tangible evidence.
 - c. Subpoenas shall be submitted to the Gaming Commission or its Chairperson for issuance on a form approved by the Gaming Commission. Concurrently, with the submission of the subpoena request to the Gaming Commission or its Chairperson, the requesting party shall serve a copy on all other parties to the proceeding. Subpoenas will not be issued in blank. A subpoena submitted for issuance must contain the title and any other identifier of the case, the name of the person to whom it will be directed, the date, time and place of hearing or deposition and the name and signature of the requesting party or their attorney. A subpoena for the request of documents must in addition contain a complete description of specific documents or tangible things that the witness will be required to produce at the hearing.
- 6-8. *Protective Orders.* Upon motion by a party or by a person to whom a subpoena is directed, or from whom discovery or testimony is sought, the Gaming Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:
- a. That a subpoena be quashed or modified;
 - b. That the discovery not be had or that it be had only on specified terms and conditions including a designation of the time or place;
 - c. That certain matters not be inquired into or produced or that testimony or production is limited in certain matters;
 - d. That a deposition be conducted with no one present except persons designated by the Gaming Commission or its Chairperson or that a deposition transcript be sealed; or
 - e. That a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way.
- 6-9. *Conduct of Hearings.* The hearing before the Gaming Commission will proceed as follows:
- a. Gaming Commission Chairperson welcome and subject introduction.
 - b. Petitioner (applicant/licensee/patron) will present its opening statement and its case, including any witnesses or evidence offered for the Commission's review.
 - c. Upon conclusion of Petitioner's case, Respondent (Commission Staff) shall present the case for the defense, including any witnesses or evidence offered for the Commission's review.

- d. Any member of the Gaming Commission may ask questions of witnesses or parties during testimony.
- e. Upon conclusion of Respondent's case, Petitioner may present its closing argument.
- f. Upon conclusion of Petitioner's closing, Respondent may present their closing. At that time, the matter will stand submitted for decision.

Section 7. Burden of Proof.

- 7-1. *Burden of Proof.* In matters involving licensing (employee and vendor) and patron complaints, the burden of proof to establish fitness or eligibility to obtain or maintain a license or to prevail in a patron complaint matter shall be upon the licensee, applicant, or patron.

Section 8. Decision of the Gaming Commission.

- 8-1. *Written Decision.* Within seven (7) calendar days from the date of the hearing the Gaming Commission shall render a written decision containing findings of fact and conclusions of law. A copy of the decision shall be provided to the applicant or licensee. A copy will also be placed in the applicant's or licensee's file.
- 8-2. *Default Decision.* The failure of an applicant or licensee to appear at the hearing shall constitute a default decision and an admission of any facts that may have been alleged in regard to said applicant or licensee. The Gaming Commission may take action based on such default decision or admission or any other evidence without further notice to the applicant or licensee. Upon receipt of written request outlining an emergency situation, the Gaming Commission may re-schedule the hearing. Supporting documentation affirming the emergent matter and/or situation may be required.

Section 9. Appeal to Tribal Court.

- 9-1. *Appeal of Decision of the Commission.* A decision to uphold revocation of a license by the Gaming Commission may be appealed to the Tribal Court by the licensee. No other decisions are eligible for Tribal Court review.
- 9-2. *Filing Deadline.* Revocation decisions upheld by the Gaming Commission may be appealed to the Tribal Court by the licensee within fourteen (14) calendar days of the date of receipt of the Commission's decision. For the purposes of counting the notice shall be deemed received the day of issuance. The day the notice is received by the applicant is not counted as part of the fourteen days.
- 9-3. *Standard of Review.* In all appeals before the Tribal Court, there shall be deference given by the Tribal Court to the determination of the Gaming Commission as the agency charged with responsibility for interpreting its own regulations. The Tribal Court does not have

authority to grant injunctive relief authorizing a return to work pending any appeal. The Tribal Court review of Gaming Commission hearing determinations is limited to interpretation and application of law or regulation. The decision of the Tribal Court shall be final.

Chapter 14. Hearings

Gaming Commission Approved: 01-22-19

Gaming Commission Resolution: #GC19-0122-02

Tribal Council Acceptance: 02-06-19

Tribal Council Resolution #19-0206-032