

REHABILITATION FOR LICENSURE ORDINANCE
Ordinance # 11-400-10

Article I. Purpose; Authority; Findings

- 1.01. *Purpose.* The purpose of this Ordinance is to establish procedures and uniform standards for the Regulatory Agency to determine that a Tribal Member is not likely to again engage in any offensive or criminal course of conduct, and that the public good does not require that the Tribal Member be denied licensure for employment with a Gaming Enterprise of the Tribe.
- 1.02. *Authority.* The Tribal Council enacts this Ordinance in accordance with the following authority:
- a. The Tribal Constitution, Article IV, Section 7 (j), provides that Tribal Council may take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe;
 - b. The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) authorizes a Compact between the Little River Band of Ottawa Indians and the State of Michigan to govern the operation of Class III gaming within the jurisdiction of the Tribe;
 - c. The Tribal-State Gaming Compact (73 Fed. Reg. 21361, April 21, 2008), Section 4(D)(2) provides that the Tribe may determine that a Tribal Member is not likely to again engage in any offensive or criminal course of conduct, and that the public good does not require that the Tribal Member be denied licensure for employment with a Gaming Enterprise of the Tribe.
- 1.03. *Findings.* The Tribal Council finds that:
- a. A strong tribal economy creates jobs that bring prosperity to tribal families, promotes education among tribal children, provides security for tribal elders, and sustains stable tribal communities;
 - b. To establish, sustain and advance a robust Tribal economy it is fundamental to enact public policy that provides employment opportunities for members of the Little River Band of Ottawa Indians;
 - c. The Tribal government, and its enterprises, are in the best position to implement employment practices that ensure tribal community participation in a tribal workforce to reinforce and strengthen the tribal economy;
 - d. As a condition of employment, employees of the Gaming Enterprise of the Tribe, the largest public employer within the Tribe's jurisdiction, are subject to licensure requirements in accordance with the Tribal-State Gaming Compact and the Gaming Ordinance #10-400-01;

- e. There is no process enacted for the Regulatory Agency to make determinations of Rehabilitation for licensure as allowed for in the Tribal-State Compact.
- f. To encourage Tribal Member employment within the Gaming Enterprise(s) of the Band there must be a mechanism that allows a Tribal Member to establish that their past convictions are not indicative of their current or future behavior, that they do not pose a threat to the integrity of gaming, and that the public good is not served by denying that Tribal Member licensure.
- g. It is in the best interest of the Tribe to provide uniform standards and procedures authorizing the Regulatory Agency to make determinations of Rehabilitation for licensure by ordinance.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution #11-0330-101.

- a. Resolution #15-0121-013, adopting amendments to provide the Regulatory Agency with the discretion necessary to determine whether an individual is eligible for rehabilitation in accordance with the Tribal-State Compact.
- b. Resolution #19-0327071, adopting amendment to correct errors and clarify the burden of proof requirements for Tribal Court review.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.

2.04. *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.

As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- 3.01. The word “*shall*” is always mandatory and not merely advisory.
- 3.02. *Compact (Tribal-State Compact)* means an agreement between the State of Michigan and the Little River Band of Ottawa Indians concerning Class III gaming approved or deemed approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710 (d).

- 3.03. *Gaming Enterprise* means any commercial enterprise of the Tribe authorized to engage in gaming, and all ancillary commercial activities within the gaming (facility(ies) and other improvements constructed for the conduct of gaming.
- 3.04. *Gaming Ordinance* means the ordinance authorizing and comprehensively and preemptively regulating the terms and conditions under which Class II and Class III gaming may be conducted on the lands of the Tribe.
- 3.05. *Regulatory Agency* means the Little River Band of Ottawa Indians Gaming Commission, created by Ordinance #04-400-04, or such other regulatory body created by Ordinance.
- 3.06. *Rehabilitation* means the exclusion of the effect a specific set of facts and circumstances that form the basis of a Specific Disqualifying Circumstance.
- 3.07. *Specific Disqualifying Circumstance* means those circumstances, as defined in the Tribal-State Compact, Gaming Ordinance, and any regulation promulgated by the Gaming Commission, which determine that an applicant is ineligible for licensure as an employee of a gaming enterprise.
- 3.08. *Tribal Member* means an individual enrolled as a member of the Little River Band of Ottawa Indians.

Article IV. Rehabilitation; Finding; Grant; Effect; Limits; Bars; Denial.

- 4.01. *Rehabilitation.* The Regulatory Agency for the Little River Band of Ottawa Indians is hereby authorized to make a determination of Rehabilitation to remediate the effect of a Tribal Member's Specific Disqualifying Circumstance(s) in the course of a licensing proceeding of the Regulatory Agency in accordance with provisions of the Gaming Ordinance, the Tribal-State Compact, and the Indian Gaming Regulatory Act.
- 4.02. *Finding of Specific Disqualifying Circumstance.* Where the Regulatory Agency, in the normal course of its background investigation for new, renewal, or revoked licensure of a Tribal Member licensee or applicant, finds a Specific Disqualifying Circumstance, the background investigator shall immediately determine whether the Specific Disqualifying Circumstance is barred from Rehabilitation as provided by this Ordinance, the Gaming Ordinance or the Compact.
- a. Where the Specific Disqualifying Circumstance is not barred from Rehabilitation the investigator shall recommend to the Regulatory Agency that Rehabilitation be granted for that Specific Disqualifying Circumstance.
- b. Where the Specific Disqualifying Circumstance is barred from Rehabilitation, the investigator shall recommend to the Regulatory Agency that Rehabilitation for that Specific Disqualifying Circumstance be denied.

- 4.03. *Grant of Rehabilitation.* The Regulatory Agency shall grant Rehabilitation to a licensure applicant where it has determined the following:
- a. The licensee applicant is a member of the Little River Band of Ottawa Indians; and
 - b. The Regulatory Agency, in the normal course of its background investigations made pursuant to licensing procedures, has found a Specific Disqualifying Circumstance that will otherwise deny licensure; and
 - c. The underlying basis for the Specific Disqualifying Circumstance is not barred from Rehabilitation as provided in this Ordinance, the Gaming Ordinance, the Compact, or the Indian Gaming Regulatory Act; and
 - d. The Regulatory Agency has determined that the Tribal Member is not likely again to engage in any offensive or criminal course of conduct and that the Tribal Member would not pose a threat to the public good.
- 4.04. *Effect.* Rehabilitation shall have the effect of exempting a finding of a Specific Disqualifying Circumstance from consideration by the Regulatory Agency in the course of its normal licensing procedures pursuant to provisions of the Gaming Ordinance.
- 4.05. *Limitations Of Rehabilitation.* Rehabilitation shall be granted only for the purpose of licensure by the Regulatory Agency and the Tribal Member remains subject to all provisions of the Gaming Ordinance, Tribal Regulations, and applicable Tribal or Federal laws.
- 4.06. *Rehabilitation Barred.* The Regulatory Agency shall not grant Rehabilitation where the underlying basis for the Specific Disqualifying Circumstance is based on conduct demonstrating habitual offender status, or where the Regulatory Agency has determined that the Tribal Member is likely again to engage in any offensive or criminal course of conduct or where the individual may pose a threat to the public good
- 4.07. *Denial of Rehabilitation.* If the Regulatory Agency fails to grant Rehabilitation it shall set forth, in writing, its findings and reasoning in determining against Rehabilitation for the Specific Disqualifying Circumstance in a Notice of Denial of Rehabilitation that shall be forwarded to the Tribal Member in writing, with notice of the right to a Rehabilitation Hearing, no later than seven (7) calendar days after the date of its determination.

Article V. Certificate of Rehabilitation.

- 5.01. *Certificate of Rehabilitation.* Upon a determination of Rehabilitation, the Regulatory Agency shall immediately cause to issue a Certificate of Rehabilitation which sets forth the following:
- a. Information sufficient to identify the Tribal Member;

- b. A declaration of Rehabilitation by the Regulatory Agency;
- c. The license category and employment position for which licensure was sought and for which Rehabilitation was granted;
- d. A disclaimer that the document is valid only for the purpose of licensure for the employment of the Tribal Member at a Gaming Enterprise of the Little River Band of Ottawa Indians.

Article VI. Right to Hearing; Reservation of Rights; Hearing Election; Burden; Evidence.

- 6.01. *Right to a Hearing.* Where a Tribal Member has been denied licensure upon a finding of Specific Disqualifying Circumstances, and the Regulatory Agency has failed to grant Rehabilitation, he or she shall receive timely notice of the right to a separate Rehabilitation Hearing before the Regulatory Agency.
- 6.02. *Reservation Of Rights.* No provision of this Ordinance shall abrogate any right to appeal a licensure decision of the Regulatory Agency pursuant to the licensing provisions of the Gaming Ordinance or Tribal Regulations.
- 6.03. *Rehabilitation Hearing Election.* For the convenience of the parties, the Regulatory Agency and the Tribal Member may agree to conduct the Rehabilitation Hearing in lieu of the licensure appeal hearing that is provided in the Gaming Ordinance.
- 6.04. *Burden of Proof.* In accordance with Section 10.05 of the Gaming Ordinance, Gaming Regulations Chapter 3, Section 5-2(a), and Chapter 7, Section 5-2(a), it is the determination of the Tribe that the public interest in the integrity of gaming is such that the burden of proof to establish fitness or eligibility to obtain or maintain a Non-Gaming or Gaming Employee License shall be upon the applicant or licensee, as the case may be.
- 6.05. *Evidence.* The Regulatory Agency shall consider all evidence presented by the Tribal Member to rebut a determination by the Regulatory Agency denying Rehabilitation of Specific Disqualifying Circumstances.
- 6.06. *Notice of Disposition of Rehabilitation Hearing.* The Regulatory Agency shall set forth in a written Notice of Disposition its determination, supported by its findings and its reasoning. The Notice of Disposition shall be forwarded to the Tribal Member, with notice of the right to appeal to Tribal Court, within seven (7) calendar days of the Rehabilitation Hearing.

Article VII. Appeal To Tribal Court.

- 7.01. *Appeal to Tribal Court.* The Tribal Court shall hear appeals from adverse decisions of the Regulatory Agency made at a Rehabilitation Hearing. Appeals shall be made in writing to the Tribal Court by the Tribal Member within fourteen (14) calendar days of the date of his or her receipt of the Regulatory Agency's decision.

- 7.02. *Documents to Be Forwarded to Tribal Court on Appeal.* The Regulatory Agency, upon receipt of notice of appeal by the Tribal Court Clerk, shall immediately cause to be copied and submitted, the following documents:
- a. The application for licensure, including all evidence and documents contained therein; and
 - b. The record of hearing of the Rehabilitation Hearing; and
 - c. The Notice of Denial of Rehabilitation forwarded to the Tribal Member of the determination of the Regulatory Agency; and
 - d. The Notice of Disposition of Rehabilitation Hearing forwarded to the Tribal Member after the Rehabilitation Hearing
- 7.03. *Examination of the Record; Request for Briefs.* The Tribal Court shall permit all parties to examine records submitted on appeal and to provide briefs or other explanatory memorandum or responses to briefs or other explanatory memorandum.
- 7.04. *Burden of Proof.* In accordance with Section 10.05 of the Gaming Ordinance, Gaming Regulations Chapter 3, Section 5-2(a), and Chapter 7, Section 5-2(a), it is the determination of the Tribe that the public interest in the integrity of gaming is such that the burden of proof to establish fitness or eligibility to obtain or maintain a Non-Gaming or Gaming Employee License shall be upon the applicant or licensee, as the case may be.
- 7.05. *Standard Of Review.* The Tribal Court shall review de novo, adverse determinations of the Regulatory Agency made at a Rehabilitation Hearing.
- 7.06. *Tribal Court Decision.* The Tribal Court shall have jurisdiction to decide:
- a. To uphold the Regulatory Agency's decision; or
 - b. To reverse the decision of the Regulatory Agency; or
 - c. To remand, with instructions, cases where:
 1. The Tribal Court determines that the Regulatory Agency has incorrectly interpreted or applied this Ordinance, the Gaming Ordinance, the Tribal-State Compact, the Indian Gaming Regulatory Act, or the Tribal Regulations governing licensure by the Regulatory Agency as they are applicable to the Rehabilitation Hearing; or
 2. The Tribal Court determines that the Regulatory Agency inadequately framed the Specific Disqualifying Circumstance for the purpose of the Rehabilitation Hearing.

7.07. *Appeal to the Court of Appeals.* All Appeals to the Tribal Court of Appeals shall be made in writing in accordance with the Little River Band of Ottawa Indians Tribal Court Rules.

CERTIFICATION

I, Sandra Lewis, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Rehabilitation for Licensure Ordinance adopted by the Tribal Council on March 30, 2011 and amended on March 27, 2019.



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