

TITLE 23
LUMMI NATION CODE OF LAWS
GAMING ORDINANCE

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**TITLE 23
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**TITLE 23
LUMMI NATION CODE OF LAWS
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Chapter 23.01 Policy and Purpose

23.01.010 Legislative Findings and Declaration of Policy

The Lummi Indian Business Council (LIBC), the governing body of the Lummi Nation, hereby finds and declares that the economic, educational, social, health, and general governmental welfare of the Lummi Nation and the Lummi people are threatened due to lack of adequate sources of governmental financing.

The LIBC further finds that governmental units have traditionally relied upon revenues from various types of gambling, including but not limited to, lotteries, horse racing, card games, bingo, punch boards, and pull tabs to support necessary governmental services.

The LIBC further finds and declares that the existence of unregulated gambling activities within a given area may be an inducement to criminal activity.

In light of these findings, the LIBC declares that strict tribal control over all gambling operations and activities on Tribal lands is both necessary and desirable to minimize the potential adverse effects of gambling on Tribal lands and its people and to maximize the production of governmental revenues for the benefit of the Lummi Nation and its people.

23.01.020 Applicability

Unless specifically indicated otherwise, all provisions of this Ordinance shall apply to Class II and Class III gaming on the Tribal lands. Class I gaming on Tribal lands is not subject to the provisions of the Indian Gaming Regulatory Act or this Ordinance.

Chapter 23.02 Definitions

23.02.010 Definitions

As used in this Ordinance, the following terms shall have the following meaning unless the context clearly requires otherwise:

(a) “Blackjack” shall mean the card game commonly known as blackjack or 21 in which the participants endeavor to draw or receive cards totaling not more than 21 points based upon values assigned to the face of the cards.

(b) “Class I gaming” shall mean:

(1) Social games played solely for prizes of minimal value; or

(2) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies, celebrations or gatherings and not as a business. Traditional Lummi forms of Lummi gaming include but are not limited’ to Sla-Hal, also known as bone games or stick games.

(c) “Class II gaming” shall mean:

(1) Bingo or lotto (whether or not electronic, computer or other technologic aids are used) when players:

(A) Play for prizes with cards bearing numbers or other designations;

(B) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(C) Win the game by being the first person to cover a designated pattern on such cards;

(2) Pull-tabs, punch boards, tip jars, instant bingo and other games similar to bingo, if played in the same location as bingo or lotto;

(3) Non-banking card games that:

(A) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

- (B) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;
- (4) Card games played in the states of Michigan, North Dakota, South Dakota or Washington, if:
- (A) A tribe actually operates the same card games as played on or before May 1, 1988, as determined by the National Indian Gaming Commission Chair; and
- (B) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the National Indian Gaming Commission Chair;
- (5) Individually owned Class II gaming operations –
- (A) That were operating on September 1, 1986;
- (B) That meet the requirements of 25 U.S.C. § 2710(b)(4)(B);
- (C) Where the nature and scope of the game remains as it was on October 17, 1988; and
- (D) Where the ownership interest or interests are the same as on October 17, 1988.
- (d) “Class III gaming” shall mean all forms of gaming that are not Class I or Class II gaming, including, but not limited to:
- (1) Any house banking game, including but not limited to –
- (A) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house-banking games); and
- (B) Casino games such as roulette, craps, and keno;
- (2) Any slot machines, as defined in 15 U.S.C. § 1171(a)(1), and electronic or electromechanical facsimiles of any game of chance;
- (3) Any sports wagering and pari-mutuel wagering, including but not limited to, wagering on horse racing, dog racing or jai alai; or
- (4) Lotteries.
- (e) “Contractor” shall mean and refer to any management contractor employed by the Nation to operate any gaming operation authorized by this Ordinance.
- (f) “Facility license” shall mean a separate license issued by the Nation to each place, facility or location on Tribal lands where the Nation elects to allow class II or class III gaming.
- (g) “Gambling” shall mean engaging in an activity whereby a person stakes or risks something of value upon the outcome of chance or a future contingent event not under their control or influence, upon an agreement or understanding that they or someone else will receive something of value in the event of a certain outcome.
- (h) “Gaming operation” shall mean each economic entity that is licensed by the Nation, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by the Nation directly; by a management contractor; or, under certain conditions, by another person or entity.
- (i) “Key employee” means person who performs one or more of the following functions:
- (1) Bingo Caller;
- (2) Counting room supervisor;
- (3) Chief of Security;
- (4) Custodian of gaming supplies or cash;
- (5) Floor manager;
- (6) Pit boss;

- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit;
- (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- (11) If not otherwise included, any other person whose total cash compensation is in excess of fifty thousand dollars (\$50,000) per year;
- (12) If not otherwise included, the four most highly compensated persons in the gaming operation; or
- (13) Any other person designated by the LTGC as a key employee.

(j) "LIBC" means the Lummi Indian Business Council, the duly constituted governing body of the Lummi Nation by the Authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington.

(k) "Licensee" shall mean any person or entity who has been issued a valid and current license pursuant to the provisions of this Ordinance.

(l) "LTGC" shall mean the Lummi Tribal Gaming Commission.

(m) "Nation" shall mean the Lummi Nation, a federally recognized Indian Tribe in the United States, also listed in the Federal Register as the Lummi Tribe of the Lummi Reservation.

(n) "Net revenues" shall mean gross gaming revenues of a gaming operation less:

- (1) Amounts paid out as, or paid for, prizes; and
- (2) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding

management fees.

(o) "Player" shall mean a person who participates in a Class II or Class III gaming who is physically present on the premises where the Class II or Class III gaming is conducted, other than as an employee or contractor of the house.

(p) "Poker" shall mean any of the various round card games in which the participants play against each other and attempt to achieve the highest ranking hand according to the rules of that particular type of game.

(q) "Management contract" means any contract, subcontract or collateral agreement between the Nation and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

(r) "Primary management official" means:

- (1) The person(s) having management responsibility for a management contract.
- (2) Any person who has authority:
 - (A) To hire and fire employees; or
 - (B) To set up working policy for the gaming operation; or
 - (C) The chief financial officer or other person who has a financial management responsibility.
- (3) Any other person designated by the LTGC as a primary management official.

(s) "Standard employee" shall mean an employee that is not a key employee or primary management official.

(t) "State" means the State of Washington.

(u) "Tribal-state compact" means the agreement between the Nation and the State of Washington regarding class III gaming under 25 U.S.C. § 2710(d).

(v) "Tribal lands" shall mean

- (1) Land within the limits of the Lummi Indian Reservation; or
- (2) Land over which the Nation exercises governmental power and that is either;
 - (A) Held in trust by the United States for the benefit of the Nation or individual; or
 - (B) Land held by the Nation or individual subject to restriction by the United States against alienation.

Chapter 23.03 Regulation of Gambling Activities

23.03.010 Gambling Prohibited Except as Authorized

Except as specifically authorized under this Ordinance, all gambling is prohibited within Tribal lands. Unauthorized gambling hereby is declared to be a public nuisance, and the LIBC, through the LTGC or other agents, shall have the right and power to abate the same by initiating a civil action in the Lummi Tribal Court or other court of competent jurisdiction, or by such other means as may be necessary and appropriate under the circumstances. In any civil action brought under this Section, the court shall be authorized to grant temporary, preliminary and/or injunctive relief, as deemed appropriate. All unauthorized gaming devices, equipment, records, receipts, and proceeds may be impounded at the direction of the LIBC or the court under Title 14 of the Lummi Code of Laws, and may be subject to forfeiture upon entry of final judgment in any such proceeding. The court may, in its discretion, award the LIBC civil damages against the operator(s) of any unauthorized gambling activity; said damages shall be presumed to be one thousand dollars (\$1,000) per each and every violation of this provision. For the purpose of this Section, each unauthorized game constitutes a separate violation and a cause of action for which damages can be awarded.

23.03.020 Authorized Gambling Activities

(a) Gaming Authorized. Class II and Class III

gaming are authorized to be conducted on Tribal lands, if such gaming is conducted in accordance with this Ordinance, the Indian Gaming Regulatory Act, the National Indian Gaming Commission’s regulations, and any other applicable laws or regulations.

(b) Class II and Class III Gaming Played Using Mobile Devices and/or the Internet. The LTGC may authorize the use of mobile devices and/or the internet to play Class II or Class III games on the Tribal lands provided the LTGC issues regulations or standards that meet the requirements of Subsections (c) and (d) of this Section, but only if such bets or wagers do not violate any provision of the Unlawful Internet Gaming Enforcement Act, 31 U.S.C. 5361 et seq., the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., the tribal-state compact or any other applicable laws.

(c) Age, Location and Data Security Requirements for Class II and Class III Gaming Played Using Mobile Devices and/or the Internet. Before allowing the play of a Class II or Class III game using mobile devices and/or the internet, the LTGC shall adopt standards or regulations to implement the following age, location and data security requirements which are intended to comply with the safe harbor provisions of the Unlawful Internet Gaming Enforcement Act, 31 U.S.C. 5361 et seq., and any other applicable laws:

- (1) Only players who have provided their legal name, date of birth, address and contact information shall be allowed to establish an account for Class II or Class III gaming using mobile devices and/or the internet.
- (2) Such information must be encrypted by the gaming facility or enterprise and the player must establish an account password or other authentication method approved by the LTGC.
- (3) The player shall be required to authenticate his or her identity prior to accessing his or her account and/or placing a wager.
- (4) The location of the player on Tribal lands must be verified by the gaming facility or enterprise prior to the first wager in the player

session using a geolocation method that provides the latitude and longitude coordinates of the player.

(5) The location of the player must be verified on an ongoing basis and the player session must be disabled any time the gaming facility or enterprise is unable to verify the player is present on Tribal lands.

(6) The player shall be allowed to create an account or withdraw funds from that account, other than for game play only in person at the gaming facility or enterprise.

(7) The LTGC shall have verification requirements and appropriate data security standards to block or prevent unauthorized access by any person whose age and current location has not been verified.

(d) Technical Standards for Class II and Class III Gaming Played Using Mobile Devices and/or the Internet. Class II games played using mobile devices and/or the internet must comply with the requirements of 25 C.F.R. Part 547, including any alternative standards adopted by the LTGC and approved by the Chair of the National Indian Gaming Commission. Class III games shall comply with the standards set forth in the tribal-state compact.

23.03.030 Ownership of Gaming

(a) The LIBC shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Ordinance, except as expressly provided in this Ordinance.

(b) No person or entity, other than the LIBC, shall conduct gaming without first obtaining a license from the LTGC.

(c) The LTGC may issue a license for individually owned gaming so long as:

(1) The individually owned gaming operation is licensed and regulated pursuant to this Ordinance;

(2) The income to the Nation from an individually owned gaming operation is

used only for the purposes listed in § 23.04.010 of this Ordinance;

(3) Not less than 60 percent of the net revenues of the individually owned gaming operation is income to the Nation;

(4) The owner of the individually owned gaming pays an annual assessment to the National Indian Gaming Commission pursuant to 25 C.F.R. § 514.1;

(5) The LTGC applies licensing standards that are as least as restrictive as those established by the state law governing similar gaming;

(6) The LTGC will deny a license for any person or entity that would not be eligible to receive a state license to conduct the same activity within the jurisdiction of the surrounding state. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation; and

(7) The LTGC shall promulgate regulations for individually owned gaming licenses, subject to review and approval by the LIBC under its authority granted by Section 23.05.020 of this Ordinance.

Chapter 23.04 Gaming Revenues

23.04.010 Use of Gaming Revenue

(a) Except as specifically authorized pursuant to Subsection (b) of this Section, net revenues from Class II and Class III gaming shall be used only for the following purposes:

(1) To fund the Nation's government operations and programs;

(2) Provide for the general welfare of the Nation and its members;

(3) Promote the Nation's economic development;

(4) Donate to charitable organization; or

(5) Help fund operations of local government agencies.

(b) If the LIBC elects to make per capita

payments to enrolled Lummi Tribal members, it shall authorize such payments only in conformity with a plan submitted to and approved by the Secretary of the Interior pursuant to 25 U.S.C §2710(b)(3), which includes the following:

- (1) The Nation has prepared a plan to allocate revenues to one or more of the five uses authorized by § 23.04.010(a) of this Ordinance;
- (2) The plan is approved by the Secretary of the Interior as adequate, particularly with respect to the uses described in Sections 23.04.010(a)(1) and 23.04.010(a)(3) of this Ordinance;
- (3) The interest of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are distributed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person; and
- (4) The per capita payments are subject to Federal taxation and the Nation notifies its members of such tax liability when payments are made.

23.04.020 Audit

(a) The LIBC shall cause to be conducted at least annually an independent audit of all gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission, and to such other agencies as may be required by the terms and conditions of any Class III compact or other document authorizing Class III gaming on Tribal lands.

(b) Annual audits shall conform to generally accepted auditing standards.

(c) All gaming-related contracts that result in the purchase of supplies, services, or concessions in excess of twenty five thousand dollars (\$25,000.00) annually, except contracts for professional legal and accounting services,

shall be specifically included within the scope of the audit that is described in Subsection (a) of this .

(d) Copies of the annual audit of each licensed gaming operation, and each audit for supplies, services or concessions of each gaming operation, shall be furnished to the National Indian Gaming Commission within one hundred twenty (120) days after the end of each fiscal year of the gaming operation.

23.04.030 Protection of the Environment and Public Health and Safety

The LIBC shall be responsible for assuring that the construction and maintenance of any gaming facilities, and the operation of gaming that is conducted in those facilities, is conducted in a manner which adequately protects the environment and public health and safety. If the LIBC determines that the construction or proposed operation of any such facility is a major action posing a substantial risk of significant adverse effects on the quality of the reservation environment, it may require the preparation of a detailed statement addressing the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, the relationship between local short-term uses of the reservation environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. In determining whether such a statement is required, the LIBC shall consider the nature and scope of the proposed action, any and all impacts identified by the applicant, any and all mitigating actions or proposals suggested by the applicant and the general state of knowledge or information presently existing regarding the proposal and its potential impacts.

Chapter 23.05 Gaming Commission

23.05.010 Lummi Tribal Gaming Commission Created

(a) There is hereby created the Lummi Tribal Gaming Commission (LTGC), which shall consist of five (5) persons who would

themselves qualify for licensing under this Ordinance. At any time that said LTGC should cease to exist or function, the LIBC shall serve as the LTGC, and shall promulgate and implement interim regulations to govern gaming on Tribal lands until such time as the LTGC is reestablished or resumes functioning under its own permanent regulations.

(b) The members of the LTGC shall be appointed by the LIBC and shall not be removed from office before the expiration of their terms of office except for misconduct, neglect of duties, malfeasance in office, good cause, or other acts that would render such persons unqualified for a license hereunder. An affirmative vote of the LIBC, taken in an open meeting after a duly noticed hearing at which the member charged with misconduct shall have the right to hear and present evidence concerning his or her removal, shall be required to remove a member of the LTGC. At the request of the member whose removal is at issue, the hearing may be held in executive session. LIBC also may elect to receive in executive session any evidence public disclosure of which might compromise any on-going law enforcement investigation.

(c) The LIBC shall appoint a Chairperson of LTGC, who shall be appointed for a term of three (3) years. Two members of the LTGC shall be appointed for terms of three (3) years and two members shall be appointed for terms of two (2) years. Notwithstanding the foregoing, the incumbent members of the LTGC upon the adoption of this Ordinance shall continue to serve according to the same terms and conditions under which they originally were appointed. The LIBC shall determine and authorize the compensation to be paid to members of the LTGC based upon the LIBC's determination of the time required to be expended upon LTGC duties and the qualifications of the appointed Commissioners.

(d) Officers of the LTGC, Quorum and Meetings.

(1) Annually, upon the appointment of the Chairperson and Commissioners by the LIBC, the LTGC shall designate a Vice-Chairperson and Secretary.

(A) The Chairperson shall preside over all meetings of the LTGC, perform all duties of a Chairperson and exercise any authority delegated to them by the LTGC;

(B) The Vice-Chairperson shall assist the Chairperson when called upon to do so; and in the absence of the Chairperson, preside and, while so presiding, have all the rights, privileges, duties, and responsibilities of the Chairperson;

(C) The Secretary shall conduct all LTGC correspondence, keep accurate records of all matters transacted at LTGC meetings, and promptly submit to the Secretary of the LIBC all minutes of regular and special meetings of the LTGC.

(2) A quorum shall be three Commissioners. All actions of the LTGC shall be taken by majority vote. The Chairperson shall be entitled to vote.

(3) The LTGC shall hold meetings at least monthly and at such other times:

(A) As may be called by the Chairperson;

(B) Upon written request to the Chairperson by any other Commissioner;

(C) Upon written request to the Chairperson by the Director of the Lummi Tribal Gaming Agency; or

(D) At the direction of the LIBC.

23.05.020 Authority of the LTGC

(a) The LTGC shall be authorized and hereby is directed to promulgate, subject to review and approval by the LIBC, detailed and comprehensive regulations for the implementation and enforcement of this Ordinance. Said regulations shall describe and establish the rules for each specific Class II and Class III gaming activity to be authorized to be conducted on Tribal lands, and no form of such gaming may be conducted on Tribal lands without prior approval by the LTGC.

(b) The LTGC and its agents shall have access to any and all records necessary to conduct investigations, reports, audits, etc. of any licensee of LTGC, provided that access is not prohibited by law.

(c) The LTGC, independent of LIBC, shall have full authority to monitor compliance with this Ordinance and its regulations, to investigate and prosecute violations of this Ordinance and the gaming regulations, and act to prevent any violation(s) thereof.

(d) Subject to the approval of the LIBC, The LTGC may adopt LTGC bylaws, rules of procedure and protocols to perform its functions in accordance with this Ordinance, the Indian Gaming Regulatory Act, the National Indian Gaming Commission's regulations, and any other applicable laws or regulations.

(e) Subject to the approval of LIBC and the appropriation of funds thereafter, the LTGC shall be authorized to employ such staff as reasonably may be required to fulfill its responsibilities under this Ordinance. Compensation of LTGC employees shall be limited to that which is comparable to compensation paid to persons performing similar duties in other governmental gaming regulatory agencies.

(f) Subject to the approval of LIBC, the LTGC hereby is authorized to establish and impose upon gaming facilities, permits, applicants and licensees such application, permit, and license fees as may be necessary to fully reimburse the Nation for its actual cost of operating the LTGC, enforcing this Ordinance and LTGC regulations, processing of licensing and permit applications, and otherwise fulfilling its regulatory responsibilities under the Indian Gaming Regulatory Act.

(g) Failure to timely pay any gaming-related fee imposed by LIBC or the LTGC, or to comply with a LTGC regulation or order, or any other violation of this Ordinance or the terms of any Class III gaming compact authorizing and regulating gaming on Tribal lands, shall be grounds for suspension or revocation of any license or permit issued

pursuant to this Ordinance, exclusion of any non-member of the Lummi Nation from the Tribal lands, and imposition of such other sanctions as the LTGC may deem appropriate.

(h) Any person or entity subject to any sanction or penalty by the LTGC shall have the right to appeal such sanction or penalty to LIBC in accordance with such rules and regulations as may be promulgated by LIBC for that purpose. The decision of the LIBC on any appeal shall be final and not otherwise reviewable.

23.05.030 Designation of an Agent by a Tribe

As described in 25 C.F.R. §519.1, the principal agent shall be the Chairperson of the LTGC, with the Director of the Lummi Tribal Gaming Agency being authorized to accept service in the Chairperson's absence.

Chapter 23.06 Employment

23.06.010 Licenses For Key Employees, Primary Management Officials, and Standard Employees

The LTGC shall ensure that the policies and procedures set out in this Section are implemented with respect to key employees, primary management officials, and standard employees employed at any Class II and/or Class III gaming enterprise operated on Tribal lands.

23.06.020 Application Forms

(a) The following notice shall be placed on the Nation's license application form for a key employee, a primary management official, or a standard employee before that form is filled out by an applicant:

"In compliance with the Privacy Act of the 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be

disclosed by the Nation or the National Indian Gaming Commission to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a key employee, primary management official or standard employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.”

(b) Existing key employees, primary management officials, and standard employees shall be notified in writing that they shall either

(1) complete a new application form that contains a Privacy Act notice; or

(2) sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(c) The following notice shall be placed on the application form for a key employee, a primary management official, and standard employee before that form is filled out by an applicant:

“A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, section 1001)”

(d) The existing key employees, primary management officials, and standard employees shall be notified in writing that they shall either

(1) complete a new application form that contains a notice regarding false statements; or

(2) sign a statement that contains the notice

regarding false statements.

23.06.030 Background Investigations

The LTGC shall perform a background investigation for each key employee, primary management official and standard employee in its gaming operation. The investigation must be sufficient to allow the LTGC to make an eligibility determination under Section 23.06.050 of this Ordinance.

The LTGC is responsible for conducting the background investigation of key employees, primary management officials and standard employees. Except for a standard employee, the background investigation shall include a check of criminal history records information maintained by the Federal Bureau of Investigation. A background investigation may also include but is not limited to, a check of the criminal history records of the Lummi Nation Courts, the Washington Courts and other public records research services available to the LTGC.

The LTGC shall request from each key employee, primary management official, and standard employee all of the following information:

(a) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(b) Currently and for the previous five (5) years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

(c) The names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under Subsection (b) of this Section;

(d) Current business, and residential telephone numbers, and all cell phone numbers;

(e) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those

businesses;

(f) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(g) 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;

(h) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(i) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations for which a fine of less than \$200 was imposed), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition;

(j) For each criminal charge, (excluding minor traffic charges for which a fine of less than \$200 ordinarily is imposed), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to Subsections (h) or (i) of this Section, the criminal charge, the name and address of the court involved and the date and disposition;

(k) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(l) A current photograph;

(m) Any other information the LTGC deems relevant; and

(n) Key employee and primary management official fingerprints obtained in accordance with procedures adopted by the LTGC according to 25 C.F.R. §522.2(h). Standard employees do not provide fingerprints.

The LTGC shall conduct an investigation sufficient to make a determination under §

23.06.050 of this Ordinance. In conducting a background investigation, the LTGC, and its investigators, and/or its agents shall keep confidential the identity of each person interviewed in the course of conducting a background investigation.

23.06.040 Fingerprinting

The LTGC is authorized to act as the law enforcement agency for the purpose of administering the fingerprinting requirement in Section 23.06.030 of this Ordinance. The LTGC may delegate this authority to staff as required.

23.06.050 Eligibility Determination

(a) Before a license is issued to a key employee, primary management official or standard employee the LTGC shall make a finding concerning the eligibility of that person for receiving a gaming license by reviewing the applicant's prior activities, criminal record, if any, and reputation, habits, and associations. If the LTGC, in applying the standards adopted in this Ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and/or activities in the conduct of gaming, the LTGC shall not license that person in a key employee, primary management official or standard employee position.

(b) Copies of a key employee's or primary management official's eligibility determination shall be included with the notice of results that must be submitted to the National Indian Gaming Commission before the licensing of a key employee or primary management official.

(c) Once a standard employee's eligibility determination is completed the LTGC may grant a license pursuant to § 23.06.080 of this Ordinance.

23.06.060 Investigative Reports – Key Employees and Primary Management Officials

(a) Before issuing a license to a key employee or primary management official, the LTGC shall create and maintain an investigative

report for each background investigation of a key employee or primary management official.

(b) Investigative reports shall include all of the following information:

(1) Steps taken in conducting the investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The basis for those conclusions.

23.06.070 Notice of Results of Background Investigations – Key Employees and Primary Management Officials

(a) Before issuing a license to a key employee or primary management official, the LTGC shall prepare a notice of results of the applicant’s background investigation to submit to the National Indian Gaming Commission. The notice of results must be submitted to the National Indian Gaming Commission no later than sixty (60) days after the applicant begins working for the Nation.

(b) The notice of results shall include the following information:

(1) The applicant’s name, date of birth and social security number;

(2) The date on which the applicant began, or will begin, working as a key employee or primary management official;

(3) A summary of the information presented in the investigative report, including:

(A) licenses that have been previously denied;

(B) gaming licenses that have been revoked, even if subsequently reinstated;

(C) every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and

(D) every felony offense of which the applicant has been convicted or any ongoing prosecution; and

(4) The LTGC shall submit, with the notice of results, a copy of the eligibility determination made under Section 23.06.050.

(c) If a license is not issued to an applicant, the LTGC:

(1) shall notify the National Indian Gaming Commission; and

(2) shall forward copies of its eligibility determination and notice of results (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

(d) When a key employee or primary management official is employed, the LTGC shall maintain a complete application file containing the information listed in Section 23.06.030(a) through (n). Furthermore, the LTGC shall retain the following for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment: (1) Applications for licensing; (2) Investigative reports; and (3) Eligibility determinations.

23.06.080 Granting a Gaming License

(a) No person shall be employed in any capacity by any gaming operation regulated by this Ordinance unless they first obtain and possess in good standing a license issued by the LTGC.

(b) The LTGC may issue a temporary license to any person who satisfactorily completes an application for a license from the LTGC; provided that in the judgment of the LTGC issuance of the temporary license will not jeopardize public safety or the integrity of the gaming operations. A temporary license shall

not be issued for a period greater than ninety (90) days. The gaming operation shall not employ an individual in a key employee, primary management official or standard employee position who does not have a license after ninety (90) days of beginning work at the gaming operation.

(c) The LTGC may issue a license to a standard employee upon a successful eligibility determination pursuant to § 23.06.050 of this Ordinance.

(d) If, within a thirty (30) day period after the National Indian Gaming Commission receives a notice of results and eligibility determination for a key employee or primary management official, the National Indian Gaming Commission does not notify the LTGC of an objection to the issuance of a license pursuant Subsection (f), the LTGC may issue a license to such applicant. Within thirty (30) days of the issuance of the license, the LTGC shall notify the National Indian Gaming Commission of its issuance.

(e) The LTGC shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report.

(f) If, within the thirty (30) day period described in Subsection (d) of this Section, the National Indian Gaming Commission provides the LTGC with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the LTGC has provided a notice of results to the National Indian Gaming Commission, the LTGC shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The LTGC shall make the final decision whether to issue a license to such applicant.

(g) If the LTGC has issued the license to a key employee or primary management official before receiving the National Indian Gaming Commission's statement of objections, notice and hearing shall be provided to the licensee as provided by Section 23.06.090.

23.06.090 Gaming License Suspensions and Revocations for Key Employees and Primary Management Officials

(a) If, after a license is issued to a key employee or a primary management official, the LTGC receives notice from the National Indian Gaming Commission or the LTGC determines that the key employee or primary management official is not eligible for employment, the LTGC shall do the following:

- (1) Immediately suspend the license;
- (2) Provide the licensee with written notice of the suspension and proposed revocation; and
- (3) Provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license.
- (4) A right to a revocation hearing vests only upon receipt of a license granted under an Ordinance approved by the Chair of the National Indian Gaming Commission.

(b) Following the revocation hearing, the LTGC shall decide whether to revoke or reinstate the license at issue.

(c) The LTGC shall notify the National Indian Gaming Commission of its decision to revoke or reinstate the license within forty-five (45) days of receiving notification from the National Indian Gaming Commission pursuant to Subsection (a) of this Section.

23.06.100 Gaming License Suspensions and Revocations for Standard Employees

(a) If, after a license is issued to a standard employee, the LTGC determines the employee is not eligible for employment, the LTGC shall do the following:

- (1) Immediately suspend the license;
- (2) Provide the licensee with written notice of the suspension and proposed revocation; and
- (3) Provide the licensee with notice of a

time and place for a hearing on the proposed revocation of the license.

- (4) A right to a revocation hearing vests only upon receipt of a license granted by this Ordinance.

(b) Following the revocation hearing, the LTGC shall decide whether to revoke or reinstate the license at issue.

Chapter 23.07 Gaming Facilities

23.07.010 Licensing of Gaming Places, Facilities, and Locations

A separate license shall be required for each place, facility, or location on Tribal lands where Class II and/or Class III gaming is to be conducted under this Ordinance.

23.07.020 Days and Times of Operation and Wager Limits

Class II, Class III, and other gambling activities authorized by this Ordinance may be conducted at such days and times as are determined by the LTGC in the exercise of its regulatory authority within the constraints of tribal and federal law.

Chapter 23.08 Miscellaneous Rules and Regulations

23.08.010 Minors Prohibited – Age Limit

No person under the age of eighteen (18) years shall take part in any Class II or Class III gambling activities on Tribal lands either as a participant or an employee. The LIBC shall by resolution, set the age limit for persons permitted to take part in any Class II or Class III gambling activity on Tribal lands.

23.08.020 Miscellaneous Gaming Regulations

All gaming conducted under the authority of this Ordinance shall be conducted in accordance with the following rules and regulations or such regulations as the LTGC may, from time to time, prescribe:

(a) Only house chips to be used. No person shall bring into a premises licensed to allow the playing of card games, nor introduce into any card game, any playing card or cards, or any

poker chips for use in wagering other than those obtained from the licensee on that business day.

(b) Devices and mechanisms giving advantage prohibited. No device, apparatus, mechanism, or thing which may give the participant in a card game an advantage over any other participant in that game may be used by any person.

(c) Wagers to be made with chips only. All wagers made in connection with a card game shall be made with chips furnished by the licensed premise. However, certain wagers may be made other than with chips when specifically permitted by regulations approved by the LTGC.

(d) Change in method of wagering prohibited. Once a method of betting is chosen for a particular hand or game, that method must be used until the hand or game is completed.

(e) Wagers by other than participants prohibited. Except for the game of paigow, only persons actually playing in the card game may wager upon the outcome of the game. Except when wagered on the game of paigow, wagers by persons other than those playing which in any way involves the outcome of the game, or of any aspect of the game, are prohibited.

(f) Assistance and substitutes prohibited. No person shall allow a representative to sit in on a card game on his or her behalf for any purpose, or to render assistance to any participant in the game in any manner which gives that participant an advantage over the other participants. No person shall act as such a representative.

(g) Licensee to prevent cheating. All licensees or operators of games authorized under this Ordinance shall not allow any player to play in such a manner as to cheat the persons with whom they are playing. The licensee or operator shall take all reasonably necessary steps to prevent cheating and shall be responsible to ensure that games played upon the premises are fairly played. Any incident in which a person is suspected of or found cheating shall be reported immediately to the applicable law enforcement agency.

(h) Intoxicated persons shall not play or provide services.

(1) No person who is visibly under the influence of liquor, marijuana or any controlled substance shall be allowed to play, or continue to play, in any game or to participate in providing any services for the game.

(2) It shall be the responsibility of the licensee or operator, and of those persons physically operating the games, to ensure that no unauthorized person is allowed to participate in any manner in the playing of or providing services to any game.

(i) House rules to be developed and posted.

Each entity operating a game under the provisions of this Ordinance shall develop and post in a conspicuous manner a summary of the rules for the conducting of such game not inconsistent with the provisions of this Ordinance and with the regulations of the LTGC. The LTGC shall establish the requirements for posting of house rules.

(j) Picture License/Identification required. All persons participating in the management or operation of any game under the provisions of this Ordinance while on premises shall wear an identification license which shall contain the person's name, photograph, and the licensed entity's name. The license shall be worn in plain view so as to be easily seen and read by persons participating in the event; provided however, that this Section shall not apply to undercover personnel performing legitimate security or monitoring services for the entity. Such persons shall carry proper identification on their person but shall not be required to display it except upon the lawful direction of law enforcement personnel or the management of the operating entity.

(k) Blackjack dealing.

(1) All blackjack games shall be conducted using a handheld double deck or a dealing "shoe" capable of holding at least four shuffled decks of cards at one time. The deal shall proceed until, in the dealer's judgment, the cards should be reshuffled or the cards withdrawn for examination and/or replaced.

(2) Cards may be dealt to the players face up or face down.

(3) No player shall remove cards from the table or "shuffle" or "cut" the cards except with the cut card provided.

(4) Only playing cards meeting the standards of the U.S. gaming industry shall be used.

(5) Cards may be shuffled using a device, apparatus, or mechanism. No device, apparatus, or mechanism which may give a participant in a card game any advantage over any other participant in that game may be used.

(l) Mechanical devices prohibited. No mechanical devices proscribed by the provisions of 15 U.S.C. §1175 shall be used in any gaming activity under the authority of this Ordinance, unless the use thereof would not violate federal law.

(m) Employee compensation to be reasonable. Compensation to the employees shall not exceed that which is normally paid in the gaming industry.

Chapter 23.09 Customers

23.09.010 Gaming Disputes

In the event a dispute develops between an employee and a guest over rules of play, payoffs, or other transactions, the following procedure should be followed:

(a) The employee should immediately contact the floor supervisor.

(b) The floor supervisor should listen to both sides of the dispute.

(c) The floor supervisor should then settle the dispute by ruling on the facts based on the floor supervisor's investigation.

(d) In all disputes when there is a margin of doubt, the ruling should be made in favor of the guest.

(e) If a guest is not satisfied with the decision,

they may request to have the dispute moved up to the next level in the gaming facility's organizational chart to the Chief Executive Officer whose decision shall constitute the guest's final remedy. The Chief Executive Officer shall provide a brief summary of the dispute and the decision to the Director of the Lummi Tribal Gaming Agency for informational purposes.

(f) A dispute under this section may be brought at the time the event occurs that gives rise to the dispute or submitted in writing to the gaming establishment within seven (7) days of the event's occurrence that gave rise to the dispute. Written disputes received after seven (7) days of the event occurring will not be reviewed.

23.09.020 Cash Handling Disputes

When there is a dispute between a cashier and a guest over a cash transaction, the following procedure should be followed:

(a) The cashier should contact their immediate supervisor.

(b) The supervisor should listen to both sides of the dispute.

(c) If the dispute is over an amount of money less than \$5.00 and there is any doubt as to the facts, the supervisor shall rule in favor of the guest.

(d) In disputes of transactions larger than \$5.00, the supervisor should, conduct a further investigation for determination of the facts.

(e) If a guest is not satisfied with the decision, they may request to have the dispute moved up to the next level in the gaming facility's organizational chart to the Chief Executive Officer whose decision shall constitute the guest's final remedy. The Chief Executive Officer shall provide a brief summary of the dispute and the decision to the Director of Lummi Tribal Gaming Agency for informational purposes.

(f) A dispute under this section may be brought at the time the event occurs that gives rise to the dispute or submitted in writing to the gaming establishment within seven (7) days of the

event's occurrence that gave rise to the dispute. Written disputes received after seven (7) days of the event occurring will not be reviewed.

23.09.030 Disruptive Guest

When any employee or supervisor notices drunkenness, guests under the influence of drugs, or disruptive behavior, the incident should be immediately called to the attention of the Security Department (Security) and/or the shift manager. At least two employees (one a supervisory level) should observe the behavior before action is taken. Depending upon the nature of the problem, Security should:

(a) If drunkenness or drug abuse is involved, ask the guest to leave the premises. In doing so, Security should offer to call a cab for the guest and encourage them not to drive while they are in their current condition.

(b) In the case of abusive behavior, Security should ask the guest to immediately discontinue the disruptive behavior. If the guest refuses to do so, Security should then ask the guest to leave the gaming operation premises.

(c) If a guest who has been asked to leave the gaming operation premises refuses to do so, Security should immediately contact the Lummi Nation Law and Order Department to request that the trespass laws be enforced.

If a guest repeats drunkenness, drug abuse, or disruptive behavior at a later visit to the Casino, or if the problem is severe, the guest should be barred from the gaming operation for a period of time. Guests may appeal this type of a decision to the Chief Executive Officer.

23.09.040 Criminal Behavior

In the event criminal behavior is observed on the gaming operation premises, Security should be immediately contacted. Security should then immediately contact the Lummi Nation Law and Order Department to report the activity. After contacting Lummi Law and Order, Security should continue to observe the offense. Under no circumstances should physical action or an attempt to apprehend be initiated. Upon the arrival of Lummi Nation Law and Order officers, the Security

Department personnel should follow the direction of the police officers in charge.

23.09.050 Gaming Facility Exclusions (Barring)

LTGC and/or the Gaming Operation's security department may develop procedures providing for the establishment of a list of persons who are to be excluded or ejected from the Gaming Operation. The procedures will provide fair notice and an opportunity to be heard to any individual whose name is being contemplated to be involuntarily excluded, ejected or have their name removed from the list of individuals.

Chapter 23.10 General Provisions

23.10.010 Construction

The Ordinance shall be liberally construed to carry out the purposes and policies of the Ordinance.

23.10.020 Severability

If any paragraph, section, or provision of this Ordinance shall be declared invalid by a court of competent jurisdiction for any reason, that paragraph, section, or provision shall be severed from the remainder of this Ordinance and the validity of the remainder of the Ordinance shall not be affected by such decision.

23.10.030 Sovereign Immunity

Nothing in this Ordinance, shall be deemed, construed, interpreted or implied to have waived, or authorized the waiver of, the sovereign immunity of the Nation, the Lummi Indian Business Council, or any of its entities, enterprises, instrumentalities, agencies, organizations, departments, tribally owned corporations, or political subdivisions, officers, agents, or employee unless such waiver is explicitly granted in writing by the Nation in accordance with Title 1 of the Lummi Code of Laws.

23.10.040 Repeal

All prior gaming ordinances, as originally enacted and as amended, hereby are repealed.

23.10.050 Effective Date

This Ordinance shall take effect when it is

approved by the Chair of the National Indian Gaming Commission pursuant to the Indian Gaming Regulatory Act, in writing, after its adoption by the Nation in a duly enacted resolution.

23.10.060 Amendment

If major substantive amendments are made to this Ordinance subsequent to the initial effective date, those amendments shall only become effective when approved by the Chair of the National Indian Gaming Commission in writing.

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