

**CHEROKEE COUNCIL HOUSE  
CHEROKEE, QUALLA BOUNDARY (NC)**

**Date: \_\_\_\_\_**

**ORDINANCE NO. \_\_\_\_ (2016)**

**TITLE: Merger of two Regulatory Agencies-  
Tribal Gaming Commission and Alcohol Beverage Control Commission**

- WHEREAS**, in 2009, the Tribal Council of the Eastern Band of Cherokee Indians adopted Chapter 18B of the Cherokee Code for the Regulation of Alcoholic Beverages on the trust lands of the Eastern Band of Cherokee Indians.
- WHEREAS**, Chapter 18B provides for the regulation of alcoholic beverages by a Tribal Alcoholic Beverage Commission ("Tribal ABC").
- WHEREAS**, Chapter 18 provides the applicable law governing alcohol introduced within the Indian Country of the Eastern Band of Cherokee Indians.
- WHEREAS**, the Tribal ABC currently regulates the sale of alcohol at two locations, Harrah's Cherokee Hotel and Casino and Harrah's Cherokee River Valley Hotel and Casino.
- WHEREAS**, the sale of alcoholic beverages on the trust lands of the Eastern Band of Cherokee Indians is only authorized at Harrah's Cherokee Hotel and Casino and Harrah's Cherokee River Valley Hotel and Casino, both of which are regulated by the Tribal Gaming Commission ("TGC").
- WHEREAS**, the Principal Chief and the Tribal Council are undertaking to reorganize aspects of Tribal government to provide for more efficient provision of services and for lower costs.
- WHEREAS**, each of the 5 positions on the Tribal ABC is paid a salary of \$25,000 on the Commission which regulates only two establishments.
- WHEREAS**, the role of the Tribal ABC can be fully served by the TGC at substantially lower cost to the Tribe and a substantial amount more dollars can flow back to the Tribe than only \$360,000 from approximately \$2,200,000 budget of the ABC Board.
- WHEREAS**, both of these regulatory agencies perform very similar type functions, such as backgrounding and licensing vendors and suppliers, oversight of a highly regulated activity, enforcement of a strict regulatory structure, inspections and reviews of all activities, inventory and accountability of licensed, stamped and protected assets of the Tribe.

**WHEREAS**, combining these two similar type regulatory agencies into one regulatory agency will create massive cost savings from salary and overhead reductions that will lead to better streamlined services and licensing.

**NOW THEREFORE BE IT ORDAINED** by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that the Cherokee Code be amended as follows:

**ARTICLE I. - IN GENERAL**

**Sec. 16-1. - Definitions.**

Unless a different meaning is set forth below, the terms used in this chapter shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701 et seq. (IGRA).

- (a) Applicant means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any license described in or required by this chapter.
- (b) Application means a request for the issuance or renewal of a license described in or required by this chapter.
- (c) Board of Advisors or Board means either the Board of Advisors of the Tribal Casino Gaming Enterprise or the Board of Advisors of the Tribal Bingo Enterprise, which shall govern and oversee the management and operations of all gaming operations of the Tribe and all non-regulatory aspects of the Tribe's gaming operations.
- (d) Capital/expansion reserve fund means a gaming related reserve fund, together with interest earned thereon, established by a gaming operation or the Commission either (1) required by an NIGC-approved management contract or (2) specifically authorized for gaming related purposes by a Tribal Council ordinance.
- (e) Chairman means the Chairman of the National Indian Gaming Commission.
- (f) Class I Gaming means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.
- (g) Class II Gaming means Class II Gaming as defined at 25 U.S.C. 2703(7)(A), and any regulations promulgated thereunder.
- (h) Class III Gaming means Class III Gaming as defined in 25 U.S.C. 2703(8), and any regulations promulgated thereunder.
- (i) Compact means the Tribal-State Compact including all renewals, amendments, appendices, exhibits and other attachments thereto between the Eastern Band of Cherokee Indians and the State of North Carolina providing for the conduct of Tribal Class III Gaming by the Eastern Band of Cherokee Indians.
- (j) Complimentary item means a service or item provided at no cost, or at a reduced cost, to a customer of a gaming operation.

- (k) Commission means the Cherokee Tribal Gaming and Alcoholic Beverage Control Commission.
- (l) Commissioner means an individual member of the Cherokee Tribal Gaming and Alcoholic Beverage Control Commission.
- (m) Council or Tribal Council means the Tribal Council of the Eastern Band of Cherokee Indians.
- (n) Distributable net revenue means all revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less:
  - (1) Prizes and operating expenses;
  - (2) Payments owed to a management contractor;
  - (3) Debt service payments (including without limitation principal, interest, and related fees, costs, and expenses); and
  - (4) Contributions to duly authorized capital/expansion reserve funds.

Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Commission.

- (o) Fiscal year means the period beginning at 12:01 a.m. on October 1 of each year and ending at midnight, September 30 of the following year.
- (p) Gaming means any Class II Gaming or Class III Gaming activity, either individually or collectively, whether authorized or unauthorized.
- (q) Gaming device means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any gaming which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this chapter and shall also include any devices, machines, components or contrivances which do or are capable of affecting, in any way, the playing of any gaming.
- (r) Gaming establishment or gaming facility means any premises where gaming is operated or conducted on the Tribe's Indian lands, and includes all buildings, improvements, appurtenances, equipment and facilities where gaming devices are stored or where gaming patrons are present.
- (s) Gaming operation means any business enterprise owned by the Tribe, the revenue of which is primarily derived from gaming or from any gaming establishment.
- (t) Gaming vendor means any person who manufactures, sells, leases, distributes, supplies or makes modifications to, any gaming device of the Tribe and all persons holding any direct or indirect financial interest in such gaming device supplier.
- (u) Gross revenue means all revenue of any nature derived directly or indirectly from a gaming operation.
- (v) Indian lands means:

- (1) All lands within the limits of the Tribe's reservation; and
  - (2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or held by the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.
- (w) Key employee means:
- (1) A person who performs one or more of the following functions:
    - (i) Bingo caller,
    - (ii) Counting room supervisor,
    - (iii) Chief of security,
    - (iv) Custodian of gaming supplies or cash,
    - (v) Floor manager,
    - (vi) Pit boss,
    - (vii) Dealer,
    - (viii) Croupier,
    - (ix) Approver of credit, or
    - (x) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
  - (2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year; or
  - (3) If not otherwise included, the four most highly compensated persons in the gaming operation.
  - (4) Any other person designated by the tribe as a key employee.
- (x) License means any authorization granted by the Commission, pursuant to this chapter, to any person which is required for such person to perform certain acts or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.
- (y) Licensee means any person who has been issued a valid and current license pursuant to the provisions of this chapter.
- (z) Management contract means any contract, agreement or other document approved by the NIGC, including all collateral agreements, establishing a relationship between the Tribal government and any person, pursuant to which such person has managerial responsibilities in or for any gaming operation. Nothing in this chapter shall be deemed to modify or amend a management contract approved prior to the effective date of this chapter.
- (aa) Management contractor means a person or entity that has a management contract duly approved by the NIGC.



(bb) Management entity or controlling shareholder means:

- (1) Any person having a direct financial interest in any management contract, including those persons who own five percent or more of any management entity's outstanding capital stock;
- (2) When a trust is a party to a management contract, any beneficiary or trustee of such trust;
- (3) When a partnership is a party to a management contract, any partner, general or limited, in such partnership;
- (4) When a corporation is a party to a management contract, any person who is an officer or director of such corporation, or who holds five percent or more of the issued and outstanding capital stock of such corporation, either alone or in combination with a spouse, parent, child or sibling; or
- (5) With respect to any nonnatural person with an interest in a trust, partnership or corporation that has an interest in a management contract, all beneficiaries, trustees, partners, or directors of, and five percent stockholders of, such nonnatural person.

(cc) Management fees means any monies paid from gaming revenue to any management contractor pursuant to an NIGC-approved management contract to operate a gaming establishment. Such term shall not include monies paid for the operating expenses of such gaming establishment.

(dd) Net revenue means gross revenue of a gaming operation less:

- (1) Amounts paid out as, or paid for, prizes; and
- (2) Total operating expenses, excluding management fees.

(ee) NIGC means the National Indian Gaming Commission.

(ff) Operating expense means any expense incurred in the operation of gaming that is specifically designated as an operating expense in any management contract or which by operation of generally accepted accounting principles, consistently applied, is so treated.

(gg) Ordinance means this chapter which is the Tribal Gaming and Alcoholic Beverage Control Ordinance of the Eastern Band of Cherokee Indians, as amended from time to time, and any rules promulgated under this chapter.

(hh) Patron means any person who participates in gaming, or who is physically present on premises wherein or whereon gaming is conducted.

(ii) Person means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

(jj) Primary management officials means:

- (1) The person having management responsibility for a management contract;
- (2) Any person who has authority:

- (i) To hire and fire employees; or
- (ii) To set up working policy for the gaming operation; or
- (3) The chief financial officer or other person who has financial management responsibility.
- (4) Any other person designated by the tribe as a primary management official.
- (kk) Rules means any rules governing the conduct of games or the control of internal fiscal affairs of gaming operations as may be promulgated by the Commission established pursuant to this chapter.
- (ll) Tribe means, and Tribal shall refer to, the Eastern Band of Cherokee Indians, which is recognized as:
  - (1) Eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians, and
  - (2) Possessing powers of self-government.

(Ord. No. 710, 10-13-2005; [Ord. No. 167, 7-8-2014](#))

Sec. 16-1.01. - Short title.

This chapter shall be known and may be cited as the Tribal Gaming and Alcoholic Beverage Control Ordinance.

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

Sec. 16-1.02. - Purpose.

The Tribal Council of the Eastern Band of Cherokee Indians enacts this chapter in order to regulate all forms of gaming on the Tribe's Indian lands.

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

Sec. 16-1.03. - Public policy.

- (a) All gaming which is conducted within the Tribe's Indian lands and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter.
- (b) The Tribal Council hereby finds and declares it to be the public policy of the Tribe that:
  - (1) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and that gaming is free from criminal and corruptive elements.
  - (2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices.
  - (3) All management entities or controlling shareholders, primary management officials, key employees, gaming establishments and suppliers of gaming goods and services must

therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

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

Sec. 16-1.04. - Class II Gaming authorized.

Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Indian lands; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this chapter, the rules and regulations of the Commission, IGRA, and the NIGC's regulations.

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

Sec. 16-1.05. - Class III Gaming authorized.

All forms of Class III Gaming that are listed in Exhibit 1 to the Addendum to the Restated Tribal-State Compact entered on November 28, 2011 and amended in May 2012 and fully approved and published by the Secretary of the Department of Interior are hereby authorized on lands within the Tribe's Indian lands; provided, however, that Class III Gaming shall be conducted in accordance with the provisions of this chapter, the rules and regulations of the Commission, IGRA, the NIGC's regulations, and the Compact.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

Sec. 16-1.05A. - Class III casino credit issuance authorised.

Casino operations are hereby empowered to make credit worthiness decisions on players to issue casino credit to players that meet requirements which shall be at least as stringent as standard casino industry practice currently requires and the Tribal Gaming and Alcoholic Beverage Control Commission promulgates in the Internal Control Standards. These standards shall set forth a level of protection for Tribal assets and for the safe and effective operation of casino credit.

(Ord. No. 244, 8-8-2012)

Sec. 16-1.06. - Location of gaming.

The Commission shall ensure that:

- (1) Such gaming as it authorizes and licenses pursuant to this chapter is conducted on lands within the Tribe's Indian lands; and
- (2) Such gaming is not otherwise specifically prohibited by federal law.
- (3) There are up to three (3) locations permitted for Class III gaming to be conducted. The property considered as location #1 shall always be recognized as the casino located in



the town of Cherokee on the Qualla Boundary alongside Soco Creek bordering Highway 19N; the second and third locations shall be approved by Tribal Council resolution and ratified by the Principal Chief following a full study by the TCGE Board of Advisors. All gaming locations shall meet all requirements under this Chapter and any requirements mandated by federal law and the Tribal-State Compact.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

**Sec. 16-1.07. - Ownership of gaming.**

The Tribe shall have the sole proprietary interest in any gaming operation authorized by this chapter and hereby authorizes and directs the casino operations to make all payments and satisfy all obligations on behalf of the Tribe in its payment obligations contained under the Tribal-State Compact or Federal and Tribal law.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

**Sec. 16-1.08. - Use of gaming revenue.**

- (a) Net revenue from tribal gaming shall be used only for the purposes set forth in this section.
  - (1) To fund tribal government operations and programs;
  - (2) To provide for the general welfare of the Tribe and its members;
  - (3) To promote tribal economic development; and
  - (4) To donate to charitable organizations.
- (b) The Tribe has elected to make per capita payments, in the amount of 50 percent of distributable net revenue from both Class II and Class III gaming activities, to enrolled tribal members, and shall authorize and issue such payments only in accordance with a revenue allocation plan submitted to and approved by the Secretary of the Interior under 25 U.S.C. § 2710(b)(3), as set forth in chapter 16C of the Cherokee Code.
- (c) Nothing in this section shall be construed to require that a gaming operation or the Commission distribute funds that are not distributable net revenue.

(Ord. No. 710, 10-13-2005; Ord. No. 244, 8-8-2012)

**Sec. 16-1.09. - Unauthorized gaming.**

Any person who commits any act of unauthorized gaming on the Tribe's Indian lands shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction.

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

**Sec. 16-1.10. - Conduct of games.**



All gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any gaming that is not conducted in accordance with such rules governing the conduct of games as may be promulgated by the Commission under this chapter.

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

Sec. 16-1.11. - Applicability of chapter.

Unless specifically indicated otherwise, all provisions of this chapter shall apply to both Class II Gaming and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

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

ARTICLE II. TRIBAL GAMING and ALCOHOLIC BEVERAGE CONTROL COMMISSION<sup>[2]</sup>

~~Footnotes:~~

~~—(2)—~~

~~Cross-reference—Tribal government, Ch. 117.~~

Sec. 16-2.01. - Establishment.

- (a) Composition of the Commission: The Tribal Gaming and Alcoholic Beverage Control Commission shall be composed of three enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes.
- (b) Appointment of Commissioners: Commissioners shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Commission shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the Commission.
- (c) Commissioners may hold other positions of employment and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter.
- (d) Except as provided in subsection (e), each Commissioner shall serve a term of five years, subject to removal, with cause, by a majority of the Tribal Council. Nothing in this chapter shall be construed to preclude a Commissioner from serving successive terms. There shall be a six-month probationary period for each new appointee to be reviewed by the Principal Chief and the Tribal Council.

- (e) To ensure continuity in the Commission and rotation of appointments, the existing Commissioners shall continue to serve, but their terms shall be adjusted so that they serve staggered terms. Upon the effective date of this amendment, the Principal Chief shall assign term expiration dates for each current Commissioner, such that one Commissioner's term expires every year beginning December 31, 2008. The established rotation shall continue for each Commission position for future new, renewal, or replacement appointments.
- (f) No Commissioner shall be finally approved until he or she has completed a background investigation pursuant to section 16-2.03.
- (g) Before assuming office, each Commissioner shall take the oath of office administered to Tribal officers.
- (h) Resignation: A Commissioner may resign at any time by providing the Principal Chief and Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Principal Chief or Tribal Council to be effective.
- (i) Vacancies: A nomination to fill a vacancy in the Commission shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.
- (j) The Commission shall select annually, from its membership, a Commission Chair.

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

Sec. 16-2.02. - Independence.

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

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

Sec. 16-2.03. - Licensing of Commissioners.

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

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

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

Sec. 16-2.04. - Restrictions on Commissioners.

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

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

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

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