

TITLE 20

GAMING CODE

Chapter 20.01 Gaming

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TITLE 20
GAMING

20.01.01 Purpose

Pursuant to Article IV, Section 3.A. of the Constitution of the Port Gamble S'Klallam Tribe, the Tribal Council is empowered to enact laws and hereby enacts this ordinance in order to govern Class II and Class III gaming operations on the Tribe's Indian lands.

20.01.02 Definitions

Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, and its regulations, 25 C.F.R. § 500 *et seq.* Specifically:

- (a) Board of Directors means the Board of Directors of the Noo-Kayet Development Corporation (or any of its subsidiaries that owns and manages the gaming operations), which shall serve as primary management officials in overseeing the General Manager and the non-regulatory aspects of the gaming operations.
- (b) Bylaws means the Bylaws of Noo-Kayet Development Corporation or any of its subsidiaries that owns and manages the gaming operations.
- (c) Charter means the Federal Charter of Incorporation of Noo-Kayet Development Corporation or any of its subsidiaries that owns and manages the gaming operations.
- (d) CEO means the Chief Executive Officer of the Noo-Kayet Development Corporation or any of its subsidiaries that owns and manages the gaming operations.
- (e) 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.
- (f) Class II gaming means
 - (1) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith):
 - (A) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

- (B) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
 - (C) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and
- (2) card games that:
- (A) are explicitly authorized by the laws of the State, or
 - (B) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- (3) The term “class II gaming” does not include:
- (A) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
 - (B) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.
- (g) Class III gaming means all forms of gaming that are not class I gaming or class II gaming.
- (h) Commission means the Tribal Gaming Commission established to perform regulatory oversight and to monitor compliance with Tribal, Federal, and applicable State regulations. The Commission is the same entity referred to in the Compact as the Tribal Gaming Agency.
- (i) Commissioner means a member of the Commission.
- (j) Compact means a Tribal-State Compact entered into and in effect by and between the Tribe and the State concerning class III gaming approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710(d).
- (k) Complimentary means a service or item provided at no cost, or at a reduced cost, to a customer.
- (l) Conflict of Interest means an action or decision by a Director, the CEO, or a Commissioner that benefits the official or the official’s immediate

family in a manner that is materially different from the benefit to the general membership of the Tribe.

- (m) Director means a Member of the Board of Directors.
- (n) Executive Director means the employee hired by the Commission who is primarily responsible for carrying out the duties of the Commission.
- (o) Financial Interest means an interest held by a Director, the CEO, or a Commissioner, or their immediate family, in any income, investment, employment, or other beneficial interest in property or a business or any interest in employment or prospective employment in the gaming operation or with the Commission.
- (p) Gaming Services means the provision of any goods or services to the Tribe with a value in excess of \$25,000 annually, whether provided on or off of the Tribe's reservation, directly in connection with the operation of Class II or Class III gaming in a gaming facility, including equipment, maintenance, or security services for the gaming facility. Gaming services shall not include professional legal or accounting services or indirect goods and services such as food and beverage suppliers.
- (q) General Manager means the person serving as the chief operating officer of the gaming operation.
- (r) Gift means any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services or other benefit received without the payment of consideration and not extended or provided to the general public; excluding gifts from family members.
- (s) IGRA means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.
- (t) Immediate family of a person means the parents, brothers, sisters, spouse, children, grandchildren and members of the household of that person.
- (u) Indian lands means:
 - (1) all lands within the limits of the Tribe's reservation;
 - (2) any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Indian Tribe exercises governmental power; and

- (3) all lands acquired into trust for the benefit of the Tribe after October 17, 1988, and which meet the requirements set forth in 25 U.S.C. § 2719.
- (t) Key Employee means:
 - (1) a person who performs one or more of the following functions:
 - (A) Bingo caller;
 - (B) Counting room supervisor;
 - (C) Chief of security;
 - (D) Custodian of gaming supplies or cash;
 - (E) Floor manager;
 - (F) Pit boss;
 - (G) Dealer;
 - (H) Croupier;
 - (I) Approver of credit; or
 - (J) 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 per year; or
 - (3) if not otherwise included, the four most highly compensated persons in the gaming operation.
- (u) Net Revenues means gross gaming revenues of an Indian gaming operation less
 - (1) amounts paid out as, or paid for, prizes; and
 - (2) total gaming-related operating expenses, excluding management fees.
- (v) Noo-Kayet Development Corporation means the Noo-Kayet Development Corporation, a federally-chartered corporation established under 25 U.S.C. § 477 and wholly-owned by the Tribe.
- (x) 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 Casino chief financial officer or other person who has financial management responsibility.
- (y) State means the State of Washington.
- (z) Tribe means the Port Gamble S'Klallam Tribe.

20.01.03 Gaming Authorized

Class II and Class III gaming are hereby authorized.

20.01.04 Ownership of Gaming

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance, which interest and responsibility may be held by and through Noo-Kayet Development Corporation unless and until such interest and responsibility may be transferred to a subsidiary of Noo-Kayet Development Corporation.

20.01.05 Use of Gaming Revenue

Net Revenues from tribal gaming shall be used only for the following purposes:

- (a) to fund tribal government operations and programs;
- (b) to provide for the general welfare of the Tribe and its members;
- (c) to promote tribal economic development;
- (d) to donate to charitable organizations; or
- (e) to help fund operations of local government agencies.

20.01.06 Board of Directors

- (a) Responsibility. The Board of Directors shall serve in a management oversight role over the General Manager and the operations at the gaming facilities. The Board of Directors shall oversee all non-regulatory

aspects of the gaming operation. Regulation of the gaming operation shall be the sole responsibility of the Commission.

- (b) CEO. The Board of Directors may authorize the CEO to exercise any or all of its duties and responsibilities on a day-to-day basis between meetings of the Board of Directors.
- (c) Licensing. The Directors and the CEO shall be subject to the same background investigation requirements as key employees and primary management officials, and must be licensed accordingly.
- (d) Duties. The Board of Directors shall perform the following duties:
 - (1) Monitor and oversee the operations of the gaming facility, whether managed by the General Manager or by an approved management contractor employed pursuant to IGRA;
 - (2) Inspect and examine on a regular basis all financial statements, cash flow and audit reports, books, records, and papers of the gaming facility
 - (3) Set hours of operation for the gaming facility;
 - (4) Set wager limits;
 - (5) Develop and approve marketing plans;
 - (6) Oversee the interview, selection, management and training of employees of the gaming operation;
 - (7) Oversee the interview, selection, management and training of the General Manager of the gaming operation, subject to any limitations set forth in the Charter and the Bylaws.
 - (8) Establish employee policies, rates of pay, and hours of work;
 - (9) Adopt an annual operating budget, including capital outlay and fund allocations subject to Tribal Council approval;
 - (10) Adopt financial policy and internal control procedures;
 - (11) Enter into contracts on behalf of the gaming operation;
 - (12) Perform any other duties necessary to monitor and oversee the gaming operation and which are consistent with the authority of the Board of Directors as that authority is established in the Charter and the Bylaws; and

- (13) Make monthly written reports to the Tribal Council and, if a subsidiary of Noo-Kayet Development Corporation owns and manages the gaming operations, the Board of Directors of Noo-Kayet Development Corporation, on the gaming operations, including a comparison of the actual revenues and expenditures compared to the approved budget.
- (e) Conflicts of Interest. The Tribe recognizes the importance of an independent Board of Directors in maintaining a well-managed gaming operation. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribe hereby finds that, at a minimum:
- (1) Neither any Director nor the CEO may serve on the Commission;
 - (2) No person in the immediate family of any Director or of the CEO may serve on the Commission;
 - (3) The Directors and the CEO are prohibited from gambling at the gaming operation; and
 - (4) The Directors and the CEO are prohibited from accepting complimentary items from the gaming operation.
- (j) Sovereign Immunity. The sovereign immunity of the Tribe is hereby extended to, and shall protect the Board of Directors, each Director and the CEO from civil liability for any act, omission or statement taken or made in the lawful performance of their duties under this ordinance except as may be provided in the Charter.

20.01.07 Tribal Gaming Commission

- (a) Establishment. The Tribe hereby establishes a Tribal Gaming Commission whose duty it is to regulate tribal gaming operations. The Commission shall consist of five (5) members. There shall be among them a Chairperson, Vice-Chairperson, a Secretary and two additional Commissioners.
- (b) Purpose and Authority. The purpose of the Commission is regulatory, not managerial. The Commission will conduct oversight to ensure compliance with Tribal, Federal, and, if applicable, State laws and regulations. The Commission will serve as the licensing authority for individuals employed in the gaming operation and will administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the internal controls for the gaming operation and in tracking revenues. In order to carry out its regulatory duties, the Commission shall have unrestricted access to all areas of the gaming operation and to all records.

The Commission shall have authority to take enforcement actions, including suspension or revocation of an individual or vendor gaming license when appropriate.

- (c) Independence and Conflict of Interest. The Tribe recognizes the importance of an independent Tribal Gaming Commission in maintaining a well-regulated gaming operation. The Commission shall be and act independently and autonomously from the Tribal Council in all matters within its purview. No prior or subsequent review by the Tribal Council of any actions of the Commission shall be required or permitted except as otherwise explicitly provided in this Ordinance. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribe hereby finds that, at a minimum:
- (1) No member of the Tribal Council may serve on the Commission;
 - (2) No Commissioner may serve on the Tribal Council or the Board of Directors or as the CEO;
 - (3) No member of the immediate family of any Tribal Council member may serve on the Commission;
 - (4) Commissioners are prohibited from gambling at the gaming operation; and
 - (5) Commissioners are prohibited from accepting gifts from licensees or applicants for licenses or complimentary items from the gaming operation, excepting food and beverages valued under twenty-five dollars and gifts given uniformly to a class of people such as gifts given to all tribal elders.
- (d) Appointments. Commissioner positions shall be filled through appointments made by the Tribal Council.
- (e) Background Investigations. Nominees for positions of Commissioner shall be subject to a background investigation and must satisfy the suitability standards set forth for key employees and primary management officials, found in Sections 20.01.22 and 20.01.23 of this Ordinance. The background investigations shall be performed under the direction of the Tribal Council.
- (f) Duties. The Commission shall:
- (1) Conduct or cause background investigations to be conducted on, at a minimum, primary management officials and key employees and vendors who are paid more than \$25,000 in any calendar year for goods or services provided to the gaming operation;
 - (2) Review and approve all investigative work conducted;

- (3) Report results of background investigations to the NIGC;
- (4) Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints;
- (5) Make licensing suitability determinations, which shall be signed by the Chairman of the Commission;
- (6) Issue gaming licenses to management officials, key employees of the operation, and vendors, consistent with the suitability determination;
- (7) Require all licensed employees to wear identification cards in plain view while working in the gaming facilities;
- (8) Establish standards for licensing Tribal gaming operations;
- (9) Issue facility gaming licenses to Tribal gaming operations;
- (10) Inspect, examine, and monitor all gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of the gaming establishment;
- (11) Ensure compliance with all Tribal, Federal and applicable State laws, rules, and regulations regarding Indian gaming;
- (12) Investigate any suspicion of wrongdoing associated with any gaming activities;
- (13) Hold hearings on patron complaints, in compliance with procedures established in this ordinance and other Tribal gaming regulations;
- (14) Comply with any and all reporting requirements under the IGRA, the Compact, and any other applicable law;
- (15) Promulgate and issue regulations necessary to comply with applicable internal control standards;
- (16) Promulgate and issue regulations on the levying of fees and/or taxes associated with gaming license applications;
- (17) Promulgate and issue regulations for the conduct of hearings and the levying of fines, not to exceed \$5,000.00 per violation per day, and/or suspension or revocation of gaming licenses for violations of the gaming ordinance, or any other Tribal, Federal or applicable State gaming regulations;

- (18) Establish a list of persons not allowed to game in the Tribal gaming facility in order to maintain the integrity of the gaming;
 - (19) Establish a list of persons who have voluntarily asked to be excluded from the Tribal gaming facility and create regulations for enforcing this exclusion;
 - (20) Provide referrals and information to the appropriate law enforcement officials when such information indicates a violation of Tribal, Federal or applicable State statutes, ordinances, or resolutions;
 - (21) Create a list of regulatory authorities that conduct vendor background investigations and licensing which the Commission recognizes as trustworthy;
 - (22) Draft regulations exempting vendors from the licensing and/or background investigation requirements if they have received a license from a recognized regulatory authority;
 - (23) Perform such other duties as the Commission deems appropriate for the proper regulation of the Tribal gaming operation;
 - (24) Make monthly written reports to the Tribal Council on the activities of the Commission, including a comparison of the actual revenues and expenditures compared to the approved budget; and
 - (25) Promulgate such regulations and guidelines as the Commission deems appropriate to implement the provisions of this Ordinance.
- (g) Confidentiality of Information. The Commission shall ensure that all records and information obtained as a result of an employee background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing and employment processes. Information obtained during the course of an employee background investigation shall be disclosed to members of management, human resource personnel or others employed by the tribal gaming operation on a need-to-know basis for actions taken in their official capacities. This Section does not apply to requests for such information or records from any Tribal, Federal or State law enforcement or regulatory agency, or for the use of such information or records by the Commission and staff in the performance of their official duties.
- (h) Terms of Office. The terms of office for Commissioners shall be as follows: the Chair shall serve an initial term of one year, with subsequent Chairs serving three-year terms. The Vice-Chair and one Commissioner shall serve an initial term of two years, with subsequent Vice-Chairs and Commissioners serving three-year terms. Secretary and

one Commissioner shall serve a three-year term, with subsequent Secretaries and Commissioners serving three-year terms.

- (i) Persons Not Eligible for Appointment. The following persons are not eligible to serve as Commissioners:
 - (1) Tribal Council members, while serving as such; Directors, while serving as such; the CEO, while serving as such; employees of the gaming operation, while serving as such; gaming contractors (including any principal of a management or other contracting company); persons in the immediate family of any of the above; persons ineligible to be key employees or primary management officials.
 - (2) Non-tribal members previously convicted of a felony, of embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) cannot serve as Commissioners. Tribal members previously convicted of a felony, of embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) will only be allowed to serve as Commissioners if the Tribal Council specifically finds that a significant amount of time has passed and that the person is now of trustworthy character.

The Tribal Council shall require a criminal history check with appropriate law enforcement agencies and shall review this criminal history report and make an appropriate suitability determination before appointing an individual to a position as a Commissioner. No one may be appointed to the Commission who would not otherwise be eligible for an individual gaming license, although a license need not be required.

- (j) Removal of Commissioners. The independence of the Commission is essential to a well-regulated gaming operation. For that reason, Commissioners may only be removed from office by the Tribal Council prior to the expiration of their respective terms for neglect of duty, misconduct, malfeasances, or other acts that would render a Commissioner unqualified for his or her position. Any allegations of neglect of duty, misconduct, malfeasance, or other acts that would render him or her unqualified for the position as Commissioner must be substantiated by a preponderance of the evidence. Commissioners will be given an opportunity to provide evidence rebutting the grounds for their proposed removal before the removal is considered. A vote of the Tribal Council on the validity of the removal shall be final and not subject to further appeal.
- (k) Quorum. A majority of the Commission shall constitute a quorum. The concurrence of a majority of the members appointed to the Commission

shall be required for any final determination or final action by the Commission. The Commission may act in its official capacity even if there are vacancies on the Commission.

- (l) Compensation. Tribal Gaming Commissioners shall be compensated at a level determined by the Tribal Council. Commissioner compensation shall not be based on a percentage of gaming revenue in order to ensure the Commission is not improperly influenced. A Commissioner's compensation shall not be reduced during that Commissioner's term of office.
- (m) Meetings and Records. The Commission shall meet at the call of the Chair or any three members, as necessary, but in any event shall meet at least once each month and the Secretary shall maintain a written record of all actions taken with due regard to the need to protect proprietary information and the privacy of individuals. The Commission may meet in closed session when considering applications for licensing, law enforcement or security matters, for deliberations following a hearing, discussing personnel matters or meeting with legal counsel.
- (n) Sovereign Immunity. The sovereign immunity of the Tribe is hereby extended to, and shall protect the Commission and each of its members from, civil liability for any act, omission, or statement taken or made in the lawful performance of their duties under this ordinance.

20.01.08 Ethics Requirements for Members of the Board of Directors, the CEO and the Tribal Gaming Commission

- (a) Prohibited Conduct. The Tribe recognizes that the duties of the Board of Directors, the CEO, and the Commission include making important decisions on highly sensitive issues. As such, the Tribe has determined that the Board of Directors, the CEO, and the Commission shall be held to extremely high ethical standards. Prior to taking their positions on the Board and the Commission, or as CEO, each person shall agree to be bound by the following principles:

Such persons shall:

- (1) Not hold financial interests that conflict with the conscientious performance of their duties as managers and regulators (Per capita distributions, if any, are not to be considered such financial interests);
- (2) Not engage in financial transactions using nonpublic information or allow the improper use of such information by others to further any private interest;

- (3) Not solicit or accept any gift or other item of monetary value, including complimentary items or services (see Section 20.01.09), from any person or entity seeking official action or inaction from, doing business with, or conducting activities overseen, managed or regulated by such person's organization, or whose interests may be substantially affected by the performance or nonperformance of such person's duties;
- (4) Make no unauthorized commitments or promises of any kind purporting to bind the Tribe, Noo-Kayet Development Corporation or any subsidiaries thereof;
- (5) Not use their positions for private gain;
- (6) Act impartially, in accordance with all relevant Tribal, Federal and applicable State laws, and shall not give preferential treatment to any private organization or individual, including to any persons in their immediate families;
- (7) Ensure that Tribal property and gaming assets shall be properly segregated and safeguarded, and that such property and assets shall not be used for unauthorized activities;
- (8) Not engage in outside employment or activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities;
- (9) Disclose waste, fraud, abuse, and corruption to appropriate authorities;
- (10) Endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards listed herein;
- (11) Disclose any real or apparent financial or personal conflicts of interest; if there is a real conflict or the appearance of one, such person shall not take part in any discussion of or decision related to the conflict of interest.

20.01.09 Complimentary Items

- (a) Regulations. The use of complimentary items shall be governed by regulations established by the Commission.
- (b) Prohibition. No Key Employee, Primary Management Official, Tribal Council member, Director, the CEO, Commissioner, or any person in the immediate family of such persons, shall be authorized to receive complimentary items other than food and beverages valued at under twenty-five (25) dollars, or, if at a public event held at the gaming facility, the free food and beverage offered to the public.

- (c) Budget and Limitations. Complimentary Items shall be included in the annual budget for the gaming operation, with maximum limits specified, and shall be subject to approval by the Board of Directors.

20.01.10 Executive Director and Staff of the Tribal Gaming Commission

- (a) Hiring. The Commission shall select and employ an Executive Director and staff to assist in carrying out the duties of the Commission. The Commission shall utilize the Human Resources office of the Tribe to assist in the selection of a Director and staff. The Executive Director and staff shall be subject to background investigations conducted by the Commission prior to employment consistent with the same procedures and standards applied to primary management officials and key employees pursuant to this Ordinance. The Executive Director and staff of the Commission shall comply with and be subject to the Personnel Policies and Procedures of the Tribe.
- (b) Supervision and Evaluation. The Commission shall directly supervise the Executive Director to ensure that the Executive Director is providing the management and supervision of the staff that is necessary for the implementation of this Ordinance, any regulations issued by the Commission and all applicable federal and state laws. The Commission shall provide for an evaluation of the performance of the Executive Director annually and shall provide for the participation of the Executive Director of the Tribe in such annual evaluation. The annual evaluation of the Executive Director shall be subject to the approval of a majority of the Commission and shall be provided to the Tribal Council.
- (c) Suspension and Removal. The Commission shall have the sole authority to suspend or remove the Executive Director of the Commission and may do so without cause. The Commission shall utilize the Human Resources office of the Tribe to assist in the process to ensure compliance with Human Resources policies and procedures, including the Personnel Policies and Procedures of the Tribe.

20.01.11 Annual Audit

- (a) Submission to NIGC. The Tribe shall cause an annual outside independent Annual Audit of gaming operations to be conducted, and shall submit the resulting audit reports to the National Indian Gaming Commission (NIGC) not later than 120 days after the close of the Tribe's fiscal year.
- (b) Contracts Included. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be included within the scope of the Annual Audit.

20.01.12 Environment and Public Health and Safety

- (a) Facilities. Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.
- (b) Standards. The Tribal Council shall adopt standards that assure adequate protection of the environment and the public health and safety.

20.01.13 Patron Dispute Resolution

Patrons who have complaints against the gaming establishment shall have as their sole remedy the right to file a petition for relief with the Commission. Complaints shall be submitted in writing, and at the discretion of the Commission, the petitioner may be allowed to present evidence. The Commission shall hold a hearing within 30 days of receipt of petitioner's complaint. Petitioner may have counsel present at such hearing. The petitioner may be allowed to present evidence, at the discretion of the Commission. The Commission shall render a decision in a timely fashion and all such decisions will be final when issued. Any patron complaint must be submitted to the Commission within thirty (30) days of the incident giving rise to the complaint. All claims by patrons shall be limited to a maximum recovery of \$750.00 per occurrence, and a cumulative limit of \$1,500.00 per patron in any twelve (12) month period, except disputes relating to a patron's entitlement to a game prize, which shall be limited to the amount of such prize. The Commission's decision shall constitute the complainant's final remedy.

20.01.14 Tribal Internal Control Standards

The Tribe shall adopt and implement Internal Control Standards (ICS) for the operation of its Tribal gaming operation in accordance with applicable law. The Tribe's ICS shall be set out in separate regulations to be reviewed and approved by the Commission.

20.01.15 Agent for Service of Process

The Tribe hereby designates the Executive Director of the Tribe as agent for service of any official determination, order or notice of violation. The Executive Director of the Tribe may be contacted at:

Port Gamble S'Klallam Tribe
31912 Little Boston Road N.E.
Kingston, Washington 98346

20.01.16 Compliance with Federal Law

The Tribe will comply with all applicable federal law, including the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*

20.01.17 Facility Licenses

- (a) Separate Licenses. The Commission shall issue a separate license annually to each place, facility, or location on Indian lands where class II and/or class III gaming is conducted under this ordinance.
- (b) Application and Standards. The Commission shall specify the form, conditions, and content for the application for such licenses, which shall be submitted by the chief management official of the facility. The initial application shall include a legal description of the lands whereon the facility is located, a certification that said premises constitute "Indian lands" as specified in the IGRA, and the initial application shall identify the environmental, health, and public safety standards with which the facility must comply and shall include a certification that the facility is in compliance with such standards. Each subsequent application for the renewal of such facility license shall identify any changes or additions to the legal description and applicable environmental, health, and safety standards and include current certifications of compliance with all such standards. The Commission shall only issue such licenses if the applications include the required information and certifications and such further conditions as the Commission shall have specified. In the event that the Commission determines that a facility license should be denied, the Board of Directors will have thirty (30) days to cure the deficiencies that gave rise to the denial of a license.

20.01.18 Licenses for Key Employees and Primary Management Officials

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any gaming enterprise operated on Indian lands. The Tribe will issue licenses annually and perform background investigations according to requirements established by the Commission that are at least as stringent as 25 C.F.R. Parts 556 and 558 and the Compact.

20.01.19 License Application Forms

- (a) Required Notices. The following notice shall be placed on the Tribe's license application form for a key employee or a primary management official before it is filled out by the applicant:
 - (1) In compliance with the Privacy Act of 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 the Tribal gaming regulatory authority 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 Tribe or the NIGC 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 NIGC 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 being unable to license you for a primary management official or key employee position.

- (2) 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) The following additional notice shall be placed on the application form for a key employee or a primary management official before it is filled out by an applicant:
- (1) 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).
- (c) Existing Employees. The Commission shall notify in writing existing key employees and primary management officials who have not completed an application containing the notices set forth above that they shall either:
- (1) Complete a new application form that contains both the Privacy Act and false statement notices; or
 - (2) Sign a statement that contains the Privacy Act and false statement notices and consent to the routine uses described in that notice.

20.01.20 License Fees

The Tribe may charge a license fee, to be set by the Commission, to cover its expenses in investigating and licensing Key Employees and Primary Management Officials of the gaming operation.

20.01.21 Fingerprints

Each applicant for a primary management official or a key employee shall be required to have fingerprints taken as part of the license application procedure. The Commission will take, or will establish procedures for a designee to take, fingerprints. The Commission will then forward fingerprints to the NIGC for processing through the FBI and the National Crime

Information Center (NCIC) to determine the applicant's criminal history, if any.

20.01.22 Background Investigations and Suitability Determinations

- (a) Responsibility. The Tribe shall perform a background investigation for each primary management official and key employee in its gaming operation. The Commission is responsible for conducting background investigations and suitability determinations.
- (b) Required Information. The Commission shall obtain from each primary management official and from each key employee all of the following information:
 - (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (2) Currently and for the previous 10 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
 - (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (b)(2) of this section;
 - (4) Current business and residence telephone numbers, and all cell phone numbers;
 - (5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - (6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - (7) 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;
 - (8) For each felony for which there is an ongoing prosecution or a conviction, ever as of the date of the application, the charge, the name and address of the court involved, and the date and disposition if any;

- (9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition, if any;
 - (10) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction (including both juvenile and adult infractions), if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (b)(8) or (b)(9) of this section, the criminal charge, the name and address of the court involved, and the date and disposition, if any;
 - (11) 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;
 - (12) Two current photographs;
 - (13) Fingerprints obtained in accordance with procedures adopted by the Tribe pursuant to 25 C.F.R. §522.2(h);
 - (14) A complete credit history; and
 - (15) Any other information the Tribe or the Commission deems relevant.
- (c) Application on file. When a primary management official or key employee is employed by the Tribe, a complete application file, containing all of the information listed in Section 20.01.22(b), shall be maintained.

20.01.23 Procedures for Conducting a Background Check on Applicants

- (a) Investigation. As part of its review procedure, the Commission or its agent shall conduct a background investigation on each applicant sufficient to allow the Commission to make an eligibility determination under Section 20.01.24. The investigation shall:
- (1) Verify the applicant's identity through items such as a social security card, driver's license, birth certificate, or passport;
 - (2) Contact each personal and business reference provided in the License Application, when possible;
 - (3) Obtain a personal credit check;
 - (4) Obtain a Washington Judicial Information History;
 - (5) Conduct a civil history check;

- (6) Conduct a criminal history check via the submission of the applicant's fingerprints to the NIGC, and further obtain information from the appropriate court regarding past felony and/or misdemeanor convictions or criminal charges, including convictions or charges committed as a juvenile;
 - (7) Inquire into any previous or existing business relationships with the gaming industry and Indian tribes by contacting the entities or tribes;
 - (8) Verify the applicant's history and status with any licensing agency by contacting the agency; and
 - (9) Take other appropriate steps to verify the accuracy of the information, focusing on problem areas noted.
- (b) Report. The Commission shall create and maintain an investigative report for each background investigation of a primary management official or key employee. Investigative reports shall include all of the following information: the steps taken in conducting the investigation, results obtained, potential problem areas, conclusions reached, and the basis for those conclusions.
- (c) Confidentiality. The Commission shall keep confidential the identity of each person interviewed in the course of the investigation, other than disclosure as required under Federal, Tribal, or applicable State law.

20.01.24 Eligibility Determination

Before a license is issued to a primary management official or key employee, the Commission shall make a finding concerning the eligibility of that person for receiving a gaming license by reviewing a person's prior activities, criminal record, if any, and reputation, habits, and associations. If the Commission, in applying the standards adopted in this ordinance, determines that licensing and employment 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, methods and/or activities in the conduct of gaming, then the Commission shall not license or employ that person in a key employee or primary management official position. The Commission shall notify the National Indian Gaming Commission and the State of its eligibility determination on each license. All eligibility determinations are final and shall not be reviewed or reconsidered for a period of twelve months unless the Commission determines that it did not have all of the relevant evidence when it reached an eligibility determination.

Copies of the eligibility determination shall be included with the notice of results that must be submitted to the NIGC before the licensing of a primary management official or key employee.

20.01.25 Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

- (a) New Employees or Officials. When a key employee or primary management official is employed to work at a gaming operation authorized by this ordinance, the Commission shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in Section 20.01.23.
- (b) Failure to Obtain License. The gaming operation shall not employ as a key employee or primary management official a person who does not have or obtain a license after 90 days of employment.

20.01.26 Report to the National Indian Gaming Commission

- (a) Content of Report. Before issuing a license to a primary management official or key employee, the Commission shall prepare and forward a notice of results of the applicant's background investigation to the National Indian Gaming Commission. 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 primary management official or key employee;
 - (3) A summary of the information presented in the investigative report, including:
 - (a) licenses that have previously been denied;
 - (b) gaming licenses that have been revoked, even if subsequently reinstated;
 - (c) every known criminal charge brought against the applicant within the last 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) A copy of the eligibility determination made in accordance with Section 20.01.24.
- (b) Time for Filing. The Commission shall forward the notice to the National Indian Gaming Commission no later than 60 days after the applicant begins working for the Tribe.
- (c) Eligibility Determination. The Commission shall submit, with the investigative report, a copy of the eligibility determination, unless the NIGC shall have advised the Tribe that the submission of the eligibility determination is not necessary. This determination shall include the following Statements: 1) a Statement describing how the information submitted by the applicant was verified; 2) a Statement of results following an inquiry into the applicant's prior activities, criminal record,

if any, and reputation, habits, and associations; 3) a Statement showing the results of interviews of a sufficient number of knowledgeable people (such as former employers, personal references, and others referred to by the applicant) in order to provide a basis for the Commission to make a finding concerning the eligibility for licensing required for employment in a gaming operation; and 4) a Statement documenting the disposition of all potential problem areas noted and disqualifying information obtained.

20.01.27 Granting a Gaming License

All primary management officials and key employees of the gaming operation must have a gaming license issued by the Commission. The Commission is responsible for granting and issuing gaming licenses to primary management officials and key employees.

- (a) Issuance of License. After receiving the fingerprint processing results, the Commission shall have 60 days to send the notification of results to the NIGC. The Commission may issue a temporary license to a primary management official or key employee applicant after submitting a notification of results of the applicant's background investigation to the NIGC, as required by Section 20.01.26.

The NIGC's notification to the Tribe that it has no objection to the issuance of a license for a primary management official or a key employee is due within 30 days of the NIGC receiving the Commission's notification of results. Once the Tribe receives notification from the NIGC, the Commission, acting for the Tribe, may issue a license with no restrictions.

- (b) NIGC Request for Information. The Commission 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. Such a request shall suspend the 30-day period under paragraph (a) of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

The Commission shall notify the NIGC of the issuance of a gaming license to a primary management official or key employee within 30 days of issuance.

The Commission shall not employ an individual in a primary management official or key employee position who does not have a license after 90 days of beginning work at the gaming operation.

- (c) NIGC Objections. If, within the thirty (30) day period described in paragraph (a) of this section, the National Indian Gaming Commission

provides the Tribe with a Statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Commission has provided a temporary license, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant. A decision to deny a license to an applicant is final and not subject to review unless the Commission subsequently determines that it did not have all of the relevant evidence when it reached the decision to deny the license.

The Commission shall take the NIGC's objections into account when reconsidering a license application.

If the Commission has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, notice and a hearing shall be provided to the licensee, as required by Section 20.01.29.

20.01.28 Denying Gaming Licenses

- (a) Denial of Gaming License. The Commission shall not license a primary management official or key employee if the Commission determines, in applying the standards in 20.01.24 for making a license eligibility determination, that licensing the person:
 - (1) Poses a threat to the public interest;
 - (2) Poses a threat to the effective regulation of gaming; or
 - (3) Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.
- (b) Notice of Denial of Gaming License. When the Commission does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued license after reconsideration, the Commission shall:
 - (1) Notify the NIGC and the State; and
 - (2) Forward copies of its eligibility determination, notice of results, and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individuals Records System.

20.01.29 Gaming License Suspension and Revocation

- (a) Notice from the NIGC or the State. If, after the Tribal Gaming Commission issues a gaming license to a primary management official or key employee, the Commission receives from the National Indian Gaming Commission, the State, or any other credible source of reliable

information indicating that a key employee or a primary management official is not eligible for licensure, the Tribal Gaming Commission shall immediately suspend the license and shall provide written notification to the licensee of the suspension and the proposed revocation, including any fines that may be levied.

- (b) Revocation Hearing. The Tribal Gaming Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license. The licensee may be represented by legal counsel at the licensee's own expense at any revocation hearing. The right to a revocation hearing vests only when a license is granted under an ordinance approved by the NIGC Chair.
- (c) Notice of Decision. Following a revocation hearing, the Tribal Gaming Commission shall decide whether to revoke or to reinstate the gaming license at issue. The Commission shall notify the National Indian Gaming Commission and the State of its decision to revoke or reinstate a license within 45 days of receiving notification from the NIGC that a primary management official or key employee is not eligible for licensure.
- (d) Determinations Final. All revocation determinations are final and shall not be reviewed or reconsidered unless the Commission determines that it did not have all of the relevant evidence when it reached a revocation determination.

20.01.30 Records Retention

Retention of Applications and Records. With respect to all employees, the Commission shall retain applications for employment and for reports (if any) of background investigations for no less than three (3) years from the date of termination of employment. For primary management officials and key employees, the Commission shall retain applications for employment and for licensing, investigative reports, and eligibility determinations for no less than three (3) years from the date of termination of employment.

20.01.31 Licenses for Vendors

- (a) Covered Vendors. Vendors of gaming services or supplies with a value of \$25,000 or more annually must have a vendor license from the Commission issued annually pursuant to regulations established by the Commission, in order to transact business with the Tribal gaming operation. Contracts for professional legal and accounting services or with federally regulated commercial lending institutions, the Port Gamble S'Klallam Tribal government, or the federal government for are excluded from the licensing requirements of this section.

- (b) Gaming Vendors. Gaming vendors are vendors, including the manufacturers of gaming equipment, who provide gaming supplies and services, including financiers and providers of cash-related services that are not federally regulated commercial lending institutions.
- (c) Non-Gaming Vendors. Non-gaming vendors provide services that do not have the ability to impact the integrity of the Tribal gaming operations, such as media advertising, facility maintenance workers, linen and laundry services, and food and beverage suppliers. The Commission shall create a regulation detailing which vendors fall into this category and shall maintain a register of the non-gaming vendors that it licenses. The regulation may exempt from licensing requirements non-gaming vendors who: 1) are Tribal, Local, State, or Federal government agencies; 2) are regulated by the United States, the State of Washington or the Tribe; or 3) will provide goods of insubstantial or insignificant amounts or quantities if the Commission determines that licensing of the vendor is not necessary to protect the public interest.

20.01.32 Submission of a Vendor License Application

In order to obtain a gaming vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include its officers, directors, management, owners, partners, non-institutional stockholders that either own 10% or more of the stock or are the 10 largest stockholders, and the on-site supervisor or manager under the agreement with the Tribe, if applicable.

20.01.33 Contents of a Vendor License

- (a) Contents. Applications for gaming vendor licenses must include the following:
 - (1) Name of business, business address, business phone, federal tax ID number (or SSN if a sole proprietorship), main office address if different from business address, any other names the applicant has done business under, type of service applicant will provide;
 - (2) Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;
 - (3) If the applicant is a corporation, the application must include the state of incorporation and the qualification to do business in the State of Washington if the state of incorporation of the applicant is other than Washington;
 - (4) Trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the applicant or its principals;

- (5) General description of the business and its activities;
 - (6) Whether the applicant will be investing in or lending money to the gaming operation and, if so, how much;
 - (7) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - (8) A list of Indian tribes with which the applicant has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities;
 - (9) Names, addresses, and phone numbers of three business references with whom the applicant has regularly done business for the last five years;
 - (10) The name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - (11) If the applicant has ever had a license revoked for any reason, the circumstances involved;
 - (12) A list of lawsuits to which the applicant has been a defendant, including the name and address of the court involved, and the date and disposition if any;
 - (13) A list of the applicant's funding sources and any liabilities of \$50,000 or more;
 - (14) A complete credit history and report;
 - (15) A list of the principals of the applicant, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company; and
 - (16) Any further information the Commission deems relevant.
- (b) Required Notice. The following notice shall be placed on the application form for a vendor and its principals:
- “Inclusion of false or misleading information in the vendor application may be grounds for denial or revocation of the Tribe’s vendor license.”
- (c) Applications Filed With Other Jurisdictions. A vendor may submit a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit in

writing any changes in the information since the other license application was filed and any information requested by the Commission not contained in the other application.

20.01.34 Vendor Background Investigation

- (a) Investigations. The Commission or its agent shall complete an investigation of the gaming vendor. This investigation shall include, at a minimum, the following steps:
- (1) Verification of the business' incorporation status and qualification to do business in the State where the gaming operation is located;
 - (2) Conduct a Better Business Bureau check on the vendor;
 - (3) Conduct a check on the vendor's credit history;
 - (4) Interview each of the references listed in the vendor application; and
 - (5) Conduct an investigation of the principals of the vendor, including a criminal history check, a credit report, and interviews with the personal references listed.
- (b) Report. The staff of the Commission shall complete an investigative report covering each of the steps taken in the background investigation of the gaming vendor and its principals and present it to the Commission.

20.01.35 Vendor License Fee

The Tribe may charge a license fee, to be set by the Tribal Gaming Commission, to cover its expenses in investigating and licensing vendors of the gaming operation.

20.01.36 Suspension or Revocation of a Vendor License

- (a) Notice from the NIGC or the State. If, after the issuance of a vendor license, the Commission receives from the National Indian Gaming Commission, the State, or any other credible source reliable information indicating that a vendor is not eligible for a license, the Commission shall suspend such license and shall provide the licensee with written notification of the suspension and the proposed revocation, including any fines that may be levied.
- (b) Revocation Hearing. The Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license. The licensee may be represented by legal counsel at the licensee's own expense at any revocation hearing.

- (c) Notice of Decision. After a revocation hearing, the Commission shall decide whether to revoke or to reinstate a gaming license. If the Commission determines that the licensee 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 activities in the conduct of gaming, then the Commission shall revoke the license. The Commission shall notify the National Indian Gaming Commission and the State of its determination on each license.
- (d) Determinations Final. All revocation determinations are final and shall not be reviewed or reconsidered unless the Commission determines that it did not have all of the relevant evidence when it reached a determination on a license.

20.01.37 Exemption for Vendors Licensed by Recognized Regulatory Authorities

The Commission may adopt regulations naming specific licensing authorities that it recognizes and may authorize exemptions to the vendor licensing process for vendors that have received a license from one of the named regulatory authorities.

20.01.38 Licenses for Non-Gaming Vendors

For non-gaming vendors, the Commission is authorized to create a less stringent vendor licensing process, including a due diligence check rather than a full background investigation as required in Section 20.01.34. The Commission may investigate such vendors when appropriate and may conduct audits in addition to monitoring Tribal purchases.

20.01.39 Repeal

All prior gaming ordinances of the Tribe are hereby repealed.

[Legislative history: Adopted by Tribal Council Resolution 09-A-039; April 28, 2009; approved by the NIGC June 29, 2009. Resolution No. 14-A-180; passed Dec. 16, 2014; approved by NIGC March 24, 2015; amended this Title for the following reasons: 1) moved management oversight of the Point Casino from the tribal government to the Noo-Kayet Development Corporation, a Section 17 Corporation; 2) removed gaming board of directors from oversight role of the Point Casino's general manager and of the Casino and placed role with the Board of Directors of the Noo-Kayet Development Corporation; 3) clarified that the delegation of authority of the Noo-Kayet Development Corporation is under the Corporation's governing document and its corporate charter; 4) gave the Noo-Kayet Development Corporation the hiring authority over the General Manager and gave Tribal Council confirmation authority; 5) required Tribal Gaming Commission's Executive Director to complete personnel evaluations conducted by the Tribal Gaming Commission's Board in conjunction with the Port Gamble S'Klallam Tribe's Executive Director; and 6) required gaming service providers who provide services to the Point Casino at \$25,000 or more to be licensed. Resolution No. 15-A-162; passed Nov.23, 2015; approved by the NIGC Jan. 16, 2016, amended the following: Section 20.01.02 changed definitions of Board, Bylaws, Charter, and CEO to recognize the NKDC may form a subsidiary to manage gaming operations; Section 20.01.04 changed to recognize the responsibility of the casino's interest may flow through a

subsidiary of the NKDC; Section 20.01.06 removed Board Removal language, Board Meetings & Records language, and Quorum language because those requirements are addressed in the NKDC Bylaws.]