

The Gaming Act

CHAPTER 7. THE SAN MANUEL GAMING ACT OF 1989¹

SMTC 7.1 Title

This Chapter shall be known as the “San Manuel Gaming Act of 1989, as amended.”

SMTC 7.2 Findings and Policy

7.2.1 This law is adopted by the General Council of the San Manuel Band of Mission Indians (“Tribe”), a federally recognized Indian Tribe, pursuant to its authority under the Tribal Articles of Association, for the purpose of establishing the terms for gaming on Tribal Lands for Tribal governmental and charitable purposes, and to continue to develop and operate such gaming consistent with the findings herein and in conformity with the federal Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.* (“IGRA”)), regulations promulgated thereunder, and the Tribal-State Gaming Compact with the State of California, as amended (“Compact”). This Gaming Act and regulations promulgated hereunder shall constitute gaming regulations for the Tribe. Based on its experience and observations in connection with such gaming and its studies of similar experiences by other Indian tribes, the Tribe finds that tribally controlled gaming on its reservation is a valuable means of promoting Tribal economic development, self-sufficiency, employment, job training and strong Tribal government. The Tribe further finds that when regulated by the Tribe, such gaming can remain free from organized crime and other corrupting influences and can be conducted fairly and honestly by both the operators and the players.

7.2.2 The General Council finds that:

7.2.2.1 Gaming on its Tribal Lands is a valuable means of generating revenues needed to promote Tribal self-sufficiency, economic development, employment, job training, and a strong Tribal government, and to fund and ensure essential social programs and services;

7.2.2.2 The Tribe desires to conduct certain forms of gaming to provide needed revenues to the Tribe and to regulate and control such gaming in a manner that will protect the environment; the Tribal Lands; the health, security and general welfare of the Tribe; the patrons; and the community; and

7.2.2.3 The Tribe desires to manage and regulate such gaming as authorized under this Ordinance in a manner that will adequately address the interests and needs of the Tribe.

SMTC 7.3 Definitions

Unless specified otherwise, terms used herein shall have the same meaning as in IGRA, including but not limited to references to “Class I,” “Class II,” and “Class III” gaming. Terms shall have the following meanings:

¹ Adopted by the General Council on August 31, 1989 as 89.02. Amended September 19, 1994; May 13, 1997; September 28, 1999; November 9, 1999; November 11, 2003; March 6, 2004; September 9, 2008; July 13, 2010; April 25, 2011; October 14, 2014; January 13, 2015; November 10, 2015; and April 11, 2017.

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7.3.1 **“Applicable Law”** means IGRA and regulations promulgated thereunder, the Compact, this Gaming Act, and all other applicable laws and regulations promulgated under State, Federal, and Tribal law.

7.3.2 **“Applicant”** means an individual or entity that applies for a tribal gaming license.

7.3.3 **“Association”** means the association of tribal and state gaming regulators as established under the Compact, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a Compact under IGRA, and up to two delegates each from the State Department of Justice, Bureau of Gambling Control and the California Gambling Control Commission.

7.3.4 **“Business Committee”** means the seven member committee established under the Tribe’s Articles of Association.

7.3.5 **“Class III Gaming”** means the form of Class III Gaming defined as such in 25 U.S.C. §2703(8) and by regulations of the National Indian Gaming Commission.

7.3.6 **“Commissioner”** means a member of the San Manuel Gaming Commission duly appointed by the Tribe’s Business Committee.

7.3.7 **“Compact”** means any Tribal-State Gaming Compact, including amendments thereto, entered into by the Tribe pursuant to IGRA to govern the conduct of certain Class III gaming activities on Tribal Lands.

7.3.8 **“Gaming Act”** means the San Manuel Gaming Act of 1989, as amended.

7.3.9 **“Gaming Activities”** means any Class I, Class II, or Class III gaming activity authorized under this Gaming Act or under the jurisdiction of the Tribe.

7.3.10 **“Gaming Commission”** means the tribal gaming agency established by the Tribe under this Gaming Act to monitor Gaming Activities, investigate wrongdoing, conduct background investigations, issue licenses, and perform other duties as required for the regulation of gaming on the Reservation. For the purpose of conducting background investigations of and issuing licenses to the Commissioners and Gaming Commission employees, such persons shall be deemed to be Key Employees under this Gaming Act and shall be required to pass a background investigation and hold a valid gaming license consistent therewith.

7.3.11 **“Gaming Device”** means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations. “Gaming Device” includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as Class II Gaming (as defined under IGRA).

7.3.12 **“Gaming Employee”** means any natural person who: (a) conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities, or is in any way responsible for supervising such Gaming Activities, or persons who conduct, operate, maintain,

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repair, account for, assist, or supervise any such Gaming Activities; (b) is in a category under federal or tribal gaming law requiring licensing; (c) is an employee of the Gaming Commission or of the Gaming Operation with access to confidential or proprietary information; and (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility in which any activities related to Gaming Activities are conducted but that are not open to the public.

7.3.13 **“Gaming Enterprise”** or **“Gaming Operation”** means any gaming business, event, enterprise or activity conducted by or under the jurisdiction of the Tribe.

7.3.14 **“Gaming Facility”** means any building in which Class III Gaming Activities or Gaming Operations occur, or in which the business records, receipts, or funds of the Class III Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Tribe’s Gaming Operation and Gaming Facility rather than providing them with an incidental benefit. Nothing in this Gaming Act prevents the conduct of Class II gaming (as defined under IGRA) in the Gaming Facility.

7.3.15 **“Gaming Resources”** means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. The term shall not include professional accounting or legal services.

7.3.16 **“Gaming Resource Supplier”** means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey or otherwise provide to the Tribe’s Gaming Operation, or Gaming Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any twelve (12) month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Gaming Operation or Gaming Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive twelve (12) month period, provided that the Gaming Commission may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with Gaming Activities, if, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier under the Compact, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

7.3.17 **“General Council”** means the governing body of the Tribe.

7.3.18 **“Key Employee”** means a person who performs one or more of the following functions: bingo caller; counting room supervisor; chief of security; custodian of gaming supplies or cash; floor manager; pit boss; dealer; croupier; approver of credit; or custodian of gaming devices, including those persons with access to cash and accounting records within such devices. If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year, and the four most highly compensated persons in the Gaming Operation, are included in the definition of Key Employee. Key Employee shall also include any employee considered a Key Employee under criteria established by the State and the Tribe

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under the Compact, as well as any person whose employment duties require or authorize access to confidential or proprietary information regarding the Gaming Facility where such person may have the ability to alter or manipulate such information for illicit or unauthorized purposes. At the discretion of the Gaming Commission, other positions or persons may be included under the definition of Key Employee and are subject to the requirements thereof.

7.3.19 **“Management Contractor”** means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

7.3.20 **“National Indian Gaming Commission”** or **“NIGC”** means the federal gaming commission established under IGRA.

7.3.21 **“Person”** means any natural person or entity, including but not limited to corporations, partnerships and trusts.

7.3.22 **“Primary Management Official”** means the person who has management responsibility for a management contract; any person who has authority to hire and fire employees or to set up working policy for the Gaming Operation; or the chief financial officer or other person who has financial management responsibility. At the discretion of the Gaming Commission, other positions or persons may be included under and be subject to the requirements for Primary Management Officials.

7.3.23 **“Reservation”** or **“Tribal Lands”** means all lands under the jurisdiction and control of the Tribe, including those lands that satisfy the definition of “Indian lands” as set forth in IGRA.

7.3.24 **“State”** means the State of California or an authorized official or agency thereof designated by the Compact or by the Governor.

7.3.25 **“State Gaming Agency”** means the entities authorized to investigate, approve, regulate and license Class III gaming pursuant to the Gambling Control Act (Chapter 5, commencing with section 19800) of Division 8 of the California Business and Professions Code, or any successor statutory scheme, and any entity or entities in which that authority may thereafter be vested. If the State fails, under a Compact provision, to designate an agency authorized to investigate, approve, and regulate gaming licenses, any function otherwise assigned to the State Gaming Agency shall be assumed by the Gaming Commission until such time as the State establishes and designates such an agency.

7.3.26 **“Tribal Court”** means any court established by the Tribe under its Judicial Code to hear disputes, or if there is none, an independent tribunal.

SMTC 7.4 Ownership of Gaming

The Tribe has the sole proprietary interest in and responsibility for the conduct of any Gaming Operation authorized by this Gaming Act.

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SMTC 7.5 Gaming Commission

7.5.1 Establishment. The Tribe hereby establishes the San Manuel Gaming Commission to be comprised of one or more Commissioner(s) appointed by the Business Committee. The initial appointed term for a Commissioner shall not exceed two years, as mutually agreed by the Commissioner and the Business Committee. A Commissioner may be reappointed for subsequent terms at the discretion of the Business Committee. A Commissioner may not be an elected official of the Tribe, or employed in any Gaming Enterprise or by the Tribe in any other capacity, while serving as a Gaming Commissioner. In the event more than one Commissioner is appointed, one shall be designated by the Business Committee as the Chair of the Commission and the Commissioners shall report to the Chair.

7.5.1.1 Commissioner Credentials. Individuals possessing the following credentials should be considered when selecting Commissioners: (1) a Certified Public Accountant with auditing experience; (2) a licensed attorney who possesses regulatory experience; (3) an individual with a background in law enforcement and criminal investigation; (4) an individual with a background in gaming regulation with at least five (5) years of gaming regulation experience; or (5) an individual with a background in information technology with at least five (5) years of information technology experience.

7.5.2 Standard of Professional Conduct. Each Commissioner shall abide by the following standard of professional conduct: confidentiality, impartiality, fairness, and commitment to upholding the reputation of the Tribe for conducting Gaming Activities of the highest integrity and honesty. All Commissioners shall strictly abide by Gaming Commission oaths of confidentiality and professionalism in the discharge of their duties.

7.5.3. Executive Director. The Gaming Commission shall employ an Executive Director who shall be responsible for managing, supervising and overseeing the daily activities of the Gaming Commission. The Executive Director shall serve as a full-time employee of the Gaming Commission and shall report to the Gaming Commissioners. The Business Committee shall approve the hiring of an Executive Director.

7.5.4 Suitability Standards. Each Gaming Commissioner, Executive Director and Gaming Commission employee must meet or exceed the qualifications established under this Gaming Act and the Compact. For the purpose of conducting background investigations of and issuing licenses to the Commissioner(s), Executive Director and Gaming Commission employees, such persons shall be deemed to be Key Employees under this Gaming Act and shall be required to pass a background investigation and hold a valid gaming license consistent therewith, including a review of financial, criminal, and employment history, checking of references, and meeting and maintaining all other suitability requirements for certification or licensing by the State or the Tribal Gaming Commission.

7.5.5 Background Investigation. Background investigations of each Gaming Commissioner(s), Executive Director, and Gaming Commission employee, as designated by the Gaming Commission, shall be conducted by an independent investigator or an investigator appointed by the Gaming Commission under the direction of the Gaming Commission, and if deemed necessary, the Tribe's legal department. The investigator shall conduct an investigation sufficient to make a determination of eligibility as required under this Act and other applicable law. This shall include verification of information submitted by the applicant. In conducting the background investigation, the investigator and the Gaming Commission

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shall maintain as confidential the identity of each person interviewed in the course of the investigation. The investigator shall document all potential problem areas noted and any disqualifying information. The legal department and/or Gaming Commission shall keep the details of the investigation confidential, but the legal department may confer with the investigator or any other person experienced in conducting or evaluating background investigations provided such other person agrees to maintain the confidentiality of the information obtained about the applicant.

7.5.5.1 The legal department and/or Gaming Commission shall make a determination as to whether the suitability standards contained within this Gaming Act have been met, and if so, shall certify that finding in writing to the Business Committee.

7.5.5.2 Background investigations of all Gaming Commission employees that are not conducted by an independent or appointed investigator as provided for above shall be conducted by the appropriate Gaming Commission staff as directed by the Gaming Commission, unless otherwise provided for by the Gaming Commission.

7.5.6 **Compensation.** The salaries and expenses of Commissioners shall be approved by the Business Committee as part of the annual budget process.

7.5.7 **Removal for Good Cause.** Commissioners may only be removed from office before the expiration of their term by the Business Committee for neglect of duty, malfeasance or other good cause shown (collectively referred to as "good cause"). Upon receipt of an allegation of an act or omission that constitutes good cause, the Business Committee may suspend, with or without pay at its own discretion, a Gaming Commissioner from office for no more than 60 days pending a full investigation of misconduct. At the expiration of the suspension period, the suspension shall be lifted upon a determination that no cause exists for removal under this Gaming Act, or, upon a finding of misconduct, the Business Committee shall discipline the Commissioner as appropriate, up to and including removal from office.

7.5.8 **Post-Commission Restriction.** Unless otherwise provided by the Gaming Commission, Gaming Commissioners and Commission employees shall be precluded from consulting or employment in any position with the Tribe's Gaming Activities for a period of no less than two (2) years from their date of termination at the Gaming Commission.

7.5.9 **Conflict of Interest.** If any Commissioner has a conflict of interest in investigating, hearing, or deciding a matter to come before the Gaming Commission, the Commissioner shall have a duty to disclose such conflict and shall recuse himself or herself from that matter.

7.5.10 **Personnel and Administrative Policies.** The Gaming Commission shall be deemed to be an agency of the Tribal government and as such shall be subject to the personnel and other governmental administrative policies of the Tribal government, as the Business Committee shall determine from time to time. The Business Committee shall, in good faith, consider and approve any exceptions necessary to tailor such policies to the Gaming Commission.

7.5.11 **Gaming Commission Independence.** Notwithstanding the fact that the Gaming Commission is a Tribal governmental agency and is accountable to the Business Committee, on behalf of the General Council, for its administration, in order to maintain independence and

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ensure the highest level of integrity, the Business Committee shall not interfere with Gaming Commission business or compromise the Gaming Commission's ability to perform its duties and responsibilities as provided for in this Act. The decisions of the Gaming Commission regarding licensing, suitability and compliance with Applicable Law shall be within the exclusive province of the Gaming Commission, except that the Business Committee may review any allegation that the Gaming Commission has exceeded its authority under this Gaming Act and, if it deems the allegation to be true, shall refer the allegation to the Business Committee for further action, which may include removal of a Commissioner for cause.

7.5.12 Gaming Commission Funding. The Gaming Commission shall be funded through an annual appropriation by the General Council and such additional funding actions as may be deemed necessary. Unjust pressure shall not be placed upon the Gaming Commission through the budgeting process.

7.5.12.1 Financial Reports. The Gaming Commission shall maintain its accounts, books and records, including records of all income and expenditures, in accordance with generally accepted accounting principles and consistent with Tribal governmental policies regarding management of funds and records.

7.5.12.2 Annual Reports. On or before April 30th of each year, the Gaming Commission shall provide to the Business Committee an Annual Report summarizing its activities during the prior twelve (12) month period ending on December 31.

SMTC 7.6 Powers and Duties

The Gaming Commission shall have the power, duty, and primary responsibility to carry out the Tribe's regulatory responsibilities under federal or tribal law and any applicable Compact; to enforce those requirements; and to protect the integrity of the Gaming Activities and the reputation of the Tribe and the Gaming Operation under provisions to include the following:

7.6.1 Conduct on-site gaming regulation and control; inspect, test, audit, examine, and monitor the Gaming Facility, including internal control systems; prepare reports and monitor compliance, including the authority to demand access to and inspect, examine, photocopy and audit all papers, books and records related to the Gaming Facility or Gaming Activities.

7.6.2 Investigate any suspicion of wrongdoing in connection with the Gaming Facility or Gaming Operation, or related to any Gaming Activity or licensee, including potential licensing or internal control violations, or interference with Gaming Commission operations, and require correction of violations as the Gaming Commission deems necessary, including establishing and imposing fines or other sanctions against licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements under applicable federal or tribal law or the Compact, and by notification to applicable regulatory authorities as deemed necessary for violations not corrected in a timely manner.

7.6.3 Conduct, or cause to be conducted, such investigations as may be necessary to determine compliance with applicable laws, including this Gaming Act, or any contracts, agreements, goods, services, events, incidents, or other matters related to Gaming Activities.

7.6.4 Conduct, or cause to be conducted, background investigations regarding any person or entity in any way connected with any Gaming Activity and/or the Gaming Operation, and

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issue licenses and identification badges to, at minimum, all Key Employees, Primary Management Officials, and Gaming Resource Suppliers according to requirements at least as stringent as those established in 25 C.F.R. Parts 556 and 558 and Section 6 of the Compact; provided no Commissioner shall provide any personal endorsement, recommendation or other support for an applicant, in accordance with this Gaming Act and the Compact.

7.6.5 Administer oaths or affirmations to witnesses appearing before the Gaming Commission; hold hearings, summon persons on Tribal Lands to attend and testify at such hearings, take testimony, and receive such evidence as the Gaming Commission deems relevant to fulfill its duties.

7.6.6 Execute agreements necessary to receive comprehensive criminal history and other background investigation information from other jurisdictions and sources.

7.6.7 Implement and administer a system for investigating, licensing (including license issuance, renewal, denial, and revocation), and monitoring for the Gaming Facility, employees, Gaming Contractors, vendors, suppliers, investors, and others connected with Gaming Activities, as described below, including the licensing of Gaming Facilities, individuals and entities as required under this Gaming Act, IGRA, or any applicable Compact.

7.6.8 Ensure, monitor, and direct inspections of Gaming Facilities by qualified building and safety experts in order to comply with the Tribe's building and safety codes; provide reports as requested to the State if applicable under the Compact; review reports; and issue a certificate of occupancy to the Gaming Facility.

7.6.9 Provide a copy of each Gaming Facility license and renewals thereof to the State Gaming Agency in accordance with the Compact, and to the NIGC, including, at minimum: the Tribe's name; name and address of the Gaming Facility; type of gaming allowed; effective date of license; the signature of the tribal official responsible for issuing the license; and the name and phone number of the Gaming Commission.

7.6.10 Hear and resolve applicable disputes against the Gaming Facility or Gaming Operation, in accordance with procedures established in this Gaming Act and applicable tribal laws, consistent with the Compact.

7.6.11 Hire staff and support services as deemed necessary, subject to the Gaming Commission approved budget.

7.6.12 To the extent required, comply with any reporting requirements established under this Gaming Act, the Compact, IGRA and regulations promulgated thereunder, and other applicable law.

7.6.13 Develop necessary documentation and protocols, and establish joint cooperative working relationships with federal, state, and local jurisdictions, including law enforcement agencies, as necessary to assist in ensuring the effective regulation of the Tribe's Gaming Activities.

7.6.14 Implement appropriate rules, regulations, and procedures to ensure the effective enforcement of the provisions of this Gaming Act, including but not limited to:

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7.6.14.1 Protect the physical safety of gaming patrons, employees, and others in the Gaming Facility;

7.6.14.2 Ensure the physical safeguarding of assets transported to, within, and from the Gaming Facility;

7.6.14.3 Prevent illegal activity in the Gaming Facility or Gaming Operation through:

7.6.14.3.1 Maintenance of employee procedures and a surveillance system in accordance with industry standards;

7.6.14.3.2 Maintenance of detailed and permanent records of all occurrences and incidents in the Gaming Facility that deviate from normal operating policies and procedures;

7.6.14.3.3 Establishment of employee procedures to detect theft, cheating and fraud;

7.6.14.3.4 Development of an exclusion policy that includes a right to a hearing and requires maintenance of a list of persons barred from the Gaming Facility;

7.6.14.3.5 Conduct of an annual CPA audit;

7.6.14.3.6 Approval of all game rules and regulations;

7.6.14.3.7 Establish and impose license fees, sanctions, fines, and conditions as appropriate under applicable law;

7.6.14.3.8 Investigate and ensure compliance with any requirements for tribal ownership, management, and control of the Gaming Facility and Gaming Operation, as set forth in applicable law;

7.6.14.3.9 Investigate and ensure compliance with age restrictions for patrons including provisions prohibiting minors in the Gaming Facility and age limits on service of alcoholic beverages as provided under applicable law;

7.6.14.3.10 Carry out any requirements under Tribal or federal law or Compact for the protection of the health and safety of Gaming Facility patrons, guests, and employees, including requirements that the Gaming Facility meets building and safety codes duly adopted by the Tribe; and

7.6.14.3.11 Approval of Gaming Facility floor plans, closed-circuit television system, and cashier's cage, minimum staffing and supervisory requirements, and technical standards for gaming device operations.

7.6.15 Ensure gaming devices are not transported to or from the Tribal Lands except in accordance with procedures established by an agreement between the Gaming Commission and the State Gaming Agency. The agreement shall require at least ten (10) days notice to the county sheriff, and transportation only to specific destinations for specific purposes as established in the agreement and the Compact.

7.6.16 Promulgate rules governing the conduct of each Class I, Class II or Class III game allowed under this Gaming Act.

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7.6.17 Comply with a Tribal conflict of interest policy to ensure that Commissioners are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their business.

7.6.18 The Gaming Commission shall make the following documents available to its patrons or their representatives in hard copy or on the Gaming Facility's website:

7.6.18.1 The Gaming Act;

7.6.18.2 The rules of each class III game operated by the Tribe, to the extent that such rules are not available for display on the Gaming Device or the table on which the game is played;

7.6.18.3 Tribal law, to the extent it impacts the public in relation to Gaming Activities;

7.6.18.4 The San Manuel Gaming Facility Tort Liability Act; and

7.6.18.5 The regulations promulgated by the Gaming Commission concerning patron disputes pursuant to section 10 of the Compact.

7.6.19 The Gaming Commission shall ensure compliance with 25 C.F.R. Parts 542 and 543 by formally adopting and making applicable to the Gaming Operation(s) written internal control standards as set forth in the Gaming Commission Regulations that:

7.6.19.1 Provide a level of control that equals or exceeds those minimum internal control standards set forth in 25 C.F.R part 542, as they existed on October 19, 2006, and as they may thereafter be amended ("Compact MICS");

7.6.19.2 Contain standards for currency transaction reporting that comply with 31 C.F.R. part 103;

7.6.19.3 Satisfy the requirements of section 9.1 of the Compact;

7.6.19.4 Are consistent with the Compact;

7.6.19.5 Require the Gaming Operation to comply with internal control standards;

7.6.19.6 Establish internal control standards for Class II and Class III games that are not addressed in applicable laws, if any.

7.6.19.7 Verify the Gaming Operation is in compliance with the internal control standards adopted pursuant to this section 7.6.19 by engaging an independent certified public accountant to perform "Agreed-Upon Procedures" as set forth in 25 C.F.R. § 542.3(f).

7.6.19.8 Authorize the Gaming Commission and the NIGC to monitor and enforce compliance with the internal control standards adopted pursuant to this section 7.6.19 in the manner provided for in 25 C.F.R. § 542.3(g). In addition, the NIGC shall, for the purpose of enforcing compliance with the internal control standards, have the power to:

7.6.19.8.1 Monitor all Class II and Class III gaming on a continuing basis;

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7.6.19.8.2 Inspect and examine all premises on which Class II and Class III gaming is conducted; and

7.6.19.8.3 Demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of all Class II and Class III gaming or any other matters necessary to ensure and enforce compliance with applicable laws.

7.6.19.6 Provide that any failure to adopt internal control standards pursuant to this section 7.6.19, perform Agreed-Upon Procedures pursuant to 7.6.19.7, prevent or obstruct the exercise of any of the Gaming Commission's powers under Section 7.6.19.8, or comply with the internal control standards, once adopted, is a violation of this Gaming Act. The Chairman of the National Indian Gaming Commission shall have the authority to remedy violations of this Gaming Act under 25 U.S.C. § 2713 and its implementing regulations, and the Tribe shall have all rights and remedies available thereunder.

7.6.20 Carry out such other duties with respect to the regulation of Gaming Activities on Tribal Lands as required under Applicable Law, including this Gaming Act, IGRA, and the Compact, and as the General Council or Business Committee shall direct.

7.6.21 Carry out such other duties as may be assigned by the Business Committee of the Tribe, regardless of whether such duties relate to the regulation of Gaming Activities on Tribal Lands. Such assignment shall be made through appropriate policy or procedure in order to capitalize upon certain expertise of the Gaming Commission.

SMTC 7.7 Enforcement

In the event it is determined that a licensee or the Gaming Enterprise has violated Applicable Law, including any internal control procedures or policy of the Gaming Enterprise, a written report of such incident shall immediately be made to the Gaming Commission. The Gaming Commission shall then investigate and determine what action should be taken, if any. If action is required, the Gaming Commission shall issue a citation to the Gaming Enterprise, notifying it of the specific violation(s) or issues, measures which must be taken for correction, and a reasonable time limit in view of all the circumstances in which such action must be taken. Copies of any such citation shall simultaneously be served on the Business Committee of the Tribe. The Gaming Commission may enforce such citations by: (a) suspending or revoking the licenses of any persons found to have violated Applicable Law; or (b) such lesser penalty or other remedy as the Gaming Commission shall determine, including the imposition of fines or sanctions. Nothing herein shall prevent or prohibit the Gaming Commission from seeking compliance assistance from local, federal, or state gaming or law enforcement agencies, the Bureau of Indian Affairs, or the NIGC, particularly but not limited to any instance in which the Gaming Enterprise and the General Council have failed to correct a violation of Applicable Law. The Gaming Commission shall report violations of the Compact that pose a substantial threat to gaming integrity, public health and safety, or the environment, or continued violations that, if isolated might not require reporting, but cumulatively pose a threat to gaming integrity, public health and safety, or the environment, and any failure to comply with the Gaming Commission's orders, to the California Gambling Control Commission and Bureau of Gambling Control in the California Department of Justice within ten (10) days of discovery.

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SMTC 7.8 Permitted Gaming Activities; Regulation of Gaming Activities

7.8.1 Unauthorized Gaming Prohibited. All Gaming Activities on Tribal Lands are prohibited except as expressly permitted under this Gaming Act.

7.8.1.1 Class I Gaming. Class I Gaming Activities are hereby permitted to the extent consistent with Tribal custom and practice and provided the General Council is given at least seven (7) days prior notice in writing of any intention to engage in such gaming. The General Council may prohibit any conduct that is claimed to be Class I gaming if the Council finds that such conduct is not in accordance with Tribal customs or practices or violates IGRA or any other law.

7.8.1.2 Class II and Class III Gaming. Class II and Class III gaming on Tribal Lands are hereby authorized as permitted under Applicable Law, provided the Tribe has the sole proprietary interest in and responsibility for the conduct of any Gaming Operation. Nothing herein shall prohibit the Tribe from engaging the services of non-tribal persons as employees or engaging any person or entity to assist the Tribe in the management of a Gaming Activity pursuant to a management agreement entered into under the provisions of IGRA or any other applicable law. Class III gaming shall be conducted in accordance with a Compact, or any alternative thereto as provided by IGRA.

SMTC 7.9 Use of Gaming Revenues

7.9.1 Except as provided for under the terms of an agreement pursuant to the provisions of IGRA or as otherwise permitted by law, all net revenues generated from any Class II or Class III Gaming Activity are the property of the Tribe. Net revenues from Class II and Class III Gaming Activities shall only be used for the following purposes:

- 7.9.1.1** To fund tribal government operations or programs;
- 7.9.1.2** To provide for the general welfare of the Tribe and its members;
- 7.9.1.3** To promote economic development for the Tribe;
- 7.9.1.4** To donate to charitable purposes; or
- 7.9.1.5** To help fund operations of local governmental agencies.

7.9.2 Except for rights to per capita payments, if any, or as set forth below, no Tribal member shall have any interest or expectation in any funds generated by any Gaming Activity. All such funds are deemed Tribal funds only and are and shall remain the property of the Tribe until disbursed, if at all, from the general treasury. The General Council shall retain the sole discretion as to how such funds are utilized, and once becoming part of the treasury such funds shall lose any identity as gaming revenues except to the extent necessary to identify them as such for accounting purposes or to comply with applicable law. Notwithstanding anything herein to the contrary, if the Tribe elects at any time to make per capita payments to the members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3). Payments out of general treasury funds to tribal members under other tribal programs, including those relating to health, welfare,

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education, elderly care, and housing, shall not be deemed to be “per capita” payments when such funds are paid from the Tribe’s general treasury.

SMTC 7.10 Operation of Gaming Establishments

7.10.1 Gaming Facility License. Except to the extent authorized by an agreement pursuant to the provisions of IGRA or as otherwise permitted by law, Gaming Activities shall only be conducted in tribally owned, operated and licensed Gaming Facilities pursuant to the provisions of this Gaming Act, the Compact and other applicable law. Such activities shall be conducted in accordance with the terms and conditions of the license issued to the Gaming Facility by the Gaming Commission prior to the conduct of any Gaming Activities therein.

7.10.1.1 The Tribe shall issue a separate license to each place, facility, or location on Indian lands where the Tribe elects to allow any gaming activity. Before Gaming Activities can be conducted in any Gaming Facility, the Gaming Commission shall inspect and license each Gaming Facility in accordance with this Gaming Act, the Compact and other applicable law. The Gaming Commission shall also determine and certify that the Gaming Facility and any new Gaming Facility construction meets the Tribe’s building and safety codes, and any applicable federal or Compact requirements, and issue a certificate of occupancy to the Gaming Facility as required under the Compact.

7.10.1.2 The Gaming Facility license shall identify: the name and address of the Gaming Facility; type of gaming allowed; effective date of the license; name and telephone number of the Gaming Commission; and such other matters as the Gaming Commission may deem necessary to the conduct of Gaming Activities therein, or as may be required under a Compact or other applicable law.

7.10.1.3 The Gaming Facility’s license shall require renewal at intervals as determined by the Gaming Commission, provided that the valid term for a facility license shall not exceed two years. The renewal process shall include all inspections required to certify continued compliance with all applicable Tribal Codes, the Compact, and NIGC Regulations.

7.10.1.4 The Gaming Commission shall provide the NIGC and the State a copy of the initial license and each renewal within thirty (30) days of issuance. The Gaming Commission’s license and certificate of occupancy issued to the Gaming Facility shall be conspicuously posted at all times.

7.10.2 Protection of Environment and Public. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities therein, shall be conducted in a manner that adequately protects the environment and the public health and safety, in compliance with any standards required under tribal and federal law, and the Compact.

7.10.3 Dispute Resolution. Patrons who have personal injury or property damage complaints (“Patron Tort Claims”) against the Gaming Facility or Gaming Operation shall have the right to remedies provided in the Tribe’s Gaming Facility Tort Liability Act. Patrons who have complaints arising from their participation in Gaming Activities at the Gaming Facility (“Patron Gaming Claims”) shall have the right to remedies as provided in the Gaming Commission Regulations.

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SMTC 7.11 Audits

7.11.1 **Annual Audit.** The Gaming Commission shall ensure the engagement of a recognized independent accounting firm to conduct an annual audit of the Tribe's Class II and Class III Gaming Operations.

7.11.2 **Contract Review and Audit.** Each gaming related contract for supplies, services, or concessions that results in purchases of more than \$25,000 annually (except contracts for professional legal or accounting services) relating to Class II or Class III gaming on the Tribal Lands shall be included in the independent audits.

7.11.3 **Reporting Audit Results.** The Tribe shall make available the results of each annual audit to the Tribe's General Council within thirty (30) days of completion of the audit. The Gaming Commission shall provide audit results to the NIGC and to the State to the extent required by applicable law.

SMTC 7.12 Gaming Licenses

7.12.1 **Licensing Procedure.** The Tribe's Gaming Licensing procedure shall be administered through the Gaming Commission. The program shall be an investigative licensing process under which all applicants for gaming licenses are evaluated against the standards set forth in, and subject to, the following applicable laws:

- 7.12.1.1 The Gaming Act and any gaming regulations promulgated thereunder;
- 7.12.1.2 IGRA and NIGC regulations;
- 7.12.1.3 Compact requirements, to the extent applicable; and
- 7.12.1.4 Any other applicable tribal, federal, or state laws.

7.12.2 **Licensing Policy and Requirements.** It is the policy of the Tribe that all Gaming Activities be licensed and controlled so as to protect the morals, good order and welfare of tribal members and other persons on Tribal Lands, and to preserve the honesty, fairness and integrity of such Gaming Activities. Accordingly, no person shall engage in any Class II or Class III Gaming Activities on Tribal Lands without a valid license issued by the Gaming Commission. 7.12.3 **Gaming License is a Privilege.** Any gaming license or finding of suitability issued by the Gaming Commission shall be deemed a privilege, and is subject to suspension or revocation at any time. No license or license renewal shall be issued that would place the Tribe in violation of Applicable Law. A gaming license or finding of suitability is subject to renewal at least every two (2) years.

7.12.4 **Burden on Applicant.** The burden of proving an applicant's qualifications to receive a license hereunder is at all times on the applicant. Applicants must accept any risk of adverse public notice, embarrassment or other action that may result from the application process and expressly waive any claim for damages as a result thereof.

7.12.5 **Applicant Claim of Privilege.** An applicant may claim any privilege afforded by law in connection with a gaming license application or investigation, but a claim of privilege

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with respect to any testimony or evidence pertaining thereto may constitute sufficient grounds for denial, suspension or revocation.

7.12.6 Release of Information. Persons applying for a license shall agree to release all information necessary in order for the Gaming Commission and any applicable federal or state entity to complete their suitability determination. Applicants must update all such information promptly on an on-going basis, and to furnish such information as may be required by the State Gaming Agency, or such other governmental agency as may be required by law.

7.12.7 Types of Licenses

7.12.7.1 Class A License. Before permitting any person to become associated with any Gaming Activity as an investor or other person owning or controlling 10% or more interest in any management entity, or any Primary Management Official, Key Employee, a gaming related position designated by the Gaming Commission as requiring a Class A license, closely associated independent contractor, or other individual or entity with influence over the management or operation of the gaming, or a Gaming Employee, such person shall obtain a Class A license. The Gaming Commission shall conduct or cause to be conducted a background investigation to determine if such person has:

7.12.7.1.1 Any criminal record or any reputation, prior activities, habits or associations which might pose a threat to the public interest or to the effective regulation of gaming; or

7.12.7.1.2 Anything else in his/her background that might create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or in the carrying on of business and financial arrangements incidental thereto.

7.12.7.1.3 Whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.

7.12.7.1.4 Those who at any time do not meet the above qualifications shall be denied a Class A license, or in the case of an existing license, the license may be revoked.

7.12.7.2 Class B License. Persons not identified as requiring a Class A License, but whom are to be employed at a Gaming Facility on Tribal Lands in another capacity, such as in non-gaming related activities, shall be required to obtain no less than a Class B license from the Gaming Commission. Such persons must establish that they have not been convicted of certain crimes or engaged in any activity which the Gaming Commission in its sole discretion deems to render such person a danger to the safety or integrity of the Gaming Activities, or to the safety and security of the Tribe, property of the Tribe, any Tribal member, any Gaming Employee or patron, or the public.

7.12.7.3 Gaming Resource Supplier. Gaming Resource Suppliers must meet all tribal and state licensing and suitability requirements. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand (\$25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars (\$25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Gaming Commission prior to the sale, lease, manufacture, vending, purveyance, supply, or distribution, or further

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sale, lease, manufacture, vending, purveyance, supply, or distribution, or otherwise providing of any such Gaming Resources to or in connection with the Tribe's Gaming Operation or Gaming Facility. The Gaming Resource Supplier license must be renewed at least every two (2) years. The Tribe shall not enter into any contract or agreement that would require licensing if the Gaming Resource Supplier has been denied a license or is deemed unsuitable, or the license or suitability determination has expired without renewal.

7.12.7.4 Union License. Any labor union, including its management and representatives, seeking to represent any Gaming Employees must first apply for and be deemed suitable to obtain a license under standards and licensing requirements established by the Gaming Commission.

7.12.7.5 Vendor License. Vendors providing other goods or services, and those providing gaming related goods or services valued at less than \$25,000 in a 12-month period, may also be required to obtain a license from the Gaming Commission prior to doing business with the Tribe's Gaming Operation. Vendors who are deemed not to be Gaming Resource Suppliers or who provide only non-gaming related goods or services to the Tribal Gaming Operation shall, at minimum, complete a short form application and qualify for a vendor license issued by the Gaming Commission. Such license must be renewed at least every two (2) years and the Gaming Commission may require additional information or licensing at any time.

7.12.7.6 Temporary or Provisional Licenses. Pending completion of an investigation for a license, the Gaming Commission may issue a temporary or provisional license of no more than ninety (90) days duration if, in its sole discretion, it deems such issuance appropriate, and may grant an extension of such a license if necessary to complete the investigation or to obtain the Criminal History Record Information results from fingerprint submissions. Such licenses shall permit the licensee to engage in such activities pursuant to such terms and conditions as the Gaming Commission may specify. Temporary or provisional licenses shall expire ninety (90) days from date of issuance, upon issuance of a regular license, or until a specified expiration date.

7.12.8 State Gaming Agency. Class III Gaming Employees, Gaming Resource Suppliers, gaming management, investors, and financial sources may further be subject to Compact licensing requirements, and State Gaming Agency investigation and suitability requirements, including issuance of a license or determination of suitability, under the Compact.

7.12.9 Drug and/or Alcohol Testing. The Gaming Commission reserves the right to require drug and/or alcohol testing for any license applicant or licensee at any time.

7.12.10 License Investigations. The Gaming Commission may employ all reasonable means, including engaging outside services and investigators and holding hearings, to acquire the information necessary to determine whether or not a license should be issued. Applicants shall agree to release all information necessary in order for the Gaming Commission to achieve its goals under this Gaming Act and to furnish such information to the NIGC, the State Gaming Agency, or other agencies as may be required by Applicable Law.

7.12.11 License Renewal. All licenses shall be subject to renewal at least every two (2) years, and more frequently if so required by the Gaming Commission or other applicable law.

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Such licenses may be revoked or suspended upon the occurrence of any act that, if known during the application process, would have tended to disqualify such person or entity for such a license.

7.12.12 License Fees. Unless specifically waived by the Gaming Commission, all persons applying for a license shall be required to pay all applicable license fees and costs when due, including a reasonable deposit for costs that may be incurred in connection with the license application. Estimates of licensing costs will be provided to applicants upon reasonable request. All fees and costs must be received by the Gaming Commission prior to issuance of the license, unless the Tribe or the Gaming Operation has agreed to reimburse the Gaming Commission directly for all or part of such fees and costs.

7.12.13 Standards. All persons engaged by or associated with any Gaming Activity on Tribal Lands shall conduct themselves with honesty, integrity, and with such decorum and manners as necessary to reflect positively on the Tribe, its members and the Gaming Activities. Any failure to abide by such standards, or any violation of a rule, regulation, law, custom or tradition of the Tribe, the Gaming Commission, or the Gaming Operation, or with the terms or conditions of the license, may be grounds for immediate suspension or revocation of any license issued hereunder.

7.12.14 Background Investigations

7.12.14.1 The Gaming Commission shall request from each Primary Management Official, Key Employee, and any other applicant for a Class A license, unless provided otherwise by the Gaming Commission consistent with Applicable Law, all of the information specified in subsections 7.12.14.1.1 through 7.12.14.1.14 below, as well as any other information required on the gaming license application. The Gaming Commission reserves the right, at any time, to request additional information during or subsequent to any background investigation.

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

7.12.14.1.2 Currently and for at least the previous ten (10) years: business and employment positions held, ownership interests in those businesses, business and residence addresses and drivers license number(s);

7.12.14.1.3 Names and current addresses of at least three (3) personal references (who are not related to or living in the same household with applicant), including one personal reference who was acquainted with the applicant during each period of residence as listed under subsection 7.12.14.1.2 above;

7.12.14.1.4 Current business, residence, and cellular telephone numbers;

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

7.12.14.1.6 A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

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7.12.14.1.7 Name and address of any licensing or regulatory agency with which the person has ever filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

7.12.14.1.8 For each felony for which there is an on-going prosecution or a conviction: the charge, the name and address of the court involved, and the date and disposition, if any, of the case;

7.12.14.1.9 For each misdemeanor conviction or on-going misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application: the name and address of the court involved, and the date and disposition, if any, of the case;

7.12.14.1.10 For each criminal charge (excluding minor traffic charges) that you have ever received, whether or not there is or was a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed above pursuant to subsections 7.12.14.1.8 or 7.12.14.1.9 above: the criminal charge, the name and address of the court involved and the date and disposition, if any, of the case;

7.12.14.1.11 Name and address of any licensing or regulatory agency (federal, tribal, state, local or foreign) with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

7.12.14.1.12 Current photograph;

7.12.14.1.13 Any other information the Tribe or Gaming Commission deems relevant;
and

7.12.14.1.14 Fingerprints consistent with procedures adopted by the Gaming Commission according to 25 C.F.R. § 522.2(h) and, as applicable, fingerprints to be processed through the California Department of Justice. For the limited purpose of obtaining fingerprints in compliance with 25 C.F.R. § 522.2 (h) the Tribal Gaming Commission shall be the designated law enforcement agency.

7.12.15 Investigation Process. The Gaming Commission shall conduct or cause to be conducted, an investigation sufficient to make a determination of eligibility as required under this Gaming Act and other Applicable Law. This shall include verification of information submitted by the applicant. The Gaming Commission shall document all potential problem areas noted and any disqualifying information. In conducting the background investigation, the Gaming Commission and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

7.12.16 Fingerprints. The Gaming Commission shall cause fingerprints to be taken and forwarded to the NIGC and to the California Department of Justice, as applicable, consistent with all applicable laws and the Compact. Fingerprints shall be processed through the Federal Bureau of Investigation and/or the California Department of Justice or other available state sources as applicable to determine the applicant's criminal history, if any.

7.12.17 Eligibility Determination. The Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a Key Employee or Primary Management Official to hold a gaming license. If the Gaming Commission, in applying the standards adopted herein, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or

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creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Gaming Commission shall not license that person in a Key Employee or Primary Management Official position or in any other position for which a Class A license is required.

7.12.18 Investigative Report and Notice of Results.

7.12.18.1 When a Primary Management Official or Key Employee is employed, the Gaming Commission shall maintain a complete application file containing the information required by section 7.12.14.1 above.

7.12.18.2 Before issuing a license to a Primary Management Official or Key Employee, the Gaming Commission shall:

7.12.18.2.1 Create and maintain an investigative report on each background investigation. The investigative report shall include the following information:

7.12.18.2.1.1 Steps taken in conducting a background investigation;

7.12.18.2.1.2 Results obtained;

7.12.18.2.1.3 Conclusions reached; and

7.12.18.2.1.4 The basis for those conclusions.

7.12.18.2.2 Submit a notice of results of the applicant's background investigation to the NIGC no later than sixty (60) days after the applicant begins work. The notice of results shall contain the following information:

7.12.18.2.2.1 Applicant's name, date of birth, and social security number;

7.12.18.2.2.2 Date on which the applicant began or will begin work as a key employee or primary management official;

7.12.18.2.2.3 A summary of the information presented in the investigative report, which shall include a listing of:

7.12.18.2.2.3.1 Licenses that have previously been denied;

7.12.18.2.2.3.2 Gaming licenses that have been revoked, even if subsequently reinstated;

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

7.12.18.2.2.3.4 Every felony of which the applicant has been convicted or any ongoing prosecution.

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7.12.18.2.2.4 A copy of the eligibility determination. **7.12.19 Granting a Gaming License.**

7.12.19.1 The Gaming Commission may issue a gaming license, subject to Compact licensing requirements.

7.12.19.2 After the Gaming Commission has provided a notice of results to the NIGC, it may issue a gaming license to any Key Employee or Primary Management Official.

7.12.19.3 After the Gaming Commission has issued a gaming license, it shall notify the NIGC of the issuance within thirty (30) days of issuing the license.

7.12.19.3.1 If, within the thirty (30) day period after the NIGC receives a complete notice of results for a Key Employee or Primary Management Official, the NIGC provides the Gaming Commission with a statement itemizing objections to the issuance of a license to that Key Employee or Primary Management Official applicant, the Gaming Commission shall reconsider the application, taking into account the objections itemized by the NIGC. The Gaming Commission shall make the final decision whether to issue a license to such applicant. If the Gaming Commission issued a license before receiving the NIGC's statement of objections, notice and hearing shall be provided to the licensee as provided by § 558.4.

7.12.19.4 The Gaming Operation shall not employ or continue to employ a Key Employee or Primary Management Official who does not have a gaming license within (90) days of beginning work.

7.12.19.5 If the Gaming Commission does not license an applicant:

7.12.19.5.1 The Gaming Commission shall notify the NIGC; and

7.12.19.5.2 The Gaming Commission shall forward copies of its eligibility determination and notice of results to the NIGC for inclusion in the Indian Gaming Individuals Record System.

7.12.19.6 The Gaming Commission shall retain the following for inspection by the NIGC for no less than three (3) years from the date of termination of employment:

7.12.19.6.1 Applications for licensing;

7.12.19.6.2 Investigative reports; and

7.12.19.6.3 Eligibility determinations.

7.12.20 Denial of Gaming License Applicants. Applicants who are denied a license must wait for at least two (2) years before they may reapply for a gaming license. The applicant shall be entitled to appeal a license denial as set forth in this Gaming Act.

7.12.21 License Suspension.

7.12.21.1 If, after issuing a gaming license, the Gaming Commission receives reliable information from the NIGC or other reliable source indicating that a Key Employee, Primary Management Official, or any other holder of a gaming license is not eligible to hold a gaming

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license under the eligibility criteria established herein, the Gaming Commission shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

7.12.21.2 The Gaming Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license in accordance with the procedures set forth in this Gaming Act.

7.12.21.3 After the revocation hearing, the Gaming Commission shall decide whether to revoke or to reinstate the gaming license. The Gaming Commission shall notify the NIGC of its decision within 45 days of receiving notification from the NIGC.

7.12.22 **Hearings.** The Gaming Commission may conduct hearings as needed to make regulatory compliance determinations within the scope of this Gaming Act, and shall conduct hearings for licensing determinations, the imposition of fines and applicable Patron Gaming Claims; provided, however, hearings on Patron Tort Claims against the Gaming Facility shall be conducted in accordance with the Gaming Facility Tort Liability Ordinance.

7.12.22.1 All Gaming Commission hearings shall:

7.12.22.1.1 Be properly noticed in writing to the party that is the subject of the Gaming Commission's decision or order by notice that is reasonably calculated to apprise the party of the pendency of a final determination. Such notice shall be delivered at least ten (10) business days prior to the hearing;

7.12.22.1.2 Allow the party that is the subject of the Gaming Commission's decision or order the opportunity to be heard through the presentation of written or oral statements or other evidence to support his or her position;

7.12.22.1.3 Allow the party an opportunity to review the materials upon which the charge is based in such a manner that does not compromise the security or regulation of the Gaming Operation;

7.12.22.1.4 Be documented or recorded and maintained on file in accordance with the governing records retention policy;

7.12.22.2 Advocates may participate in the hearing on behalf of either party at the party's own expense, and the Gaming Commission may seek the advice of the Tribe's legal counsel as needed.

7.12.22.3 The Gaming Commission shall weigh the evidence, testimony, and exhibits and make its decision, based on the credibility of the evidence and witnesses, by a preponderance of the evidence. Gaming Commission decisions shall be issued in writing within 30 days of the hearing. All decisions shall include a statement of facts and a statement of legal authority on which the decision is based. Decisions shall be delivered to the party and include information and instructions for appealing the decision.

7.12.22.4 Nothing herein shall prohibit the Gaming Commission from taking immediate action in emergency situations to protect the health and safety of patrons and employees or assets of the Tribe. Such actions shall immediately be followed by the hearing process.

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7.12.23 Appeals.

7.12.23.1 Gaming Commission decisions may be appealed to the San Manuel Tribal Court by filing a *Notice of Appeal* with the San Manuel Tribal Court and the Gaming Commission within twenty (20) days of the issuance date of the Gaming Commission decision. Failure to file a Notice of Appeal within the time specified herein renders the Gaming Commission decision unappealable.

7.12.23.2 All decisions of the Tribal Court shall be final.

7.12.23.3 In the event the Tribal Court is not in operation or no longer in existence, parties may appeal the Gaming Commission's decision by filing a *Notice of Appeal* with the Gaming Commission within twenty (20) days of the issuance date of the Gaming Commission decision. Failure to request a hearing within the time specified herein renders the Gaming Commission's decision unappealable. The Gaming Commission shall transmit the *Notice of Appeal* to an independent tribunal within seven (7) days of receipt along with the record created in the Gaming Commission hearing.

Appeals shall be conducted before an independent tribunal, which shall schedule a hearing within ninety (90) days of receipt of the *Notice of Appeal* from the Gaming Commission. The independent tribunal shall send written notice to each party informing them of the hearing date, time and location at least thirty (30) days prior to the hearing. All hearings shall be conducted in accordance with the rules established by the independent tribunal. The decision of the independent tribunal shall be final.

7.12.24 **Effect of Compact.** Notwithstanding anything in this Gaming Act to the contrary, any licensing procedures required under the Compact shall be implemented as provided therein, and the Gaming Commission may adopt regulations integrating such procedures with the foregoing.

SMTC 7.13 Application Forms

7.13.1 **Notices.** Each application form for a Key Employee or a Primary Management Official, as well as for all other Class A license applicants, unless otherwise specifically exempted by the Gaming Commission consistent with applicable law, shall contain the notices set forth in subsections 7.13.1.1 and 7.13.1.2 below:

7.13.1.1 **Privacy Act Notice.**

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form [your application for a gaming license and any renewal thereof] 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 Gaming Commission and by the National Indian Gaming Commission ("NIGC") 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

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a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Tribe's being unable to license you for a primary management official or key employee position, or other position as determined by the Tribe. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

7.13.1.2 Notice Regarding False Statements.

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 (18 U.S.C § 1001).

7.13.2 Existing Licensees. Any existing Key Employee or Primary Management Official, or other Class A licensee, unless otherwise specifically exempted by the Gaming Commission, shall be notified that they shall either:

7.13.2.1 Complete a new application form that contains the Privacy Act Notice and the Notice Regarding False Statements; or

7.13.2.2 Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice and sign a statement that contains the Notice Regarding False Statements.

SMTC 7.14 Class III Gaming; Compact

In addition to the provisions set forth above, Class III gaming shall be engaged in on the reservation pursuant to a Compact or by an alternative as provided by IGRA. All negotiations for such Compacts and amendments thereto shall be conducted through the Tribal Chairperson, with the advice and suggestion of the Gaming Commission, and shall be finalized only upon majority vote of the General Council after consideration of the terms. In the event the provisions of a Compact, as approved under IGRA, may be inconsistent with provisions herein, the approved Compact provisions shall govern, but only to the extent inconsistent with this Gaming Act.

SMTC 7.15 Interest in Management Contracts by Tribal Officials

No elected official of the Tribe, any Commissioner, or any member of any other committee or agency of the Tribe, shall have a financial interest in or management responsibility for any management agreement entered into pursuant to IGRA, nor shall such elected official serve on the board of directors or hold (directly or indirectly) ten percent (10%) or more of the issued and outstanding stock of any corporation, or 10% or more of the beneficial interest in any partnership, trust, or other entity, in any such corporation, partnership, trust or other entity having a financial interest in, or management responsibility for, such contract.

SMTC 7.16 Limitations on Gaming

No elected or appointed official of the Tribe's Gaming Commission, Entertainment Authority, or Business Committee, or licensed employee shall engage in or be permitted to engage in either directly or indirectly through another person, any Class II or Class III Gaming Activities authorized hereunder. Such limitation shall not apply in instances where, as pre-approved by

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the Gaming Commission, the individual engages in such activities as a part of an event designed specifically for such individuals or for training purposes.

SMTC 7.17 Service of Process

The Tribe designates the Chairperson of the Tribe as its agent for the service of official determinations, orders, or notices of violation from any federal or state agency. The Gaming Commissioner shall also receive any notice related to gaming from any state, local or federal agency, including the NIGC and the State Gaming Agency.

SMTC 7.18 Tribal Gaming Corporation

Nothing in this Gaming Act shall prevent the Tribe, through its General Council, from delegating the authority to conduct gaming to one or more Tribal corporations, so long as the tribal gaming enterprises to which such authority is delegated agree to meet all criteria and requirements established under this Gaming Act.

SMTC 7.19 Prior Gaming Act; Effective Date

Any and all prior Gaming Ordinances and versions of this Gaming Act are hereby repealed on the effective date of this Gaming Act. After adoption by the General Council, this Gaming Act and any subsequent amendments thereto shall become effective on the date of final approval by the NIGC, as applicable. The Gaming Commission shall provide notice to the State Gaming Agency of any change or amendment to this Act no later than thirty (30) days after the change or amendment becomes effective.

SMTC 7.20 Severability

If any provision or application of this Gaming Act is determined by review to be invalid, such determination shall not be held to render such provision inapplicable to other persons or circumstances, nor shall such determination render invalid any other provision of this Gaming Act.

SMTC 7.21 Amendments

All provisions of this Gaming Act are subject to amendment by the General Council. Regulations promulgated by the Gaming Commission under this Gaming Act are subject to amendment by the Gaming Commission.

SMTC 7.22 Sovereign Immunity Preserved

Nothing in this Gaming Act is intended or shall be construed as a waiver of the sovereign immunity of the Tribe, and no manager, officer, or employee of the Gaming Commission or the Tribe or the Gaming Operation shall be authorized, nor shall they attempt, to waive the immunity of the Tribe.