WAGANAKISING ODAWAK STATUTE 2001-02

GAMING REGULATORY ORDINANCE

SECTION I: PURPOSE

The Tribal Council of the Little Traverse Bay Bands of Odawa Indians, enacts this Statute pursuant to the Tribal Constitution, Article VII sections m and n which authorizes and directs the Tribal Council "To manage any and all economic affairs and enterprises of the Bands and to engage in any business not contrary to federal law . . ." and "To establish and delegate to subordinate boards, organizations, cooperative associations, Bands officers, committees, delegates, or other Bands groups, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power or to cancel any delegation."The Tribal Council hereby ordains and establishes this Ordinance for the purpose of authorizing and comprehensively and preemptively regulating the terms and conditions under which Class II and Class III gaming may be conducted on the lands of the Tribe. This Ordinance rescinds and replaces the Gaming Regulatory Ordinance enacted on March 3, 1996, as amended, being Waganakising Odawak Statute 1996003.

SECTION II: DEFINITIONS

A. "Gaming Regulatory Commission" or "Commission" means the entity created under Section X of this Statute.

C. "Key employee" means

(a) A person who performs one or more of the following functions:

(1) Bingo Caller;
(2) Counting Room Supervisor
(3) Chief of Security
(4) Custodian of gaming supplies or cash;
(5) Floor Manager
(6) Pit Boss
(7) Dealer
(8) Croupier
(9) Approver of Credit; or
(10) Custodian of gambling devices including persons with access

to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

C. "Primary management official" means

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or
(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

D. The terms "Statute" and "Ordinance" are synonymous when used herein.

E. "Tribal Council" means the elected governing body of the Little Traverse Bay Bands of Odawa Indians called the Board of Directors in the Tribe's Constitution and Bylaws.

G. "Tribe" means the Little Traverse Bay Bands of Odawa Indians membership and collective federally recognized tribal entity.

SECTION III: GAMING AUTHORIZED

A. Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703(7)(A) ("IGRA") and by regulations lawfully promulgated by the National Indian Gaming Commission ("NIGC") that now or hereafter may be in effect is hereby authorized.

B. Class III gaming as defined in IGRA, 25 U.S.C. Section 2703(8) and by regulations

promulgated by the NIGC that now or hereafter may be in effect is hereby authorized, provided such gaming is also authorized by and consistent with a Tribal-State Compact that has been approved by the Secretary of the Interior and is in effect, or otherwise has been authorized by the Secretary of the Interior or federal law.

SECTION IV. OWNERSHIP OF GAMING FACILITIES AND/OR ENTERPRISES

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming facilities and/or enterprise(s) authorized by this ordinance.

SECTION V. USE OF GAMING REVENUE

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

1) to fund Tribal government operations and programs;
2) provide for the general welfare of the Tribe and its members;
3) promote Tribal economic development;
4) donate to charitable organizations; or
5) help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to Tribal members, it shall authorize such payments only in conformity with a plan submitted to and approved by the Secretary of the Interior pursuant to applicable law.

SECTION VI. AUDIT

A. The Tribal Council, through official action or appropriate delegation, shall cause to be conducted at least annually an independent audit of all gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission, and to such other agencies as may be required by the terms and conditions of any Class III compact or other document authorizing Class III gaming.

B. 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 specifically included within the scope of the audit that is described in Subsection A above.

SECTION VII: PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Class II and Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

SECTION VIII: LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

The Gaming Regulatory Commission 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 class II and/or Class III gaming enterprise. The Gaming Regulatory Commission has the authority to determine additional job classifications and/or positions as ones which will require licensure. The Gaming Regulatory Commission has to demonstrate, subject to the review and approval of the Tribal Council, that such additional determination is reasonable and prudent and in the best interest of the Tribal membership.

A. Application Forms

1. The following notice shall be placed on the application form of a key employee or a primary management official before that form is filled out by an applicant:

> 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 employed in a gaming operation. The information will be used by 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 to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions, or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with

a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

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

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

a. Complete a new application form that contains a Privacy Act notice; or

b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (18 U.S.C. §1001).

4. Existing key employees and primary management officials shall be notified that they shall either:

a. Complete a new application form that contains a notice regarding false statements; or

b. Sign a statement that contains the notice regarding false statements.

B. Background Investigations

1. The Gaming Regulatory Commission shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in 25 C.F.R. parts 556 and 558.

2. The Gaming Regulatory Commission shall conduct an investigation sufficient to make a determination under Subsection C. below. In conducting a background investigation, the Gaming Regulatory Commission or its agent(s) shall promise to keep confidential the identity of each person interviewed in the course of the investigation. The Commission shall utilize the Tribe's Law Enforcement Department to take fingerprints and conduct criminal history checks utilizing the Law Enforcement Information Network. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

C. Eligibility Determination

The Gaming Regulatory Commission shall review an applicant'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 for employment in a gaming operation. If the Gaming Regulatory Commission determines that 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 and methods and activities in the conduct of gaming, the gaming operation shall not employ that person in a key employee or primary management official position.

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

1. When a key employee or primary management official begins work at a gaming operation authorized by this Ordinance, the Gaming Regulatory 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 Subsection C of this Section.

2. The Gaming Regulatory Commission shall forward the report referred to in Subsection E of this Section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who after 90 days does not have a license pursuant to section VIII F. of this Ordinance.

E. Report to the National Indian Gaming Commission

1. Pursuant to the procedures set out in Subsection D of this Section, the Gaming Regulatory Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

a. Steps taken in conducting the background investigation;

b. Results obtained;

c. Conclusions reached; and

d. The bases for those conclusions.

2. The Gaming Regulatory Commission shall submit, with the report, a copy of the eligibility determination made under Subsection C of this Section.

3. If a license is not issued to an applicant, the Gaming Regulatory Commission:

a. Shall notify the National Indian Gaming Commission; and

b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

4. With respect to key employees and primary management officials, the Gaming Regulatory Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination or denial of employment.

F. Granting a Gaming License

1. If, within a thirty (30) day period after the National Indian Gaming Commission

receives a report, the National Indian Gaming Commission notifies the Gaming Regulatory Commission that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Gaming Regulatory Commission has provided an application and investigative report to the National Indian Gaming Commission, the Gaming Regulatory Commission may issue a license to such applicant.

2. The Gaming Regulatory 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 Subsection G.1. of this Section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Gaming Regulatory Commission with a statement itemizing its objection(s) to the issuance of a license to a key employee or to a primary management official for whom the Gaming Regulatory Commission has provided an application and investigative report to the National Indian Gaming Commission, the Gaming Regulatory Commission shall reconsider the application, taking into account the objection(s) itemized by the National Indian Gaming Commission. The Gaming Regulatory Commission shall make the final decision whether to issue a license to such applicant.

4. If the NIGC provides no response within the thirty (30) day period described above, the Gaming Regulatory Commission may issue a license based on its own findings on a temporary basis contingent on the contents of a final report from the NIGC.

G. License Suspension

1. If, after the issuance of a gaming license, the Gaming Regulatory Commission receives from the National Indian Gaming Commission, or from its own sources, reliable information indicating that a key employee or a primary management official is not eligible for employment under Subsection C above, the Gaming Regulatory Commission shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Gaming Regulatory Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Gaming Regulatory Commission shall decide whether to revoke or to reinstate a gaming license. The Gaming Regulatory Commission shall notify the National Indian Gaming Commission of its decision.

SECTION IX: LICENSING OF GAMING PLACES, FACILITIES AND LOCATIONS

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

SECTION X. CREATION OF GAMING REGULATORY COMMISSION

A. There is hereby created the Gaming Regulatory Commission, which shall consist of three Tribal members who would themselves qualify for licensing under this Ordinance.

B. The members of the Gaming Regulatory Commission shall be appointed by the Tribal Council as follows:

1. Initial appointment. Immediately upon passage of this ordinance, the Tribal Council may publicize, to the extent reasonable and practical, that it will be appointing a three (3) member Gaming Regulatory Commission seeking both applicants for appointment and nominations of individuals to be appointed. At the next regularly scheduled meeting, or as soon thereafter as the Tribal Council identifies qualified Tribal members willing to serve on the Gaming Regulatory Commission, the Tribal Council shall appoint three (3) members to the Gaming Regulatory Commission.

2. Term and compensation. Members of the Gaming Regulatory Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, one person shall be appointed to a one (1) year term, one person shall be appointed to a two (2) year term, and one person shall be appointed to a three (3) year term. All appointments thereafter shall be for three (3) year terms. There shall be a Chairperson of the Gaming Regulatory Commission, who shall be selected by the members of the Commission from the Commission members for a one year term.

3. Subject to the availability of funding and a budget approved by the Tribal Council,

members of the Gaming Regulatory Commission may receive a stipend, mileage and expense reimbursement for attendance at properly called meetings at which a quorum is present.

4. Future Appointments. At least two (2) weeks prior to any meeting during which appointments to the Gaming Regulatory Commission will be made, the Tribal Council shall publicize that it will be making such appointments and shall seek applicants for appointment and nominations of individuals to be appointed.

5. Oath of Office. As soon as possible after appointment, the Tribal Court, by any member of the Judiciary or the Court Administrator, shall administer the oath of office to the members of the Gaming Regulatory Commission which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this ordinance.

6. In the event a vacancy occurs in the Gaming Regulatory Commission, by virtue of death, resignation or removal, the vacancy shall be filled in the following manner:

a. If one year or less remains of the term of office which has become vacant, the Tribal Council shall appoint a qualified member of the Little Traverse Bay Bands of Odawa Indians to fill the remaining term of office without seeking applications or nominations therefor.

b. If more than one year remains of the term of office which has become vacant, the Tribal Council shall comply with the requirements of Section X(B)(3) prior to appointing a qualified member of the Little Traverse Bay Bands of Odawa Indians to fill the remaining term of office.

c. To ensure that the Commission remains functional, the Tribal Council may make emergency temporary appointments for 60 day increments. Council members who would themselves qualify for licensing under this Ordinance may be appointed to such emergency interim positions.

7. Removal or Discipline. Members of the Gaming Regulatory Commission shall not be removed during their terms of office except for misconduct, neglect of duties or other acts that would render such persons unqualified for licensure hereunder. The procedure for removal shall be as follows:

a. The Chairman of the Little Traverse Bay Bands of Odawa Indians shall call a

special meeting of the Tribal Council to deal with a request to remove the member or place the item on the agenda of the next regularly scheduled Council meeting in response to any one of the following:

1. The Tribal Council by majority vote determines that there is cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

2. The Tribal Council receives a petition signed by at least fifty (50) members of the Little Traverse Bay Bands of Odawa Indians alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

3. The Tribal Council receives a petition signed by two members of the Gaming Regulatory Commission alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section.

b. In the event that the Tribal Council receives a petition under this section, or determines itself that there may be grounds for removal the Council shall:

1. Submit the petition to the Election Board for verification that the petition contains a sufficient number of valid signatures;

2. If the Election Board finds the petition to contain a sufficient number of valid signatures, the Tribal Council shall submit the petition to the Tribal Court to determine if the charges, if proven true, would constitute grounds for removal;

3. In the event that Council itself has determined that there is cause to suspect that a member may be subject to removal, Council shall submit its reasons in writing to the Tribal Court to determine if the charges, if proven true, would constitute grounds for removal.

4. If the Tribal Court determines that the charges, if proven true, would constitute grounds for removal of a Commissioner from his or her appointed

position, the Tribal Council shall set a date for hearing the charges on the petition and shall provide notice to the member of the Gaming Regulatory Commission whose removal is being sought.

c. Notice to the member whose removal is being sought shall be served no later than two (2) weeks prior to the date set for the hearing, shall include the date, time and location of the hearing, shall attach a full and complete copy of a statement of the Tribal Council or the petition seeking removal, and shall attach a copy of the rules to be followed during the hearing. Upon good cause shown, the Tribal Council may postpone the hearing to a later date. Notice shall also advise the recipient of the availability of Tribal Council power to require the presence of any witness or the production of any document which the recipient deems necessary in order to attempt to defend against the charges contained in the petition, and the right of the commissioner to have one attorney or Tribal member advocate present to represent and assist the commissioner at the hearing.

d. The Tribal Council shall also provide copies of the notice to the other members of the Gaming Regulatory Commission, and to the member of the Little Traverse Bay Bands of Odawa Indians who presented the petition, advising each of them of the opportunity to appear and to present evidence, either in support of the charges against the member of the Gaming Regulatory Commission whose removal is sought or in support of the defense of such member. The presenter of the petition or a person who signed the petition designated by the presenter shall have the ability to request the Tribal Council to require the presence of witnesses or production of documents deemed necessary to support the charges contained in the petition.

e. The Tribal Council shall preside at the hearing of the charges contained in any such petition and shall allow as much time as necessary for the testimony of witnesses and presentation of evidence in support of the charges, as much time as necessary for the testimony of witnesses and presentation of evidence to refute the charges, and such time as the Tribal Council deems appropriate for summary statements and arguments. At any time, the Tribal Council may recess the hearing until a later time certain. At the request of the member whose removal is at issue, the hearing may be held in executive session. The Tribal Council also may elect to receive in executive session any evidence public disclosure of which might compromise the proprietary interests of the Tribe or any on-going law-enforcement investigation.

f. Upon the conclusion of the presentation of evidence and of summary statements and arguments, the Tribal Council shall deliberate in executive session and shall either dismiss the petition, remove the member charged in the petition from the Gaming Regulatory Commission, or take such other disciplinary action as it deems appropriate short of removal, upon such findings of fact as may be appropriate. The decision of the Tribal Council shall be final, and no appeal to any other tribunal shall be available.

g. Upon conclusion of the hearing, any information disclosing possible criminal activity shall be promptly reported to Tribal Law Enforcement.

C. The Gaming Regulatory Commission shall be authorized and hereby is directed to promulgate detailed and comprehensive regulations for the implementation and enforcement of this Ordinance. Provided, the Tribal Council retains the right to approve and/or modify such regulations. Said regulations shall describe and establish the rules for each specific Class II and Class III gaming activity to be authorized to be conducted, and no form of such gaming may be conducted without prior approval by the Gaming Regulatory Commission. The regulations may contain an appellate procedure whereby appeals of licensing decisions are taken to the Tribal Court or such other appellate body as established therein.

D. Subject to the ultimate authority of the Tribal Council under Article VII, sections (m) and (n) of the Constitution, the Tribal Council delegates to the Gaming Regulatory Commission authority to monitor compliance with this Ordinance and its Regulations, and to investigate and act to prevent any violation(s) thereof. Any investigation disclosing criminal violations shall be promptly reported to Tribal Law Enforcement.

E. Subject to the approval by Tribal Council action and the appropriation of funds therefor, the Gaming Regulatory Commission shall be authorized to employ such staff and/or consultants as reasonably may be required to fulfill its responsibilities under this Ordinance. Compensation of Commission employees shall be limited to that which is comparable to compensation paid to persons performing similar duties in other Tribal governmental departments. Such employees are not employees of the Enterprise, but of the Tribal Government.

F. Subject to the approval by Tribal Council action, the Gaming Regulatory Commission hereby is authorized to establish and impose upon gaming facilities, permittees, applicants and licensees such application, permit and license fees as may be necessary to fully reimburse the Tribe for its

actual costs of operating the Gaming Regulatory Commission, enforcing this Ordinance and Gaming Regulatory Commission regulations, processing of licensing and permit applications, and otherwise fulfilling its regulatory responsibilities under IGRA. All such fees shall be collected by the Gaming Regulatory Commission and hereby are continuously appropriated solely for the purposes enumerated in this Subsection.

G. Failure to timely pay any gaming-related fee imposed by the Tribal Council or the Gaming Regulatory Commission, or failure to comply with any Commission regulation or order, or any other violation of this Ordinance or the terms of any Class III gaming compact to which the Tribe is a party authorizing and regulating gaming, shall be grounds for suspension or revocation of any license or permit issued pursuant to this Ordinance, exclusion of any non-member of the Tribe from the Tribe's Gaming Enterprise, and imposition of such other sanctions as the Gaming Regulatory Commission may deem appropriate.

SECTION XI: RESOLUTION OF DISPUTES BETWEEN THE GAMING PUBLIC AND TRIBE OR MANAGEMENT OFFICIAL

Disputes between the gaming public and Tribe or management official shall be resolved in accordance with procedures adopted by the Gaming Regulatory Commission. Such procedures shall at a minimum include: 1. The aggrieved member of the gaming public shall first bring his/her complaint either verbally or in writing to staff of the gaming facility. 2. If not satisfied with staff response, the complaining party may file a written complaint with the Gaming Regulatory Commission which shall take appropriate action on the complaint within thirty (30) days of submission.

SECTION XII: SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this ordinance is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this ordinance, the entirety of the balance of the ordinance to remain in full and binding force and effect.

SECTION XIII. EFFECTIVE DATE

This Statute takes effect upon approval of the Chairman of the National Indian Gaming Commission, or when considered approved by operation of applicable Federal law and/or regulation.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on February 18, 2001 at which a quorum was present, by a vote of three (3) in favor, two (2) opposed, and zero (0) abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	_____	__x__	_____	_____
Gerald Chingwa	__x__	_____	_____	_____
Dorothy Gasco	__x__	_____	_____	_____
Janet Shomin	_____	__x__	_____	_____
Susan Wysocki	_____	_____	_____	__x__
Alice Yellowbank	__x__	_____	_____	_____

Date: 2/18/01

Gerald Chingwa, Tribal Chairman

Dorothy Gasco, Tribal Secretary