

LR-002 (e) LICENSING APPEAL HEARING REGULATIONS

6.0 INTRODUCTION

It shall be the responsibility of all licensees to understand that a Gaming License is a privilege and not a right. It is the licensees responsibility to adhere and comply with all laws and gaming regulations as enumerated within the Indian Gaming Regulatory Act, the Tribal/State Compact, Gaming Ordinance, TMGC Rules and Regulations and all Federal, State and Tribal laws. Failure to do so may be grounds for suspension and/or revocation of a gaming License. Copies of all laws and regulations are available online or from the governing body. Only licensees that are licensed by the TMGC are eligible for appeals and hearings in accordance with these regulations.

ORDINANCE SEC VII. Licenses for Key Employees and Primary Management Officials (Pg. 7)

The TMGC 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 III gaming enterprise operated on Torres Martinez Tribal Land.

6.1 TRIBAL SUSPENSION OR DENIAL

Any applicant's application for a tribal gaming license may be denied, and any license issued may be suspended or revoked in accordance with these rules, regulations and other governing documents.

The TMGC may deny a license if they determine that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.

Compact SEC. 6.5.1 (a) Denial, Suspension, or Revocation of Licenses. (40)

Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with these regulations and if applicable section 6.5.5. of the Tribal-State Compact.

Compact SEC. 6.5.1. (b) Denial, Suspension, or Revocation of Licenses. (pg. 40)

The TMGA shall summarily suspend the license of any licensee if the TMGA determines that the continued licensing of the person or entity constitutes a threat to the public health or safety or may summarily suspend the license of any licensee if the TMGA determines that the continued licensing of the person or entity may violate the TMGA's licensing or other standards. The TMGA shall notify the State Gaming Agency within seven (7) days of any such determination. The right to notice or hearing in regard thereto shall be governed by tribal law and comport with federal due process by, for instance, providing the licensed person or entity with notice reasonably calculated to appraise the licensee of the pendency of the determination, an opportunity to review materials upon which the charge is based in such a manner that does not compromise security or regulation of the Gaming Operation or Facility, and an opportunity to be heard.

Compact SEC. 6.5.5. Summary Suspension of Tribal Gaming License. (pg. 42)

All rights to notice and hearing shall be governed by tribal law and comport with federal procedural due process by, for instance, providing the applicant with notice reasonably calculated to inform the Applicant of the pendency of the determination, an opportunity to review materials upon which the charge is based in such a manner that does not compromise security or regulation of the Gaming Operation of Facility, and an opportunity to be heard. The Applicant shall be notified in writing of the hearing and given notice of any intent to suspend or revoke the tribal gaming license.

Compact SEC. 6.5.1. (c). Denial, Suspension, or Revocation of Licenses. (pg. 40)

6.2 NIGC NOTIFICATION FOR LICENSE SUSPENSION AND REVOCATIONS

If after the issuance of a gaming license, to a primary management official or key employee the TMGC receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection E. below, the TMGC shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

*Gaming Ordinance Sec. 1 (1) License Suspension and revocations (pg. 14)
25 CFR Sec. 558.4 Notice of information impacting eligibility and licensee's right to a hearing (pg. 204)*

6.3 ELIGIBILITY DETERMINATION

The TMGC 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, for the granting of a gaming license. If the TMGC determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the TMGA shall not license that person in a key employee or primary management official position.

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

*Gaming Ordinance Sec. E (pg. 12)
25 CFR Sec. 556.5 Tribal eligibility determination. (pg. 202)*

When a key employee or primary management official begins work at the casino TMGC shall forward to the National Indian gaming Commission a completed application for employment and conduct the background investigation and make a suitability determination.

ORDINANCE SEC F. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission. (Pg. 12)

The TMGC shall forward the notice of results to the National Indian Gaming Commission within 60 days after an applicant begins work.

The casino shall not employ as a key employee or primary management official person who does not have a license after 90 days.

The TMGC shall create, maintain and forward to the National Indian gaming Commission an "notice of results: on each background investigation. A notice of results shall include all of the following:

Gaming Ordinance Sec.. G. Report to the National Indian gaming Commission

- a. Steps taken in conducting a background investigation;
- b. The applicant's name, date of birth, and social security number;
- c. The date on which the applicant began, or will begin, working as a primary management official or key employee;
- d. A summary of the information presented in the investigative report, including:
 - i. Licenses that have previously been denied;
 - ii. Gaming licenses that have been revoked, even if subsequently reinstated;
 - iii. Every known criminal charge brought against the applicant within the last 10 years of the date of the application; and
 - iv. Every felony offence of which the applicant has ever been convicted or any ongoing prosecution; and

After the TMGC has provided a notice of results of the background check to the NIGC, the TMGC may license a primary management official or key employee.

25 CFR 558.3 Notification to NIGC of license decisions and retention obligations. (Pg. 204)

Within 30 days after the issuance of the license, a tribe shall notify the NIGC of its issuance.

The Casino shall not employ a key employee or primary management official who does not have a license after ninety (90) days.

If the TMGC does not license an applicant

- a. The TMGC shall notify the NIGC; and
- b. Shall forward copies of its eligibility determination and notice of results, under 556.6(b)(2) of this chapter, to the NIGC for inclusion in the Indian Gaming Individuals Record System.

The TMGC shall retain the following for inspection by the Chair or his or her designee for no less than three years from the date of termination of employment:

- a. Applications for licensing;
- b. Investigative reports; and
- c. Eligibility determinations

6.4 NOTIFICATION TO LICENSEE OF LICENSE SUSPENSION OR REVOCATION

The licensee will be informed in writing by the TMGC regarding the suspension, or revocation of their gaming license. Additionally, the applicant will be granted the right to request an appeal hearing.

If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under 25 CFR 556.5, the NIGC shall notify the tribe of the information.

25 CFR 558.4 (a) Notice of information impacting eligibility and licensee's right to a hearing. (Pg. 204)
Gaming Ordinance Sec. I (1) License Suspension and revocations (pg. 14)

Upon receipt of such notification under paragraph 25 CFR 558.4 (a), a the TMGC shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

25 CFR 558.4 (b) Notice of information impacting eligibility and licensee's right to a hearing. (Pg. 204)

The TMGC shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

25 CFR 558.4 (b) Notice of information impacting eligibility and licensee's right to a hearing. (Pg. 204)
Gaming Ordinance Sec. I (2) License Suspension and revocations (pg. 14)

A right to a hearing under this part shall vest only upon receipt of a license granted under the ordinance approved by the Torres Martinez Tribe.

25 CFR 558.4 (c) Notice of information impacting eligibility and licensee's right to a hearing. (Pg. 204)
Gaming Ordinance Sec. I (3) License Suspension and revocations (pg. 14)

After a revocation hearing the TMGC shall decide to revoke or to reinstate a gaming license. The TMGC shall notify the National Indian Gaming Commission of its decision to revoke or reinstate a license within 45 days of the receiving notification from the NIGC that a primary management official or key employee is not eligible for employment.

25 CFR 558.4 (e) Notice of information impacting eligibility and licensee's right to a hearing. (Pg. 204)
Gaming Ordinance Sec. I (4) License Suspension and revocations (pg. 14)

6.5 STATE DENIAL

Except as provided in subdivision (e) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly, and in no event more than thirty (30) days from the state Gaming Agency notification, revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, reissue an tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding between the Applicant and the State Gaming Agency in state court conducted pursuant to section 1085 or 1094.5 of the California Code of Civil Procedure, as provided by the California Gambling Control Act.

Compact SEC. 6.5.1. (d) Denial, Suspension, or Revocation of Licenses. (pg. 40)

Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal gaming license issued to a person employed by the Tribe pursuant to section 6.4.3, subdivision (e) or (f) (Pg. 25-26) of the Tribal-State Compact (see below).

Compact SEC. 6.5.1. (e) Denial, Suspension, or Revocation of Licenses. (pg. 41)

(d) the Tribal shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability or for a renewal of such a determination has been denied, or whose determination of suitability has expired without renewal.

(e) Notwithstanding subdivision (d), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if:

- (1) The person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; and*
- (2) The denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate, at least ten (10) years, the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and*
- (3) The person is not an employee or agent of any other gaming operation; and*
- (4) The person has been in the continuous employ of the Tribe for at least three (3) years prior to January 16, 2004.*

(f) Notwithstanding subdivision (d), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe (defined for purposes of this subdivision as a person who is a member of the Tribe as determined by the Tribe's law), and if:

- (1) The enrolled member of the Tribe holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; and*
- (2) The enrolled member of the Tribe is not an employee or agent of any other gaming operation; and*
- (3) Either subdivision (f)(3)(A) or (B) applies:*
 - (A) The enrolled member was eligible for an exemption under section 6.4.4, subdivision (d) (Pg. 29) of the 2003 Compact, was granted a license by the Tribal Gaming Agency while the 2003 Compact was in effect, and the State Gaming Agency's denial of the application is based solely on activities, conduct, or associations that antedate the Tribal gaming Agency's first grant of license to the tribal member pursuant to the 2003 Compact; or*

(B) The denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate, by at least ten (10) years, the filing of the enrolled member of the Tribe's initial application to the State Gaming Agency for a determination of suitability.

Compact SEC. 6.4.3. (d), (e), (f) Gaming Employees. (pg. 25-26)

THE TORRES MARTINEZ GAMING COMMISSION

**TRIBAL MOTION
RECORD OF MOTION or ACTION TAKEN**

Meeting Date: 4/3/2024	Agenda Item Number: VII.b
Department: TMGC	Presenter: TMGC
Concerning the matter of:	Licensing Appeal Hearing Draft Regulation
Resolution number:	#LR002(e)

ACTION TAKEN

<input checked="" type="checkbox"/> APPROVED
<input type="checkbox"/> DENIED
<input type="checkbox"/> TABLED
<input type="checkbox"/> FOR THE RECORD
<input type="checkbox"/> OTHER
<input type="checkbox"/> FURTHER INFORMATION REQUIRED
<input type="checkbox"/> FORWARD TO
<input checked="" type="checkbox"/> Alfonso Loya, TGA Manager
<input type="checkbox"/> Tribal Procurement
<input type="checkbox"/> Tribal Council

FOR 3 AGAINST 0 ABSTAIN 0

COMMENTS: Approval for Licensing Appeal Hearing Regulation #LR002(e) effective April 3, 2024; to be reviewed every 3 years. TMGC reserves right to make amendments at any time.

VERIFICATION: Britni Stafford
Britni Stafford, Secretary TM Gaming Commission DATE: 4/3/2024

