

TRIBAL CODE
CHAPTER 76:
PARTIAL WAIVER OF CONVICTION FOR GAMING
LICENSE PURPOSES

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HISTORY NOTE:

Current Ordinance:

Resolution 2007-55, adopted March 20, 2007, adopts and renames Tribal Code Chapter 76: Partial Waiver of Conviction for Gaming License Purposes, and rescinds Tribal Code 76 Gaween-Nji-Da.

TRIBAL CODE

CHAPTER 76:

PARTIAL WAIVER OF CONVICTION FOR GAMING LICENSE PURPOSES

76.101 Purpose.

The purpose of this Chapter is to establish procedures for issuing a waiver to Tribal members for criminal convictions within the immediately preceding five (5) years only for the limited purpose of obtaining Gaming Licenses for employment.

76.102 Applicability.

(1) This Chapter applies only to members of the Sault Ste. Marie Tribe of Chippewa Indians.

(2) Any application for waiver for the limited purpose of obtaining a Gaming License shall be deemed to be consent to the jurisdiction of the Tribe and the Gaming Commission in all matters arising from the conduct of such activities and all matters arising under any of the provisions of this Code or other Tribal laws.

76.103 Definitions.

(1) “Criminal Conviction” shall mean a judgment that a person is guilty of a crime or has pled *nolo contendere* (no contest) to a criminal charge under any tribal, federal, state or local law.

(2) “Fraud” shall mean a criminal offense committed in Michigan or any other jurisdiction, containing an element of fraud, which is crime or would be a crime if committed in Michigan.

(3) “Gaming Commission” shall mean the Gaming Commission of the Sault Ste. Marie Tribe of Chippewa Indians.

(4) “Gaming License” shall mean a license granted under Subchapter V of Chapter 42 of the Tribal Code.

(5) “Misrepresentation” shall mean a criminal offense committed in Michigan or any other jurisdiction, containing an element of misrepresentation, which is a crime or would be a crime if committed in Michigan.

- (6) “Tribal Court” shall mean the Sault Ste. Marie Chippewa Tribal Court.
- (7) “Tribe” shall mean the Sault Ste. Marie Tribe of Chippewa Indians.

76.104 Authority of the Board.

The Board of Directors (“Board”) shall have the power to grant waivers to eligible applicants only for the limited purpose of issuing a Gaming License.

76.105 Eligibility for Waiver.

(1) Any Tribal member who has been convicted of a crime within the immediately preceding five (5) years is eligible for a waiver only if all of the following conditions are met:

- (a) the individual has never been convicted of or entered a plea of guilty or *nolo contendere* to felony fraud, felony misrepresentation or any gambling-related offense;
- (b) the individual has not been convicted of or entered a plea of guilty or *nolo contendere* to misdemeanor fraud or misdemeanor misrepresentation more than two (2) times.
- (c) the individual has never participated in organized crime;
- (d) the individual has not been denied a waiver nor had a waiver application dismissed for failure to disclose all criminal convictions within the preceding three (3) months; and
- (e) the individual does not have more than three (3) criminal convictions resulting from separate instances of conduct within the preceding two (2) years.

(2) The Gaming Commission and the Tribal Prosecutor shall not process any application for a waiver filed by an individual who is determined to be ineligible pursuant to Section 105(1) above.

76.106 Procedures for Application.

- (1) Applications for a waiver shall be available at the Tribal Court.
- (2) The completed applications shall be filed with the Tribal Court. The applicant must disclose all prior criminal convictions on the application, regardless of the date of conviction. Failure to disclose any criminal conviction shall result in the dismissal of the application.

(3) The Gaming Commission, together with the cooperation and assistance of the Tribal Prosecutor, shall obtain a complete criminal history of eligible applicant and forward the application, criminal history, and any other applicable information known by the Gaming Commission to the Tribal Prosecutor.

(4) The Tribal Prosecutor shall send a copy of the application to the sentencing judge. The sentencing judge shall have ten (10) days to file with the Tribal Prosecutor any objections or comments regarding the applicant.

(5) The Tribal Prosecutor shall send a copy of the application to the Casino management for a recommendation. The Casino manager shall have ten (10) days to file with the Tribal Prosecutor any objections or comments regarding the applicant.

(6) After gathering the necessary information, the Tribal Prosecutor shall present the application to the Board of Directors, with a list of relevant factors in determining whether to grant a waiver pursuant to any Board policy regarding the granting of a waiver.

76.107 Waiver Hearings.

The Board of Directors shall hear all waiver applications at a public hearing. The applicant must be present. The Tribal Prosecutor shall represent the Tribe at the hearing. At the hearing, the Tribal Prosecutor shall provide the Board of Directors with a recommendation for action.

76.108 Standards for Granting a Waiver.

The Board of Directors shall grant a waiver to an eligible applicant who only upon a finding that:

(1) the applicant is not likely again to engage in any offensive or criminal course of conduct;

(2) the public good does not require that the applicant be denied a license as a key employee or primary management official; and

(3) the applicant's prior activities, criminal record, associations, and/or background do not pose a threat to the public interest, gaming regulation, or the Tribe's business and financial arrangements incidental to gaming.

76.109 Subsequent Application After Denial of Waiver.

If the Board of Directors determines not to grant a waiver to the applicant or the application is dismissed for failure to disclose all criminal convictions, the applicant shall not be eligible to reapply for a waiver for a period of three (3) months from the date the application was filed.

76.110 Effect of Waiver.

A waiver for a criminal conviction granted by the Board of Directors shall constitute a waiver of the conviction only for the limited purpose of obtaining a Gaming License. The conviction shall not be expunged from the applicant's criminal record.