



ORDINANCE NO. 13-03

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ADOPTING AND ADDING A NEW ARTICLE 4 TO CHAPTER 10 OF TITLE 1 OF THE BLUE LAKE RANCHERIA TRIBAL CODE ENTITLED: PROTECTION AND USE OF GAMING REVENUES

The Business Council ("Business Council") of the Blue Lake Rancheria ("Tribe") hereby ordains as follows:

SECTION 1. FINDINGS AND POLICY. The Tribe hereby finds and declares as follows:

1. The Tribe operates a gaming facility which produces revenues which are subject to the control of the Business Council.

2. Under the Indian Gaming Regulatory Act ("IGRA") 25 U.S.C. §2710(b)(2), and Section 6.01 of Ordinance No. 95-01, entitled "An Ordinance of the Blue Lake Rancheria Authorizing and Regulating Gaming on the Blue Lake Rancheria" ("Gaming Ordinance"), last amended on May 6, 2001, and approved by the National Indian Gaming Commission on January 4, 2002, net gaming revenues may only be used:

- A. To fund Tribal government operations and programs;
- B. To provide for the general welfare of the Tribe and its members;
- C. To promote the economic development of the Tribe;
- D. To provide per capita payments to the members of the Tribe; and
- E. To donate to charitable organizations.
- F. To help fund operations of local government agencies.

3. The purpose of this Ordinance is to protect and preserve gaming revenues for the purposes authorized by the IGRA, the Gaming Ordinance and the Tribal Gaming Compact between the Tribe and the State of California, and for the allocation of gaming revenues in a manner which recognizes the immediate and long-term needs of the Tribe and its members. Those needs include the development and protection of the Tribe,

administration of tribal government, the needs of Tribal Members in the areas of health care, housing, education, job training, and care for the elderly and the young and other purposes which address the present and future health and welfare of the Tribe and its members.

SECTION 2. ADOPTION AND ADDING OF A NEW CHAPTER TO THE TRIBAL CODE ENTITLED "PROTECTION AND USE OF GAMING REVENUES." A new Article 4 is hereby adopted and added to Title 1, Chapter 10 of the Blue Lake Rancheria Code and shall provide as follows:

Article 4

PROTECTION AND USE OF GAMING REVENUES

Sections:

- 01.10.04.010 Definitions.
- 01.10.04.020 Gaming Enterprise Budget and Accounts.
- 01.10.04.030 Distribution of Net Gaming Revenues to Net Gaming Revenue Account.
- 01.10.04.040 Permissible Uses Net Gaming Revenue.

Section 01.10.03.010 Definitions. In construing the provisions of this Ordinance, the definitions in Section 3 of the Gaming Ordinance shall have the same meaning in this Ordinance, unless re-defined herein, and the following words or phrases when capitalized shall have the following meanings:

- A. **"Business Council"** means the governing body of the Tribe as set forth in Article V, Section 4 of the Tribe's Constitution.
- B. **"Cost of Gaming Operations"** means:

All operating expenses of the Gaming Enterprise determined in accordance with Generally Accepted Accounting Principles ("GAAP"), including, without limitation, the following:

- (i) amounts paid out as, or paid for, prizes;
- (ii) fees imposed on the Gaming Enterprise by the National Indian Gaming Commission based upon its gross receipts from Class II Gaming and Class III Gaming, including, but, not limited to any contributions and license/regulatory fee reimbursements payable to the State pursuant to the Tribal-State Compact. In addition, these fees and costs include all costs of the Tribal Gaming Commission (including, without limitation, costs for salaries, employees, background investigations, office expenses and other incidental costs of said Gaming Commission).
- (iii) the amount required by the Tribal-State Compact to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;
- (iv) other fees for background investigations except that individuals requiring background investigations under 25 C. F. R. §. 537.1 must pay the fees for those investigations;
- (v) depreciation and amortization of the Gaming Facility based on an assumed useful life, as approved by the Business Council, and depreciation and amortization of all other assets in accordance with GAAP;

(vi) interest on all other loans or capital leases pertaining to the Gaming Facility and the Gaming Enterprise; interest on installment contract purchases or other interest charges on debt; and operating lease payments for Furnishing and Equipment;

(vii) total gaming-related costs, fees and expenses, including, without limitation, materials, supplies, inventory, utilities, repairs, maintenance, insurance, bonding, marketing, advertising, annual audits, accounting, legal or other professional and consulting services, security or guard services, executive training, and such other costs, expenses or fees incurred in the operation of the Gaming Enterprise's Class II Gaming and Class III Gaming, including the Initial Cost of Operations and consultant fees that are expenses;

(viii) compensation and benefits to employees of the Gaming Enterprise;

(ix) all expenses and costs incurred in operating any non-gaming business activity within the Gaming Facility, including, without limitation, all employment costs relating to non-gaming employees working in the Gaming Facility, including the hotel and the mini-mart gas station, non-gaming supplies and materials, insurance and other non-gaming costs reasonably and customarily incurred in the operation of such portion of the Gaming Enterprise.

C. **"Gaming Enterprise"** means businesses operated in a Gaming Facility.

D. **"Gaming Facility Operating Accounts"** means an account or accounts established by the Business Council at one or more financial institutions into which all revenues from the operation of the Gaming Facility are deposited and from which the Cost of Gaming Operations are paid.

E. **"Gaming Operation"** means a Gaming Enterprise.

F. **"Gross Gaming Revenues"** means all revenues of the Gaming Enterprise from any source or activity.

G. **"Net Gaming Revenues"** means Gross Gaming Revenues remaining at the end of an accounting period, designated by resolution of the Business Council, less Costs of Gaming Operations.

H. **"Net Revenue Accounts"** means an account or accounts established by the Business Council at one or more financial institutions into which only Net Gaming Revenues are deposited and from which allocations and payments are made pursuant to this Ordinance.

I. **"Tribal Court"** means the Blue Lake Rancheria Tribal Court.

J. **"Tribal Member"** means an enrolled member of the Blue Lake Rancheria.

K. **"Tribe"** means the Blue Lake Rancheria.

Section 01.10.03.020 Gaming Enterprise Budget and Accounts.

A. No later than sixty days prior to the beginning of the fiscal year of the Gaming Enterprise, as fixed from time to time by resolution of the Business Council, the Business Council shall adopt a Gaming Enterprise

operating budget in accordance with generally accepted accounting principles, against which it shall compare actual and budgeted expenses on a monthly basis. The budget shall include a line item for cash reserves required to insure adequate funding to pay prizes and a prudent reserve for purposes of adequate cash flow, and to accrue funds for capital improvements and replacements and other anticipated expenses or liabilities. On a quarterly or more frequent basis, as determined by the Business Council or by delegation the Gaming Enterprise Manager or Managers, the Business Council or designee shall compare the budgeted income and expenses with actual income and expenses and make such adjustments to the budget as are prudent.

B. On a daily basis, Gross Gaming Revenues shall be deposited in the Gaming Facility Operating Account. The funds deposited in the Gaming Facility Operating Account shall be used exclusively to pay the budgeted Costs of Gaming Operations. The Business Council or the Gaming Enterprise Manager or Managers shall provide written notice to any financial institution where a Gaming Facility Operating Account is maintained that the funds in a Gaming Enterprise Operating Account are exempt from any levy, attachment, seizure or other similar creditor process by any court or administrative agency, unless a garnishment, levy, attachment or other encumbrance is imposed by a resolution of the Business Council for a gaming-related purpose or an order of the Tribal Court. This restriction on the Gaming Facility Operating Account shall be deemed an encumbrance and lien on the funds in the Gaming Facility Operating Account in favor of the Gaming Enterprise to secure compliance with the restriction on the use of said funds by federal and tribal law which arose upon the adoption of this Ordinance.

C. The Tribal Court shall have exclusive jurisdiction over any action or proceeding to levy upon or impose an encumbrance or restriction on the use of funds in the Gaming Facility Operating Account by the Gaming Enterprise. If a levy, garnishment, attachment or other similar creditor process is served upon a financial institution to seize or restrict the use of the funds in a Gaming Facility Operating Account by the Gaming Enterprise to pay the Costs of Gaming Operations, the sole remedy of the financial institution shall be to interplead the funds into the Tribal Court to determine the proper disposition of the funds.

Section 01.10.03.030 Distribution of Net Gaming Revenues to Net Gaming Revenue Accounts.

A. On a monthly, quarterly, semi-annual or annual basis, as determined from time to time by the Business Council, the Gaming Enterprise shall deposit Net Gaming Revenues into the Net Revenue Account designated by the Business Council. Funds in the Net Revenue Account shall be used exclusively as provided in Section 01.10.03.040. The Business Council shall provide written notice to any financial institution where a Net Gaming Revenue Account is maintained that the funds in a Net Revenue Account are exempt from any levy, attachment, seizure or other similar creditor process by any court or administrative agency, unless a garnishment, levy, attachment or other encumbrance is imposed by a resolution of the Business Council for a purpose authorized in Section 01.10.03.030 or an order of the Tribal Court. This restriction on the Net Revenue Account shall be deemed an encumbrance and lien on the funds in the Net Revenue Account in favor of the Members of the Tribe, the Tribal Gaming Commission and the National Indian Gaming Commission to secure compliance with the restriction on the use of said funds by federal and tribal law which arose upon the adoption of this Ordinance.

B. The Tribal Court shall have exclusive jurisdiction over any action or proceeding to levy upon or impose an encumbrance or restriction on the use by the Tribe of funds in the Net Revenue Account. If a levy, garnishment, attachment or other similar creditor process is served upon a financial institution to seize or restrict the use of the funds in a Net Revenue Account by the

Tribe as authorized by Section 01.10.03.040, the sole remedy of the financial institution shall be to interplead the funds into the Tribal Court to determine the proper disposition of the funds.

Section 01.10.03.040 Permissible Uses Net Gaming Revenue.

A. Funds on deposit in the Net Revenue Account shall only be used for the following purposes, and no other:

1. To fund Tribal government operations and programs;
2. To provide for the general welfare of the Tribe and its members;
3. To promote the economic development of the Tribe;
4. To provide per capita payments to the members of the Tribe, but only if the Tribe has adopted a revenue allocation plan which has been approved in accordance with 25 C.F.R. Part 290;
5. To donate to charitable organizations; and
6. To help fund operations of local government agencies.

B. Prior to the commencement of the Tribe's fiscal year, as determined by the Business Council, the Business Council shall adopt a budget for the funds in the Net Revenue Account. The budget shall allocate the funds among the six allowable uses set forth in Subsection A. Other tribal revenues, such as from federal grants and contracts, may also be used for any of these uses, but shall be deposited to and withdrawn from one or more accounts with a financial institution which are separate from the Net Revenue Accounts.

SECTION 3. DISPUTE RESOLUTION.

The Tribal Court shall have exclusive jurisdiction over all disputes arising under this Ordinance, including, but not limited to, any claim by a tribal creditor against Gaming Facility Operating Accounts or Net Revenues Accounts in a financial institution, wherever located.

SECTION 4. NO WAIVER OF TRIBAL SOVEREIGNTY.

No provision of this Ordinance expressly or impliedly waives the sovereign immunity of the Tribe or its officers and employees or is intended to operate as consent to suit.

SECTION 5. SEVERABILITY.

In the event that any Section or provision of this Ordinance is held or determined to be invalid by any Court of competent jurisdiction, it is the intent of the Council that the remaining Sections or provisions of this Ordinance, and any amendments of this Ordinance, shall continue in full force and effect.

SECTION 6. AMENDMENTS.

This Ordinance may be amended at any time by the Business Council, when such amendment is necessary to promote the general health, safety, and welfare of the Tribe or its members. The Business Council expressly reserves the right to amend this Ordinance subject to the approval of this Ordinance by the Secretary of the Interior, if said approval is required by applicable federal law.

SECTION 7. REPEAL OF PRIOR ORDINANCES.

All prior Ordinances previously enacted by the Business Council, to the extent they are inconsistent with the provisions of this Ordinance, are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other Ordinance, the provisions of this Ordinance shall control.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall take effect immediately after its adoption by the Business Council.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Business Council with a quorum present held on May 29, 2013, by the following vote:

AYES: 4
NOES: 0
ABSTAIN: 0
ABSENT: 1

/s/ Claudia Brundin
Claudia Brundin, Chairperson

ATTESTED:

/s/ Arthur Ramsey
Arthur Ramsey, Secretary- Treasurer