

Chapter 16B TRIBAL BINGO ENTERPRISE ¹⁴

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Sec. 16B-1. Tribal Bingo Enterprise created.

- (a) Pursuant to the authority vested in the Eastern Band of Cherokee Indians by its Governing document and particularly by [section 23](#) thereof, and its inherent tribal sovereign authority to oversee, protect and preserve the assets and benefits of the Tribe, together with its capacity and authority to conduct both governmental and business activities by and on behalf of the Tribe, especially when Tribal members derive direct benefit from such activities, the Tribal Council hereby creates this Tribal enterprise that shall be known as the Tribal Bingo Enterprise, hereafter referred to as the TBE.
- (b) In any suit, action or proceeding involving the validity or enforcement of any of its contracts, the TBE shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this chapter. A copy of the chapter, duly certified by the clerk of the Tribal Council, shall be admissible in evidence in any suit, action or proceeding.

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(Ord. No. 710, 10-13-2005)

Sec. 16B-2. Declaration of need.

It is hereby declared:

- (a) That the Eastern Band of Cherokee Indians is authorized to conduct all forms of gaming as defined in 25 U.S.C. 2703(7) ("Class II Gaming"); that the Eastern Band of Cherokee Indians is authorized by the Indian Gaming Regulatory Act ("IGRA") to operate Class II gaming facilities; that the Tribal Council of the Eastern Band of Cherokee Indians has revised its gaming ordinances to comply with the IGRA and regulations promulgated by the National Indian Gaming Commission ("NIGC"); that the Tribal Council has established a Gaming Commission ("TGC") which has regulatory oversight responsibilities over all gaming on the Cherokee Indian Reservation, to ensure that appropriate gaming laws and regulations are complied with.
- (b) The Board of Advisors of the Tribal Bingo Enterprise is authorized to undertake such actions as are necessary and appropriate for the execution of the duties and authorities enumerated herein.
- (c) That the TBE is hereby created and established in the public interest to provide an organizational plan which can most effectively and efficiently direct all Class II Gaming owned by or operated on behalf of the Tribe. The Board of Advisors of the Tribal Bingo Enterprise is authorized to undertake such actions as are necessary and appropriate for the execution of the duties and authorities enumerated herein.

(Ord. No. 710, 10-13-2005)

Sec. 16B-3. Board of Advisors; generally.

The Board of Advisors of the TBE shall be the same individuals who serve as the Board of Advisors of the Tribal Casino Gaming Enterprise pursuant to [Section 16A-3](#), provided that they shall have the authority to select from among themselves different officers to lead the TBE, and the TBE shall be governed as a separate Tribal gaming enterprise.

(Ord. No. 710, 10-13-2005)

Sec. 16B-4. Eligibility criteria for Board members.

To avoid potential conflicts of interest in oversight and management of the TBE, the Tribe hereby declares that:

- (a) While actively serving in any of the following capacities, no Principal Chief or Vice-Chief, member of the Tribal Council, no Judge or Justice, no Tribal Gaming Commissioner, and no employee of the Tribal Gaming Commission, a management contractor or any gaming operation owned by the Tribe, may serve on the Board of Advisors;
- (b) No person who is ineligible to be a key employee or primary management official and no person convicted of a felony, embezzlement, theft, or any other money-related crime or honesty-related crime (such as fraud) may serve on the Board of Advisors;
- (c) Board members are prohibited from:
 - (1) Gambling in any gaming operation owned by the Tribe;
 - (2) Accepting complimentary items from any gaming operation;
 - (3) Providing contractual services of any kind to any gaming operation;

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- (4) Providing management services to any gaming operation pursuant to a management contract;
- (5) Accepting gratuities or any other thing of value from any gaming licensee or applicant for a gaming license; and
- (6) Engaging in outside employment or activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities as determined by the Tribal Council.

For purposes of subparagraph (c)(2), complimentary items shall not include ceremonial gifts or meals provided at the expense of a Tribal gaming operation, provided that such items do not each exceed \$50.00 in value and are not offered as an inducement or reward for gambling in the operation.

(Ord. No. 710, 10-13-2005)

Sec. 16B-5. Powers and duties of Board.

Subject to the limitations contained in this chapter and other applicable laws, the TBE, by and through its Board of Advisors, shall have the following powers and perform the following duties:

- (a) *Management contract.* The powers set forth in this section 16-6 are subject to the proviso that a management contractor, operating under a management contract approved by the NIGC, may be assigned responsibility for day-to-day operation, development, management and maintenance of a gaming operation, the administration and enforcement of personnel policies, and hiring and termination of employees. In such a case, the management contractor shall report to the Board of Advisors at the frequency and in the format established by the management contract. This chapter shall be read and interpreted in a manner that is consistent with such a management contract.
- (b) *Governance and management oversight.* The TBE shall have the power and duty to:
 - (1) With respect to a gaming operation subject to an NIGC-approved management contract, approve internal management policies, including:
 - (A) Written policies and procedures regarding:
 - (i) Hiring, discipline and discharge of employees including rights of appeal and policies governing the provision of Indian preference in employment;
 - (ii) Procurement:
 - (a) The form of vendor contracts, contracts concerning facility maintenance and repair, and contracts and sub-contracts regarding ancillary commercial activities of the TBE including retail shops and concessions;
 - (b) Policies regarding advertisement and promotional sales and activities; and
 - (c) Construction plans and specifications, including interior and exterior design and furnishings.
 - (2) With respect to a gaming operation not operated pursuant to an NIGC- approved management contract, employ a general manager and delegate to the general manager all duties and responsibilities as necessary for the lawful, efficient and profitable operation of the gaming operation.
 - (c) *Budgetary and financial authority.* The TBE shall have the power and duty to:
 - (1) Prepare annual operating, capital, and working capital budgets, which fund short range and long range goals and objectives of a gaming operation and the strategies used to

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accomplish these goals and objectives, which are to be included in the Executive Committee's proposed budget submitted annually to Tribal Council for approval;

- (2) Establish general bank accounts for each gaming operation for the deposit and maintenance of the funds of the operation;
 - (3) Establish, fund, and maintain capital/expansion reserve funds, as defined in [Section 16-1](#) of this Code, for working capital, continuity of operations, reinvestment in or future expansion of a gaming operation, or such other gaming related purposes as are consistent with an approved master plan, *provided* that such funds are either (1) required by an NIGC-approved management contract, or (2) specifically authorized for gaming related purposes by a Tribal Council ordinance to accomplish the goals of an approved master plan or other detailed plan for use of the funds submitted by the Board of Advisors;
 - (4) Authorize the expenditure of funds as necessary for the operation and maintenance of the business and properties of a gaming operation and the timely payment of financial liabilities and obligations of the gaming operation;
 - (5) Borrow money and issue temporary or long term evidence of indebtedness and timely repay such debts;
 - (6) Pledge the assets and receipts of a gaming operation as security for debts and acquire, sell, lease, exchange, transfer and/or assign the non-realty property interests of a gaming operation;
 - (7) Provide for monthly distributions to the Tribe of all distributable net revenues as defined in [Section 16-1](#) of this Code, to the extent permitted by any applicable provisions of any financing agreements to which the TBE and/or the Tribe are a party.
 - (A) Upon actual and proper transfer of funds or any other property from the TBE to the Tribe made in compliance with this Chapter and any applicable provisions of any financing agreements to which the TBE and/or the Tribe are a party, the funds shall no longer be deemed the funds or property of the TBE, and shall no longer be subject to or liable for the obligations of the TBE. All obligations incurred in connection with the operation of a gaming facility as authorized by the Board of Advisors shall be special obligations of the TBE payable solely from the assets or revenues remaining under the control of the TBE, or from funds or property, if any, that are not properly transferred as set forth in the prior sentence.
 - (B) No part of the net earnings of the TBE shall inure to the benefit of or be distributed to any Board member or other private person, except that the Board of Advisors is authorized and empowered to pay reasonable compensation for services rendered to the TBE as provided in this Chapter and to participate in regular per capita distributions as enrolled members of the Tribe.
 - (8) Provide for prompt filing of all reports of gaming winnings, and the names of the winners, as the same may be required by the Internal Revenue Service and comply with all other provisions of the Internal Revenue Code applicable to the operation of the gaming facility, as well as any state reports required by the Tribal-State Compact.
- (d) *Property management.* The TBE shall have the following powers and duties:
- (1) The TBE shall perpetually use and operate the Tribe's real property on which Cherokee Tribal Bingo, and such other gaming operations as may be established by Tribal Council resolution and assigned to the management of the TBE, are located;
 - (2) The TBE may lease other property from the Tribe or others for such periods as are lawfully authorized to hold and manage or sublease such properties; and

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- (3) The TBE may negotiate for and fund the acquisition of real property as necessary for a gaming operation, provided that all real property acquisitions shall be approved by a resolution of the Tribal Council and the real property shall be acquired in the name of the Tribe.
 - (4) Ownership of all property used or operated by the TBE shall be consistent with [Section 16B-20](#)
- (e) *Contracting and procurement.* The TBE shall have the power and duty to:
- (1) Enter into agreements, contracts, and understandings with any government agency, person, partnership, corporation or Indian tribe; and
 - (2) Retain the services of any business or professional consultants.
 - (3) All contracts and other documents executed in the name of the TBE must be signed by two Board members, one of whom shall be the Chairperson or the Vice-Chairperson, provided that the Board of Advisors in its discretion may delegate such signatory authority for specific types of documents to an officer or employee of the TBE or a designated employee of a management contractor.
- (f) *Planning.* The TBE shall have the power and duty to:
- (1) Undertake and carry out feasibility and other studies and analyses of gaming operations and markets, prepare gaming plans, and execute such plans to the extent permitted by the IGRA and [Chapter 16](#) of this Code;
 - (2) Prepare and adopt operation and management plans concerning gaming operations as required or otherwise necessary for the proper conduct of gaming as authorized by this Chapter;
 - (3) Prepare a master plan for future capital improvement and expansion of the gaming operations overseen by the Board of Advisors; submit the plan for approval by Tribal Council resolution within six months of the effective date of this ordinance; and submit proposed amendments to that master plan for amendment by Tribal Council resolution as the Board deems necessary in the future;
 - (4) Seek written regulatory approval from the Tribal Gaming Commission and/or other appropriate regulatory authorities when seeking to offer a new gaming product; and
 - (5) Cooperate with all other agencies and entities of the Tribe to achieve the goals of the TBE and the Tribe.
- (g) *Internal governance and record keeping.* The TBE shall have the power and duty to:
- (1) Adopt by-laws as necessary for internal operations, provided that such by-laws shall be consistent with the provisions of this Chapter and other applicable law;
 - (2) Establish from time to time consultant groups and advisory boards which shall have such duties and the members of which shall hold office for such periods as the Board may determine;
 - (3) Prepare and maintain complete and accurate records of all meetings and actions taken by the Board;
 - (4) Maintain at the TBE's principal office or facility all financial books and records, all minutes of Board meetings, and all other materials, books, records, documents, correspondence, and contracts. All such material shall be made available for inspection and copying at any reasonable time during the usual business hours, to:
 - (A) The Principal Chief and Tribal Council or duly authorized representatives thereof;
 - (B) Any Board member;

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- (C) The Tribal Gaming Commission; and
 - (D) Agents of the State of North Carolina conducting inspections pursuant to the Tribal-State Compact, or agents of the NIGC conducting inspections pursuant to applicable federal law.
- (h) *Limited waiver of sovereign immunity.* The TBE, as an unincorporated instrumentality of the Tribe, retains all of the Tribe's rights, privileges, and immunities, including sovereign immunity from suit. The TBE, by and through its Board of Advisors, shall have the power to:
- (1) Waive the right of the TBE to exercise sovereign immunity in contracts, agreements or undertakings to which the TBE is a party, *provided* that any such waiver of sovereign immunity is strictly limited to enforcement of obligations of the TBE and is enforceable only against the following assets or revenues:
 - (A) The assets of the TBE;
 - (B) The assets (other than real property and fixtures), including the revenues, related to or arising from the operation of the TBE, whether legal title to such assets or revenues is in the name of the TBE or the Tribe;
 - (C) Any proceeds obtained by the TBE through the use, ownership or other operation or disposition of such assets or of the business operated by the Tribe in the name of the TBE; and
 - (D) Any other assets (other than real property and fixtures) produced or acquired by the Tribe and operated as part of the business of the TBE;
 - (E) Provided, however, that all assets, including net revenues, properly distributed in accordance with this Chapter to other accounts or purposes of the Tribe shall be exempt from such enforcement.
 - (2) If in any case, the Board of Advisors exceeds the foregoing limitations on its power and authority to waive sovereign immunity, it shall be deemed to have waived its sovereign immunity only to the extent permitted in this subsection.
 - (3) Nothing in this subsection shall be deemed to impair or invalidate a waiver of sovereign immunity duly approved under applicable prior law.
- (i) *Reporting.* The TBE shall have the power and duty to:
- (1) File a quarterly report with the Principal Chief and the Tribal Council, within 60 days after the end of each quarter, which shall include:
 - (A) Quarterly financial statements, prepared in accordance with generally accepted accounting principles, which reflect all business conducted by the TBE during the preceding fiscal quarter and year to date, as well as the budgeted amount for the balance of the current fiscal year;
 - (B) Material changes and developments since the last report in the business conducted at the gaming operations, including a description of competitive conditions, research and development activities, new lines of business, and projected gross revenue, net revenue, reinvestment, and distributions to the Tribe over the next 12 months;
 - (C) Any material pending legal proceeding to which the TBE is or was a party;
 - (D) Total number of employees and turnover rate at each gaming operation, including the number of Tribal enrolled members; and
 - (E) All other information which the Board deems relevant in order to keep the Principal Chief and Tribal Council informed and current on all gaming regulatory matters.

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- (2) File an annual report with the Principal Chief and the Tribal Council, within 60 days after the end of each fiscal year, which shall include:
 - (A) A summary of the year's activities;
 - (B) The financial condition of the TBE;
 - (C) The condition of the TBE's gaming facilities;
 - (D) All significant problems and accomplishments; and
 - (E) All other information which the Board deems relevant in order to keep the Principal Chief and Tribal Council informed and current on all TBE business matters.
- (3) In addition to the foregoing reports, the TBE Board Chair shall meet on a regular basis with the Principal Chief. Upon request, the TBE shall promptly and fully advise the Principal Chief and Tribal Council with respect to the business and affairs of the TBE and shall provide copies of requested records, books or documents.
- (j) *Litigation.* The Board of Advisors shall immediately notify the Principal Chief upon receipt of any summons or complaint upon the TBE, any Board member, employee or agent of the TBE, or any management contractor, in which such a party is named in any suit, claim, action or other proceeding in any court, administrative or regulatory forum. A copy of the summons and complaint and related documents shall also be provided to the Tribal Council Chair and the Tribe's Attorney General.
- (k) *Conflict resolution.* The TBE is expected to work cooperatively with the Tribal Gaming Commission, and shall meet with the Commission on a regular basis to foster good business practices in compliance with applicable laws and regulations, resolve differences of opinion, and advance the interests of the Tribe. If a dispute arises with the Commission regarding whether an issue is regulatory or operational, then the Board and the Commission shall make every good faith effort to resolve the dispute and then shall utilize the arbitration provisions of [Section 16-2.15](#) of this Code, if applicable and necessary.
- (l) *Limitations of authority.* The Board of Advisors shall possess only those powers specifically granted by this Chapter, but is authorized to take such actions as are necessary and appropriate to carry out the granted authority.

(Ord. No. 710, 10-13-2005; Ord. No. 430, 11-2-2010)

Sec. 16B-6. Order of business in Board meetings.

- (a) The Board of Advisors shall establish regular meetings, not less than monthly.
- (b) Notice of meetings. Notice of each meeting of the Board shall be mailed to each member, addressed to each Board member's address or usual place of business, not less than five nor more than 20 days from the day on which the meeting is to be held, or notice may be delivered to such member personally not less than two days before the day on which the meeting is to be held. Notice of any meeting of the Board need not be given to any member who shall waive such notice.
- (c) The Board of Advisors may call emergency meetings upon 24 hours notice to Board members with the time and place of such meeting and the business to be transacted at such meeting. Any business conducted in an emergency session shall be approved by not less than a majority of the full Board of Advisors.
- (d) The Board of Advisors shall endeavor to attend all meetings of the TBE. The TBE shall decide whether absences of the Board member are excused or unexcused. Three consecutive unexcused absences of a Board member shall be reported by the TBE to Tribal Council. Three consecutive unexcused absences may be considered cause for removal by the Tribal Council.

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(Ord. No. 710, 10-13-2005)

Sec. 16B-7. Elections of Board officers.

The Board of Advisors shall, at the first meeting of each fiscal year, elect from among themselves a Chairperson, a Vice-Chairperson and a Secretary. The Board member selected on the basis of his or her experience in auditing or accounting shall be designated Treasurer.

(Ord. No. 710, 10-13-2005)

Sec. 16B-8. Annual audit.

The Board of Advisors shall be responsible for the preparation and presentation to the Tribal Council of the certified annual audit subject to the requirements of [section 16-8.02](#) of this Code.

(Ord. No. 710, 10-13-2005)

Sec. 16B-9. Preservation of records of the Board.

- (a) The Secretary of the Board of Advisors shall prepare and maintain complete and accurate records of all meetings and actions taken by the Board.
- (b) The Treasurer shall keep complete and accurate financial records of the Board's expenses and receipts, report at least every fiscal quarter to the Board and shall submit a complete annual report to the Board.

(Ord. No. 710, 10-13-2005)

Secs. 16B-10, 16B-11. Reserved.

Sec. 16B-12. Quorum of Board meetings.

Two members of the Board shall constitute a quorum.

(Ord. No. 710, 10-13-2005)

Sec. 16B-13. Decision making by Board.

The Board shall meet and decide all matters by the majority vote of the full Board. The Chairperson shall vote on all issues. A majority vote shall be binding on the Board. The Chairperson, or the Vice-Chairperson in the Chairperson's absence, shall preside at each meeting.

(Ord. No. 710, 10-13-2005)

Sec. 16B-14. Minutes of Board meetings.

The Secretary shall cause to be kept a complete and accurate record of all Board meetings, copies of which shall be furnished to the Board and to the Tribal Council upon request.

(Ord. No. 710, 10-13-2005)

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Sec. 16B-15. Compensation of Board members.

The Board members shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Board's annual budget. Board members shall be reimbursed for actual expenses incurred on Board business, including necessary travel expenses.

(Ord. No. 710, 10-13-2005)

Secs. 16B-16, 16B-17. Reserved.

Sec. 16B-18. Sub-committees of Board.

The Board may from time to time establish consultant groups and advisory Boards which shall have such duties and the members of which shall hold office for such periods as the Board may determine.

(Ord. No. 710, 10-13-2005)

Sec. 16B-19. Board Officers.

- (a) *Positions and selections.* From among the Board members, the Board shall appoint the following Officers of the TBE Board ("Officers") a Chairperson, a Vice-Chairperson, Secretary and Treasurer.
- (b) *Terms of office.* The Board shall appoint its Officers at each annual meeting of the Board in the first week of October.
- (c) *Powers and duties.* Subject to the supervisory authority of the Board, an Officer shall have the following powers and duties, in addition to such other powers and duties as may be set for the office in this chapter or applicable law, or as may be assigned by the Board.
 - (1) *Chairperson.* The Chairperson shall preside over all Board meetings; sign on behalf of TBE all documents, contracts, or other instruments approved for such execution by the Board; and be responsible, jointly with the Treasurer, for the authorized and secure receipt, maintenance execution, endorsement, disbursement, and other disposition of all funds, checks, drafts, other order or demand for money, notes, other evidence of indebtedness, securities and other valuable instrument's and shall have such other powers and duties as may from time to time be assigned to him by the Board.
 - (2) *Vice-Chairperson.* The Vice-Chairperson shall exercise the powers and perform the duties of Chairperson when the Chairperson is absent or disabled; sign on behalf of the TBE all documents, contracts or other instruments approved for such execution by the Board and shall have such other powers and duties as may from time to time be assigned to him or her by the Board.
 - (3) *Secretary.* The Secretary shall issue notices for all Board meetings; keep minutes of all meetings; and serve as custodian of and maintain all minutes of meetings and associated records and correspondence of the TBE Board. The Secretary shall make such reports and perform such other duties as are incident to the office, or are properly required or assigned to him by the Board.
 - (4) *Treasurer.* The Treasurer shall be responsible, jointly with the Chairperson, for the authorized and secure receipt, maintenance, execution, endorsement, disbursement, and other disposition of all funds, checks, drafts or other order or demand for money, notes, other evidence of indebtedness, securities and other valuable instruments be responsible for the maintenance of comprehensive financial books and records of transactions, prepared in accordance with generally accepted accounting principles. The Treasurer shall have principal oversight

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responsibilities for all financial functions and affairs of TBE and shall serve as the Board's principal financial liaison with the Tribal Council and other members of TBE management having financial management responsibilities with the TBE with any Contract Manager, accounting firm and financial advisors. The Treasurer shall perform such other duties incident to the office or that are properly required by the Board.

- (5) *Delegation.* In case of unavailability or disability of any Board member, the Board may temporarily delegate the Board's powers or duties as an officer to another Board member, until the Board member is available or no longer disabled or until the Tribal Council fills the vacancy.
- (d) *Duties upon leaving office.* Upon termination from office, each Board member, employee and agent of TBE shall turn over to his or her successor or to the Chairperson, in a timely fashion and in good order, all monies, books, records, minutes, documents, contracts or other property of TBE in his or her custody. If such property is not turned over or is damaged or missing, the Board may charge each Board member and any employee or agent a reasonable replacement fee.

(Ord. No. 710, 10-13-2005)

Sec. 16B-20. Ownership of property.

All personal property assets used in the operation of the TBE whether now existing or hereafter acquired shall be titled in the name of the Tribal Bingo Enterprise, as an instrumentality of the Eastern Band of Cherokee Indians, and shall be administered by the TBE for the benefit of the Tribe; *provided*, however, that nothing herein shall affect the title to the real property (which includes all land, buildings, improvements or fixtures) used in the operation of or related to the TBE, whether now existing or hereafter acquired, and all such real property shall continue to be held in the name of the Tribe with restrictions upon alienation imposed by the United States, or in the name of the United States in trust for the Tribe, and the title to such real property shall always remain in trust status.

(Ord. No. 710, 10-13-2005)

Secs. 16B-21—16B-23. Reserved.

Sec. 16B-24. Severability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to violate applicable law or otherwise to be invalid, then that provision shall be severable and considered null and void, but such judgment shall not affect, impair or invalidate the remainder of this chapter or its application to other persons and circumstances, but shall remain in full force and effect, and such judgment shall be confined in its operation to the provisions circumstances directly involved in the controversy in which such judgment was rendered.

(Ord. No. 710, 10-13-2005)

Sec. 16B-25. Reserved.

Sec. 16B-26. Rescission of inconsistent law.

All prior ordinances and resolutions in conflict with this chapter are hereby rescinded in their entirety.

(Ord. No. 710, 10-13-2005)

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Sec. 16B-27. Duration of TBE.

The lawful existence of the TBE shall perpetual and shall not be revoked until or unless all obligations incurred by the TBE for the financing of the Class II gaming facilities have been satisfied including, without limitation, all obligations of the TBE under applicable credit documents.

(Ord. No. 710, 10-13-2005)

FOOTNOTE(S):

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Editor's note— Ord. No. 710, ratified October 13, 2005, amended the Code by repealing former Ch. 16B, §§ 16B-1—16B-27, and adding a new Ch. 16B. Former Ch. 16B pertained to similar subject matter, and derived from Ord. No. 388, ratified November 7, 1996; and Ord. No. 180, ratified April 17, 2000. ([Back](#))

Cross reference— Tribal gaming, Ch. 16; Tribal casino gaming enterprise, Ch. 16A. ([Back](#))