

**FOREST COUNTY POTAWATOMI COMMUNITY**  
**AMENDED GAMING LICENSE CRIMINAL BACKGROUND WAIVER POLICY**

**I. Introduction**

Pursuant to federal law and tribal ordinance, and in conformity with the Tribe's Class III Gaming Compact with the State of Wisconsin, the Forest County Potawatomi Community in its gaming operations will not license or employ any person who has been convicted of, or entered a plea of guilty to or no contest to, any felony during the immediately preceding ten (10) years, unless the Tribe's governing body (the General Council) waives such restriction by legislative resolution after the applicant/employee has demonstrated to the General Council evidence of sufficient rehabilitation and present fitness for a gaming license.

The purpose of this Policy is to protect the Community's gaming operations while also allowing eventual licensure and employment for FCPC tribal members with a criminal background, if they are able to show sufficient rehabilitation and fitness for employment. For tribal members convicted of gambling-related offenses, the intent of this Policy is not to impose a lifetime ban on gaming-related employment. However, any Criminal Background Waiver Application submitted by tribal members convicted of such crimes and offenses will be subject to heightened scrutiny and demands for proof in order to safeguard the Community's interests to the greatest extent possible.

General Council understands that detailed review of each Criminal Background Waiver application by a quorum of the General Council may prove impractical and raise legitimate privacy concerns. For this reason, the General Council has authorized creation of a Criminal Background Waiver Panel as described below, charged with the duty to protect the Community's gaming interests, provide employment opportunities to otherwise qualified tribal members, and protect the reasonable confidentiality and privacy expectations of tribal members who desire to work in one of the Tribe's Gaming Enterprises.

**II. Continuing Prohibition**

Nothing in this Policy shall be construed to confer a right to licensure or employment in the Community's Gaming Enterprises if the General Council or the Gaming Commission determines that the tribal member license applicant or gaming employee whose license has been suspended or revoked is a person whose current or prior activities, criminal record if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create and enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto.

## Exhibit A

### III. Criminal Background Waiver Panel

With the adoption of this Policy, the General Council shall authorize the creation of a Criminal Background Waiver Panel. A Criminal Background Waiver Panel shall be composed of three (3) members: (1) a General Manager (or its equivalent title) from one of the Community's Gaming Enterprises; (2) a respected FCPC tribal member designated by the Executive Council, and; (3) the Attorney General. Panel members may name a designee in case of exigent circumstances. The Executive Council shall determine which General Manager shall serve on the Panel as necessary.

### IV. Definitions

The following definitions will apply to this Policy and each Criminal Background Waiver Panel's consideration of any waiver request.

Gaming Enterprises/Facilities: shall mean Potawatomi Bingo Casino and Potawatomi Carter Casino Hotel, any successors to either, and any other gaming facility owned and operated by the Forest County Potawatomi Community at which Class III gaming is conducted in the future.

Clear and Convincing Evidence: for the purpose of informal hearings before the Criminal Background Waiver Panel, "clear and convincing evidence" is more than proof of "probable" rehabilitation and fitness, but not to the point of removing all "reasonable doubt" about the applicant's rehabilitation and present fitness for a license.

Felony: a crime shall be considered a felony if the jurisdiction imposing the conviction was, at the time of the conviction, authorized by law to impose a punishment of imprisonment of more than one year, including capital offenses. A felony shall be considered to be within the "immediately preceding ten years" if judgment of conviction was entered within ten years preceding the date the individual submits his or her license application.

Gambling-Related Offenses: an offense shall be considered "gambling-related" if it was committed in or against a gambling or gambling-related entity, facility, enterprise, or business; employed gambling or games of chance in its commission; included gambling as an element of the crime as defined; was committed in whole or in part because of a gambling debt or to facilitate gambling by the individual, or was committed by the individual during or as a part of his or her position as an employee, representative, agent, or owner of a gambling or gambling-related entity, enterprise, or business.

Fraud or Misrepresentation in Any Connection: an offense involves fraud or misrepresentation if the elements of the offense or the underlying facts include any of the following, knowingly done to achieve some gain for the individual or another:

- a) The making of a false statement;
- b) The failure to reveal a material fact;
- c) The active concealment of a material fact; or
- d) Any act, plan, or scheme designed to trick or deceive.

## Exhibit A

An individual is equally responsible for another person who performs any of these acts if the individual conspired with, aided and abetted, or caused the other person to perform the act and was convicted in connection with the act.

A statement is "false" if it was untrue when made. "Statement" includes written, oral, numeric, or symbolic communication. Examples of offenses within this definition may include, but are not limited to:

- a) Forgery;
- b) Embezzlement;
- c) Obtaining services or property through the use of a check drawn on an account lacking sufficient funds (NSF) or through the use of a check drawn on a fictitious account or account of another;
- d) Impersonation of another;
- e) Obtaining government assistance with false information;
- f) Unauthorized use of a credit or charge card or account number;
- g) Unauthorized use of information obtained from a computer or computer network;
- h) Money laundering;
- i) The sale of stolen property to a purchaser acting in good faith;
- j) Overcharging for goods or services, and/or;
- k) Charging for goods and services not actually provided.

Connection to the Crime: a conviction need not be for the crime of fraud, misrepresentation, or false pretenses if the commission of the crime involved fraud or misrepresentation as defined above.

All Other Offenses: for the purposes of this Policy, all other offenses (under Wis. Stat. Ch. 562 or 565, applicable rules or regulations of any state gambling regulatory agency, or the Community's Gaming Control Ordinance) shall be determined by reference to the respective law, regulation, or Ordinance.

Waiver Applicant: for the purposes of this Policy, Waiver Applicant shall refer to an FCPC tribal member with a criminal background who may be determined to be, or suspects he/she will be, ineligible for employment at one of the Tribe's Gaming Facilities absent a felony waiver.

## V. Review Process

The Criminal Background Waiver Panel shall evaluate each application for a criminal background waiver pursuant to the procedure described in this section. The Panel shall convene as the number of Criminal Background Waiver requests warrants, prior to Regular and Special General Council meetings, or as directed by the Executive Council action.

1. The Gaming Commission shall develop and make available Criminal Background Waiver Applications forms.
2. For each Waiver Applicant, the Forest County Potawatomi Gaming Commission shall prepare a summary of that tribal member's criminal background information, and forward

## Exhibit A

such summary, and any other information the Gaming Commission deems relevant, to the Criminal Background Waiver Panel.

3. At the same time, the Gaming Commission shall notify the Waiver Applicant of his or her right to submit a written statement to the Criminal Background Waiver Panel, or to request an informal hearing before the Panel (or both) at which the Waiver Applicant may offer evidence of sufficient rehabilitation and present fitness for licensure and employment.
4. Once a Criminal Background Review Panel is convened by the Panel itself or the Executive Council, the Panel shall timely notify the Waiver Applicant of the time, place, and date for a hearing, if requested. (Waiver Applicants may request an informal hearing, ask the Criminal Background Review Panel to render judgment based solely upon written submissions, or ask the Panel to consider both).
5. The Criminal Background Waiver Panel shall name a Presiding Officer before each hearing to manage the proceedings, unless the Waiver Applicant chooses not to appear and only submits a written statement.
6. At an informal hearing, the Waiver Applicant may call witnesses, present evidence, and present an argument on his/her behalf, or be represented by an attorney who may do the same.
7. The Criminal Background Review Panel may call its own witnesses to help the Panel understand the evidence presented by the Waiver Applicant, but the hearing shall not follow an adversarial process, nor shall the Panel be required to present evidence.
8. All three members of the Criminal Background Waiver Panel (or a designee) must be present for an official hearing. All three members of the Panel must vote in favor of recommending a waiver to the Executive Council for the recommendation to be considered positive.
9. The burden of showing sufficient rehabilitation and present fitness shall at all times be on the Waiver Applicant. The Criminal Background Waiver Panel shall not recommend a waiver unless the Waiver Applicant shows rehabilitation and fitness by Clear and Convincing Evidence.
10. Waiver Applicants convicted of Gambling-Related Offenses, Fraud or Misrepresentation in Any Connection, or violation of any applicable gaming law or regulation, may not apply for a waiver until at least ten (10) years have passed since date of conviction. The Waiver Applicant shall be required to meet the "clear and convincing" standard of proof, and submit sworn affidavits from three reputable individuals who have known the applicant for at least five (5) years and can attest to their sufficient rehabilitation and present fitness for a gaming license.
11. The Criminal Background Waiver Panel shall issue a written decision within fifteen (15) calendar days of either the hearing, or the date the Panel met to consider the application for waiver, and so notify the Waiver Applicant by Certified Mail. The Criminal Background Waiver Panel shall timely forward a copy of all of its decisions to the Executive Council.
12. If the Criminal Background Waiver Panel denies a waiver request, the Waiver Applicant may appeal such denial to the Executive Council by notifying the Executive Council of

## Exhibit A

his/her intent to appeal the denial within ten (10) business days of receiving the Criminal Background Waiver Panel's decision. The Executive Council shall consider all waiver requests in a timely manner. Executive Council decisions regarding waiver requests shall only require a simple majority vote. If the Executive Council votes in favor of a positive waiver recommendation, the Executive Council shall include its positive recommendation on the next available General Council agenda.

13. If the Executive Council denies the Waiver Applicant's request, the Waiver Applicant may appeal the denial to the General Council. The Waiver Applicant shall be responsible for timely notifying the Executive Council of an appeal prior to any upcoming General Council meeting so that the Executive Council may place the appeal on the General Council agenda.
14. If the Executive Council denies a waiver request, the Waiver Applicant shall be responsible for presenting his/her appeal (if any) to the General Council.
15. For each waiver request, the Attorney General, or a designee, shall present the following information to the General Council for its consideration:
  - a. Waiver Applicant's FCPC tribal enrollment number; and
  - b. A summary of Felony convictions as listed on the Waiver Applicant's criminal background report; and
  - c. A summary of the decisions made by the Criminal Background Waiver Panel and the Executive Council regarding the Waiver Applicant's appeal.
16. Decisions of the General Council for each criminal background waiver application shall be final. A Waiver Applicant whose appeal for a waiver has been denied may not re-apply for another Criminal Background Waiver Panel, another review by Executive Council, or appeal their denial to the General Council, for at least one (1) year following the date of the most recent denial.
17. If the General Council approves any criminal background waiver requests, they shall do so by legislative resolution.
18. Any criminal background waiver granted by the General Council will be automatically revoked if, within ten (10) years of the waiver being granted, the Waiver Applicant granted the waiver is convicted of another crime that would make the individual ineligible for employment and/or licensure.