

# COLVILLE TRIBAL GAMING COMMISSION



## Tribal Gaming License Hearings

Adopted, September 16, 2005, Resolution 2005-033

Amended, December 9, 2005, Resolution 2005-044

Amended, September 14, 2007, Resolution 2007-079

Amended, August 7, 2009, Resolution 2009-074, rescind chapter 12 and 13 Commission Regulations

Amended, June 16, 2017, Resolution 2017-022, update citations to 6-5 Gaming where applicable

Amended, August 10, 2018, Resolution 2018-007, remove term 're-hearing' and use term 'reconsideration'

Amended, February 26, 2021, Resolution 2021-001, update citations to new Code 6-5 Gaming where applicable

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# **Colville Tribal Gaming Commission (Commission)** **Tribal Gaming License Hearings**

**NOTE:** This regulation is adopted pursuant to Sections 6-5-60(a), (b), (m), and (x), 6-5-91, 6-5-100, and 6-5-101 of the Colville Tribal Code (“CTC”). These hearing procedures are also in accordance with the Colville Civil Rights Act, CTC 1-5-1, *et seq.* This regulation was adopted by Commission Resolution No. 2005-033 (09-16-05) and amended by Commission Resolutions No. 2005-044 (12-09-05), 2007-079 (09-14-07), 2009-074 (08-07-09), 2017-022 (06-16-17), 2018-007 (8/10/2018), and 2021-001 (02-12-2021)

## **I. Gaming Director’s Adverse Actions.**

**A. Initial license application.** The Gaming Director (“Director”) may deny an applicant (“Respondent”) an initial tribal gaming license (“license”) based on failure to meet licensing requirements. *See* Commission Individual Licensing Regulations and Commission Vendor Licensing Regulations.

1. The Director will provide proof of delivery of a letter to respondent describing the action taken.
2. The Director’s letter will include a written statement of the reasons for action taken and provisions of tribal law, regulation and/or policy which form the basis for the adverse action.
3. The letter will inform respondents that they may request a hearing before the Commission to contest the Director’s adverse action and that they have the right to representation or legal counsel at their own expense.
4. A copy of the Request for Hearing Form, the Memorandum on Conditional Licenses and these Commission Hearing Procedures will be sent to the Respondent with the Director’s letter.

## **B. Current license.**

- 1. Annual renewal.** The Director may deny an application to renew a tribal gaming license based on failure to comply with licensing requirements.
- 2. Failure to comply with Colville Gaming Law.** The Director may suspend or revoke a tribal gaming license based on failure to comply with Colville Gaming Law. *See* Personnel Addendum, Section II.B. The Director will send notice as provided in Section A above.
- 3. Complaint.** The Gaming Director may take adverse licensing action based on a written, signed complaint involving licensing issues. The Director will investigate a complaint in accordance with 6-5-68 and 6-5-69 and Commission policy on complaints. *See* Resolution 2004-057. If, after an investigation, the Director determines that the complaint has merit, he/she may revoke or suspend a license or assess a fine in lieu of suspension. The Director will send notice to Respondents as provided in Section A above.
- 4. Director's Stay of Adverse Action Pending Commission Decision.** The Director has authority to stay the implementation of an adverse action pending a Commission decision, if the stay does not pose an appreciable risk to the public or the lawful operation of CCT gaming operations.

## **II. Request for a Commission Hearing:**

### **A. Filing an appeal**

- 1. Respondent's petition.** Respondent may ask the Commission to review the Director's adverse licensing action by submitting a signed request for a Commission hearing in accordance with these procedures. CTC Section 6-5-60(o).
- 2. Denial of initial gaming license.** Individual Respondents who have been denied an initial gaming employee license have thirty (30) calendar days to hand-deliver, mail or fax a Request for Hearing Form in accordance with the filing procedures in paragraph 5 below.

- 3. Other adverse actions.** All other Respondents have thirty (30) calendar days from receipt of the Director's letter to hand-deliver, mail or fax a Request for Hearing Form in accordance with the filing procedures in paragraph 5 below
- 4. Request for a hearing Form.** Respondent's request for a hearing must be on a Request for Hearing Form. It must be signed and include a brief written description of the basis for Respondent's request.
- 5. Filing procedures.** All requests must be delivered to: Colville Tribal Gaming Commission, 729 Jackson Street, Omak, WA 98841 within the required time period. Mailed requests must be postmarked in a timely manner. Hand-delivered requests must be date-stamped in the Commission office. Requests may be delivered via fax to the Commission office at (509) 422-7719. Faxed documents will be deemed to have been received by the date printed by the Commission fax machine.
- 6. Director's response.** Within twenty (20) working days from receipt of respondent's Request for Hearing form, the Director will send a letter to the Respondent with the date, place and time of the Commission Hearing.

## **B. Requesting a continuance**

- 1.** Respondents may request a continuance by submitting a signed Request for Continuance Form stating the basis for the request. A Request for Continuance Form must be submitted to the Director a minimum of two (2) working days before the hearing date.
- 2.** In emergency circumstances beyond the respondent's control, a request for a continuance may be submitted by telephone prior to the hearing, followed by a written, signed Request for Continuance Form.
- 3.** For each continuance granted by the Commission, the Director will send a letter to the Respondent indicating a new date and time of the Commission hearing.

### **C. Declaring a default (failure to appear)**

1. In the event that a Respondent does not appear for the hearing and does not request a continuance, the Commission may elect to conduct a hearing without the party present or may declare a default based on failure to appear (“FTA”) and affirm the adverse action taken by the Director.
2. Appropriate documents will be prepared to indicate facts related to the FTA and mailed to the party in accordance with these procedures.

### **III. Commission Hearing**

**A. Director’s responsibility.** The Director and/or designee will present charges/allegations/ a history of the case and evidence in support of the Director’s adverse action to the Commission, explaining the basis, in Colville Gaming Law, for the action taken

**B. Respondent’s responsibility.** Respondent and/or Respondent’s representative will present evidence and testimony (including other witnesses) to refute the adverse actions/charges/allegations/specifications and in support of Respondent’s position.

### **C. Commission Decision**

1. The Commission may uphold, overturn (vacate) or modify (with greater or lesser adverse action) the Director’s adverse licensing decision.
2. The Commission decisions are based on a preponderance of the evidence.
3. In accordance with applicable governing documents, the Commission may authorize:
  - a. a Class III, Class II or non-gaming key employee or primary management official license without conditions for a period of one year; or

- b. a conditional Class III, Class II or non-gaming key employee or primary management official license for up to one year.
4. Conditional licensees are required to comply with conditions established by the Commission and to return to the Commission for a review hearing prior to the end of the licensing period, or to the Director when licensee is in compliance with conditions.
5. In cases involving the revocation of a license, the Commission will also determine the length of time for Respondent's license revocation. The Commission may hold a hearing under CTC 6-5-70(f).
6. The Commission will issue a decision by formal, written resolution within twenty (20) working days of the hearing.
7. The Commission may announce a decision on the day of the hearing or may take the matter under advisement.
8. All parties will be notified of the Commission decision in writing.

#### **D. Request for Reconsideration of Commission Decision**

1. Respondents have a right to ask the Commission to reconsider their decision within thirty (30) days following receipt of notice of the Commission decision. Respondents must submit a signed Request for Reconsideration Form and include a brief description of the reasons for requesting this reconsideration.
2. The Commission shall afford the Respondent an opportunity to appear and be heard.
3. All parties will be notified of the Commission decision in writing.

**E. Commission Reconsideration or Other Proceedings.**

1. Upon reconsideration or other proceedings, the Commission may affirm, vacate, reverse or modify its earlier decision.
2. All parties will be notified of the Commission decision in writing.

**F. Colville Tribal Court.**

1. After exhausting all administrative remedies, “an aggrieved party may appeal any final [Commission] decision ... to the [Colville] Tribal Court.” CTC 6-5-201(a).
2. Appeals must be filed within thirty (30) days after the Commission’s decision, action or order. Such an appeal shall be made pursuant to Chapter 2-4 of the Colville Tribal Code.

**IV. Commission Hearing Procedures:**

- A.** Commission hearings are conducted by the Commission Chairperson, or his/her designee. The Commission may also delegate responsibility for conducting hearings in accordance with CTC 6-5-70(f).
- B.** In order to protect confidential information utilized during Commission hearings, Colville Business Council members who are observing *ex officio* are required to sign a confidentiality agreement.
- C.** Commission hearings are a public record and are recorded with all parties present.
- D.** Commission deliberations are confidential and are not recorded.
- E.** Parties have the right to have a representative or legal counsel at their own expense.



- F.** The Commission will allow evidence deemed relevant to the matter at issue. CTC 6-5-60(p). Testimony, documents and other evidence, including bona fide affidavits, are allowed.
- G.** Hearsay is not allowed.
- H.** Commission hearings are conducted as follows:
  1. Respondents are notified that the procedures are recorded. All persons present are asked to identify themselves for the record.
  2. The Commission Chairperson (or designee) explains Commission hearing procedures, including the laws and regulations which govern the proceeding.
  3. The Director (and/or designee) presents the basis for the adverse decision.
  4. The Respondent presents his/her case in support of vacating or amending the adverse decision.
  5. Commissioners may ask questions of either party at any time during the hearing.
  6. The Director (and/or designee) has an opportunity for response and closing summary of arguments.
  7. The Respondent has an opportunity for response and closing summary of arguments.
  8. The Commission Chairperson (or designee) asks the parties to leave the hearing room and to wait nearby while the Commission deliberates. The Commission Attorney, the Recording Secretary and persons allowed by statute may remain in the hearing room.
  9. The Commission deliberates and makes a decision or takes the matter under advisement

10. All parties are asked to return to the hearing room.
11. The Commission Chairperson (or designee) announces the Commission decision or notifies the parties that the matter is being taken under advisement.
12. The parties are advised of their rights in accordance with applicable laws and regulations and told that a written Commission resolution and letter of explanation will be sent by certified mail.
13. Commissioners may offer non-binding advice, guidance and/or provide additional comments including praise or recognition when due, for the parties.
14. The parties have opportunity to ask for further clarification of Commission decision and procedures.

**V. Commission guidelines for decisions under CTC 6-5-60(bb):**

6-5-90 Violations

Any person who within the jurisdiction of the Tribes violates any provision of this Code may be subject to the sanctions and penalties of Chapter 2-3 and Chapter 3-2, and Section 3-1-185 of the Colville Tribal Code as now or hereafter amended, in addition to the civil enforcement/actions and sanctions set forth in this Section.

**A. Cause of violation**

1. Lack of knowledge: when the person who committed the violation was not aware of the statutory/compact/regulatory requirements through no fault of their own. An honest, inadvertent, or unintended mistake, error or omission.
2. Negligence: when the violation is due to negligence or when the person knew or should have known, by virtue of his/her position, the statutory/compact/regulatory requirements, i.e., employee handbook, licensing/orientation/training signature page.

3. Willful: when the person has willfully committed a violation or has committed the same violation two or more times within a 12-month period of time.

**B. Gravity of violation** Any one of the following factors may be considered in determining the gravity of a violation:

1. Potential for personal injury.
2. Incident reports.
3. Potential or actual monetary consequences.
4. Potential or actual damage to public trust.
5. Potential or actual damage to Tribal assets.
6. Degree of deception, fraud, manipulation, or disrespect.
7. Degree of deliberate or reckless disregard for the statutory/compact/regulatory requirements.
8. Health and safety.
9. Loss of morale, esprit de corps.
10. Degree of malice.
11. Compromise of classified Tribal Gaming information.
12. Such other considerations as justice may require.

**C. Frequency of violation**: The more frequently a person commits the same or similar violations, the greater the sanction will be.

**D. Mitigating factors that may affect degree of sanction**:

1. Length of employment (without violations)
2. Quality of work – employee evaluations, support from supervisors and/or coworkers.
3. Accepts responsibility for own actions.
4. Understands that actions were violation of statutory/compact/regulatory requirements.
5. In cases where actions were based on lack of knowledge, has recently read applicable laws/compact/regulations or promises to do so.
6. Apologetic, remorseful, repentant.
7. Restitution.
8. Rehabilitation.

9. Such other factors as the Commission may determine appropriate.

**E. Guidelines for Sanctions**

1. Minimum gravity: 1 - 12 months
2. Moderate gravity: 12 - 30 months
3. Maximum gravity: 30 - 60 months

**F. Operating Principles**

1. A Tribal Gaming License is a privilege, not a right.
2. The maximum sanction will be given, unless the Commission finds mitigating factors which are sufficient to decrease the sanction.
3. The person who committed the violation has the burden of proof for showing the basis for mitigation.
4. Each case is unique and will be considered under the specific facts presented.
5. A license revocation based on a felony conviction will automatically result in Class III License ineligibility for ten (10) years.
6. Key Employees, Primary Management Officials, Commissioners and employees of the Commission are held to a higher standard and are therefore presumed to have received, read and understood applicable licensing requirements (statutory/compact/ regulatory).
7. At the end of the license revocation period and/or correction of the delinquent area(s), the person may reapply for a Tribal Gaming License.
8. For tribal gaming employment following revocation period, reapplication for a license is contingent upon an available position, a job offer and completion of a successful license application.
9. Loss of Gaming License, *per se*, does not preclude employment in other Colville Confederated Tribes non-gaming positions.