

GAMING COMMISSION REGULATIONS ESTABLISHING PROCEDURES FOR  
CONDUCTING HEARINGS HELD TO ENFORCE THE COYOTE VALLEY GAMING  
ORDINANCE AND THE REGULATIONS PROMULGATED BY THE COMMISSION  
PURSUANT TO THE ORDINANCE

Coyote Valley Gaming Commission  
Coyote Valley Band of Pomo Indians

Chapter 13

ENFORCEMENT PROCEEDINGS

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13.010 Applicability.

The provisions of these regulations shall govern all disciplinary proceedings and enforcement actions commenced by the Commission alleging a violation of the Coyote Valley Gaming Ordinance of 1996, the regulations promulgated by the Commission pursuant to that ordinance and the internal controls approved by the Commission pursuant to Chapter 9 of the Commission's regulations.

### 13.020 Issuance and Service of Order to Show Cause.

1. Proceedings to determine whether a license, should be suspended or revoked for a violation of the Coyote Valley Gaming Ordinance of 1996, the Commission's regulations, or the internal controls adopted or approved by the Commission pursuant to Chapter 7 of the Commission's regulations or whether a penalty should be imposed for a violation of the Ordinance, Regulations, or Internal Controls, shall be commenced by the Commission issuing an order to show cause ("Order"). The Order shall be directed to the person or persons who the Commission believes has violated the Ordinance, Regulations, or Internal Controls and shall set forth the day, time, and location where the Commission shall hold a hearing at which the person or persons to whom the Order is directed shall appear and show cause why the Commission should not find them in violation of the Ordinance, Regulations, or Internal Controls. The Order shall also specify the act or acts which the Commission believes the person or persons have engaged in which constitutes a violation of the Ordinance, Regulations, or Internal Controls.

2. Unless the Commission withdraws the Order to Show Cause, the Commission will serve a copy of the Order to Show Cause upon the person or persons who shall be designated in the Order as a respondent, either personally by a person eighteen (18) years of age or older, or by certified mail, at his or her address on file with the Commission. The person serving the Order on behalf of the Commission shall file a proof of service of the Order with the Secretary of the Commission on a form approved by the Commission for that purpose.

### 13.030 Defense.

1. The respondent may file a written answer to the Order to Show Cause. The answer shall be filed on 8½ x 11 inch paper and shall contain the caption of the case and case number set forth in the Order to Show Cause that the answer is responding to. The answer shall be dated and signed by the respondent or his or her attorney and shall contain a verification under penalty of perjury that the statement of facts contained in the answer are true.

2. The respondent may appear with or without counsel at the time and place specified in the Order to Show Cause and present his or her defenses to the charges contained in the Order in accordance with applicable law and the Commission's regulations relating to the conduct of such hearings contained in this Chapter.

### 13.040 Conduct of Hearings.

1. The following procedures shall govern all hearings conducted by the Commission pursuant to this Chapter 13:

(a) The Order to Show Cause and answer will be read by the Secretary of the Commission at the initiation of the hearing, unless the Commission by majority vote waives the reading of the Order and answer.

(b) The respondent will be allowed to present and argue any legal objections to the Order to Show Cause set forth in the answer; the Commission may thereupon present its answering argument through the Commission's attorney; and thereafter the respondent may present rebuttal argument. The matter will then be submitted to the Commission for decision. The Commission may rule upon such objections immediately or take the matter under submission and proceed with the Hearing.

(c) The Commission will present its opening statement on the merits and the respondent will then be permitted to make a statement of the defense.

(d) The Commission will then present its case in chief in support of the Order to Show Cause.

(e) Upon the conclusion of the Commission's case in chief, the respondent may move for dismissal of the Order to Show Cause. The Commission may hear arguments on the motion, or may grant, deny, or reserve decision thereon, with or without argument.

(f) If no motion to dismiss is made, or such motion is denied or decision is reserved thereon, the respondent may thereupon present the case for the defense.

(g) Upon conclusion of the respondent's case, the Commission may present its case in rebuttal.

(h) Upon conclusion of the Commission's case in rebuttal, the Commission shall present its closing argument, the respondent may present answering argument and thereafter the Commission may present rebuttal argument. Thereupon, the matter will stand submitted for decision.

2. Unless required for the disposition of ex parte matters authorized by law:

(a) Members of the Commission shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any respondent, his representative or other person, except upon notice and opportunity to all parties to participate. This section does not preclude the Chairman or members of the Commission from consulting with their counsel concerning matters before the Commission; and

(b) A respondent, party, or his or her representative shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any member of the Commission, except upon notice and opportunity to all parties to participate. The Commission shall dismiss or strike the respondent's answer if the respondent knowingly violates the provisions of this Regulation. All Orders to Show Cause issued by the Commission shall contain a statement advising the respondent of the penalty for violating the provisions of this Regulation.

#### 13.050 Presentation of Evidence.

1. All evidence shall be taken only upon oath or affirmation administered by the Chairman of the Commission or Secretary of the Commission.

2. Affidavits and declarations under penalty of perjury may be received into evidence. However, unless the affiant or declarant is not available to testify and be subjected to cross-examination, the Commission shall give the affidavit or declaration very little probative value or weight in making its decision.

3. Every party to a hearing shall have the right:

(a) to call and examine witnesses;

(b) to introduce exhibits relevant to the issues to the case, including the transcript of testimony at any investigative hearing conducted by or on behalf of the Commission;

(c) to cross-examine opposing witnesses on any matters relevant to the case, even though the matter was not covered in a direct examination;

(d) to impeach any witness regardless of which party first called him or her to testify; and

(e) to offer rebuttal evidence.

4. If the respondent does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

#### 13.060 Admissibility of Evidence.

1. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,

regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in a civil court action.

2. The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, even though such evidence might otherwise be subject to objection.

3. Irrelevant and unduly repetitious evidence shall be excluded.

13.070 Official Notice. The Commission may take official notice of any generally accepted information or technical or scientific matter within the field of gaming, and of any other fact which may be judicially noticed by the courts of the State of California. The parties shall be informed of any information, matter, or facts so noticed, and shall be given a reasonable opportunity, upon request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the matter of such refutation to be determined by the Commission.

13.080 Issuance of Subpenas. Prior to a hearing a hearing before the Commission, and during a hearing upon reasonable cause shown, the Commission will issue subpenas and subpenas duces tecum at the request of any party. All subpenas and subpenas duces tecum issued by the Commission shall bear the official seal of the Commission.

13.090 Depositions.

1. The testimony of any material witness residing within or without the Reservation may be taken by deposition in the manner provided by the California Rules of Civil Procedure.

2. The provisions of the California Rules of Civil Procedure, in so far as the same may be appropriate shall apply to the use of such depositions, objections to their admissibility and the effect of taking or using depositions.

13.100 Continuances. Continuances will not be granted except for good cause shown to the satisfaction of the Commission.

13.110 Failure to Testify. If a respondent fails to testify in his or her own behalf or asserts a claim of privilege with respect to any question propounded to him or her, the Commission will infer therefrom that such testimony or answer would have been adverse to the respondent's case.

13.120 Refusal to Testify. If a respondent or any person controlling, controlled by, or under common control with, or

employed by, or an agent of a respondent fails to answer a subpoena or other summons or refuses to testify fully at the request of the Commission, or its authorized agents and employees, such failure or refusal may be deemed independent grounds for the revocation or suspension of any license held by said licensee; and, in addition, the Commission will infer therefrom that such testimony would have been adverse to the licensee.

#### 13.130 Amended for Supplemental Pleadings.

1. The Commission may, in its discretion before the submission of the case for decision, permit the filing of an amended or supplemental pleadings, including amended or supplemental pleadings that conform to the evidence presented during the hearing.

2. The Commission shall notify all parties of any such application for permission and shall provide a reasonable opportunity for objections thereto.

3. If such application is granted, all parties shall be permitted to introduce additional evidence with respect to any new matter contained in such amended or supplemental pleadings.

13.140 Defaults. Failure of a respondent to file an answer or to request or appear at the hearing shall constitute an admission of all matters and facts contained in the Order to Show Cause filed with respect to such respondent. In such cases the Commission shall take action based upon such admission or upon any other evidence, including affidavits or declarations, and without any further notices whatsoever to respondent.

#### 13.150 Decision of the Commission.

1. After the hearing of a contested matter, the Commission will render a written decision on the merits which shall contain findings of fact, a determination of the issues presented and the penalty to be imposed, if any; and will thereafter make and enter its written order in conformity to such decision. Findings of fact and the determination of the issues presented shall be based upon a preponderance of the evidence standard.

2. No member of the Commission who did not hear the evidence shall vote on the decision. The affirmative votes of a majority of the whole Commission shall be required to impose any penalty.

3. Copies of the decision and order shall be served on the parties personally or sent to them by certified mail.

4. The decision shall become and remain effective upon such service, unless the Commission shall otherwise order.

5. For purposes of this Section, the preponderance of the evidence standard is such evidence as when considered and compared with that opposed to it, has more convincing force, and produces in the minds and members of the Commission, a belief that what is sought to be proved is more likely true than not true.

13.160 Rehearing.

1. The Commission may, upon motion therefore, made within ten days after service of a decision and order, order a rehearing before the Commission, upon such terms and conditions as it may deem just and proper if a petition for judicial review of the decision and order has not been filed.

2. Such motion shall not be granted except upon a showing that there is additional evidence which is material and necessary and reasonably calculated to change the decision of the Commission, and that sufficient reason existed for failure to present such evidence at the hearing of the Commission. The motion shall be supported by an affidavit or declaration of the moving party or his or her legal counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced at the hearing.

3. Upon rehearing, rebuttal evidence to the additional evidence shall be permitted.

4. At the rehearing, the Commission may modify its decision and order as the additional evidence may warrant.

13.170 Judicial Review. A decision of the Commission shall be final. Each party to the proceeding shall have a right to petition the Coyote Valley Tribal Court, if one exists, for a review of the Commission's decision in accordance with the rules of pleading, practice, or procedure established by the Tribal Court. Nothing in these Regulations shall be construed as a waiver of the Commission's sovereign immunity from suit, except to the extent that the Commission waives its sovereign immunity from suit for the sole purpose of allowing the Tribal Court to determine whether or not the Commission's decision violates applicable law. In any review of a Commission decision by the Tribal Court, the Tribal Court shall be bound by the findings of fact of the Commission. The Secretary of the Commission upon Order of the Tribal Court shall certify and file the administrative record of the Commission, pertaining to the decision of the commission being appealed, with the Clerk of the Tribal Court.

13.180 Effect of Suspension or Revocation of License. The suspension or revocation of any gaming license issued by the Commission pursuant to a decision or order of the Commission

entered pursuant to Section 13.150 above which will take effect immediately and such license shall be immediately returned to the Commission.

13.190 Penalties. In addition to the suspension or revocation of a gaming license, the Commission shall have the authority to levy fines and penalties up to such amounts as are specified in the Coyote Valley Gaming Ordinance of 1997 and may, in the alternative or in addition thereto, issue written reprimands, modify existing gaming licenses by placing conditions on the continued validity of such licenses and issue orders directing licensees as a condition of their continuing to hold a valid gaming license to perform or refrain from performing certain acts.

**CERTIFICATION**

The foregoing Regulations, comprising Chapter 13, were adopted at a regular meeting of the Coyote Valley Gaming Commission held on \_\_\_\_\_, 1997, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Chairman of the Coyote Valley  
Gaming Commission

ATTESTED:

\_\_\_\_\_  
Secretary of the Coyote Valley Gaming Commission