

**ORDINANCE PRESCRIBING ALLOCATION AND THE NET DISTRIBUTABLE  
CASH FROM TRIBAL GAMING ACTIVITIES**

**ARTICLE I**

**DECLARATION OF PUBLIC POLICY AND PURPOSE**

**Section 1. Compliance with IGRA.** The Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California ("Band") owns and operates a Gaming Enterprise on its Indian Lands. ("Reservation") that is in full compliance with the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.*, ("IGRA") and all other applicable federal laws. The IGRA governs how Net Revenues from the Gaming Enterprise may be expended (25 U.S.C. § 2710(b)(2)(B)(3)). Under Section 13 of the Tribal Gaming Ordinance, and 25 U.S.C. 2710 (b)(2)(B), the Band hereby formalizes this Ordinance Prescribing Allocation and Distribution of Net Revenues from Tribal Gaming Activities for the Band ("Ordinance") both for general Tribal purposes and for Per Capita Distributions to Eligible Tribal Members.

**Section 2. Use of Revenues.** The Band operates the Gaming Enterprise for the purposes of employing its Tribal Members and generating revenues to help fund Tribal government operations and programs, promoting Tribal economic development and providing for the general health, education, welfare and other responsible programs for the Band and its Tribal Members.

**Section 3. Future Investment.** The Band is committed to providing for the long term social and economic security of its Tribal Members. Accordingly, the Band shall ensure that Net Distributable Cash is allocated toward programs, investments and projects that not only address present needs, but also anticipate future needs and are aimed toward improving Tribal conditions and the life opportunities of Tribal Members from generation to generation.

**Section 4. Minors.** The Band retains the inherent sovereign right to protect the interests of its children, and strongly promotes education, and seeks to encourage its members to pursue degrees in colleges, universities or vocational school. The Band shall therefore tailor its distribution of Per Capita Payments to Minor Enrolled Tribal Members so as to encourage the minors to complete their schooling by controlling the distribution of Per Capita funds.

**Section 5. Seniors and Elders.** The Band retains the inherent sovereign right to protect the interests of its Tribal Seniors and Tribal Elders, and recognizes the historical poverty and deprivation suffered by Tribal Seniors and Tribal Elders may result in significantly greater health problems for those Tribal Members as they age and require additional resources and care for those Tribal Members. The Band shall therefore tailor its Community services and programs to make additional Community services and programs available to Tribal Seniors and Tribal Elders.

## ARTICLE II DEFINITIONS

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

- (a) *“Band”* means the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, a federally recognized Indian Tribe exercising jurisdiction over the Band’s Reservation.
- (b) *“Eligible Tribal Member”* means any living enrolled member of the Band pursuant to Section 2 of the Articles of Association, who is not less than twenty-one (21) years of age, is in good standing, has not forfeited or waived his or her right to receive Per Capita Payments from the Bands’ Net Distributable Cash, and who is not excluded by this Ordinance from receiving such payments.
- (c) *“Fiscal Year”* means January 1 through December 31.
- (d) *“Gaming Enterprise”* means the Band’s Gaming Enterprise, owned and operated by the Band on the Rincon Indian Reservation.
- (e) *“General Council”* means the General Council of the Band which is composed of the voting membership of the Band as a whole.
- (f) *“Incapacitated Person”* means any person who has been declared legally incompetent by any tribal, state or federal court with the legal authority to do so.
- (g) *“Manager”* means the person or business entity responsible for the day-to-day operations of the Gaming Enterprise.
- (h) *“Minors”* means enrolled Tribal Members under the age of twenty-one (21).
- (i) *“Net Distributable Cash”* means cash received by the Tribal Government from the Band’s Gaming Enterprise, which includes but is not limited to the revenue from the Gaming Enterprise remaining at the end of each calendar month or other applicable period of accounting or disbursement after amounts paid out as play winnings, management fees, loan obligations, capital reserves as defined in the management agreement and revenue sharing payments under the Compact with the State of California currently in effect and all other operating expenses as defined in the Indian Gaming Regulatory Act expenses of the Gaming Enterprise for that month or period are paid.
- (j) *“Per Capita Payment”* or *“Per Capita Distribution”* means those payments made or distributed to Eligible Tribal Members of the Band, or to groups of members identified by this Ordinance, which are paid directly from the Net Distributable Cash.

- (k) *“Per Capita Pay Period”* means the period of time established by the Rincon Business Committee that is used to calculate Net Distributable Cash available for Per Capita Payments.
- (l) *“Rincon Business Committee”* means the elected Rincon Business Committee of the Band, which exercises the executive powers of the Band pursuant to Section 6 of the Articles of Association.
- (m) *“Tribal Allocation Account”* means one or more accounts in a federally insured financial institution, or a financial instrument backed by the full faith and credit of the federal government, into which, pursuant to this Ordinance, the Rincon Business Committee deposits the Net Distributable Cash of the Band’s Gaming Enterprise. No other funds shall be commingled into the Tribal Allocation Account.
- (n) *“Tribal Elder”* means an Eligible Tribal Member age sixty-five or older.
- (o) *“Tribal Member”* means any enrolled member of the Band.
- (p) *“Tribal Senior”* means an Eligible Tribal Member age fifty-five to sixty-four.

**ARTICLE III  
ALLOCATION PLAN**

**Section 1.** The Band intends to dedicate its Net Distributable Cash to the following purposes in approximately the percentages set forth in this Article III. The percentage of Net Distributable Cash allocated for distribution in the categories set forth below shall be determined annually through the Band’s budget review process, which takes place not less than sixty (60) days prior to the end of each Fiscal Year. Each allocation shall be determined by the Business Committee based upon the best interest of the Band, the anticipated Net Distributable Cash to be distributed in the upcoming year, and the needs of the tribal government. Tribal staff shall propose a range of percentages to be distributed in each category and the basis for each proposal. The Business Committee, upon due deliberation and consideration shall determine the exact percentages to be distributed. The Business Committee shall ensure that not less than One Hundred Percent (100%) of the Net Distributable Cash is spent upon those categories listed below. All decisions of the Business Committee regarding allocation shall be final and shall not be subject to review.

- (a) Not less than Eight Percent (8%) and not more than Thirteen Percent (13%) of Net Distributable Cash shall be used to fund Tribal government administration and governmental operations;
- (b) Not less than Eight Percent (8%) and not more than Fifteen Percent (15%) of Net Distributable Cash shall be used for Community services and programs, including but not limited to social welfare, education, housing, health and nutrition, planning and environmental protection (collectively “Community services and programs”). The Community services and programs category shall also include the following programs:

1. **Tribal Senior Program.** Historically those persons who qualify as Tribal Seniors have been subject to poverty and deprivation for a significantly longer time period than Minors and most Eligible Tribal Members. As a result, it is reasonable to conclude that Tribal Seniors will have significantly greater health problems as they age and will require additional resources and care. Moreover, the Band has a responsibility to protect the interests of its Members and to assist in providing support to its Members, particularly Tribal Seniors. The Rincon Business Committee finds that it is reasonable to conclude that Tribal Seniors have a shorter life expectancy than most Eligible Tribal Members and accordingly, Tribal Seniors will be able to enjoy the benefits of gaming for significantly less time than most other Eligible Tribal Members. The Rincon Business Committee determines that in light of the historical circumstances of the Band, including social injustice and severe poverty suffered by Tribal Seniors, it is equitable to make additional resources available to Tribal Seniors. Therefore, the Band may allocate and distribute up to an additional \$3000 per year to each Tribal Senior for the purpose of payment and/or reimbursement of the following Community services and programs costs: medical expenses, housing expenses, energy assistance, health and wellness activity expenses, social services expenses, and other related expenses.
  
2. **Tribal Elder Program.** Historically those persons who qualify as Tribal Elders have been subject to poverty and deprivation for a significantly longer time period than Minors, most Eligible Tribal Members, and Tribal Seniors. As a result, it is reasonable to conclude that Tribal Elders will have significantly greater health problems as they age and will require additional resources and care. Moreover, the Band has a responsibility to protect the interests of its Members and to assist in providing support to its Members, particularly Tribal Elders. The Rincon Business Committee finds that it is reasonable to conclude that Tribal Elders have a shorter life expectancy than most Eligible Tribal Members and accordingly, Tribal Elders will be able to enjoy the benefits of gaming for significantly less time than all other Eligible Tribal Members combined. The Rincon Business Committee determines that in light of the historical circumstances of the Band, including social injustice and severe poverty suffered by Tribal Elders, it is equitable to make additional resources available to Tribal Elders. Therefore, the Band may allocate and distribute up to an additional \$5000 per year to each Tribal Elder for the purpose of payment and/or reimbursement of the following Community services and programs costs: medical expenses, housing expenses, energy assistance, health and wellness activity expenses, social services expenses, and other related expenses.

- (c) Not less than Eight Percent (8%) and not more than Twelve Percent (12%) of Net Distributable Cash shall be used for tribal economic development, including but not limited to developing and/or expanding Tribal business enterprise, and investments in land, business opportunities, goods and services that may provide employment and financial returns for the Band and its members;
- (d) Not less than Zero Percent (0%) and not more than One Percent (1%) of Net Distributable Cash to be used to donate to charitable organizations;
- (e) Not less than Fifty Percent (50%) and not more than Seventy Percent (70%) of Net Distributable Cash shall be paid as Per Capita Distributions to Eligible Tribal Members.
- (f) Not less than Zero Percent (0%) and not more than Nine Percent (9%) of Net Distributable Cash shall be Reserves, which shall be available for categories (a)-(d) above, which shall be determined in the sole discretion of the Rincon Business Committee.

Any Net Distributable Cash allocated to any of the above categories that has not been expended as of the last date of the Fiscal Year may, at the Business Committee's discretion, be allocated to Reserves. In no instance shall any aggregate payments provided for in any category, subsections (a)-(f), exceed the maximum percentage amount allowed for such categories.

**Section 2. Monthly Accounting.** On or before the 25<sup>th</sup> day of every month, the Manager of the Gaming Enterprise shall provide to the Rincon Business Committee's delegated representatives:

- a) A complete financial statement of the operation of the Gaming Enterprise for the preceding month.
- b) The schedule of Net Distributable Cash for the preceding month.
- c) A check in the amount of the Net Distributable Cash commensurate with the schedule of Net Distributable Cash.

**Section 3. Deposit.** Upon receipt of the Net Distributable Cash, the Rincon Business Committee shall immediately deposit those funds in the Tribal Allocation Account(s).

**Section 4. Withdrawal and Accounting.** The Rincon Business Committee shall ensure that each month, or other applicable period of disbursement, the appropriate percentages of such Net Distributable Cash are earmarked and set aside for the expenditures described in Article III, Section 1(a)-(f) above.

**Section 5. Time of Per Capita Distribution.** Per Capita Distribution shall commence according to the outline below.

- (1) Each following month a payment will be made based on the Net Distributable Cash from two months prior. (See examples below.)

- a. December's distribution will be based upon October's Net Distributable Cash.
  - b. January's distribution will be based upon November's Net Distributable Cash.
- (2) Distributions shall be made on the first day of the month following the month of receipt of Net Distributable Cash by the Tribal Government.

**Section 6. Budget Review Process.**

- (a) At least ninety (90) days prior to the commencement of each new Fiscal Year, the Business Committee shall receive budget reports and requests from the Tribal Administrator and each tribal governmental department. The budget reports shall detail at a minimum: past fiscal year operating costs, projected operating costs, revenue sources, including the projected amount of Net Distributable Cash recommended, together with a detailed accounting for expenditures. The budget report shall also include budget requests for funding from Net Distributable Cash allocated to funding for tribal governmental administration and governmental operations.
- (b) The Business Committee shall, after receiving all budget reports and requests under this Section, allocate those funds designated for tribal governmental administration and governmental operations. The Business Committee shall be the sole decision-making body as to any actions taken upon budget reports and requests and as to the allocation of funds designated for tribal governmental administration and governmental operations or any other category listed in Article III.
- (c) Prior to adoption of the Fiscal Year budget, the Business Committee shall review the budget reports and requests for the prior Fiscal Year, and any other reports prepared in accordance with generally accepted accounting principles, to determine the actual amount of monies expended on tribal governmental administration and governmental operations and all other categories listed in Article III of this Ordinance in the prior fiscal year together with the percentage of Net Distributable Cash allocated to tribal governmental operations and all other categories in the prior fiscal year.

**ARTICLE IV  
ELIGIBILITY FOR PER CAPITA PAYMENTS**

**Section 1. Adult Members.** Every living person who is an enrolled member of the Band and who has attained the age of twenty-one (21) on or before the date of the Per Capita Distribution is eligible to receive a full Per Capita Payment, unless:

- (a) That person relinquishes their Tribal Membership pursuant to the Band's relinquishment procedures. Such person shall not receive a Per Capita Payment for the Pay Period in which they relinquished their Membership; or

- (b) That person is deceased prior to the date of the Per Capita Payment, in which case no payment shall be due to that person's estate or heirs.

**Section 2. Minors (Enrolled).** The Band retains the inherent sovereign right to protect the interests of Minors, is committed to the education of Minors, and seeks to encourage Minors to pursue degrees in high school, colleges, universities or vocational schools. The Band is concerned that providing Per Capita Payment to Minors or that by allowing the Per Capita Payments to accumulate in an interest bearing account, the Minors may not be motivated to perform to their highest levels in school, and may become dependent on Per Capita Payments alone. Therefore, the Rincon Business Committee has specially modified its distribution to prohibit Per Capita Payments to enrolled tribal minor members in exchange for the following payments:

- a) A Minor's legal guardian should receive a clothing allowance, beginning on or before December 15, 2007 or the commencing first calendar year feasible, for Minors pursuant to Article III Section 1(b) that ensures the protection of children's social welfare. The Minor's clothing allowance shall be distributed as, Five Hundred Dollars (\$500.00) on the date of December 15<sup>th</sup>, and Five Hundred Dollars (\$500.00) on the date of June 15<sup>th</sup>, Five Hundred Dollars (\$500.00) on the date of August 15<sup>th</sup> as identified in the Allocation Plan Budget on an annual basis. The legal guardian for a Minor shall account to the Rincon Business Committee in sufficient manner to demonstrate the funds disbursed were expended as required by this Ordinance and any other applicable federal law.
- b) The Band should expend at least Twenty Five Thousand Dollars (\$25,000.00) annually each calendar year, or as otherwise determined in the Rincon Business Committee's discretion, for recreational activities for Minors pursuant to Article III, Section 1(b) that ensures the protection of children's social welfare.
- c) Minors should also be eligible for the receipt of special educational scholarships, stipends and grants pursuant to Article III, Section 1(b) above that ensures that Minors shall have a quality education.
- d) Minors shall also be eligible to participate in a student bonus plan pursuant to Article III, Section 1(b) aimed at keeping Minors in school by receiving a one time One Thousand Dollar (\$1,000.00) check upon graduation from high school with a diploma, GED, or equivalent.
- e) Minors ages 18-21 as defined in this ordinance should be eligible for the same benefit schedule as in Section 2(a) provided that they have a high school diploma or GED, or those who are successfully pursuing a diploma or GED by attending high school, or adult education. Additionally, those who are furthering their education through attending vocational training or a college or university.

Minors shall not be entitled to any form of Per Capita Payment until they turn the age of twenty-one (21). The Rincon Business Committee finds that the different treatment of Minors with regard to Per Capita Distributions bears a rational relationship to the legitimate government objective of encouraging Minors to complete their schooling, and this Ordinance is designed to promote the permissible objective of providing for the general health, education, and welfare of the Band and its Members.

## **ARTICLE V CALCULATION AND DISBURSEMENT OF PER CAPITA PAYMENTS**

**Section 1. Equal Payment.** The percentage of Net Distributable Cash devoted to Per Capita Payments pursuant to Article II above shall be divided such that every Eligible Tribal Member receives an equal Per Capita Payment, share and share alike. Provided further that Eligible Tribal Members and Minors are not entitled to those payments described in Article III and IV of this Ordinance until Net Distributable Cash has been received by the Tribal Government and deposited in the Tribal Allocation Account.

**Section 2. Garnishment of Payments.** Any garnishment of payments as set forth below shall be done in compliance with Tribal Laws and Ordinances, and at a minimum shall include a written notice as to why said payment has been garnished and an adjusted statement of account.

- a. The Business Committee shall garnish Per Capita Payments for monies owed to the Band by Tribal Members and/or their renters/lessees.
- b. Violations of Tribal laws or ordinances (fines)
- c. Court ordered child support
- d. Forfeit of disbursement

**Section 3. Form of Payment.** Each Per Capita Payment shall be made by Tribal check or direct deposit, payable only to the Eligible Tribal Member, except in the case of incompetents (see Section (4) below). If paid by check it shall be mailed to the latest known address of the Tribal Member.

**Section 4. Payment to Incompetent Members.** Per Capita Payments made to legally incompetent Tribal Members shall be made payable to the legal guardian, or to the person holding a valid power of attorney for such incompetent Tribal Member, or otherwise as provided by Tribal law. The legal guardian or the person holding a valid power of attorney for such incompetent Tribal Member shall maintain records and, upon request from the Rincon Business Committee, shall account to the Rincon Business Committee in sufficient detail to demonstrate the funds disbursed were expended as required by this Ordinance, applicable federal law, or otherwise as provided by Tribal law.

**Section 5. Reporting to IRS.** The Band shall comply with all requirements of the Internal Revenue Service (IRS) pertaining to the payment of Per Capita Payments, including, to the extent required by applicable law or IRS regulations, withholding federal income tax from Per Capita Payments in an appropriate amount. A notice that Per Capita Payments are subject to

federal income tax shall be furnished to each Tribal Member with each Per Capita Payment. The notice shall also provide that the Business Committee will file a Form 1099 with IRS, if required by the Internal Revenue Code or IRS regulations, reporting the Per Capita Payment as income to the Tribal Member. The notice shall inform Tribal Members that the Business Committee has withheld federal income tax from the Per Capita Payment if, such withholding is required by federal law or regulations. Any required taxes, and or garnishments, that are required by law to be taken out of Per Capita Payments shall be withheld.

The Band shall include with each Per Capita Payment a statement reading: "Federal law requires the Band to inform you that this Per Capita Payment is subject to federal taxation. 25 U.S.C. § 2710(b)(3)(D)."

**Section 6. Appeals.** Any person that has their Per Capita Payment garnished in any manner by the terms of this Ordinance, or otherwise has a claim regarding the terms or implementation of this Ordinance shall have the right to file a complaint or appeal with the Rincon Business Committee, which shall have final authority to adjudge such person's eligibility and any other claims arising relating to this Ordinance. In making eligibility determinations, the Rincon Business Committee shall be entitled to require evidence in support of the claim to the Rincon Business Committee. Nothing herein shall limit a decision of the Rincon Business Committee to refer to the matter appealed pursuant to this Ordinance to Tribal Court, as established pursuant to Tribal law.

## **ARTICLE VI MISCELLANEOUS**

**Section 1. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application, and, to this end, the provisions of this Ordinance are severable.

**Section 2. No Waiver of Immunity.** Nothing in this plan shall provide or be interpreted to provide a waiver of the sovereign immunity from suit of the Band or that of its governmental officers, agents, employees or enterprises for any purpose.

**Section 3. Adoption.** This Ordinance shall become effective upon its approval by majority vote of the Rincon Business Committee of the Band at a duly noticed meeting and upon receipt of approval from the Secretary of Interior or its authorized representative.


**Section 4. Amendment.** This Ordinance may be amended by the Rincon Business Committee, and by majority vote of the Business Committee is hereby directed to make any amendments to this Ordinance required by the Secretary of the Interior in order to obtain the Secretary's approval of this Ordinance for compliance with 25 U.S.C. § 2710, *et seq.*, and shall be effective from the date of approval.

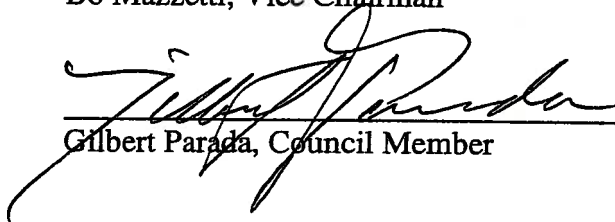
**CERTIFICATION**

We, the undersigned, as the governing body of the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, do hereby certify that the Rincon Business Committee is composed of five (5) members of whom 4 constituting a quorum were present at a meeting duly held on March 6, 2008, and that the foregoing resolution was adopted by the affirmative vote of 4 members.

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Vernon Wright, Chairman

  
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Bo Mazzetti, Vice Chairman

  
\_\_\_\_\_  
Stephanie Spencer, Council Member

  
\_\_\_\_\_  
Gilbert Parada, Council Member

  
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Charles Kolb, Council Member