

Amended
GAMING REVENUE ALLOCATION ORDINANCE
Use of Gaming Revenues

A. Findings and Statement of Purpose

1. The Tule River Indian Tribe (the "Tribe") operates a gaming facility known as the Eagle Mountain Casino through the Tule River Tribal Council.
2. Pursuant to the Tribe's Gaming Ordinance, Tribal Resolution Number 69-96, and the Indian Gaming Regulatory Act, 25 U.S.C. §2710(b)(2)(B), the Tribal Council may use funds from the Tribe's gaming operation for the following purposes:
 - a. To fund Tribal government operations or programs;
 - b. To provide for the general welfare of the Tribe and its members;
 - c. To promote Tribal economic development;
 - d. To donate to charitable organizations;
 - e. To help fund the operations of local government agencies;
3. The Indian Gaming Regulatory Act ("IGRA") provides that net revenues from Class II/III gaming activities maybe used to make Per Capita Payments to, Tribal Members if (a) the Tribe has prepared a plan to allocate revenues for uses authorized under IGRA; (b) the plan is approved by the Secretary of the Interior; (c) the interests of minors and other legally incompetent persons are adequately protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education or welfare of the minors or other legally incompetent persons; and (d) the Per Capita Payments are subject to Federal taxation and Tribal Members are notified of their tax liability when payments are made.
4. The purpose of this Plan is to provide a plan for the use of gaming revenues and the rules respecting the distribution of such revenues for various purposes.
5. The Tribal Council has found that the general welfare of Tribal Members is best served, if a portion of the Tribe's share of the net revenues of the gaming enterprise be distributed per capita to Tribal Members at the discretion of the Tribal Council, but not to exceed 50% of net revenues; and, the remainder of net revenues, at least 50%, be used for Tribal programs that benefit the members collectively. The Tribal Council shall make an allocation under this Plan each year.

B. Definitions

1. "Minors and Incompetents Trust" means a trust(s) for both minor Tribal Members and adult Tribal Members deemed incompetent by a court of competent jurisdiction incorporating the following provisions:
 - a. Each Minor and each Incompetent is a beneficiary and the Tribal Council is the Trustee;
 - b. The Trustee is required to separately account for each beneficiary's trust assets and to notify each parent and/or legal guardian or conservator for whom it has an address of each deposit to the beneficiary's account and provide each such parent, guardian, or conservator with an annual report of the account balance.
 - c. The Trustee is required during the term of the trust to preserve the trust assets for the benefit of the beneficiary by investing them to earn a reasonable rate of return consistent with ensuring the preservation of principal. The Trustee may pool trust assets of beneficiaries for investment purposes as long as the trustee accounts for each beneficiary's individual share of trust assets and the income or capital appreciation attributable to that beneficiary's share thereof.
 - d. For Minors, the trust terminates on the earlier of the beneficiary's 21st birthday, or upon the beneficiary's 18th birthday if he or she has attained a high school diploma or GED, or upon the death of the beneficiary, if he or she dies before age of 18. For incompetents, the trust terminates at such time as the beneficiary is deemed to be legally competent or upon the death of the beneficiary.
 - i. Upon termination of the trust and as soon as is administratively feasible, all trust assets shall be transferred free of any restrictions or encumbrances to the beneficiary, his/her designee(s), or his/her parent(s), if the beneficiary dies without designating a successor or while still a minor or incompetent. If a beneficiary dies without designating a beneficiary and is not survived by a parent, the trust assets shall be transferred in accordance with Tribal and federal law. The transfer to the beneficiary shall be made in a single lump-sum payment. Also, all per capita payments for beneficiary's who have turned 18 will be held solely on the beneficiary's behalf unless they are in compliance with TEP policy.
2. "Minor" means a Tribal Member under the age of 18 whose date of birth and certified copy of his/her birth certificate have been provided to the Tribe. A minor shall be considered an adult Tribal Member, if the minor has been emancipated by a court of competent jurisdiction. An emancipated minor must file a certified copy of the court order with the Chief Financial Officer or his/her designee. If the minor has not filed such an order with the Chief Financial Officer or his/her designee he or she shall be considered a minor for all purposes under this Plan, until the date such order is filed with the Chief Financial Officer or his/her designee.

Emancipated Minor – a minor that is self supporting and independent of parental control as a result of court order terminating parental rights.

3. "Beneficiary Account" means an account opened or acquired by the Trustee under the Minors and Incompetents Trust. A Beneficiary Account may include funds of more than one beneficiary, which have been pooled for investment purposes, provided the Trustee accounts separately for each beneficiary's share of the pooled funds.
4. "Net Revenues" means gross revenues from Eagle Mountain Casino less amounts paid out as, or paid for, winnings, total operating expenses, and required loan service payments.
5. "Gaming Revenue Fund" means a special revenue fund, held in one or more accounts, authorized by the Tribal Council, in which Net Revenues are deposited and held pending disbursement pursuant to Tribal Resolution. No other funds shall be deposited or used to purchase instruments in the Gaming Revenue Fund.
6. "Payment Date" means the date or dates declared to be the payment date by Tribal Council Resolution so long as the total amount of Per Capita Payment does not exceed the limits in subparagraph A(5) above.
7. "Per Capita Payment" means a payment from the Gaming Revenue Fund to a Tribal Member the amount for which is determined by dividing the total amount to be distributed by the number of Tribal Members living on the Payment Date. Per Capita Payments shall be equal in amount for each Tribal Member entitled to payment.
8. "Chief Financial Officer" means the Tribe's financial officer responsible for the administration of the Gaming Revenue Allocation Plan subject to approval by the Tribal Council.
9. "Tribal Member" means any person, regardless of age, who is an enrolled member of the Tribe on September 30 of the previous fiscal year in which a Per Capita Payment is made.
10. "Incompetent" means an adult Tribal Member who has been declared incompetent by a court of competent jurisdiction.
11. "Tribal Council" shall mean that duly elected governing body of the Tule River Indian Tribe as established by its Constitution and Bylaws, as amended from time to time.

C. **Division of Net Revenues**

1. Tribal governmental fiduciary responsibility requires the means, and ability to modify the allocation, or percentage break down, for each purpose described in subparagraph A(5) above. The Tribe retains the authority to modify a percentage allocation per purpose provided that, concurrence of Secretary of the Interior is obtained if modification to fund

allocation for purposes is different from the percentages provided in subparagraph A(5) above. In every case, the aggregate of all percentages for all purposes shall remain equal to one hundred (100) percent of Class II/III gaming Net Revenues.

2. Upon receipt of the Net Revenues, the Chief Financial Officer, with the approval of Tribal Council, shall deposit the funds in the Gaming Revenue Fund.
3. By the 15th day of August, the Chief Financial Officer shall prepare an accounting of the total net revenues in the Gaming Revenue Fund.
4. The Chief Financial Officer shall deliver to the Tribal Council, within 5 working days of preparing the accounting prepared pursuant to this Paragraph, a report of such accounting and the amount of the Per Capita Payment for the fiscal year.

D. **Per Capita Payments**

1. The Tribe may, but has no moral or legal obligation to, make Per Capita Payments to the membership, and there is no anticipated benefit to the Tribe or the Tribal Council as a result of any such payment. The Tribe, after considering its fiduciary responsibilities, shall determine what amount, if any, is available for distribution to the Tribal Members in the form of Per Capita Payments. The amount that is available shall be equally divided such that all eligible Tribal Members receive a numerically identical Per Capita distribution.
 - i. Elders 62 and older shall receive per capita distribution of \$6,000.00 per annum in addition to the annual disbursement made to the membership.
 - ii. Elders 55 to 61 shall receive per capita distribution of \$3,000.00 per annum in addition to the annual disbursements made to membership.
 - iii. The distributions to Elders in D(1)(i) and (ii) above shall be prorated starting the first day of the month after their 55th or 62nd birthdays respectively.
2. All Tribal Members who have been placed on the current official Tribal Membership Roll, who are living on the Payment Date, who are an enrolled member of the Tribe on September 30th of the previous fiscal year in which a Per Capita Payment is made, who have not subsequently relinquished and/or disenrolled from membership with the Tribe shall be eligible for Per Capita distribution. Any person enrolled after September 30th is not eligible for such Per Capita Distribution until the following year.
3. All disputes arising in the interpretation of eligibility may be appealed to the Tribal Council or its designee.
4. Within ten (10) days of the Secretary of the Interior's approval of this Plan, and the same date each year thereafter, ("Notice Date"), the Chief Financial Officer or his/her designee shall provide notice to Tribal Members, or the parents, guardians or conservators of

Minor and Incompetent members ("Notice") that a Per Capita Distribution shall be made. The Tribal Member or his or her parent, legal guardian or conservator must provide the Chief Financial Officer or his her designee with a current address and the Tribe, its officers, employees, agents and members shall not be responsible for any failure to update such address. The Chief Financial Officer shall be entitled to rely on the address provided by the member or other authorized instructions filed with the Chief Financial Officer. The notice shall also inform Tribal Members that they may notify the Chief Financial Officer to mail their payment, automatically deposit the payment in a designated account at the expense of the Tribal Member, or hold the payment at the Tribal office for the member to pick-up. If signed and notarized by the member, the instructions may authorize the Chief Financial Officer to release the check to another person. If the Tribal Member is incarcerated, request may not be notarized provided that the mail is post-stamped by the correctional institution. The member or authorized recipient shall provide picture identification when he or she picks up the check. The Chief Financial Officer shall only release the check upon presentation of adequate identification. All checks not picked up after sixty (60) days of issuance shall be voided for reissuance to such Tribal Member at a later date. The above Notice shall be sent as follows:

- a. The Chief Financial Officer shall provide such notice by regular mail to any Tribal Member for whom the Chief Financial Officer has a mailing address; and
 - b. For a period of ten (10) days after the Notice Date, the notice shall be prominently posted in any place within the community required for general Tribal elections; and
 - c. The notice shall be published as soon after the Notice Date as is possible in a local newspaper of general circulation.
5. Failure of any Tribal Member to receive actual notice shall not give that Tribal Member any right of action or claim against the Tribe, its officers, agents or employees, or impose any obligation on the Tribe or any of its officers, agents or employees.
6. Subject to the authorization by the Tribal Council, the Chief Financial Officer shall make the Per Capita Payment for the fiscal year on or before fifth business day following the Payment Date, as follows:
- a. To each Tribal Member who is not a Minor or Incompetent, by mailing checks, transferring funds or issuing and holding checks as directed by the Tribal Member. In the absence of specific instructions from the member as provided herein, the Chief Financial Officer shall cancel the checks and funds will be redeposited into the Gaming Revenue Fund.
 - b. The Chief Financial Officer shall distribute one-half of each of the Minor's and Incompetent's Per Capita Payments fiscal year up 50% to the total amount of the per capita payment as provided for in D(6)(a) but only where such Minor attending

school maintains an attendance record in such school of 90% or more of all non-holiday school days for the prior grading period unless there is a bone fide written excuse for each such absence approved by a Board or Committee designated by the Tule River Tribal Council by Resolution. Nothing shall prevent the Tribal Council from adding additional requirements over and above such Minor attendance requirement by duly adopted Tribal Resolution (without the necessity of amending this Ordinance), including, without limitation, a minimum grade point average, withholding of per-capita payments of the custodian/parent/legal guardian for such Minors. All other amounts distributed to each Minor and Incompetent as a Per Capita Payment shall be deposited in the Minor or Incompetent's account in accordance with the Minors and Incompetents Trust. Should the total amount distributed to any Minor and Incompetent as a Per Capita Payment per fiscal year exceed the total of \$3,000 then this Ordinance shall be amended to include the establishment of criteria for health, education and welfare withdrawals of the funds in the Minors and Incompetent's Trust, acceptable proof and/or receipts for accountability of the expenditure of such funds and the circumstances for denial of the withdrawal of the Minors and Incompetent's Per Capita Payments by parents or legal guardians.

- c. With regard to beneficiaries of the Minors and Incompetent Trust, once a beneficiary who is not legally incompetent reaches the earlier of the age of 21, or the age of 18 and after having attained his or her high school diploma or GED, as of September 30 of the year in which a Per Capita Payment is made, he or she shall be eligible to receive the Per Capita Payments directly with the balance of their funds in the Minors and Incompetents Trust being distributed to them as provided therein.
- d. A notice that Per Capita Payments are subject to federal income tax shall be furnished to each member with Notice of their Per Capita Payment. In addition to the disclaimer that the Per Capita Payments are subject to federal income tax, the notice shall state that the Tribe shall withhold federal income tax from the Per Capita Payment, per IRS publication or other IRS ruling. The Tribe shall calculate federal withholding, using the Tables for Withholdings on Distributions of Indian Gaming Profits to Tribal Members provided by the IRS, for example but not by way of limitation, as provided in IRS Publication 15-A, Employer's Supplemental Tax Guide as referenced in IRS Publication 3908, Gaming Tax Law for Indian Tribal Governments. The Tribe will report Per Capita Payments to the IRS on Forms 1099, 1098 or W-2C and make withholding deposits with the IRS, using Form S 109.
- e. Only Tribal Members living on the Payment Date are entitled to a Per Capita Payment, and any amounts allocated to Tribal Members who have died before the Payment Date shall be returned to the General Fund.
- f. Nothing in this Plan is intended to vest or vests in any Tribal Member or any other person any right or interest in the Eagle Mountain Casino, the Tule River Economic Development Corporation, or any other Tribal business venture, the income produced by such businesses, any other Tribal assets, or the income produced by such assets.

The Tribal Council reserves the right to amend or repeal this Plan at any time and such amendment or repeal shall not represent a taking of any vested property right.

E. Early Withdrawals from Minors and Incompetent Trust

FOR EDUCATIONAL NEEDS

1. For attendance in a private secondary school, to include grades 9-12.

(Private school must be accredited by the National Association of Independent Schools)

2. Programs for handicapped or disabled persons.
3. For educational travel that is school sponsored or sanctioned.

All applications for Educational Disbursements must include detailed documentation from the accredited school.

FOR HEALTHCARE NEEDS

1. For immediate life threatening events when other resources, personal or tribal are not available.
2. For deductibles, co-insurance and copayments when other resources, personal or tribal are not available.
3. For a terminal illness when the minor is not expected to attain the age of 18.
4. For medical procedures that exceed the plan limits.
5. For durable medical equipment when other resources, personal, or tribal are not available.
6. For dental and orthodontic procedures that exceed the plan limits when other resources, personal or tribal are not available.

All requests for health related disbursements must include specific health information from medical personnel supporting the need.

FOR WELFARE NEEDS

1. For the purchase of food and clothing when all other sources have been exhausted.

All requests for Welfare related disbursements must include proof that all other sources have been exhausted, including employment and other sources of income of the custodian/parent/legal guardian.

GENERAL GUIDELINES

1. All applications for early disbursement must be received from the Minor's custodian/parent/legal guardian.
2. Applications will be reviewed within 30 days.

3. Disbursements of approved applications will be made within 10 days business days of approval.
4. Not more than 5% of the minor's account value will be eligible for early distribution per request, limited to two per calendar year for a total of 10%.
5. In the case of extreme medical emergency immediate approval may be deemed necessary.
6. Any funds not used for the specific purpose requested must be returned to the Finance department in order that they may be properly credited to the Minor's account.
7. All disbursements are taxable.

F. **Tribal Programs Funds**

1. The Chief Financial Officer shall work with the Tribal Council in preparing a proposed budget for the funds contained in the Gaming Revenue Fund to be directed to Tribally funded programs in accordance with the Tribe's Resolution.
2. The permissible uses of the funds contained in the Gaming Revenue Fund to be directed to Tribally funded programs shall include, but are not limited to, the following uses:
 - a. To fund Tribal government operations or programs;
 - b. To provide for the general welfare of the Tribe and its members;
 - c. To promote Tribal economic development;
 - d. To donate to charitable organizations;
 - e. To help fund the operations of local government agencies;
3. The budget shall be approved annually in accordance with a Tribal Resolution and a breakdown by category is attached hereto as Exhibit A. Such budget shall be automatically incorporated herein by this reference and without any further amendment of this ordinance.

G. **Enforcement, Dispute Resolution, Administrative Procedures and Tribal Court Jurisdiction**

1. Disputes in the eligibility of Tribal Members for receipt of Per Capita Payments based on their Enrollment may be appealed to the Tribal Council or its designee. Disputes in the administration and distribution of the Minors and Incompetents Trust shall be processed according to the processes described in the subparagraph B(1) and D(6)(b) of this Plan. All other disputes concerning this Plan, interpretation of the Plan and actions required to implement the policy, regulations and intent of the Indian Gaming Regulatory Act shall be decided by the Tribal Council pursuant to the Procedure outlined below.

2. The development of administrative procedures governing implementation of this Plan shall be the responsibility of Tribal Council and/or its designee. All disputes shall be made in written form to the Tribal Council by way of a complete Council Presentation Form.
3. Upon receipt from a Tribal Member of a Council Presentation Form regarding disputes surrounding the administration and distribution of the Per Capita Payments, the Tribal Council has fifteen (15) working days to convene a hearing on the dispute and an additional fifteen (15) working days to render a written finding and decision, concerning the Issue(s) raised. Therefore, the time periods governing disputes are serial, involving up to a total of thirty (30) working days, commencing the day the Tribal Council receives a completed written dispute as required by the Council Presentation Form. The Tribal Council's decisions are final and binding.

H. **No Waiver of Sovereign Immunity**

No provision in this Revenue Allocation Ordinance expressly or impliedly waives the sovereign immunity of the Tribe or Tribal Council and its officers, employees, agents or members or is intended to operate as a consent to suit.

I. **Amendments**

All provisions of this Plan are subject to amendment by Tribal Council and further subject to the review and approval of Appropriate Bureau Official with delegated authority.

J. **Severability**

If any provision of this Ordinance, or its application to any purpose or circumstances, is held invalid by a court of competent jurisdiction, the full remainder of the provision, or the application of the provision through another person or circumstances, shall not be affected.

K. **Effective Date**

This Ordinance shall be effective immediately upon its adoption by the Tribal Council and its approval by the Appropriate Bureau Official with delegated authority.