

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON ELDER AND SENIOR ASSISTANCE PROGRAM
ORDINANCE
RINCON TRIBAL CODE § 17.300**

Adopted on November 20, 2014

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

Table of Contents

§ <u>17.300</u>	Findings and Purpose	3
§ <u>17.301</u>	Authority	3
§ <u>17.302</u>	Definitions.....	4
§ <u>17.303</u>	Tribal Elder and Tribal Senior Assistance Eligibility.....	6
§ <u>17.304</u>	Tribal Elder and Tribal Senior Assistance Limits.....	6
§ <u>17.305</u>	Elgible Program Assistance	7
§ <u>17.306</u>	Application Process	9
§ <u>17.307</u>	Program Funds Disbursement Process	11
§ <u>17.308</u>	General Administrative Procedures	11
§ <u>17.309</u>	Miscellaneous	13

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

§ 17.300 FINDINGS AND PURPOSE

(a) The purpose of this Ordinance is to assist Tribal Seniors and Tribal Elders to maintain their health, well-being, independence and quality of life. The Tribe has a responsibility to protect and promote the general welfare interests of its members and to assist in providing support to its members.

(b) Tribal Seniors and Tribal Elders are very important to the Tribe; ensuring their care and support is a vital goal of the Tribe. Tribal Seniors and Tribal Elders have been subject to poverty and deprivation for a significantly longer time period than minors and most eligible tribal members. Tribal Seniors and Tribal Elders have significantly greater health problems as they age, and as such, will require additional resources and care.

(c) Tribal Seniors and Tribal Elders have a shorter life expectancy than most eligible tribal members. Accordingly, in light of these considerations and historical circumstances of the Tribe, including social injustice and severe poverty suffered by Tribal Seniors and Tribal Elders, the Tribal Council has resolved that it is equitable to make additional resources available to Tribal Seniors and Tribal Elders.

(d) This Ordinance is designed to provide assistance to Eligible Tribal Members of community services, activities and needs including medical expenses, house expenses, energy assistance, health and wellness activity expenses, social services expenses, cultural, spiritual and educational expenses, and other related expenses as described herein. It is the Tribe's intent that the assistance provided pursuant to this Ordinance will meet the criteria set forth in Revenue Procedure 2014-35 (including any subsequent Internal Revenue Service guidance) and the Tribal General Welfare Exclusion Act of 2013, for treatment as a tax exempt benefit.

§ 17.301 AUTHORITY

This Ordinance is established pursuant to the authority vested in the Tribal Council by Section 6 of the Articles of Association to enact ordinances for the general welfare of the Tribe, and pursuant to the Tribal General Welfare Exclusion Act of 2013, codified under Internal Revenue Code Section 139E, which excludes from gross income, for income tax purposes, the value of general welfare assistance that may be provided to an Eligible Tribal Member.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

§ 17.302 **DEFINITIONS**

(a) **“Applicant”** means a Tribal Member seeking benefits under this Program who may submit an application to qualify as a Beneficiary of Program assistance.

(b) **“Application”** means written forms completed by the Applicant, including all supporting documentation, submitted to the Tribal Administrator pursuant to Section 12.206 (a).

(c) **“Band Member”** means any enrolled member of the Band and shall be have the same meaning as Tribal Member.

(d) **“Beneficiary”** means the Tribal Senior or Tribal Elder determined to be eligible to receive general welfare assistance payments pursuant to this Program. Beneficiary means the same as Eligible Tribal Member.

(e) **“Dependent”** means a child or individual who is legally dependent for the fiscal year, within the meaning of Internal Revenue Code §152.

(f) **“Eligible Cost Documentation”** means documentation that substantiates the expenditure of Program or Beneficiary funds to a Third Party for purposes of direct payment or reimbursement pursuant to Section 12.207.

(g) **“Essential Services to the public”** means medical facilities, pharmacies, public library, post office, and grocery stores.

(h) **“Fiscal Year”** means the calendar year commencing January 1st and ending December 31st each year.

(i) **“Elder/Senior Assistance Application”** means the written forms required by the Tribal Administrator to be completed by the Applicant in order to receive consideration for assistance under Program.

(j) **“In-Home”** services means assistance provided by a family member or licensed, third-party care provider that includes, but is not limited to, preparation of meals, housekeeping, shopping, assistance with personal care, assistance with bookkeeping and bill paying, and handyman services.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

(k) **“Non-Covered Medical”** includes assistance for medical expenses and needs that are not otherwise covered by insurance or covered through other tribal, state or federal benefits, including but not limited to, in-home professional care from nurses, therapists or licensed care givers; extended nursing home stays; day care; hospice care; vision care; dental care; durable medical equipment; non-prescription drugs; transportation, meals and lodging for medical care away from home; and insurance co-pays and deductibles.

(l) **“Ordinance”** means this Rincon Elder and Senior Assistance Program Ordinance.

(m) **“Pay”** means payment directly to a third-party service provider or reimbursement in whole or in part to the Beneficiary.

(n) **“Principal Residence”** means a primary residence which is occupied by the Beneficiary for more than a majority of the time during a fiscal year, and is used exclusively as his/her principal residence. Principal residence may also be determined based also on the location of the Band Member’s spouse and children, the Band Member’s driver’s license, the address used for federal and state income tax purposes, where the Band member is registered to vote, and other legal indicia of residency. The residence may be real estate property in which the Beneficiary has right, title or interest held by fee simple, by leasehold (including residential land leases and assignments under Rincon Tribal Code § 8.700), by tenancy in common, by tenancy in entirety, by joint tenancy, by fractional interest, or other certified legal right of use and occupancy. Qualifying residences include but are not limited to, a single family home, apartment, condominium, townhome, or other cooperative or fractional-ownership unit. “Housing” and “residence” shall have the same meaning as Principal Residence.

(o) **“Program”** means the Elder and Tribal Senior general welfare assistance program described by this Ordinance.

(p) **“Rincon Reservation”** means all land within the exterior boundaries of the Rincon Reservation, located in Valley Center, California, and all lands that may be added from time to time to the Rincon Reservation after the date of enactment of this Ordinance.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

(q) **“Service Area”** means a geographic area designated by the Assistant Secretary of Interior where financial assistance and social services Programs are provided, as defined by 25 C.F.R. § 20.100.

(r) **“Service Unit Area”** means the area designated for purposes of administration of Indian Health Service Program pursuant to 42 C.F.R. 136.21 (1).

(s) **“Third Party”** means the contractor, vendor, service or care provider in a contractual relationship with a Beneficiary.

(t) **“Transportation”** means transport by bus, taxi, shuttle, hired car, rental car, substantiated mileage use of a private automobile, and other forms of public transportation.

(u) **“Tribal Administrator”** means the Tribal Administrator appointed by the Tribal Council to execute administrative functions on behalf of the Tribal Government.

(v) **“Tribal Elder”** means a Tribal Member who has attained the age of 65 years or older.

(w) **“Tribal Senior”** means an enrolled member of the Rincon band who has attained the age of 55 years or older.

§ 17.303 TRIBAL ELDER AND TRIBAL SENIOR ASSISTANCE ELIBILITY

To be eligible for assistance pursuant to this Program, a person must be a Tribal Member who is also a Tribal Elder or Tribal Senior.

§ 17.304 TRIBAL ELDER AND TRIBAL SENIOR ASSISTANCE LIMITS

(a) **Annual Limitation:** All assistance provided pursuant to this Program is subject to the availability of funds. Financial assistance is limited to an aggregate annual amount as follows:

- Senior Member - \$3,000.00 per year.
- Elder Member - \$5,000.00 per year.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

The annual assistance limit is subject to change from time to time, at the discretion of the Tribal Council. The annual assistance limit reflects a determination by the Tribe that this amount reasonably represents some or all of the additional financial assistance needs of its Senior and Elder population, for the types of costs of living reflected in Section 17.305 of this Ordinance, in order to support and maintain their health and well-being and to achieve the equitable purposes of this Ordinance as set forth in Section 17.300.

(b) Disbursement limits. Disbursements under this Program will be made only upon approval of an Application from an Eligible Tribal Member. In addition, for payment of services provided by a Third Party, it is the general preference of the Tribe to pay the Third Party directly. Other assistance may be disbursed in the form of reimbursement to the Eligible Tribal Member as set forth in this Ordinance.

(c) Non-Discrimination. The assistance provided under this Program shall not discriminate in favor of the governing body of the Tribe.

(d) Limitation on Liability. Any agreement or contract for work performed in connection with this Program is solely between the Eligible Tribal Member and a Third Party. The Tribe shall not be liable for any loss or damages whatsoever resulting from services performed in connection with assistance provided to an Eligible Tribal Member under this Program, and no legal relationship shall be created between the Tribe and a Third Party on behalf of an Eligible Tribal Member, satisfaction of any monetary duty or obligation to a Third Party shall be owed and remain at all times with the Eligible Tribal Member.

§ 17.305 ELIGIBLE PROGRAM ASSISTANCE

Program assistance is limited to costs actually incurred by the Beneficiary and includes the following types of costs:

(a) Transportation Assistance. This includes transportation to or from the Rincon Reservation and a Service Area or Service Unit Area; transportation to or from the Beneficiary's Principal Residence and the Rincon Reservation, Service Area or Service Unit Area; transportation to or from the Beneficiary's Principal Residence, Rincon Reservation, Service Area or Service Unit Area and facilities that provide essential services to the public.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

(b) Non-Covered Medical Assistance. Assistance payments will only be authorized only for services and equipment deemed medically necessary by a licensed care provider. Disbursement will be authorized only for licensed care providers, medical equipment providers or medical facilities, with the exception that payment for traditional Indian medicines may be made to a recognized Tribal Elder, official or spiritual leader.

(c) In-Home Services. If due to health issues the Beneficiary is having trouble with any two of the daily living tasks from the following list, the Beneficiary is eligible to receive financial assistance for in-home services:

- Bathing
- Eating
- Getting Places
- Cooking
- Dressing
- Walking
- Light household chores
- Heavy housework
- Organizing business affairs

(d) Cultural, Social, Religious, Community and Educational Activities. Substantiated expenses for transportation, food, lodging and admission fees associated with the following activities and programs are eligible for assistance payments:

- Attending or participating in educational, cultural, social, religious or community Programs and activities such as pow-wows, ceremonies and traditional dances offered by the Tribe or any other tribe or tribal organization; and
- Visiting sites that are culturally or historically significant to the Tribe.

(e) Delivered Meals. Assistance payments will only be authorized for licensed catering or community and tribal service organizations for the costs associated with preparing and delivering meals to the Beneficiary's Primary Residence.

(f) Housing Repair and Rehabilitation Assistance. Actual costs incurred by the Beneficiary for basic repairs or rehabilitation of his or her Principal Residence, including labor and materials for the following:

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

- Essential improvements
- Energy-related improvements
- Lead-based paint hazards
- Improvements for handicapped accessibility
- Replacement of major housing systems
- Demolition costs, when part of a rehabilitation project
- Site Improvements and Utility Connections
- Physical Enhancements for Crime Prevention
- Mold remediation
- Roof repair or replacement
- Removal of building code deficiencies
- Exterior or interior painting
- Sewage or septic systems
- Heating/Cooling systems
- Plumbing
- Flooring
- Other basic housing repairs as may be allowed by the Tribal Administrator

(g) Utility Assistance. Assistance payments for actual costs incurred by the Beneficiary for utility company charges related to the use of services in his or her Principal Residence. Eligible utility company charges include those for phone services, electricity, gas, propane, internet, cable, water, sewer, and waste services.

§ 17.306 APPLICATION PROCESS

(a) Tribal Member Applicant Responsibility.

(1) Application Requirement. If required by the Tribal Council, an Applicant must submit a written Application in accordance with the requirements established by the Tribal Administrator pursuant to this Program. All Applications must be signed and dated by the Applicant. Completed Applications will be accepted in person, by mail or facsimile.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

- (2) **Eligible Cost Documentation.** For requests for reimbursement or direct payment to a third party, the Applicant must submit receipts, contracts, invoices, bills or other documentation which substantiates the actual expense incurred by the Applicant, or payment due from the Applicant to a Third Party.
- (3) **Voluntary Release of Information.** If required by the Tribal Council, the Applicant must complete all forms to permit release of information from a Third Party as may be necessary, including HIPAA-related releases.
- (4) **Tribal Administrator Requests.** If required by the Tribal Council, the Applicant shall timely submit any other documents or information deemed necessary by the Tribal Administrator.

(b) **Tribal Administrator Responsibility.**

- (1) **Eligibility Determination.** The Tribal Administrator shall confirm the eligibility of each Beneficiary who receives assistance under this Program through enrollment records or other pertinent records of the Tribe. If an Application is required pursuant to Section 17.306 of this Ordinance, the Tribal Administrator shall date stamp the Application upon receipt and notify the Applicant, in writing within five (5) business days, of his/her determination of eligibility for assistance benefits.
- (2) **Emergency Applications.** Completed Applications for emergency needs shall be reviewed, and determination made as to eligibility, within forty-eight (48) hours of receipt by the Tribal Administrator.
- (3) **Annual Assistance Limit.** Upon the request of the Tribal Council and for purposes of periodically testing the propriety of the annual assistance limit, the Tribal Administrator shall conduct due diligence research into the average annual costs which an Elder or Senior may expect to incur for the types of eligible assistance costs reflected in Section 17.305 of this Ordinance.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

§ 17.307 PROGRAM FUNDS DISBURSEMENT PROCESS

(a) Subject to Section 17.305, a Beneficiary is eligible to receive up to the maximum assistance limit as determined by his or her age.

(b) Payment in the form of a negotiable check will be disbursed to or on behalf of the Beneficiary as follows:

- i. **Annual Assistance Payment.** The Tribal Administrator will disburse the total annual assistance amount to each eligible Beneficiary in January of each year; provided however, to the extent a Beneficiary has requested payment directly to a third party or reimbursement of eligible costs, the annual assistance payment shall be offset by the amount of such payments or the Beneficiary shall be required to repay any excess benefits to the Tribe.
- ii. **Payment Directly to a Third Party.** Upon the request of the Beneficiary, the Tribe may make payment directly to a Third Party on behalf of a Beneficiary. A Beneficiary must present the Eligible Cost Documentation to the Tribal Administrator fourteen (14) days before the due date of payment to the Third Party.
- iii. **Reimbursement to Beneficiary for Payments to a Third Party.** Upon the request of the Beneficiary, the Tribe may reimburse the Beneficiary for eligible costs. A Beneficiary must present the Eligible Cost Documentation to the Tribal Administrator fourteen (14) days before the due date of payment to the Beneficiary.

§ 17.308 GENERAL ADMINISTRATIVE PROCEDURES

(a) **Record Maintenance.** The Tribal Administrator shall maintain the following files:

- (1) For each Beneficiary, documentation establishing eligibility, including all information and documentation supplied in connection with his or her Application and Eligible Cost Documentation, if required, and all proof of disbursement of Program funds.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

- (2) For each Beneficiary determined to be ineligible, including all information provided by the Applicant and documentation of the decision making process to disapprove eligibility.
- (3) For Applications which are incomplete and pending determination of eligibility. Applicants submitting incomplete Applications will be notified in writing and given an opportunity to submit the missing information within a reasonable period of time.
- (4) An annual ledger recording each and every form of Program assistance provided to a Beneficiary during the applicable Fiscal Year. All ledgers shall be retained for a period of no less than seven (7) years.
- (5) For the Program, record of all due diligence research conducted to support the annual assistance limit, including but not limited to surveys, cost samplings and other research.

(b) Audit.

- (1) Beneficiaries may be required to submit an application to annually recertify eligibility for assistance under this Program.
- (2) Beneficiaries are required to use Program assistance exclusively for the purposes stated herein. In the event that assistance payments are used or pledged for a purpose inconsistent with the purposes set forth in this Program or the Beneficiary's Application, the Tribal Administrator shall require the immediate repayment of the assistance payment.

(c) Appeal Procedure. Should the Tribal Administrator disapprove any Application, the Applicant may appeal the decision by filing a written notice with the Tribal Council within fourteen (14) working days following the certified mailing of notice of disapproval. The Applicant shall be entitled to be present at a meeting of the Tribal Council and shall have the right to present oral or written communication with regard to the reconsideration. The decision of the Tribal Council shall be considered final.

RINCON ELDER AND SENIOR ASSISTANCE PROGRAM ORDINANCE

Rincon Tribal Code § 17.300

§ 17.309 MISCELLANEOUS

- a) **Severability.** If any provision of this Ordinance, or the application thereof to any person or circumstance, shall be held unconstitutional or invalid by the Tribal Council, only the invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.
- b) **No Waiver of Immunity.** All inherent sovereign rights of the Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance and are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Band's sovereign immunity from unconsented suit.
- c) **Adoption.** This Program shall become effective upon its approval by majority vote of the Tribal Council at a duly noticed meeting.

[END OF DOCUMENT]