

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



**RINCON NON-GAMING REVENUE ALLOCATION
ORDINANCE
RINCON TRIBAL CODE § 4.700**

Adopted July 18, 2012

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§ 4.700 **PURPOSE**

The Band owns certain non-gaming tribal enterprises to engage in, carry on and conduct any type of lawful business, enterprise, venture or investment to efficiently and effectively utilize Band resources to advance economic development through revenue generation and wealth creation for the Band and its members. In addition, the Band may realize cash payments from settlement agreements with governmental entities or private third parties or other non-gaming income all of which, from whatever source derived, shall be subject to allocation pursuant to this Ordinance.

§ 4.701 **APPLICABILITY AND INTERPRETATION**

Except as otherwise provided under Tribal law, any income or revenue allocation to Band members from non-gaming sources, including, but not limited to, cash settlements, Tribal enterprises, businesses, ventures or investment shall be regulated by this Ordinance.

§ 4.702 **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 Rincon 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 (defined below in Section 4.702(f)), has not forfeited or waived his or her right to receive Non-gaming 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 Reservation pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

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(e) **“General Council”** means the General Council of the Band which is composed of the voting membership of the Band as a whole.

(f) **“Good Standing”** means an enrolled member who (i) is in compliance with all applicable tribal laws and policies, (ii) is not party to legal process or proceedings with the Band as a counter party, and (iii) owes no financial debts to the Band, including any debts that may accrue from a member’s renters or lessees, or who has made satisfactory written arrangements for the payment thereof.

(g) **“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.

(h) **“General Welfare Programs”** means those social welfare programs established by the Band as a tax-exempt benefit that may be funded through an allocation of Net Distributable Cash as further described in Section 4.703(a) of this Ordinance.

(i) **“Net Income”** means total income from all sources minus operating costs and any other monetary obligations of the business from which the income is derived.

(j) **“Net Distributable Cash”** means Non-gaming Income received by the Tribal Government from a Non-gaming Enterprise, a settlement agreement or other income source.

(k) **“Non-gaming Enterprise”** means any corporation, partnership, limited liability company, enterprise or lawfully organized joint venture, business or association wholly or partially owned by the Band, other than the Gaming Enterprise.

(l) **“Non-gaming Income”** means Net Income from whatever source derived, including, but not limited to, income from a Non-gaming Enterprise, and expressly excluding income from a Gaming Enterprise, a lawfully collected tribal tax, federal funds received by the Band pursuant to any federal contract with the United States government or any federal or state funds otherwise restricted from per capita distribution to tribal members.

(m) **“Non-gaming Per Capita Payment” or “Non-gaming 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.

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(n) **“Non-gaming 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 Non-gaming Per Capita Payments.

(o) **“Non-gaming 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 Non-gaming Income. No other funds shall be commingled into the Non-gaming Tribal Allocation Account.

(p) **“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. The Rincon Business Committee is also referred to in this Ordinance as the Council.

(q) **“Treasurer”** shall mean the official appointed by the Business Committee pursuant to Section 3(a) of the Articles of Association Covering Procedures for Administering the Affairs of the Rincon Band of San Luiseño Mission Indians, California.

(r) **“Tribal Member”** means any enrolled member of the Band.

§ 4.703 **ALLOCATION PLAN**

(a) **Dedication of Net Distributable Cash.** Subject to receipt of Non-gaming Income, the Band intends to dedicate Net Distributable Cash to the following purposes in approximately the percentages set forth in this Section 4.703.

The percentage of Net Distributable Cash from Non-gaming Income allocated for distribution in the categories set forth below shall be determined by the Business Committee based upon the best interest of the Band, the anticipated Non-gaming Income to be distributed as Net Distributable Cash in the upcoming year, and the needs of the tribal government. The Treasurer 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 from Non-gaming Income 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.

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(1) Tribal Government Administration and Governmental Operations. Not less than Zero Percent (0%) and not more than Twenty-five Percent (25%) of Net Distributable Cash from Non-gaming Income shall be used to fund Tribal government administration and governmental operations;

(2) Tribal Economic Development. Not less than Zero Percent (0%) and not more than Twenty-five Percent (25%) of Net Distributable Cash from Non-gaming Income shall be used for tribal economic development, including but not limited to developing and/or expanding on- or off-reservation Tribal business enterprises, and investments in land, business opportunities, goods and services that may provide employment and financial returns for the Band and its members;

(3) Non-gaming Per Capita Distributions To Eligible Tribal Members. Not less than Zero Percent (0%) and not more than Thirty Percent (30%) of Net Distributable Cash from Non-gaming Income shall be paid as Non-gaming Per Capita Distributions to Eligible Tribal Members.

(4) Reserves; Contingency. Not less than Zero Percent (0%) and not more than Twenty Percent (20%) of Net Distributable Cash from Non-gaming Income shall be Reserves and or Contingency/Borrowing Trust, which shall be determined in the sole discretion of the Rincon Business Committee.

(5) General Welfare Programs. Not less than Zero Percent (0%) and not more than Fifty Percent (50%) of Net Distributable Cash shall be used for General Welfare Programs, including, but not limited to, social and general welfare purposes, medical assistance, education, elder/senior support, housing, utilities or other similar, specifically identified needs that may be established from time to time by the Band pursuant to the Tribal General Welfare Exclusion Act of 2013 (codified as Internal Revenue Code Section 139E), including Revenue Procedure 2014-35 and any subsequent Internal Revenue Service guidance under the Internal Revenue Code Section 139E for treatment as a tax exempt benefit.

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§ 4.704 **ANNUAL ACCOUNTING**

On or before the end of the third quarter of every year, the Treasurer of the Band shall provide to the Rincon Business Committee's delegated representatives:

(a) A complete statement of any Non-gaming Income paid to the Band in the preceding year;

(b) A complete financial statement of the operation of Non-gaming Enterprises for the preceding year.

(c) The schedule of Net Distributable Cash from Non-gaming Income for the preceding year.

(d) A check in the amount of the Net Distributable Cash from Non-gaming Income with the schedule of Net Distributable Cash from Non-gaming Income.

§ 4.705 **DEPOSIT**

Upon receipt of the Net Distributable Cash from Non-gaming Income, the Rincon Business Committee shall immediately deposit those funds in the Tribal Allocation Account(s).

§ 4.706 **WITHDRAWAL AND ACCOUNTING**

The Rincon Business Committee shall ensure that for each annual period of disbursement, the appropriate percentages of such Net Distributable Cash from Non-gaming Income are earmarked and set aside for the expenditures described in Section 4.703 (a) (1) – (4) above.

§ 4.707 **TIME OF NON-GAMING PER CAPITA DISTRIBUTION**

Non-gaming Per Capita Distribution shall be made in one lump sum payment no later than the last day of the fourth (4th) quarter each calendar year.

§ 4.708 **ELIGIBILITY FOR NON-GAMING PER CAPITA PAYMENTS**

(a) **Adult Members.** Every living person who is an enrolled member in Good Standing of the Band and who has attained the age of twenty-one (21) on or before

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the date of the Non-gaming Per Capita Distribution is eligible to receive a full Non-gaming Per Capita Payment, unless:

- (1) That person relinquishes their Tribal Membership pursuant to the Band's relinquishment procedures. Such person shall not receive a Non-gaming Per Capita Payment for the Pay Period in which they relinquished their Membership; or
- (2) That person is deceased prior to the date of the Non-gaming Per Capita Payment, in which case no payment shall be due to that person's estate or heirs.
- (3) That person is under the age of 25 and has not obtained a high school diploma, GED certificate, or the functional equivalent thereof.
- (4) That person is incarcerated for a period of years more than one (1) year. That member's Non-gaming Per Capita payments during the period of incarceration will be subject to forfeiture.
- (5) The Business Committee determines that the person is not a member in Good Standing as defined above in Section 4.702(f).

§ 4.709 **CALCULATION AND DISBURSEMENT OF PER CAPITA PAYMENTS**

(a) **Equal Payment.** The percentage of Net Distributable Cash from Non-gaming Income devoted to Non-gaming Per Capita Payments pursuant to Section 4.703 above shall be divided such that every Eligible Tribal Member receives an equal Non-gaming Per Capita Payment, share and share alike. Provided however that Eligible Tribal Members are not entitled to those payments described in Section 4.709(a) of this Ordinance until Net Distributable Cash from Non-gaming Income has been received by the Tribal Government and deposited in the Tribal Allocation Account.

(b) **Garnishment of Payments.** Any garnishment of Non-gaming Per Capita Payments as set forth below shall be in compliance with all applicable Tribal laws and ordinances, and at a minimum shall include a written notice as to why said payment is subject to garnishment and an adjusted statement of account. Non-gaming Per Capita Payments may be garnished for any of the reasons set forth in this Section 4.709(b) as provided below:

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- (1) Fines owed to the Band for violations of Tribal laws, ordinances, resolutions or policies;
- (2) Court ordered child support.

(c) **Form of Payment.** Each Non-gaming 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 4.709(d) below). If paid by check it shall be mailed to the latest known address of the Tribal Member.

(d) **Payment to Incompetent Members.** Non-gaming Per Capita Payments made on behalf of legally incompetent Tribal Members shall be made payable to the court appointed legal guardian, guardian ad litem, executor, conservator or person holding a valid power of attorney to act in the stead of such incompetent Tribal Member. The court appointed legal guardian, guardian ad litem, executor, conservator or person holding a valid power of attorney to act in the stead of such incompetent Tribal Member shall maintain records and, upon request from the Council shall account to the Council in sufficient detail to demonstrate the funds disbursed were expended as required for the maintenance of the incompetent Tribal member. A decision made by the Tribal Council to require submittal of receipts before or after per capita disbursements are made on behalf of an incompetent member may be appealed to the Tribal Court. If a court of competent jurisdiction determines that the tribal member is no longer incompetent, the member must notify the Council by providing a certified copy of the court order.

(e) **Reporting to IRS.** The Band shall comply with all requirements of the Internal Revenue Service pertaining to the payment of Non-gaming Per Capita Payments, including, to the extent required by applicable law or IRS regulations, withholding federal income tax from Non-gaming Per Capita Payments in an appropriate amount. A notice that Non-gaming Per Capita Payments are subject to federal income tax shall be furnished to each Tribal Member with each Non-gaming 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 Non-gaming 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 Non-gaming 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 Non-gaming Per Capita Payments shall be withheld.

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(f) Appeals. Any Eligible Tribal Member that has his or her Non-gaming 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. The Business Committee's decision may be appealed to the Tribal Court.

§ 4.710 MISCELLANEOUS

(a) 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.

(b) No Waiver of Immunity. Nothing in this Ordinance shall provide or be interpreted to provide a waiver of the sovereign immunity from suit of the Band, its enterprises or that of its governmental or corporate officers, agents, and employees for any purpose.

(c) Effective Date. This Ordinance shall become effective on the first day of the first month of 2014.