

NATIONAL  
INDIAN  
GAMING  
COMMISSION

SEP 29 1997

Andrew Lorentine, Executive Director  
Tohono O'Odham Nation  
Gaming Office  
2731 East Elvira, Suite 141  
Tucson, AZ 85706

Re: Amendments to Gaming Ordinance of Tohono O'Odham Nation

Dear Mr. Lorentine:

This letter is in response to your request to review and approve the amendments to the tribal gaming ordinance of the Tohono O'Odham Nation (Tribe). The amendments to the ordinance were adopted by the Tribe by Resolution No. 97-168 on May 19, 1997, and by Resolution No. 97-303 on July 23, 1997. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review amendments to ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations.

The amendment enacted by Resolution No. 97-168 amends the ordinance to allow for annual gaming facility license fees based upon the number of gaming devices in operation at each facility. This change was made to recognize that smaller operations should be required to pay smaller fees than the larger operations. This amendment does not implicate the IGRA and is therefore not subject to our approval.

The amendment enacted by Resolution No. 97-303 amends the ordinance to allow for per capita payments from available revenues received from the Tribe's gaming operations. The IGRA, at § 2710(b)(3), provides that the Tribe may not make per capita distributions without a plan approved by the Secretary of the Interior. Prior to obtaining such approval, the Tribe must show that the per capita distribution is consistent with the laws of the Tribe. To the extent that the ordinance amendment

verifies that the Tribe has approved per capita distribution under its laws, the amendment is approved by the Chairman. As the Tribe is aware, it must still receive approval for its per capita distribution plan from the Secretary of the Interior before making any distributions.

Thank you for submitting the amendments to the tribal gaming ordinance of the Tohono O'Odham Tribe. The NIGC staff and I look forward to working with you and the Tribe in the future.

Sincerely yours,

/s/

Tadd M. Johnson  
Chairman

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Amending Section 1104 of the Ordinance for the Regulation of  
Gaming Activities Within the Tohono O'odham Nation)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8 007

**RESOLUTION NO. 97-168**

**WHEREAS, the Tohono O'odham Nation adopted the "Ordinance for the Regulation of Gaming Activities Within the Tohono O'odham Nation" (Gaming Ordinance) by Resolution Number 93-296 on August 16, 1993; and**

**Whereas, Chapter 16, Section 1601 of the Gaming Ordinance provides that the Gaming Ordinance may be amended by action of the Legislative Council; and**

**Whereas, Chapter 11 provides for the licensing requirements for gaming facilities including the payment of fees; and**

**WHEREAS, the current Gaming Facility License fee is three hundred thousand dollars (\$300,000) per year, based on gaming facilities having five hundred (500) gaming devices; and**

**WHEREAS, an annual fee of \$300,000 may be a financial burden to small gaming facilities with fewer than 500 gaming devices; and**

**WHEREAS, the Gaming Office of the Tohono O'odham Nation recommends that Sections 1104(a) and (b) be amended to address required fee payments of Gaming Facilities with less than 500 gaming devices.**

**NOW THEREFORE, BE IT RESOLVED THAT:**

- 1. Section 1104 of the Tohono O'odham Gaming Ordinance is hereby amended as follows:**

**RESOLUTION NO. 97-168**

**(Amending Section 1104 of the Ordinance for the Regulation of Gaming Activities Within the Tohono O'odham Nation)**

**Page 2 of 5**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Section 1104. Fees**

**The Gaming Office shall collect the following fees in connection with the processing of applications and the issuance of licenses:**

**(a) Gaming Facility License:**

- 1. Annual fee of \$300,000.00 for gaming facilities with 400 to 500 gaming devices in operation.**
- 2. Annual fee of \$240,000.00 for gaming facilities with 300 to 400 gaming devices in operation.**
- 3. Annual fee of \$180,000.00 for gaming facilities with 200 to 300 gaming devices in operation.**
- 4. Annual fee of \$120,000.00 for gaming facilities with 100 to 200 gaming devices in operation.**
- 5. Annual fee of \$60,000.00 for gaming facilities with 100 or less gaming devices in operation.**

**(b) The annual fee shall be payable in equal quarterly installments, the first of which shall be payable within 15 days of receipt of notice of approval of the Gaming Facility License. The remaining installments shall be paid on the first day of each**

**RESOLUTION NO. 97-168****(Amending Section 1104 of the Ordinance for the Regulation of Gaming Activities Within the Tohono O'odham Nation)****Page 3 of 5**

1  
2  
3 succeeding calendar quarter calculated at the  
4 rate imposed under subsection (a) then in effect  
5 for the number of gaming devices authorized for  
6 operation on the date each quarterly installment  
7 is due.  
8

9  
10 2. The Gaming Ordinance shall be reprinted in its  
11 entirety, bearing Ordinance Number 93-01 and showing  
12 a revision date of May 1997.

13 3. The Executive Director of the Gaming Office is  
14 authorized and directed to take all necessary and  
15 reasonable steps to obtain approval of the amendment  
16 to Section 1104 by the National Indian Gaming  
17 Commission.  
18  
19

20 **BE IT FINALLY RESOLVED** by the Legislative Council that this resolution  
21 hereby rescinds Resolution No. 97-150.

22 The foregoing Resolution was passed by the Tohono O'Odham Legislative  
23 Council on the 9TH day of MAY, 1997 at a meeting at which a quorum was  
24 present with a vote of 1315.0 FOR; -0- AGAINST; -0- NOT VOTING; and 561  
25 [10] ABSENT, pursuant to the powers vested in the Council by Article VI,  
26 Section 1(c) of the Constitution of the Tohono O'Odham Nation, adopted  
27 by the Tohono O'Odham Nation on January 18, 1986; and approved by the  
28 Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March  
6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

**RESOLUTION NO. 97-168**

**(Amending Section 1104 of the Ordinance for the Regulation of Gaming Activities Within the Tohono O'odham Nation)**

**Page 4 of 5**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**



**Dennis Ramon, Legislative Chairman**

15<sup>th</sup> day of May, 1997

**ATTEST:**

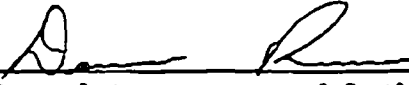


**Frances G. Antone, Legislative Secretary**

15<sup>th</sup> day of May, 1997.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 15<sup>th</sup> day of May, 1997 at 4:36 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**



**Dennis Ramon, Legislative Chairman**

**RESOLUTION NO. 97-168**  
**(Amending Section 1104 of the Ordinance for the Regulation of**  
**Gaming Activities Within the Tohono O'odham Nation)**

Page 5 of 5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPROVED

on the 19<sup>th</sup> day of May, 1997

DISAPPROVED

at 4:02 o'clock, P.M.



**EDWARD D. MANUEL, Chairman**  
**TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 19<sup>th</sup> day of

May, 1997, at 4:15 o'clock, P.M.

Francis G. Antone

**Francis G. Antone, Legislative Secretary**

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Enacting Amendment to Gaming Ordinance Authorizing Expenditure  
of Gaming Revenue for Per Capita Payments)**

AUG 19 1997

RESOLUTION NO. 97-303

1  
2  
3  
4 **WHEREAS, on June 28, 1997 the voters of the Tohono O'odham Nation**  
5 **(the "Nation") approved the "O'odham Voice on use of**  
6 **Gaming Revenues" Initiative, No. IN-01-97 (the "Initiative"),**  
7 **by a majority of votes cast; and**

8  
9 **WHEREAS, the Initiative provides for a "one time" \$2,000 per capita**  
10 **payment to all enrolled members of the Nation living as of**  
11 **the date of passage of the Initiative, and a \$2,000 per capita**  
12 **payment to members every two years thereafter provided**  
13 **"Gaming Revenues are available"; and**

14  
15 **WHEREAS, the Initiative provides that the per capita payments shall be**  
16 **made from available revenues received from the Nation's**  
17 **gaming operations; and**

18  
19 **WHEREAS, pursuant to Resolution 93-296, the Nation enacted an**  
20 **Ordinance for the Regulation of Gaming Activities within the**  
21 **Tohono O'odham Nation (the "Gaming Ordinance"), as**  
22 **amended by Resolution 97-168; and**

23  
24 **WHEREAS, Section 302 of the Ordinance prescribes the permissible**  
25 **categories for expenditure of revenues from Class II and**  
26 **Class III gaming activities (the "Gaming Revenues"); and**  
27

28



**RESOLUTION NO. 97-303**

**(Enacting Amendment to Gaming Ordinance Authorizing Expenditure of Gaming Revenue for Per Capita Payments)**

**Page 2 of 6**

1  
2  
3 **WHEREAS, Section 302 of the Gaming Ordinance does not authorize**  
4 **expenditure of Gaming Revenues for per capita payments;**  
5 **and**

6  
7 **WHEREAS, the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2710 (b) (3)**  
8 **and (d) (1) (A) (ii) , prohibits the Nation from using Gaming**  
9 **Revenues to make per capita unless the Secretary of the**  
10 **Interior (the "Secretary") has approved a revenue allocation**  
11 **plan which prescribes the terms and conditions for such**  
12 **payments; and**

13  
14 **WHEREAS, on December 21, 1992 the Secretary, acting through the**  
15 **Assistant Secretary for Indian Affairs, issued Guidelines to**  
16 **Govern the Review and Approval of Per Capita Distribution**  
17 **Plans (the "Guidelines") which set forth the criteria which**  
18 **must be met to secure the Secretarial approval required by**  
19 **the Indian Gaming Regulatory Act; and**

20  
21  
22 **WHEREAS, one of the preconditions for approval is a determination**  
23 **that the Per Capita Distribution Plan (the "Plan"), when**  
24 **submitted by the Nation, is consistent with the laws of the**  
25 **Nation; and**

26  
27 **WHEREAS, satisfaction of this criterion requires that the Nation amend**  
28

**RESOLUTION NO. 97-303**

**(Enacting Amendment to Gaming Ordinance Authorizing Expenditure of Gaming Revenue for Per Capita Payments)**

**Page 3 of 6**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**the Gaming Ordinance, prior to submission of its Plan, to allow expenditure of Gaming Revenues for per capita payments; and**

**WHEREAS, the Tohono O' odham Legislative Council and the Chairman of the Nation are committed to use their best efforts to implement the per capita distribution proposal as soon as reasonably possible and in a manner consistent with applicable law.**

**NOW, THEREFORE, BE IT RESOLVED THAT:**

- 1. The Tohono O'odham Legislative Council hereby amends Section 302 of the Gaming Ordinance, by inserting a semicolon in place of the period at the end of subsection (d) and adding thereto a new subsection (e) to read as amended:**

**Section 302. Use of Net Revenues. The net revenues received by the Nation from all Gaming Activities shall be utilized exclusively for one or more of the following purposes:**

- (a) to fund government operations or programs of the Nation or Districts;**

**RESOLUTION NO. 97-303**

**(Enacting Amendment to Gaming Ordinance Authorizing Expenditure of Gaming Revenue for Per Capita Payments)**

**Page 4 of 6**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- (b) to provide for the general welfare of the Nation and its members;**
- (c) to promote the Nation's economic development;**
- (d) to benefit charitable organizations providing services within the Nation;**
- (e) to make per capita payments to enrolled members of the Nation, subject to compliance with all applicable laws of the United States and the Nation.**

**2. The Executive Director of the Gaming Office is authorized and directed to submit this amendment to the Gaming Ordinance to the National Indian Gaming Commission for approval, and to take all other reasonable and necessary steps for implementation of this Resolution.**

**3. The Gaming Ordinance shall be reprinted in its entirety bearing Ordinance Number 93-01 and showing a revision date of July 1997.**

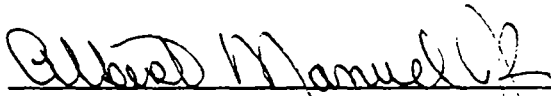
**RESOLUTION NO. 97-303**

**(Enacting Amendment to Gaming Ordinance Authorizing Expenditure of Gaming Revenue for Per Capita Payments)**

**Page 5 of 6**

The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 21ST day of JULY, 1997 at a meeting at which a quorum was present with a vote of 1,620.0 FOR; -0- AGAINST; -0- NOT VOTING; and 307.0 [08] ABSENT, pursuant to the powers vested in the Council by Section 1(c) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

  
For **Dennis Ramon, Legislative Chairman**  
22<sup>nd</sup> day of July, 1997

**ATTEST:**

  
**Julianna Saraficio, Acting Legislative Secretary**

20<sup>th</sup> day of July, 1997.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 22<sup>nd</sup> day of July, 1997 at 5:36 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

RESOLUTION NO. 97-303

(Enacting Amendment to Gaming Ordinance Authorizing Expenditure of Gaming Revenue for Per Capita Payments)

Page 6 of 6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
For **Dennis Ramon, Legislative Chairman**

APPROVED

on the 23<sup>rd</sup> day of July, 1997

DISAPPROVED

at 8:50 o'clock, A.M.

  
**EDWARD D. MANUEL, Chairman**  
**TOHONO O'ODHAM NATION**

Returned to the Legislative Secretary on the 23<sup>rd</sup> day of

July, 1997, at 9:08 o'clock, A.M.

  
**Julianna Saraficio, Acting Legislative Secretary**