



JUN 12 1998

Honorable Audrey Kohlen
President, Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, Minnesota 55089

Dear Ms. Kohlen:

This letter responds to your request to review and approve the amendment to the Prairie Island Indian Community's tribal gaming ordinance submitted on March 26, 1998. The amendment does not require approval by the National Indian Gaming Commission (NIGC) because the amendment addresses net revenues allocation.

Under the Indian Gaming Regulatory Act (IGRA) and the regulations of the NIGC, the Chairman is directed to review ordinances and amendments 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. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval.

Under the IGRA, 25 U.S.C. § 2710 (b)(3)(B), a plan to allocate revenues must be approved by the Secretary of the Interior. By Resolution 98-3-25-37, we have been advised that the Prairie Island's revenue plan has been and/or submitted to the Bureau of Indian Affairs for approval. Although the NIGC does not approve all amendments to tribal gaming ordinances, we do require tribes to submit to the NIGC all such amendments.

Thank you for submitting the Prairie Island Indian Community's amendment for review. If you have questions or require further assistance, please contact Ms. Frances Fragua at (202) 632-7003.

Sincerely yours,

A handwritten signature in cursive script that reads "Tadd M. Johnson".

Tadd M. Johnson
Chairman

Handwritten initials "Bud" in cursive script, positioned to the right of the typed name.

cc: Robert Grey Eagle, General Counsel

**PRAIRIE ISLAND INDIAN COMMUNITY
IN THE
STATE OF MINNESOTA**

GAMING REVENUE ALLOCATION ORDINANCE
[Revised 5th]

Ordinance Number 98-3-25-37

MAR 27 1998

Section 100. Repeal of Inconsistent Legislation:

Notwithstanding any previously applicable or inconsistent provisions of tribal law which are hereby repealed and rescinded, this Ordinance shall govern the distribution of available net revenues from tribally owned gaming establishments including per capita distribution to qualified Community members of the available proceeds of the gaming businesses of the Prairie Island Indian Community.

Section 101. Policy:

This Ordinance shall comply with the Indian Gaming Regulatory Act of 1988 [25 U.S.C. §§2701, et. seq.] and all other applicable federal law. The Prairie Island Indian Community shall use revenues generated by tribal gaming establishments primarily to strengthen the tribal government, tribal self-sufficiency and to support tribal economic development. All members of the Prairie Island Indian Community shall be entitled to share in Community gaming profits. The Community is committed to strengthening its Reservation community socially, economically, and culturally in its continuing efforts to realize its goal for Self-Determination. The Community retains the inherent sovereign right to determine the best interests of tribal members and to allocate its limited resources in a manner that best satisfies the needs of tribal members.

Section 102. Authority:

This Ordinance is enacted pursuant to authority detailed in the Prairie Island Indian Community in the State of Minnesota Constitution and Bylaws including but not limited to those powers detailed in Article V, Section 1(a), Article V, Section 1(c), Article V, Section 1(g), Article V, Section 1(i), Article V, Section 10 and all other applicable enumerated and reserved powers. The Ordinance is also enacted pursuant to the terms of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701, et. seq.

Section 103. Use of Tribal Gaming Net Revenues; Tribal Government Operations and Programs:

A. In order to provide supplemental funding for tribal operations, the Tribal Council hereby allocates henceforth, **TWENTY PERCENT (20%)** of net gaming business revenues to be paid into a tribal account called the “tribal operations fund.”

If it deems necessary, the Tribal Council shall have the authority to revise and **increase or decrease** the allocated percentage of net gaming business fund. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior or his agent.

B. The Tribal Council or its appointed agent shall receive budget reports from each tribal program thirty (30) days prior to the commencement of the fiscal year. The budget reports shall detail at a minimum; past year and expected revenues and revenue sources, expenditures including a detailed accounting for expenditures. The budget reports shall also include budget supplement requests to be funded by the “tribal operations fund.”

C. Tribal programs to submit budget reports under this section shall include: tribal administration, tribal court, finance department, legal department, Indian Child Welfare program, social services program, tribal health department, tribal maintenance, tribal commodity program, education program, elderly program, and other programs hereafter developed and added to this provision by amendment.

D. The Tribal Council shall within thirty (30) days from receiving all budget reports allocate those funds in the tribal operations fund by dividing the tribal operations fund on a percentage basis in divisions that shall be fair and best meet the budget supplement request submitted by each tribal program in light of projected gaming business revenues.

E. The Tribal Council shall devise and disseminate budget report requirements that detail what projected expenditures are allowed to be included in the supplement budget requests. The budget report requirement shall require tribal programs to consider those essential duties, services and responsibilities of tribal programs which cannot be dependent on projected, yet uncertain, gaming revenues; further, the budget report requirements shall require tribal programs to prioritize items included in its supplement budget request to insure essential duties, services and responsibilities will be met by all projected revenues derived from whatever source.

F. The Tribal Council or its appointed agent shall disburse those monies available out of the "tribal operations fund" pursuant to the Treasurer's division as devised pursuant to paragraph D herein. Such disbursements shall be made quarterly unless the Tribal Council adopts by resolution an alternative disbursement plan. Any disbursements made hereunder shall be received by the receiving program and handled in a manner consistent with the programs generally accepted accounting methods.

Section 104. Use of Tribal Gaming Business Net Revenues; General Tribal Welfare:

A. In order to provide supplemental funding for general community welfare, the Tribal Council hereby allocates henceforth, **TWO PERCENT (2%)** of net gaming business revenues to be paid into a tribal account called the Community welfare fund.

If it deems necessary, the Tribal Council shall have the authority to revise and increase the allocated percentage of net gaming business revenues paid into the community welfare fund by allocating a larger percentage to the fund. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior or his agent.

B. The Tribal Council or its delegated agent shall meet with all tribal social service related staff and consultants to consider the social service and general welfare needs of tribal members and to receive needs assessments and budget reports of any social service tribal program not included in Section 106 thirty (30) days prior to the commencement of the fiscal year. The needs assessments and budget reports shall detail at a minimum; past year and expected revenues and revenue sources, expenditures including a detailed accounting for expenditures. The budget reports shall also include budget supplement requests to be funded out of the community welfare fund.

The Tribal Council, or its delegated agent, shall consider charitable contribution requests under this section and shall make such contributions from funds available out of the "community welfare fund." The Tribal Council may show a preference to such charitable contribution requests that benefit tribal members or Indian people generally.

C. The Tribal Council shall within thirty (30) days from receiving all needs assessments and budget reports under this section allocate those funds in the general welfare fund by dividing the general welfare fund on a percentage basis in divisions that shall be fair and best meet the budget supplement requests submitted by each tribal program and/or on behalf of specific tribal welfare needs in light of projected gaming business revenues.

D. The Tribal Council shall devise and disseminate to tribal program personnel requirements for needs assessments and budget report that detail what projected expenditures are allowed to be included in the supplement budget requests. The budget report requirement shall require tribal programs/specific tribal welfare needs to consider those essential duties, services and responsibilities of tribal programs/specific tribal welfare needs which cannot be dependent on projected, yet uncertain, gaming revenues; further, the budget report requirements shall require tribal programs to prioritize items included in its supplement budget request to insure essential duties, services and responsibilities will be met by all projected revenues derived from whatever source.

Section 105. Use of Tribal Business Net Revenues, Tribal Economic Development:

A. In order to provide funding for tribal economic development, the Tribal Council hereby allocates henceforth, **FIVE PERCENT (5%)** of net gaming business revenues to be paid into a tribal account called the "Tribal Economic Development Fund."

If it deems necessary, the Tribal Council shall have the authority to revise and increase the allocated percentage of net gaming business revenues paid into the "Tribal Economic Development Fund" by allocating a larger percentage to the fund. Any revision of the allocated percentage herein shall be documented by a Tribal Council resolution, a copy of which shall be provided to the Secretary of the Interior or his agent.

B. The Tribal Council shall have the authority to utilize funds from the tribal economic development fund to fund general tribal economic development projects. The Tribal Council shall establish and/or maintain a process by which it considers tribal economic development proposals. Each tribal economic development proposal shall include projected revenue expenditures and a budget request.

Section 106. Use of Tribal Gaming Business Revenues; Local Government Revenue Sharing Fund.

A. In order to provide supplemental funding for local government revenue sharing grants, the Tribal Council hereby allocates henceforth, **TWO PERCENT (2%)** of net gaming business revenues to be paid into a tribal account called the "local government revenue sharing fund."

B. The Tribal Council shall have the authority to utilize the funds available in the local government revenue sharing fund to assist local, city and county governments in projects and programs that affect the Prairie Island Indian Community. The Tribal Council shall receive from or initiate proposals for projects or programs with local city or county governments, negotiate the terms of such project/program in light of available funds in the local government revenue sharing fund. It is a specific priority of the Tribe to expend monies pursuant to the terms of this section only if such expenditures are matched by local, city or county government funding, or funding from some source other than the Tribe.

Section 107. Use of Tribal Gaming Net Revenues: Individual Per Capita Payments:

A. In order to advance the personal health, safety and welfare of qualified tribal members, the Tribal Council hereby allocates henceforth, **SEVENTY-ONE PERCENT (71%)** of all net gaming business revenues shall be divided in the following manner: **FIFTY-EIGHT PERCENT (58%)** shall be divided into equal shares and paid to all adult enrolled members of the Prairie Island Indian Community over the age of eighteen (18) and **THIRTEEN PERCENT (13%)** shall be divided into equal shares and paid to all minor enrolled members of the Prairie Island Indian Community under the age of eighteen (18). For purposes of this Ordinance, “per capita payment” shall mean those payments made pursuant to the terms of this Ordinance to enrolled members out of revenues generated from tribal gaming businesses; no other commonly accepted or used definition of the term “per capita” affects the use of the term herein.

1. Uniform Monthly Per Capita Payment: Upon the majority vote of the Tribal Council, the per capita payment schedule for all persons entitled to receive such payments may be adjusted to provide for uniform monthly per capita payments. All monies of the stipulated monthly net proceeds of Tribal gaming businesses that are set aside for per capita payments in excess of the uniform monthly amount shall be deposited into a low-risk interest bearing reserve bank account, the principal and interest of which shall be available and shall be drawn upon to supplement individual per capita payments in any month or months during which the available proceeds do not permit distribution at the previously budgeted uniform amount. All monies, if any, remaining in the reserve account herein shall be distributed to all qualified Tribal members in equal payments near the end of the calendar year. Nothing in this section shall allow the Tribal Council to allocate more than the percentage allowed for herein for per capita payments.

2. Compulsory Payment of Per Capita Reserve. In no event shall the principal placed in the uniform payments per capita reserve account be held for more than twelve (12) calendar months from the date of deposit into the reserve. Interest on the per capita reserve may be retained or uniformly distributed hereunder at the discretion of the Tribal Council.

B. Qualification for Per Capita Payments. All enrolled members, including minors, of the Prairie Island Indian Community shall be entitled to receive an equal share of the specific percentage allocated in this section for per capita payments to them.

C. The Prairie Island Indian Community Tribal Council has the inherent authority to place into trust the per capita payments, or any portion or percentage thereof, of any minor or individual who is declared incompetent by a court or competent jurisdiction.

1. Placement Into Trust for Minors and Legal Incompetent:

a. Placement into Trust for Minors: The Tribal Council shall place into trust the per capita payment of every minor into a trust to be entitled the "Irrevocable Minor's Trust of the Prairie Island Indian Community in the State of Minnesota" and shall be administered by an independent institutional trustee. The principal and interest shall be disbursed to the parent or legal guardian of a minor or the minor in accordance with the trust document that shall allow for the following distributions:

Distributions Directly to Minor as Follows:

Twenty-five percent (25%) of the principal at age 18;
Twenty-five percent (25%) of the principal at age 21;
Twenty-five percent (25%) of the principal at age 25;
Twenty-five percent (25%) of the principal at age 31; and
One hundred percent (100%) of the net interest income at age 35.

Distributions to Parent or Legal Guardian as Follows:

The trust document shall also allow for "special needs" distribution to the parent or legal guardian of a minor on a "clear and convincing" standard, for the health, welfare and education of the minor when all other resources have been exhausted including federal, state, local and tribal assistance; as well as family and individual resources available to minor have been exhausted. A parent or legal guardian who receives a distribution from the minor's trust for a minor's "special needs" shall fully account to the Tribal Council or their agent for all amounts distributed to them for the minor.

b. Placement into Trust for Legal Incompetent: The Tribal Council will place into trust the per capita payment of any individual declared legally incompetent upon a Prairie Island Indian Community Tribal Court Order, an Order of any other court of competent jurisdiction or the petition of at least two qualified enrolled members, one of which must be a family member of the person whose per capita payment is being requested to be placed into trust. The Tribal Council or its appointed agent shall conduct hearings as it sees fit to gather testimony and evidence as to the reasons petitioners feel it should place into trust the per capita payments of the individual declared incompetent. The Tribal Council or its appropriate agent retains the authority to place into trust any per capita payment of any individual declared incompetent before holding a hearing, however, the Tribal Council or its appointed agent must conduct a hearing and make a decision thereafter within sixty (60) days from the date it has placed into trust the per capita payment. The per capita payments of that individual shall be placed in trust in a low-risk interest bearing bank account until that individual is declared legally competent.

2. Authority to Distribute Living Allowance: The Tribal Council or its appointed agent shall consider paying a monthly living allowance from the proceeds of any per capita payment placed into trust for an individual declared legally incompetent upon the petition of the legal guardian of the individual declared legally incompetent. Such petition shall include a detailed budget of monies necessary for the health, education and welfare of the individual declared legally incompetent. The legal guardian of the individual declared legally incompetent must submit an accounting to document that the funds received were used for the health, welfare and education of the individual declared legally incompetent.

3. Account Statements of Trust Account: The Tribal Council or its appointed agent shall make available a monthly statement of any monies placed into trust for every minor and each individual declared incompetent to the legal guardian of such person.

4. Power of Tribal Council to Delegate Authority: The Prairie Island Indian Community Tribal Council has the inherent power to delegate authority by making determinations regarding the per capita payments to minors or persons declared incompetent. It shall be up to the Tribal Council to determine to whom they will delegate this authority, if to anyone. Any such appointment of an agent with delegated authority shall be documented by Tribal Council resolution.

5. Right of Judicial Review: Any qualified enrolled member adversely affected by this paragraph shall have the right of judicial review by bringing an action in Tribal Court to seek review of such adverse determination. A final decision of the Tribal Court shall be binding. The Tribal Council hereby waives its immunity from suit for the limited purpose of allowing Tribal Court review of any adverse determination relating to the placement into trust of per capita payments.

D. Any person enrolling in the Prairie Island Indian Community shall not be entitled to any back payments of per capita proceeds. Per capita payments shall commence on the date the enrollment committee issues a confirmation of enrollment and shall not be retroactive. The first per capita payment to a new member shall be on the first date of a regularly scheduled payment after her or his enrollment is confirmed.

The Tribal Council shall insure that notification of the application of federal tax laws to tribal per capita payments be made when such payments are made. The Tribal Administration shall also implement a procedure by which qualified enrolled members who receive per capita payments can have applicable taxes automatically deducted from per capita payments. The Tribal Administration shall include in the notice of the application of federal tax laws a notice of the existence of the withholding procedure.

Section 108. Severability:

If any section of any part of this Ordinance or the application thereof to any party, person or entity or, in any circumstances, shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or by the Department of the Interior, the remainder of the part or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be invalid.

Section 109. No Waiver of Sovereign Immunity:

Nothing in this Ordinance shall mean or be interpreted to provide a waiver of sovereign immunity from suit of the Tribe, or any of its governmental officers and/or agents, except to the limited extent such waiver is explicitly expressed herein.

Section 110. Amendment or Repeal of Ordinance:

This Ordinance, and any word, provision, part thereof may be amended or repealed only by a majority vote of the Tribal Council in regular session.