PER CAPITA ORDINANCE

of the
HOOPA VALLEY TRIBE
Hoopa Valley Indian Reservation

Title 40

Ordinance No: 5-96

Date Approved: June 15, 2004

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe in California, by the authority of Article V, Section 1 of the Constitution and Bylaws of the Tribe as approved on August 18, 1972, by the Commissioners of Indian Affairs and on October 31, 1988, by Congress; and

WHEREAS, the Council is authorized by Article IX, Section (c), of the Constitution and By-laws to "collect and expend any Hoopa Valley Tribal funds within the exclusive control of the tribe and to recommend the expenditure of any other tribal funds"; and

WHEREAS, the funds requested to be used for these per capita payments do not involve funds transferred pursuant to Section 4(c) of Public Law 100-580.

NOW, THEREFORE, BE IT RESOLVED that the following Ordinance governing per capita payments to members of the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Tribal Council.

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SECTION 1. PURPOSE

The purpose of this Ordinance is to make the process of issuing per capita payments to Tribal members fair, equal and fiscally responsible, to set out standards that balance and harmonize the objective of the Tribal government to offer services, seek economic opportunities and protect and enhance the rights and natural resources of Tribal members, with the objective of the Tribal government to assure that Tribal members receive sufficient financial support to assist them in caring for their children and grandchildren and for whatever their requirements may be from time to time. This Ordinance is not intended, nor shall it be so interpreted, to create a right to any specific Tribal government service or to create a right to any specified payment to Tribal members.

SECTION 2. DEFINITIONS

2.1 "Council" shall mean the Hoopa Valley Tribal Council.

2.2 "Cut-off date" shall mean that date before each per capita payment used to determine eligibility to receive the payment and which shall fall on the Friday before each Wednesday payment. To be eligible for a per capita payment, a person must be alive and enrolled by 11:59 p.m. on the Friday before the Wednesday payment.

2.3 "Emancipated minor" shall mean a person under eighteen (18) years of age who is or has been married, who is on active duty with the armed forces of the U.S., or who has received a declaration of emancipation as defined by the California Family Code, Section 7122.

2.4 "Enrolled Tribal member" shall mean any living member of the Hoopa Valley Tribe whose name is lawfully placed on the Tribal roll, in accordance with Title 9 of the Hoopa Valley Tribal Code.

2.5 "Foster parent" shall mean that individual assigned the temporary legal custody of a minor child by court action, including the right to the care, custody and control of the child and the duty to provide, among other things, food, clothing and shelter.

2.6 "Guardian" shall mean that individual assigned the legal custody of a minor child, either by court action or agreement of the natural parents, including the right to the care, custody and control of the child and the duty to provide, among other things, food, clothing and shelter.

2.7 "Individual Indian Money Account" or "IIM Account" shall mean those interest-bearing accounts administered by the Bureau of Indian Affairs, pursuant to 25 C.F.R. Section 115.

2.8 "Married" shall mean being in the state of legal matrimony as recognized by the written laws of the Hoopa Valley Tribe or a State.

2.9 "Minor's residency" shall mean that residence where the minor has been living for at least three (3) consecutive months prior to the per capita payment date.

2.10 "Parent" shall mean the biological parent, the legal parent, or the adoptive parent of a minor child.

2.11 "Per Capita Administrator" shall mean that person employed by the Tribal Council to administer the per capita payments.

2.12 "Proof of residency" shall mean that evidence which may support a claim of residency and which shall include the affidavit of a custodial parent or guardian and one of the following items: a second supporting affidavit from a family member or friend, evidence of the receipt of welfare benefits, a court order, a letter from a social services agency, or other items as may be determined acceptable by the Per Capita Administrator.

2.13 "Restricted portion" shall mean that portion of a per capita payment that is required by this Ordinance to be deposited in an IIM Account.

2.14 "Unrestricted portion" shall mean that portion of a per capita payment that is not required by this Ordinance to be deposited in an IIM Account.

2.15 "Trust account" shall mean that account as defined in 25 U.S.C. Section 162a.

SECTION 3. ELIGIBILITY

Every enrolled member of the Hoopa Valley Tribe is entitled to receive per capita payments, provided that the Tribal member is alive and enrolled on the cut-off date, as set forth in Section 4.3.1(c) or Section 4.3.2(c).

SECTION 4. DISTRIBUTION

4.1 Dates. Per capita payments shall be made four times annually, on the second Wednesday of the months of March, June, August and December.

4.2 Debt Collection. As set forth in the Debt Collection Ordinance, Title 28, Section 28.11.2, Hoopa Valley Tribal Code, per capita payments are authorized to be applied toward any debt of any Tribal member to any Tribal entity; provided that:

4.2.1 The Tribal Entity has a completed Per Capita Withholding Form indicating the Tribal member's consent to the per capita withholding, pursuant to Title 28, Section 28.11.3, or the Tribal entity has mailed a Per Capita Withholding Form to the Tribal member at least thirty (30) days prior to the payment date, pursuant to Title 28, Section 28.11.5; and

4.2.2 The Official of the Tribal entity has submitted a list in Tribal roll number order to the Fiscal Department ten (10) business days prior to the Wednesday payment identifying those individuals whose per capita payments, or a portion thereof, will be withheld, including on that list the name, roll number, birthdate, and amount owed by each person.

4.3 Notice. Tribal members shall receive notice of per capita payments via the U.S. Mail by October 15 of each year. Subsequent notices of payments throughout the year shall be made in the Tribal Newsletter thirty (30) days prior to the payment date.

4.3.1 Annual Notice: The annual notice sent to each Tribal member at the start of each fiscal year shall include the following:

(a) The total amount to be distributed by the Tribe over the upcoming year, based on the calculations set forth in Section 5;

(b) The dates certain for the per capita payments in that year;

(c) The dates certain for the cut-off for eligibility for the per capita payments, which shall be 11:59 p.m. on the Friday prior to the Wednesday payment dates; and

(d) The dates certain for the deadline for submitting written notice to the Per Capita Administrator of (1) change in guardianship for minor children, (2) change of address for adults or emancipated minors, or (3) name changes, which shall be by 5:00 p.m. ten (10) business days prior to the Wednesday payment dates;

4.3.2 Published Notice: The notice provided to Tribal members in a special insert in the Tribal Newsletter thirty (30) days prior to a payment date shall include the following information as a reminder:

(a) The amount to be distributed for that payment, to be determined based on the number of members from the prior per capita payment;

(b) The date certain for that payment;

(c) The date certain for the cut-off for the eligibility for that per capita payment, which shall be 11:59 p.m. on the Friday prior to that Wednesday payment date; and

(d) The date certain for the deadline for submitting written notice to the Per Capita Administrator of (1) change in guardianship for minor children, (2) change of address for adults or emancipated minors, or (3) name changes, which shall be by 5:00 p.m. ten (10) business days prior to the Wednesday payment date.

4.4 Payment.

4.4.1 To Adults and Emancipated Minors: The per capita payment shall be made by the Tribe directly to each competent adult Tribal member whose current address is known to the Tribe, and to each competent minor Tribal member who has provided the Tribe with proof that he or she is an emancipated minor and whose current address is known to the Tribe.

4.4.2 To Adults and Emancipated Minors Whose Address is Unknown: If the current address for an adult Tribal member is unknown at the time of payment, the per capita payment shall be held by the Tribe as the Per Capita Administrator makes reasonable efforts to ascertain the member's current address. If no current address is determined within ten (10) business days after the date of the payment, the payment shall be sent to an IIM account created on behalf of the missing Tribal member. Subsequent per capita payments shall continue to be made to the same IIM account until a written change of address is submitted at least ten (10) business days prior to the subsequent per capita payment.

4.4.3 To Adults and Emancipated Minors Who Are Incarcerated: Unless an incarcerated Tribal member provides the Tribe with a power of attorney and a correct address or account in which to deposit his or her per capita payment within ten (10) days of the date of payment, the Tribe shall deposit that per capita payment into an IIM account. Subsequent per capita payments shall be made to the same IIM account until a written change of address is submitted at least ten (10) business days prior to the subsequent per capita payment.

4.4.4 To Adults Non Compos Mentis: The Tribe shall deposit into an IIM account the full amount of each per capita payment to be made to adult Tribal members who have been legally determined not competent to manage their own affairs.

4.4.5 To Unemancipated Minors in Foster Care: The Tribe shall deposit into an IIM account the full amount of each per capita payment to be made to an unemancipated minor in foster care, pursuant to a valid court order.

4.4.6 To All Other Unemancipated Minors: Nothing set forth below shall serve to limit the Tribal Council's ability to exercise its authority pursuant to other, duly enacted laws of the Hoopa Valley Indian Tribe.

4.4.6.1 For each per capita payment made to a minor Tribal member who has not demonstrated proof of emancipation, the Tribe shall deposit into an IIM account at least one-half of each payment of less than or equal to $1,500.00 and at least two-thirds of each payment of more than $1,500.00. The Tribe reserves the right to deposit any additional amount of the payment, up to and including the entire amount. This deposited money shall be held in trust in the IIM account and shall be administered by the BIA under applicable regulations. The money is not to be released until such minor reaches the age of eighteen (18) or otherwise becomes emancipated.

4.4.6.2 Where there is no dispute as to the minor's place of residence, the remaining unrestricted portion of each per capita payment to each unemancipated minor shall be paid, for the benefit of the minor, to the parent or guardian with whom the child resides. Unless requested otherwise, the payments shall be made in the following manner:

(a) If the parents are married and both parents are Tribal members, the payment shall be made to the father;

(b) If the parents are married and only one parent is a Tribal member, the payment shall be made to the Tribal member parent;

(c) If the parents are unmarried, the payment shall be made to the mother; and

(d) If the parent or guardian with whom the minor resides instructs the Tribe to transmit the unrestricted portion payment to the IIM account, the Tribe shall so transmit.

4.4.6.3 When there is a dispute as to the minor's place of residence, unrestricted portion payments shall be made as indicated:

(a) If the minor has been with the current parent or guardian for less than three (3) months, the Tribe shall make the unrestricted portion payment to the minor's IIM account.

(b) If the non-custodial parent alleges the minor has not been with the named custodial parent or a guardian for at least three (3) months and the custodial parent or guardian claims otherwise, the non-custodial parent or guardian must submit written notice of the residency dispute with the Per Capita Administrator ten (10) business days prior to the Wednesday payment. The Per Capita Administrator shall inform the custodial parent or guardian, who must then submit proof of residency to rebut the non-custodial parent's assertion. If proof of residency cannot be obtained within ten (10) business days after the Wednesday payment, the Tribe shall make the unrestricted portion payment to the minor's IIM account.

(c) If the minor is the subject of a case before the Hoopa Valley Tribal Court and involving the Hoopa Valley Tribe Division of Human Services, that Division shall advise the Per Capita Administrator of a change in the minor's guardianship so the payment may be placed in the minor's IIM account.

(d) If there is a pending private custody matter in either Tribal or State Court, either parent or a guardian may obtain a Tribal Court order indicating that the minor's residency is in dispute and ordering that the unrestricted portion payment be held by the Tribe, pursuant to Section 4.4.6, pending resolution of the case.

(e) If a dispute has arisen as to the identity of the parent or the guardian, the Tribe shall make the unrestricted portion payment to the IIM account of the minor child.

4.4.7 The Tribe shall not hold checks, except as provided above, unless ordered to do so by the Hoopa Valley Tribal Court. If so ordered, the Per Capita Administrator shall establish a custodial, interest-bearing account to hold such checks pending resolution of the dispute. Upon resolution, the Court shall order the transfer of the payment, including interest calculated to the date of transfer.

4.5 Minor Request. No unemancipated minor may request that his or her full per capita payment be sent to his or her IIM account.

4.6 Pick Up of Payments. No checks will be held at the Tribal Office for pick-up; all checks will be mailed.

4.7 High School Diploma/General Equivalency Requirement. No payment from an IIM account that has accumulated prior to a Tribal Member reaching the age of eighteen (18) shall be accessed, unless said Tribal member has graduated from high school or has earned a General Equivalency Diploma (GED). Such specific per capita trust funds shall be held in a specific per capita trust account. Upon graduation from high school or obtaining a GED, or when the person reaches the age of twenty-one (21) years old, said specific per capita trust funds held shall be paid to the Tribal member. It shall be the duty of each Tribal member between the ages of eighteen (18) and prior to twenty-one (21) years old to provide documented proof of graduation from high school or a GED to the per capita administrator in order to access the specific per capita trust account. A Tribal member that reaches the age of eighteen (18) shall receive regular quarterly per capita payments in accordance with this Title.

SECTION 5. AMOUNT OF PAYMENTS

5.1 Basis of Revenue. Per capita distributions shall be based upon the revenue earned in the fiscal year two (2) years prior; for example, the distribution for fiscal year 1997 shall be based on the revenue of fiscal year 1995, using the accrual method of accounting. The revenue for a single fiscal year shall be derived from the following accounts and activities:

stumpage payments received into the Trust account;
interest income on stumpage payments received into the Trust account;
royalty payments;
interest income on the Trust account;
interest income from the General Fund account;
miscellaneous payments (e.g., business, residential); and
fifteen percent (15%) of Tribal entities' net profits.

5.2 Computation. The total revenue derived from the sources listed in Section 5.1 establishes the Gross Revenue for determination of per capita payments. Forty percent (40%) of the Gross Revenue shall be distributed to the Hoopa Tribal membership, as set forth in Section 3 of this Ordinance. Payments shall be made in accordance with Section 4 of this Ordinance.

5.3 Other Revenue Sources. Distribution of funds from settlements, lawsuit awards, and various other sources will be determined by the Tribal Council on a case-by-case basis.

SECTION 6. FISCAL CONTROLS

6.1 Written Report Required. The Tribal Treasurer shall submit to the Tribal Council, by September 1 of each year, a written report, based on audited financial statements, indicating the total amount of revenue received for the fiscal year two (2) years prior, as set forth in Section 5.1, and the amount available for the per capita payments for the upcoming year.

6.2 Stop Payment, Reissuance of Per Capita Checks

6.2.1 Upon written or oral request by a Tribal member that a per capita check be reissued by reason of being lost, stolen, or otherwise made unavailable to that Tribal member, the Per Capita Administrator shall immediately request that the Chief Fiscal Officer initiate a stop payment order with the issuing bank. Provided that the issued check has not cleared the bank, the Chief Fiscal Officer shall initiate that order. Once the stop payment is completed, the Fiscal Department shall reissue a replacement per capita check no sooner than ten (10) business days following the issuance of that stop payment order on the original per capita check. After the required ten (10) day waiting period, the new per capita check shall be transmitted to the Tribal member or the individual to whom the check rightfully belongs.

6.2.2 In the event that the original per capita check is located or received after the stop payment order has issued, that original check shall immediately be returned to the Fiscal Department. If a check on which a stop payment order has been issued is cashed, the Fiscal Department reserves the right to hold the next per capita payment to cover any costs incurred by the Tribe and/or its entities as a result.

6.3 Voided Checks. Any per capita check more than six (6) months old shall be considered void. The Chief Fiscal Officer shall initiate the stop payment process immediately and deposit those funds into an IIM account created for that Tribal member.

6.4 Cashing of Checks. Neither the Tribal Council, the Tribal Chairman, nor any Tribal employee may authorize the cashing of any individual Tribal member's per capita check.

SECTION 7. TAX AND RESOURCES EXEMPTION

Pursuant to federal law, 25 U.S.C. Section 1407, none of the funds which are distributed per capita shall be subject to Federal or State income taxes, nor shall such funds, nor their availability, be considered as income or resources, nor otherwise

utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, 42 U.S.C.A. Section 301, et seq., or, except for per capita shares in excess of $2,000.00, any Federal or federally assisted program.

SECTION 8. APPEALS

A Tribal member or the parent or guardian of a minor Tribal member not satisfied with the application of this Ordinance may pursue his or her appeal through the Hoopa Valley Tribal Court, as provided in Title 2 of the Hoopa Valley Tribal Code. The Court's review shall be *de novo* and the Tribal member bringing the claim must prove the case by a preponderance of the evidence.

SECTION 9. EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Article IV, Section 3 of the Constitution and Bylaws.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that this is the complete text of the Per Capita Ordinance of the Hoopa Valley Tribe located on the Hoopa Valley Indian Reservation, as adopted by the Tribal Council on September 19, 1996 and amended by referendum vote on June.15, 2004. The Hoopa Valley Tribe held an election on the 15th day of June, 2004; and that these Amendments to the Per Capita Ordinance were adopted by a majority vote of those voting in the election; and that at least thirty percent (30%) of the registered voters voted in said election and that said Ordinance has not been rescinded or amended in any way. On August 19, 2004, the Tribal Council approved a resolution to correct the placement of the referendum language within this Per Capita Ordinance.

Dated this 19th day of August, 2004.

Clifford L. Marshall, Chairman
Hoopa Valley Tribal Council

ATTEST: Darcy A. Miller

Darcy A. Miller, Executive Secretary
Hoopa Valley Tribal Council