

TRIBAL CODE

CHAPTER 43

CHAPTER X: PER CAPITA DISTRIBUTION ORDINANCE

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ADDENDUM 1: PER CAPITA

- 43.10 Per Capita Payment Distribution Ordinance

HISTORY NOTE:

Current Ordinance

Chapter X added August 16, 1994, by referendum approval following authorization for referendum, Resolution No. 298(94), Bureau of Indian Affairs approval dated November 8, 1994.

Chapter X amended February 26, 1996, Resolution No. 63(96). Bureau of Indian Affairs approval dated October 25, 1996.

Amendments to Section 43.1004(1) deletion pertaining to relinquished members and Section 43.1007 amending Tribal authority to withhold any applicable federal taxes, and September 23, 1996, Resolution No. 368(96). Bureau of Indian Affairs approval dated October 25, 1996.

Chapter 43.10, Addendum #1 regarding Special One Time Per Capita Distribution on July 30, 1999 added May 24, 1999, Resolution No. 230(99). Bureau of Indian Affairs approval dated July 6, 1999.

Amendments to Section 43.1002(5) added and renumbering (6), (7), (8), (9), (10) and adopting Section 43.1006(2) and renumbering (3) added April 14, 2000, Resolution No. 173(00), June 26, 2000.

Amendments to Section 43.1003 regarding Appropriations and Applications of Tribal Gaming Revenues, Section 43.1003(1) regarding annual per capita payment, Section 43.1006 regarding Payments, adopted January 26, 2004, Resolution No. 16(04). Approval by National Indian Gaming Commission dated May 3, 2004.

Section 43.1003 (2), Resolution No. 10(09) adopted January 12, 2009 complied with IGRA and the regulations in 25 CFR Part 290 for allocations distributed during FY 2007. Bureau of Indian Affairs approval dated December 9, 2009.

Amendment to Section 43.1003 regarding the Tribe's Revenue Allocation Plan, Section 43.1003(2) regarding annual per capita payment, adopted October 25, 2010, Resolution No. 211(10).

Resolution No. 295(12) amends the Childrens Trust Fund Guidelines to state: Any CTF Request will be determined by a case by case basis by the Tribal Judge.

Amendment to Section 43.1003 regarding the Tribe's Revenue Allocation Plan, Section 43.1003(2) adopted November 23, 2015, Resolution No. 603(15). Bureau of Indian Affairs approval dated April 29, 2016.

## CHAPTER X: PER CAPITA DISTRIBUTION ORDINANCE

### 43.1001 STATEMENT OF POLICY.

In order to promote the general welfare of the Tribe and its members, this Ordinance is intended to provide for fair and equitable per capita distribution to duly enrolled tribal members of revenues appropriated by the Lac du Flambeau Tribal Council from gaming activities conducted by and on behalf of the Tribe. This Ordinance combines both the per capita plan and the revenue allocation plan of the Tribe.

### 43.1002 DEFINITIONS.

For purposes of this Ordinance:

(1) "Act" means the Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. §2701 et seq.

(2) "Children's Trust Funds" or "CTFs" shall mean the trust funds established under §43.1005 for all minor Members and legally incompetent adult Members eligible to receive per capita payments.

(3) "Council" means the duly elected Lac du Flambeau Tribal Council.

(4) "Members" means those persons, including otherwise eligible minor children and other legal incompetents, who are duly recognized as members of the Lac du Flambeau Tribe.

(5) "Need based public benefit program" means programs which use the amount of the applicant's monthly income as one factor in determining eligibility. *Definition added by Resolution No. 173(00) April 14, 2000.*

(6) "Net revenues" means gross revenues of tribal gaming activities less amounts paid out as, or paid for, prizes and total operating expenses including debt service but excluding management fees paid to a management contractor within the meaning of 25 U.S.C. §2711(c). *Section renumbered by Resolution No. 173(00) April 14, 2000.*

(7) "Ordinance" means this Per Capita Distribution Ordinance. Section renumbered by *Resolution No. 173(00) April 14, 2000.*

(8) "Revenue Allocation Plan" means the revenue allocation plan included in §43.1003 of this Ordinance providing a percentage allocation of uses of funds derived from tribal gaming operations. *Section renumbered by Resolution No. 173(00) April 14, 2000.*

(9) "State" means the state of Wisconsin. *Section renumbered by Resolution No. 173(00) April 14, 2000.*

(10) "Trustee" means a professional asset management firm with suitable expertise and discretion selected by the Lac du Flambeau Tribal Council. The Council shall only be empowered to select qualified financial institutions as Trustee. Such selection shall be limited to state and federally chartered banks, trust companies and investment brokerage firms which, at the time of engagement manage assets of five hundred million dollars or more. *Section renumbered by Resolution No. 173(00) April 14, 2000.*

43.1003 APPROPRIATIONS AND APPLICATION OF TRIBAL GAMING REVENUES.

Pursuant to 25 CFR § 290.12, the allocation of Tribal Gaming Revenues distributed when the Tribe makes a per capita payment (as required by 25 CFR § 290.6) shall be as follows:

CATEGORY	PERCENTAGE RANGE
Tribal Government Operations	30%---40%
General Welfare of the Tribe	40%---50%
Economic Development	5%---25%
Charitable Organizations	0%---5%
Local Government	0%---5%

Provided that the percentage breakdown of uses within the above Percentage Ranges shall total 100% of the allocation of Tribal Gaming Revenues for the fiscal year [pursuant to 25 CFR § 290.12(a)] in which compliance with the Revenue Allocation Plan in required by 25 CFR § 290. *Resolution No. 603(15)*

43.1004 MEMBERSHIP AND ELIGIBILITY.

(1) Applications, Written Determination of Eligibility. All members of the Lac du Flambeau Tribe that are on the tribal rolls shall be eligible to receive per capita distributions. Persons seeking membership in the Lac du Flambeau Tribe may fill out an application for membership in accordance with the Tribal Enrollment Ordinance. Applications for membership may be made at any time, and shall be submitted in such form and manner as the Enrollment Officer may reasonably require. In order to provide for the orderly review and consideration, applications submitted within 60 (sixty) days or less of a scheduled distribution date shall not be found eligible for distribution until the next scheduled distribution. At least 45 (forty-five) days but no longer than 50 (fifty) days before the annual date of the distribution of per capita payments as provided in Section 6 of this Ordinance, the Enrollment Officer shall publish a list of those persons found eligible for such payments or whose eligibility is dependent on action on their application for

enrollment. Any applicant found not to be eligible shall be provided with a written determination of the basis for the denial.

(2) Appeal of Findings. Any person who believes that the Enrollment Officer has erroneously made a determination regarding his or her own membership or residency may appeal that as provided for in Chapter 10 of the Tribe's ordinances, entitled, "Membership Ordinance".

#### 43.1005 MINORS AND OTHER LEGAL INCOMPETENTS.

(1) The interests of minors and other legally incompetent Members, or members whose addresses are unknown at the time of a distribution, otherwise entitled to receive per capita payments shall be disbursed as follows. Within 60 days of passage of this Ordinance a Children's Trust Fund, which shall be irrevocable, shall be established for each minor Member and legally incompetent adult Member eligible for per capita payments. The Council shall select a Trustee with suitable expertise and discretion to administer the CTFs. Trust assets shall be invested in a reasonable and prudent manner which protects the principal and seeks a reasonable return. The Trustee shall disburse the proportional assets of each CTF to the beneficiary thereof in accordance with the Trust Agreement but in no event later than five years following the Member reaching the age of eighteen (18); this provision shall not operate to compel disbursement of funds to Members legally determined to be incompetent. *Resolution No. 245(06), October 23, 2006.*

(2) Members whose whereabouts are unknown shall also have their money added to the CTF and said monies shall be held until their whereabouts are known or until reasonable proof of death is presented to the Tribal Court at which time the monies due to the member shall be distributed in accordance with the Trust Agreement. *Resolution No. 245(06), October 23, 2006.*

(3) Funds in the CTF of a minor or legally incompetent member shall be available for the benefit of a beneficiary's health, education and welfare, as provided in the Trust Agreement, when the needs of such person are not being met from other Tribal funds and upon a finding of special need by the Lac du Flambeau Tribal Court. In order to request such funds, a written request must be submitted to the Tribal Court by the beneficiary's parent or legal guardian or by the beneficiary if the beneficiary is at least eighteen years of age and not incompetent. The parent, legal guardian or beneficiary shall maintain records sufficient to demonstrate that the funds disbursed were expended as required by this Ordinance and any applicable state or federal law. The procedure that shall be followed in making this request is that it is to be in writing on an application form available from the Department of Social Services that has been approved by the Per Capita Committee and the Tribal Court judges. This form shall include information under oath what special needs must be met. Upon application and filing with the Tribal Court a

hearing shall be conducted after at least three working days' notice is given to the Department of Social Services, the Tribal Secretary, and the Tribal Treasurer. The application form shall include a notice to the applicant that if the funds are expended in a way other than as authorized by this Ordinance or any applicable state or federal law that the Tribe will seek prosecution of the responsible party(ies). *Resolution No. 245(06), October 23, 2006.*

(4) Assets in the Children's Trust may not be used to satisfy the claims of the Tribe's creditors unless (i) the Trust Agreement requires that the Trust assets be available to satisfy such claims, (ii) there has been a waiver of sovereign immunity that expressly permits a judgment against the Tribe to be satisfied with Trust assets, (iii) such waiver has been approved by referendum, (iv) judgment has been entered against the Tribe, (v) all other means of satisfying the judgment have been exhausted, and (vi) the Secretary of the Interior consents to the use of Trust assets to satisfy the claim. *Resolution No. 245(06), October 23, 2006.*

#### 43.1006 PAYMENTS.

(1) Any per capita payments authorized by the Council pursuant to §43.1003 shall be made annually on or before the first Monday in the month of December to all Members eligible for the distribution in accordance with §43.1004, and in proportionate shares to the CTFs on behalf of the beneficiaries thereof. All members living on October 1st of the distribution year shall be eligible for payment even if they subsequently die.

(2) In order to promote the social welfare of the tribe, a monthly supplemental income distribution of up to five hundred (\$500) dollars shall be made to all Members age 55 and above eligible for the distribution in accordance with §43.1004, provided those Members are not participating in other need based public benefit programs. Those Members participating in need based public benefit programs shall receive their supplemental income distribution with the per capita payment made to all members in paragraph (1) of this section or at such time as determined by the Council. The amount of monthly supplemental income distribution shall be determined based upon availability of funds and provided for as a line item of the General Fund Operation Budget. *Section adopted per Resolution No. 173(00) April 14, 2000.*

(3) Unless there is an approved loan and repayment schedule in effect prior to the distribution close out date of October 1 of the distribution year and the member is not in default on that schedule, any monies owed to the Tribe, to any Tribal Enterprise or to the Tribal Court, shall be deducted from any members per capita payment until such debt and/or obligation to the Tribe is paid in full. *Section renumbered by Resolution No. 173(00) April 14, 2000.*

#### 43.1007 TAXATION.

The per capita payments are subject to Federal taxation upon distribution to Members. Members receiving payments shall be informed that they are responsible for payment of applicable taxes. The Tribe will deduct and withhold any applicable federal taxes as required by Section 3402(r) of the Internal Revenue Code of 1986. Resolution No. 245(06), October 23, 2006.

#### 43.1008 AMENDMENTS.

This ordinance may be amended by the action of the Lac du Flambeau Tribal Council, in a meeting at which a quorum is present, but only upon the affirmative vote of a majority of the members. All amendments shall be subject to the approval of the Secretary of the Interior before they become effective. (Resolution No. 10(09), January 12, 2009, complied with IGRA and the regulations in 25 CFR Part 290 for allocations distributed during FY 2007)

### TRIBAL CODE

#### CHAPTER 43.10 - PER CAPITA PAYMENT DISTRIBUTION ORDINANCE

##### ADDENDUM #1

The Lac du Flambeau Band of Lake Superior Chippewa Indians financed construction of the Lake of the Torches Casino in 1996, with the payoff scheduled in June of 1999. At the time of financing, tribal members were asked to be patient and told that when the casino was paid off, they would receive a per capita payment.

Therefore, the Lac du Flambeau Tribe wishes to make a special one time payment of \$1500.00 each to its tribal members. This special payment would be made from funds available through the General Fund Per Capita Account.

This Special June 30, 1999 distribution shall not affect the payment schedule outlined in the Tribal Code, Chapter 43.10, Per Capita Payment Distribution Ordinance, which shall remain intact until such time as the tribe decides if and when it will make more frequent payments.

The following shall apply for the Special June 30, 1999 One Time payment:

(1) Applications, Written Determination of Eligibility. All members of the Lac du Flambeau Tribe that are on the tribal rolls shall be eligible to receive the Special June 30, 1999 per capita distribution. Persons seeking membership in the Lac du Flambeau Tribe may fill out an application for membership in accordance with the Tribal Enrollment Ordinance and shall be submitted in such form and manner as the Enrollment Officer may reasonably require. In order to provide for the orderly review and consideration, applications submitted within 40 days or less of scheduled distribution date shall not be found eligible for the Special June 30, 1999 distribution. At least 25 days but no longer than 30 days before the Special June 30, 1999 distribution of per capita payments as provided in Section 4 of this Addendum, the Enrollment Officer shall publish a list of those persons found eligible for such payments. Any applicant found not to be eligible shall be provided with a written determination for the basis for the denial.

(2) Appeal of Findings. Any person who believes that the Enrollment officer has erroneously made a determination regarding his or her own membership may appeal that as provided for in Chapter 10 of the Tribe's ordinances, entitled, "Membership Ordinance."

(3) Minors and Other Legal Incompetents. The interests of minors and other legal incompetent members, or members whose addresses are unknown at the time of the distribution, otherwise entitled to receive per capita payments shall be placed in the Children's Trust Fund and handled in accordance with Chapter 43.1005(1)(2)(3).

(4) Payments. This Special July 30, 1999 distribution, authorized by the Council pursuant to this Addendum #1, shall be made in accordance to the provisions set forth herein to all members eligible for the distribution, and in proportionate shares to the CTFs on behalf of the eligible for the Special July 30, 1999 distribution even if they subsequently die.

(5) Unless there is an approved loan and repayment schedule in effect prior to the distribution day of July 30, 1999 and the members in not in default on the schedule, any monies to the Tribe, to any Tribal Enterprise or to the Tribal Court, shall be deducted from any members per capita payment until such debt and/or obligation to the Tribe is paid in full.

(6) TAXATION. The per capita payments are subject to Federal taxation. Members receiving payments shall be informed that they are responsible for payment of applicable taxes as required by Section 3402(r) of the Internal Revenue Code of 1986. *Resolution No. 230(99)*