



**NOTICE OF AN ADDENDUM TO THE AGENDA OF
REGULAR MEETING OF THE CLARKDALE TOWN COUNCIL**

**Tuesday, February 10, 2009 at 6:00 P.M.
Clark Memorial Clubhouse, Men's Lounge**

PURSUANT TO A.R.S. §38-431.02, NOTICE IS HEREBY GIVEN to the members of the Common Council of the Town of Clarkdale and to the general public that the Town of Clarkdale Common Council will hold a Regular Meeting open to the public on **Tuesday, February 10, 2009 at 6:00 p.m.** at in the **Clark Memorial Clubhouse, Men's Lounge, 19 N. Ninth Street, Clarkdale, Arizona.** Pursuant to A.R.S. §38-431.03, the Council may vote to recess the meeting and move into Executive Session on any item, which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda.

Dated this 9th day of February, 2009
BY

Walt Good
Deputy Town Clerk

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you turn it off at this time to minimize disruption to this meeting.

THIS ADDENDUM DELETES AN ITEM TO THE AGENDA FOR THE FEBRUARY 10, 2009, REGULAR COUNCIL MEETING:

NEW BUSINESS

YAVAPAI-APACHE NATION DISTRIBUTION OF GAMING REVENUES UNDER PROPOSITION 202



Staff Report

Agenda Item: YAVAPAI-APACHE NATION DISTRIBUTION OF GAMING REVENUES UNDER PROPOSITION 202

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: February 10, 2009

Background: Proposition 202, passed by Arizona voters in 2002, specifies various guidelines for new gaming compacts between the State of Arizona and the respective Indian tribal nations in the state. A key provision of Proposition 202 is the sharing of gaming revenue with the state. The stipulations for gaming compacts also permit each individual Indian tribe to retain and administer a portion of the revenue.

Specifically, the compacts permit an Indian tribe to make 12% of its total annual contribution to “cities, towns, or counties for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development.” These provisions were included in the legislation in recognition that communities that are in close proximity to gaming activities are impacted by those activities, and local Tribe’s should have an opportunity to help offset those impacts.

Each year since 2002, the Yavapai-Apache Nation has distributed funds to the Town of Clarkdale through this provision in the gaming compact. However, although the Nation makes the distribution of a total amount to the Town of Clarkdale, each year they have requested Clarkdale to disburse a portion of the total distribution to outside entities. The distribution of funds directly to an outside entity poses a financial management issue for the Town of Clarkdale. As a municipality, we are prohibited from “donating” money to outside entities. To resolve that problem in FY 2008-09, the Council adopted an IGA with the Clarkdale-Jerome School and an agreement with the Clarkdale Chamber of Commerce to allow the Tribe’s requested distribution to take place. The agreements served to formalize the transfer of money, and, more importantly, acknowledged that the designated use (as requested by the Nation) met the provisions of Proposition 202.

The Town recently received a letter dated January 30, 2009 from the Yavapai Apache Nation relating to the Nation’s Proposition 202 funding distribution for this year. The letter states that the Yavapai-Apache Nation Tribal Council approved the distribution of \$14,542 to the Town of Clarkdale, and, states that 100% of the funding should be designated by the Town of Clarkdale to the Clarkdale-Jerome School for “Seed money for Native American Club”. The letter also included a check in the amount of \$14,542 made out to the Town of Clarkdale.

Although the establishment of a Native American Club at the Clarkdale-Jerome School may be a priority for the Nation or the School, it does not appear to fit the criteria for Proposition 202 funding, which is to be used for: “cities, towns, or counties for government services that benefit

the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development.”

In addition to the Town of Clarkdale, the City of Cottonwood, Town of Camp Verde and Yavapai County received Proposition 202 distributions from the Nation this year. As you can see from the attached Press Release, the Nation directed that the distributions be used as follows:

- **City of Cottonwood (\$56,058)**
 - 100% to Mingus Union High School (Tutor)
- **Town of Camp Verde (\$56,058)**
 - 50% to Camp Verde School District (Tutor)
 - 25% to South Verde High School
 - 25% Parks & Recreation Youth Programs
- **Yavapai County (\$50,000)**
 - 70% Boys & Girls Club of Yavapai-Apache
 - 15% Beaver Creek School
 - 15% Rimrock High School
- **Town of Clarkdale (\$14,542)**
 - 100% Clarkdale-Jerome School for Seed Money for Native American Club

Mayor Von Gausig, Mayor Joens from Cottonwood, Mayor Gioia from Camp Verde and Supervisor Davis have discussed and corresponded about this issue, and Mayor Von Gausig would like to update the Council on those discussions to date.

The following documents are attached as part of your background materials:

- The letter the Town received from the Yavapai-Apache Nation regarding the distribution to Clarkdale.
- The Press Release from the Nation regarding the total of their distributions.
- The section of Arizona Revised Statutes regarding Proposition 202 distributions.
- A memo from the legal counsel of the Yavapai County Board of Supervisors relating to this year’s distribution of Proposition 202 funds.

Recommendation: This item is a report only, and no official action by the Council is required at this time. Mayor Von Gausig will update the Council on the agenda item.



YAVAPAI-APACHE NATION OFFICE OF PUBLIC RELATIONS

Phone: (928) 567-1006

Fax: (928) 567-1082

For Immediate Release
February 4, 2009

Contact: Trapper Moore
Public Relations Manager
Yavapai-Apache Nation
Office: (928) 567-1006
Cell: (928) 300-9216
Email: editor@yan-tribe.org

Yavapai-Apache Nation Distributes More Than \$176,000 to Local Communities, Schools and Organizations

Camp Verde, AZ – The Yavapai-Apache Nation recently contributed more than \$176,000 to the neighboring cities and towns of Camp Verde, Cottonwood, Clarkdale, and Yavapai County as part of the distribution of the discretionary 12 percent of state revenue sharing as outlined in 2003's Proposition 202.

Passed by Arizona voters in November 2002, Proposition 202 specifies various guidelines for new gaming compacts between the State of Arizona and the respective Indian tribal nations in the state. A key provision of Proposition 202 is the sharing of gaming revenue with the state. The stipulations for gaming compacts also permit each individual Indian tribe to retain and administer a portion of the revenue.

Specifically, the compacts permit an Indian tribe to make 12 percent of its total annual contribution in the following form: "Distributions to cities, towns, or counties for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development."

On January 29 the Yavapai-Apache Nation's Tribal Council approved distribution of funds from the 12 percent revenue share of fiscal year 2008 by the following funding amounts:

Town of Camp Verde: \$56,058

- 50% Camp Verde School District (Tutor)
- 25% South Verde High School
- 25% Parks & Recreation Youth Programs

City of Cottonwood: \$56,058

- 100% Mingus Union High School (Tutor)

Yavapai County: \$50,000

- 70% Boys & Girls Club of Yavapai-Apache
- 15% Beaver Creek School
- 15% Rimrock High School

Town of Clarkdale: \$14,542

- 100% Clarkdale-Jerome School

Total 2008 appropriation: \$176,658.00

The Yavapai-Apache Nation is a sovereign Native American tribe from the Verde Valley. Tribal members have two culturally distinct backgrounds and speak two indigenous languages. Today, the Yavapai-Apache Nation thrives on a reservation that spans over 1,800 acres in the four communities of Camp Verde, Middle Verde, Clarkdale, and Rimrock. The Nation proudly owns and operates Cliff Castle Casino, Arizona's #1 casino for nine consecutive years, Yavapai-Apache Construction, Yavapai-Apache Sand & Gravel and Yavapai-Apache Gaming, an enterprise that has successfully completed four start-up casinos nationwide. Additionally, the Nation distributes more than a quarter of a million dollars every year to Northern Arizona communities in the form of charitable donations, sponsorships, Prop 202 Revenue distributions and higher education scholarships.



Yavapai-Apache Nation

Phone: (928) 567-1003

Fax: (928) 567-3994

January 30, 2009

Mayor Doug Von Gausig
Town of Clarkdale
P.O. Box 346
Clarkdale, AZ 86324

Dear Mayor Von Gausig,

On Thursday, January 29, 2009, the Yavapai-Apache Nation Tribal Council approved the distribution of \$14,542.00 to the Town of Clarkdale. According to the Nation's approved resolution, the \$14,542.00 should be distributed by the Town of Clarkdale according to the following percentages and designations:

- 100% Clarkdale Jerome School \$14,542.00
Seed money for Native American Club

The distribution of these funds to the Town of Clarkdale is part of the Prop 202 Initiative, passed by Arizona voters in November 2002. Proposition 202 specifies various guidelines for new gaming compacts between the State of Arizona and the respective Indian tribal nations in the state. A key provision of Proposition 202 is the sharing of gaming revenue with the state. The stipulations for gaming compacts also permit each individual Indian tribe to retain and administer a portion of the revenue.

Specifically, the compacts permit an Indian tribe to make 12 percent of its total annual contribution in the following form: "Distributions to cities, towns or counties for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development."

The Yavapai-Apache Nation is honored to support the Town of Clarkdale. Should you have any questions, you can contact the Nation's Public Relations Office at (928) 567-1006.

Sincerely,

Thomas Beauty
Chairman

RESOLUTION NO. 15-09
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Adopting the "Distribution of 12% Revenue Sharing Funds for FY
2008" Document

- WHEREAS:** The Yavapai-Apache Tribal Council ("Council") is empowered to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation; and
- WHEREAS:** The Council is the legislative body of the Nation empowered to enact laws, ordinances and resolutions incidental to the exercise of legislative powers as provided by Article V(v) of the Nation's Constitution and to manage all tribal economic affairs and enterprises and to appropriate and regulate the use of tribal funds as provided by Article V(i) and (k); and
- WHEREAS:** The Nation entered into that certain agreement with the State of Arizona on December 27, 2002 entitled the Yavapai-Apache Nation and State of Arizona Gaming Compact ("Compact") required pursuant to the Indian Gaming Regulatory Act of 1988 ("Act") in order for the Nation to conduct Class III gaming; and
- WHEREAS:** The Nation conducts Class III gaming under the Compact and the Act as a means of promoting economic development, self-sufficiency, and the development of a strong tribal government; and
- WHEREAS:** Under Section 12 of the Compact, the Nation annually contributes a percentage of the Nation's annual Class III Net Win, of which an annual contribution of eighty-eight percent (88%) goes to the Arizona Benefits Funds as established under Arizona law and twelve percent (12%) is designated for distribution to cities, towns or counties for the benefit of the general public ("12% Revenue Sharing Funds") as the Nation deems appropriate; and
- WHEREAS:** The Nation will contribute One Hundred Seventy Six Thousand Six Hundred Fifty Eight and 00/100 Dollars (\$176,658.00) for the 12% Revenue Sharing FY 2008; and
- WHEREAS:** The Council has decided to distribute the above identified 12% Revenue Sharing Funds in accordance with the attached document entitled "Distribution of 12% Revenue Sharing Funds for FY 2008".

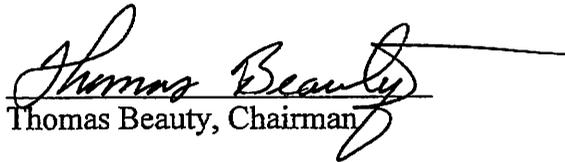
NOW THEREFORE BE IT RESOLVED by the Yavapai-Apache Nation Tribal Council that the Nation shall contribute One Hundred Seventy Six Thousand Six Hundred Fifty Eight and 00/100 Dollars (\$176,658.00) as the amount of 12% Revenue Sharing Funds required to be distributed under Section 12 of the Yavapai-Apache Nation and the State of Arizona Gaming Compact for FY 2008.

BE IT FURTHER RESOLVED that the attached document entitled "Distribution of 12% Revenue Sharing Funds for FY 2008" is hereby adopted, which document sets forth the cities, towns and counties, along with the applicable dollar amounts and percentages, that the Council has determined shall receive 12% Revenue Sharing Funds.

BE IT FINALLY RESOLVED That the Chairman, or Vice-Chairman, or each of them, is hereby authorized to take such further action as is necessary or deemed proper to implement the intent of this Resolution.

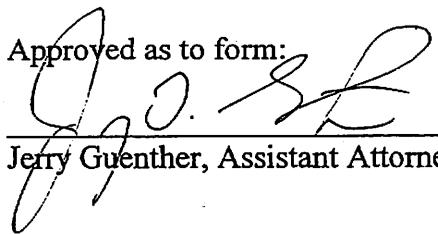
CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, presented for approval on January 29 2009, by a vote of 8 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation.


Thomas Beauty, Chairman

ATTEST:

Karla Reimer
Karla Reimer, Council Secretary

Approved as to form:

Jerry Guenther, Assistant Attorney General

147369

CLARKDALE

CLA

Account #:

147369

01/30/2009

Check Description

Amount

LOCAL REVENUE SHARING FOR 2008 FUNDS

\$14,542.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



YAVAPAI-APACHE NATION

2400 W. DATSI STREET
CAMP VERDE, ARIZONA
(928) 567-3649

GENERAL FUND ACCOUNT

BANK ONE
CAMP VERDE, AZ 86322

91-2/1221

147369

147369

Fourteen Thousand Five Hundred Forty Two and 00/100 Dollars

DATE

AMOUNT

01/30/2009

\$14,542.00

PAY TO THE ORDER OF
TOWN OF CLARKDALE
P.O. BOX 346
CLARKDALE, AZ 86324

Thomas Beauty



AUTHORIZED SIGNATURE

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 147369 ⑈

⑆ 122100024⑆

1249 7296 ⑈

5-601.02. New standard form of tribal-state gaming compact; effects

(Caution: 1998 Prop. 105 applies)

A. Notwithstanding any other law, within 30 days after receipt of a timely written request by the governing body of an Indian tribe, the state, through the governor, shall enter into the new standard form of tribal-state gaming compact with the requesting Indian tribe by executing the new compact and forwarding it to the United States department of the interior for any required approval.

B. The state, through the governor, may only enter into a new compact with an Indian tribe with a pre-existing compact if the Indian tribe requests a new compact pursuant to subsection A during the first 30 days after the effective date of this section. The state, through the governor, shall serve a timely notice of nonrenewal of a pre-existing compact on any Indian tribe that does not request a new compact during the first 30 days after the effective date of this section. Any Indian tribe without a pre-existing compact on the effective date of this section may request a new compact at any time.

C. Notwithstanding any other law, an Indian tribe may conduct the following forms of gambling as regulated gambling, as defined in section 13-3301, if the gambling is conducted in accordance with the terms of a tribal-state gaming compact: gaming devices, keno, offtrack pari-mutuel wagering, pari-mutuel wagering on horse racing, pari-mutuel wagering on dog racing, blackjack, poker (including jackpot poker), and lottery.

D. The department of gaming shall administer and carry out its responsibilities under the procedures for the transfer and pooling of unused gaming device allocations described in section 3(d) of the new compact.

E. The state, through the governor, is authorized to negotiate and enter into amendments to new compacts that are consistent with this chapter and with the policies of the Indian gaming regulatory act.

F. At the request of any Indian tribe for which paragraph 6 of subsection I does not specify a possible additional devices allocation, the state, through the governor, shall negotiate with the Indian tribe for a possible additional devices allocation. This allocation shall not be less than the smallest or greater than the largest possible additional devices allocation provided to an Indian tribe with an equal number of devices in the current device allocation column set forth in the new compact. At the option of the Indian tribe, the possible additional devices allocation shall be included in either the Indian tribe's new compact or an amendment to such new compact.

G. The authority and obligations of the state, through the governor, to negotiate additional compact terms pursuant to subsections E and F are independent of and separate from the obligations of the state pursuant to subsection A, and shall not constitute grounds for any delay by the state in carrying out its obligations to execute and forward new compacts to the United States department of the interior as required in subsection A.

H. The Arizona benefits fund is established consisting of monies paid to the state by Indian tribes pursuant to section 12(c) of new compacts and interest earned on those monies. An Indian tribe with a new compact satisfies the requirements of subsection F of section 5-601. Tribal contributions paid to the state pursuant to a new compact shall be deposited in the Arizona benefits fund, not the permanent tribal-state compact fund pursuant to subsection G of section 5-601.

1. The department of gaming shall administer the Arizona benefits fund. The department of gaming shall make an annual report to the governor, the president of the senate, the speaker of the house of representatives and each Indian tribe with a new compact within 90 days after the end of the state's fiscal year. This report shall be separate from any other report of the department of gaming. The report shall include a statement of aggregate gross gaming revenue for all Indian tribes, aggregate revenues deposited in the Arizona benefits fund, including interest thereon, expenditures made from the Arizona benefits fund, and aggregate amounts contributed by all Indian tribes to cities, towns and counties pursuant to paragraph 4 of this subsection. The department of gaming shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records.

2. Except for monies expended by the department of gaming as provided in subdivision (a) of paragraph 3 of this subsection, which shall be subject to appropriation, the Arizona benefits fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any statutory provision to the contrary. Monies paid to the state by Indian tribes pursuant to a new compact shall be deposited directly with the Arizona benefits fund. On notice from the department of gaming, the state treasurer shall invest and divest monies in the Arizona benefits fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the Arizona benefits fund shall be expended only as provided in paragraph 3 of this subsection, and shall not revert to any other fund, including the state general fund. Monies in the Arizona benefits fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

3. Monies in the Arizona benefits fund, including all investment earnings, shall be allocated as follows:

(a)(i) Eight million dollars or nine percent, whichever is greater, shall be used for reimbursement of administrative and regulatory expenses, including expenses for development of and access to any online electronic game management systems and for law enforcement activities incurred by the department of gaming pursuant to this chapter. Any monies that are allocated pursuant to this subsection 3(a) that are not appropriated to the department of gaming shall be deposited in the instructional improvement fund established by section 15-979.

(ii) Two percent shall be used by the department of gaming to fund state and local programs for the prevention and treatment of, and education concerning, problem gambling.

(b) Of the monies in the Arizona benefits fund that are not allocated pursuant to subdivision (a):

(i) Fifty-six percent shall be deposited in the instructional improvement fund established by section 15-979 for use by school districts for classroom size reduction, teacher salary increases, dropout prevention programs, and instructional improvement programs.

(ii) Twenty-eight percent shall be deposited in the trauma and emergency services fund established by section 36-2903.07.

(iii) Eight percent shall be deposited in the Arizona wildlife conservation fund established by section 17-299.

(iv) Eight percent shall be deposited in the tourism fund account established by paragraph 4 of subsection A of section 41-2306 for statewide tourism promotion.

4. In addition to monies contributed to the Arizona benefits fund, twelve percent of tribal contributions pursuant to new compacts shall be contributed by Indian tribes to cities, towns and counties as defined in title 11, Arizona Revised Statutes, for government services that benefit the general public, including public safety, mitigation of impacts of gaming, and promotion of commerce and economic development.

(a) An Indian tribe may distribute such funds directly to cities, towns and counties for these purposes. The amount of monies so distributed by each Indian tribe shall be reported to the department of gaming in the quarterly report required by the new compact.

(b) Any monies comprising the twelve percent not so distributed by an Indian tribe shall be deposited in the commerce and economic development commission local communities fund established by section 41-1505.12 for grants to cities, towns and counties.

5. The deposit of monies required by subdivision (b) of paragraph 3 of this subsection shall be made on a quarterly basis, or more frequently if practicable.

INTEROFFICE MEMORANDUM

**Yavapai County Administrator's Office
1015 Fair Street, Prescott, AZ 86301
Phone (928) 771-3105 Fax (928) 771-3431**

TO: Chip Davis, Supervisor, District 3
FROM: Dave Hunt, Assistant Administrator/Board Counsel
SUBJECT: Use of Proposition 202 Gaming Funds
DATE: February 6th, 2009

This memorandum is in response to your request for advice regarding appropriate uses of Proposition 202 gaming funds recently "awarded" to Yavapai County by the Yavapai-Apache Nation (the "Nation") Notice of this award with provided to you in a letter, dated January 30, 2009 from Thomas Beauty, Chairman of the Nation, announcing a distribution of \$50,000 to Yavapai County and stating that "According to the Nation's approved resolution, the \$50,000 *should* be distributed by Yavapai County according to the following percentages and designations:

- 15% Beaver Creek School \$7,500.
- 15% Rimrock High School \$7500.
- 70% Boys & Girls Club of Central Arizona, Middle Verde & Clarkdale Branches - \$35,000."

Distribution of the "12% Revenue Sharing Funds" is governed by ARS §5-601.02(H)(4) which provides in pertinent part that:

In addition to monies contributed to the Arizona benefits fund, twelve percent of tribal contributions pursuant to new compacts shall be contributed by Indian tribes to cities, towns and counties as defined in title 11, Arizona Revised Statutes, for government services that benefit the general public, including public safety, mitigation of impacts of gaming, and Promotion of commerce and economic development.

(a) An Indian tribe may distribute such funds directly to cities, towns and counties for these purposes. The amount of monies so distributed by each Indian tribe shall be reported to the department of gaming in the quarterly report required by the new compact.

* * * * *

Section 5-601.02(H)(4) expressly limits awards of 12% gaming funds to cities, towns and counties to be used for "... government services that benefit the general public including public safety, mitigation of the impacts of gambling and promotion of commerce and economic development. Although Chairman Beauty's January 30th letter expressly references the pertinent portions of Section 5-601.02(H)(4) it *directs* the to County simply pass its entire \$50,000 award to 3 preselected organizations, one of which (the Boys & Girls Club) is not even a public agency. In my opinion, the

process utilized by the Nation in awarding funds and designating the ultimate recipients is contrary to the intent and language of Proposition 202.

The framers of Proposition 202 could have readily included schools, civic organizations, special taxing districts or any number of public or private entities as authorized recipients of 12% gaming funds. Since this was not done it appears that the final decision authority regarding proposed uses of these funds has been reserved to cities, towns and counties. This would not preclude discussions between tribes and authorized funding recipients with regard to project proposals nor would it prevent cities, towns and counties from involving other public and private entities as part of the service delivery process. The voter-approved statutory framework would not, however, require or, arguably, allow a city town or county to simply act as a pass-through for 12% gaming funds to an entity not authorized by law to receive them. If tribes wished to support entities not authorized to receive 12% funds they could readily use other gaming revenues to do so.

Based on the forgoing, I recommend that the Nation be advised that the County will be unable to distribute the \$50,000 award under the conditions established for acceptance. You may wish to conduct further discussions with the Nation regarding project proposals. In my opinion, however, Proposition 202 requires that 12% funds be used for city, town or county service programs and final decisions with respect to use of funds awarded must rest with these designated recipients.

If I can provide additional information or assistance, please let me know.