

TITLE 4 - CIVIL ACTIONS

CHAPTER 2 - REMOVAL AND EXCLUSION OF NONMEMBERS

Legislative History: Ordinance No. 97-02, "Removal and Exclusion of Non-Members," was approved by Resolution No. 97-087 on March 12, 1997.

TITLE 4 – CIVIL ACTIONS

CHAPTER 2 – REMOVAL AND EXCLUSION OF NONMEMBERS

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ORDINANCE OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL

ORDINANCE NO. 97-02

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REMOVAL AND EXCLUSION OF NON-MEMBERS

Section 1.1 Persons Subject to Removal and Exclusion

- A. Any non-member of the Tohono O'Odham Nation may be removed and excluded from all or any part of the lands within the exterior boundaries of the Tohono O'Odham Nation, including San Xavier, San Lucy, and Florence, in accordance with this Chapter.

- B. Removal and exclusion may not be invoked to exclude non-members from:
 - 1. lands owned by, or held in trust for, the Tohono O'Odham Nation when the non-member(s) are authorized by Federal statute or administrative regulation to be present on the tribal lands; or
 - 2. Individually owned lands, whether held under trust, restricted or fee patent, when the non-member(s) are present with the consent of the individual owner provided however, (a) that the consent of the owner will not stop the exclusion of any non-member from such lands if it is determined that such non-member poses a clear and continuing danger to the health or safety of tribal members or property; (b) that the consent of the owner will not stop the exclusion of any non-member from such lands if it is determined that such non-member has continually violated the laws and ordinances of the Tohono O'Odham Nation; or
 - 3. Access to state highways within the exterior boundaries of the Tohono O'Odham Nation unless it is determined that in addition to a violation of Sections 1.2(A) and 1.3(A), such non-member poses a clear and continuing danger to the safety of persons or property on such highway which outweighs the interest of the non-member in using the highway.

Section 1.2 Reporting of Criminal Acts

- A. When the Tohono O'Odham Police Department finds evidence that a non-member has committed an act or acts which would be a crime or crimes under the Tohono O'Odham Criminal Code, Arizona Revised Statutes, or the United States Code, it shall report said evidence to the United States Attorney or other governmental entity having jurisdiction to prosecute said act or acts. A copy of said report shall also be provided to the Chief Prosecutor of the Tohono O'Odham Nation. If the non-member is an employee of the United States Government,

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the evidence shall also be provided to the employee's immediate supervisor and the head of the employing governmental agency.

Section 1.3 Grounds for Removal and Exclusion

A. Any non-member of the Tohono O'Odham Nation may be removed and excluded pursuant to Section 1.1(A) if he or she engages in any of the following conduct:

1. commits an act which is prohibited by Federal, State or Tribal law, including a violation of State or Tribal traffic regulations; or
2. prospects or mines without authority or permit; or
3. trades or peddles without authority or permit; or
4. cuts timber, or removes any protected native plant, or any rocks or artifacts without authority or permit; or
5. forcibly enters into the home or onto the lands of any tribal member without the consent of the occupant(s); or
6. interferes with or photographs a tribal ceremony without authority or permit; or
7. commits fraud, or carries on a confidence game, or usury against tribal members, or induces such members to enter into grossly unconscionable contracts of any nature; or
8. attempts to repossess unlawfully any personal property for the satisfaction or discharge of any claim or debt or upon the default of any contract term; or
9. defrauds any tribal member of just compensation for his or her labor or service of any nature done at the request of the non-member; or
10. causes a breach of the peace or engages in repeated public drunkenness; or
11. is infected with or carries a contagious disease; or
12. enters without authority or permit into an area of the Tohono O'Odham Nation designated as restricted; or

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- 13. removes or attempts to remove any tribal member under the age of eighteen (18) years from the Tohono O'Odham Nation without the approval of a parent, guardian or custodian, or the Children's or Tribal Courts; or
- 14. conducts missionary work or activities without prior authority or permit; or
- 15. hunts, fishes, or traps without authority or permit; or
- 16. camps without authority or permit in an area designated as closed to camping; or
- 17. fails or refuses to pay taxes, rents or other charges justly due the Tohono O'Odham Nation after reasonable notice and opportunity to pay; or
- 18. engages in conduct or activities causing property damage, loss or clear and continued danger to the health or safety of tribal members or property, or acts in such a manner as to demonstrate disrespectful or insolent behavior against the Tohono O'Odham Nation and its members; or
- 19. violates any provision of Tribal Ordinance No.03-82.

B. Any removal and exclusion may be subject to the terms and provisions of any applicable license, lease or permit which that person may have or possess, under which that person is entitled to be upon the lands of the Tohono O'Odham Nation.

Section 1.4 Procedure

A. Any member of the Tohono O'Odham Nation, police officer of the Nation, or prosecutor of the Nation may file a complaint with the Tohono O'Odham Judicial Courts requesting removal and exclusion of a non-member. The Complaint shall state the ground(s) upon which the request is based, a brief statement of facts relied upon which support the ground(s) for removal and exclusion, and the names and addresses of any witnesses who will provide supporting information for the proposed exclusion. The Tohono O'Odham Judiciary Court shall then issue an Order to Show Cause requiring the non-member to appear at a hearing to determine if cause exists to remove and exclude the non-member.

B. If the removal and exclusion action is filed by a Tohono O'Odham Police officer or a Tohono O'Odham Prosecutor the

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Nation's Prosecutor's Office shall represent the Complainant. However, if the removal and exclusion action is filed by a member of the Tohono O'Odham Nation, representation may be by private advocate or attorney as selected by the member.

- C. The Court shall issue a Temporary Restraining Order (TRO) pending the Show Cause hearing if reasonable grounds exist to believe the non-member will cause irreparable or immediate harm to any person or property if not restrained.
- D. The Show Cause order shall state the time and place where the non-member may appear to show cause why he or she should not be excluded and removed from the Tohono O'Odham Nation.
- E. The Order may be served personally or by registered mail, or in accordance with the rules established by the Court for notice and service in Civil cases. Return receipt shall be used in any service by mail and such service shall be complete upon the date of the return receipt.

Section 1.5 Hearing

- A. The hearing for removal and exclusion shall be conducted in the manner of a civil trial. The non-member shall be given an opportunity to (1) confront and cross-examine any witness called by the Complainant to support exclusion, (2) to present oral and written evidence in his or her defense, and (3) to be represented by counsel at his or her own expense.
- B. Upon a finding that cause exists for removal and exclusion the Court shall either enter an Order of Exclusion or, in the discretion of the Court and in appropriate circumstances, order that the charged party remedy or eliminate the cause for exclusion within a time and subject to the terms and conditions prescribed by the Court.
- C. In cases where permanent or indefinite exclusion is sought by the Tohono O'Odham Nation, or where the ground for exclusion is violation of federal, state or tribal laws, and the factual basis is disputed by the non-members, the facts supporting exclusion must be established by clear and convincing evidence. In any other case, the facts supporting exclusion must be established by a mere preponderance of the evidence. Each decision and order of exclusion shall be in writing and shall be based only upon facts and law presented at the hearing.

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D. Upon a finding that no cause for exclusion of the non-member exists, the Tohono O'Odham Judicial Court shall dismiss the Complaint.

E. An Order of Exclusion shall specify the period of time during which exclusion will be effective. The Court may suspend an order of exclusion upon such reasonable terms and conditions as may be prescribed by the Court.

Section 1.6 Enforcement of Exclusion Order

A. Any person ordered excluded from the Tohono O'Odham Nation who fails or refuses to remove himself or herself and his or her property within the time period prescribed by the Order of Exclusion shall be removed, together with his or her property by the tribal police department. Reasonable force may be used by the police in effecting the exclusion and removal.

B. Any person who violates an exclusion and removal order issued by the Tohono O'Odham Judicial Courts shall be subject to a civil fine not to exceed \$5,000.00 for each violation.

Section 1.7 Emergencies

A. Nothing in this Chapter shall prevent a member of the Nation, a Tohono O'Odham Police Officer, a BIA representative, or the Nation's Chairman or the Nation's Prosecutor from applying to the Tohono O'Odham Judicial Court for an emergency exclusion order removing a non-member bodily from all or any part of the Tohono O'Odham Nation prior to an exclusion hearing if:

1. there is an immediate danger to life, health or property of the Tohono O'Odham Nation or any of its members; or
2. the non-member is engaged in conduct which constitutes a criminal offense and poses immediate danger or irreparable damage to any person or property.

B. The Court shall direct the Nation's police department to execute the emergency order using as much force as is necessary to effect the removal.

C. The emergency order shall also contain the notice of charges and hearing provided for in Sections 1.4 and 1.5. The notice shall state that the non-member may demand that a hearing be held within 24 hours, excluding Saturdays, Sundays and holidays, after he or she receives such notice or at any time up to ten (10) days from date of notice. Absent such a demand the Court shall schedule

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the exclusion hearing in its own discretion, but, within a reasonable time.

D. The emergency order shall notify the non-member of a specific boundary entry where he or she may re-enter for the purpose of attending the hearing required pursuant to Section 1.5 of this Chapter.

E. Nothing in this Chapter shall prevent a duly authorized police officer from stopping and detaining, without prior legal process from the Tohono O'Odham Judicial Court, any non-member within the exterior boundaries of the Tohono O'Odham Nation when the officer has reasonable cause to believe that the non-member is committing or has committed any offense in violation of Tohono O'Odham, State or federal law, including a traffic offense.

F. Detention pursuant to subsection E may be accomplished either for the purpose of turning over the non-member to the officials or courts of the United States or the State of Arizona, or for the purpose of detaining a non-member in order to seek an emergency removal order from the Tohono O'Odham Judicial Court under this section.

Section 1.8 Repeal of Prior Conflicting Laws and Ordinances

This ordinance repeals the provisions of Chapter 6 of the Law and Order Code, Ordinance No. 02-82 of the Tohono O'Odham Nation adopted by the Papago Council on March 15, 1982, and repeals all other ordinances, laws and resolutions of the Tohono O'Odham Council in conflict herewith.

Section 1.9 Banishment of Members is Not Prohibited

Nothing in this ordinance shall be construed to prohibit actions to banish tribal members residing within any district of the Tohono O'Odham Nation based on the custom and tradition of the district.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Approval of Revised Ordinance for Removal and Exclusion of Non-Members and the Repeal of Prior Ordinance No. 02-82)**

RESOLUTION NO. 97-087

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4 **WHEREAS, the Tohono O'Odham Nation is fully authorized to act on**
5 **behalf of our members in matters arising under the Indian**
6 **Self-Determination Act of 1975, P.L. 93-638, as amended, 25**
7 **U.S.C. 450 et. seq., (hereinafter the Act); and**

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9 **WHEREAS, the Tohono O'Odham Legislative Council is empowered to**
10 **act for and on behalf of its Tohono O'Odham Members in**
11 **adopting resolutions; and**

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13 **WHEREAS, the Nation recognizes that with the passage of time certain**
14 **ordinances may become outdated and thereby do not meet**
15 **the current needs of the Nation; and**

16 **WHEREAS, Ordinance No. 02-82 (Removal and Exclusion of Non-**
17 **Members) is outdated and does not meet the current needs**
18 **of the Nation; and**

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20 **WHEREAS, the Nation has an interest in having all criminal acts**
21 **committed within its exterior boundaries reported to the**
22 **Tohono O'Odham Police Department when committed by**
23 **either non-members or members; and**

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25 **WHEREAS, the Nation recognizes that Ordinance No. 02-82 has no such**
26 **requirements; and**

27 **WHEREAS, Ordinance No. 02-82 only allows a tribal member to initiate**
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RESOLUTION NO. 97-087

(Approval of Revised Ordinance for Removal and Exclusion of Non-Members and the Repeal of Prior Ordinance No. 02-82)

1 **Page 2 of 4**

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a removal and exclusion action against a non-member; and

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WHEREAS, the Tohono O'Odham Police Department and Office of the

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Prosecutor are intricately involved in most removal and

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exclusion actions and need to have the ability to file such an

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action; and

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WHEREAS, Ordinance 02-82 does not provide for any sanction against a

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non-member who violates a removal and exclusion order of

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the Tohono O'Odham Judiciary; and

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WHEREAS, the proposed revised ordinance for removal and exclusion

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of non-members has been reviewed by the Domestic Affairs

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Committee of the Tohono O'Odham Legislative Council, the

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Attorney General's Office and the Office of the Prosecutor

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and its approval and passage is recommended by the

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Domestic Affairs Committee; and

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WHEREAS, this resolution shall remain in effect until such time as this

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resolution has been fully completed, expressly rescinded or

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modified by the Legislative Council.

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NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative

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Council hereby approves the revised Ordinance for Removal

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and Exclusion of Non-Members and the repeal of prior

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Ordinance No. 02-82.

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RESOLUTION NO. 97-087

(Approval of Revised Ordinance for Removal and Exclusion of Non-Members and the Repeal of Prior Ordinance No. 02-82)

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The foregoing Resolution was passed by the Tohono O'Odham Legislative Council on the 6TH day of MARCH, 1997 at a meeting at which a quorum was present with a vote of 1,397.0 FOR; -0- AGAINST; 479.0 NOT VOTING; and [08] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c)(7) 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


Dennis Ramon, Legislative Chairman

10th day of March, 1997

ATTEST:


Frances G. Antone, Legislative Secretary

10th day of March, 1997.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 10th day of March, 1997 at 4:50 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. 97-087

(Approval of Revised Ordinance for Removal and Exclusion of Non-Members and the Repeal of Prior Ordinance No. 02-82)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Dennis Ramon, Legislative Chairman

APPROVED on the 12th day of March, 1997
 DISAPPROVED at 11:50 o'clock, A.M.


EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12th day of
March, 1997, at 12:38 o'clock, P.M.


Frances G. Antone, Legislative Secretary