

TITLE 2 - AGRICULTURE AND LIVESTOCK

CHAPTER 5 - LIVESTOCK BUYERS

Legislative History: Tohono O’odham Code Title 2, Chapter 5, Livestock Buyers, was enacted and codified by Resolution No. 08-697 effective December 15, 2008.

Resolution No. 08-697 repealed a number of livestock-related laws, including Ordinance No. 35, governing permits for nonmember livestock buyers, which was enacted by the Papago Council on April 4, 1958 and approved by the Sells Indian Agency Superintendent on April [“11” or “16” (date unclear)], 1958; amended by Ordinance No. 36, which was enacted by the Papago Council on June 6, 1958 and approved by the Sells Indian Agency Superintendent on June 16, 1958.

Related Legislation: Ordinance No. 14, “To Regulate the Conduct of Business upon the Papago Reservations, was enacted by the Papago Council on June 20, 1947 and approved by the Sells Indian Agency Superintendent on [date unreadable; handwritten notation below chairman’s signature reads “Ord. 14 reviewed and not rescinded by I.O. letter dated Aug. 8, 1947.”]; amended (to rescind Section VII, “and the portion of Section VI dealing with termination of license for violation of Section VII”) by Ordinance No. 38, “Regulations Governing Sanitation of Eating and Drinking Establishments,” which was enacted by the Papago Council on May 6, 1960, approved by the Papago Agency Superintendent on May 16, 1960, and became effective on November 4, 1960. (Ordinance No. 14 appears in Title 5, Chapter 1 of the Tohono O’odham Code. Ordinance No. 38 appears in Title 17 - Health and Safety, Chapter 3 - Restaurant Sanitation Regulations.)

Related Legislation: Ordinance No. 28, governing permits for removal of plants and natural materials, camping, photography, and certain livestock purchases, was enacted by the Papago Council on November 15, 1947 and approved by the Sells Indian Agency Superintendent on November 25, 1947, but, according to multiple handwritten notations on the Ordinance, was vetoed by a Bureau of Indian Affairs Central Office letter dated January 31, 1958.

TOHONO O’ODHAM CODE

TITLE 2 - AGRICULTURE AND LIVESTOCK

CHAPTER 5 - LIVESTOCK BUYERS

Purpose and Definitions 1

Article 1 The Livestock Inspector’s Office 1

Section 5101 Authority of the Livestock Inspectors’ Office 1

Article 2 Livestock Buyers 1

Section 5201 Livestock Buyer License Requirements..... 1

Section 5202 Livestock Buyer License and Temporary Permit Application Process 2

Section 5203 Applicant Qualifications for a Livestock Buyer’s License 2

Section 5204 Applicant’s Ability to Provide a Bond..... 2

Section 5205 Livestock Buyer’s License Validation Period and Renewal Process..... 2

Section 5206 Livestock Buyer’s License and Temporary Permit Fees 4

Section 5207 Bill of Sale Forms 5

Article 3 Violations, Jurisdiction, and Judicial Review 5

Section 5301 Violations and Jurisdiction..... 5

Section 5302 Notice of Violation and Notice of Final Action..... 6

Section 5303 Judicial Review 6

Article 4 Sovereign Immunity; Private Right of Action..... 6

Section 5401 Limited Waiver of Sovereign Immunity 6

Section 5402 Private Right of Action 6

Section 5403 Restriction 7

Section 5404 Statute of Limitation 7

Section 5405 Intervention 7

Article 5 Exclusion of Liability and Indemnification 7

Section 5501 Exclusion of Liability and Indemnification 7

Article 6 Severability 7

Section 5601 Severability 7

TOHONO O'ODHAM CODE

TITLE 2 – AGRICULTURE AND LIVESTOCK

CHAPTER 5 – LIVESTOCK BUYERS

PURPOSE AND DEFINITIONS

The purpose of this Chapter is to regulate the licensing and bonding of livestock buyers on the Tohono O'odham Nation ("Nation"). The definitions set forth in Chapter 4 of this Title shall apply to this Chapter.

ARTICLE 1 – THE LIVESTOCK INSPECTORS' OFFICE

Section 5101 Authority of the Livestock Inspectors' Office

The Livestock Inspectors' Office shall have civil regulatory authority over the licensing and bonding of livestock buyers within the Nation. The Brand Inspector Supervisor and the Livestock Brand Inspector shall have the authority to carry out these functions.

ARTICLE 2 – LIVESTOCK BUYERS

Section 5201 Livestock Buyer License Requirements

(A) No Person shall purchase livestock within the Nation without a livestock buyer's license; except that Nation's members are required to have a livestock buyer's license for resale purposes only.

(B) The Brand Inspector Supervisor may waive Section 5201(A) and issue a temporary permit within 20 days to a Person who is not an enrolled member of the Nation to purchase livestock within the Nation if:

- (1) The applicant has submitted a written application for a temporary permit;
- (2) The purchase involves no more than five animals at one time;
- (3) The applicant has not purchased livestock within the Nation within the last six months;
- (4) The applicant has not violated any provisions of this Chapter or laws of the Nation pertaining to the purchase of livestock within the last three years; and
- (5) The applicant has paid in full the required fee pursuant to Section 5206.

Section 5202 Livestock Buyer License and Temporary Permit Application Process

(A) Each application for a livestock buyer license or a temporary permit must be submitted on a valid Livestock Inspectors' Office standard application form to the Livestock Inspectors' Office, with a receipt reflecting payment of the required fee. A valid Livestock Inspectors' Office application form will include:

- (1) The applicant's full name, mailing address, business and residential telephone numbers, and a valid driver's license number.
- (2) The applicant's business and employment information for the last five years, including businesses involving the purchase of livestock.
- (3) The names, addresses, and telephone numbers of business partners within the last five years to the present.
- (4) The name and address of any licensing or regulatory agency that the applicant has filed with for an occupational license or permit within the last five years.
- (5) The applicant's criminal history within the last five years, for animal/livestock related offenses only, including but not limited to possession, ownership, purchase, or sale of livestock and including dates, description of the charge, name and address of the Court, and the final disposition.
- (6) The current names, addresses, and telephone numbers of three personal references.
- (7) Such additional information as the Livestock Inspector's Office may require.

(B) The Brand Inspector Supervisor shall approve or deny each livestock buyer's license application and notify the applicant of its decision no later than 60 calendar days after receipt of a completed application.

(C) Upon approval of the application, the livestock buyer's license or the temporary permit shall be issued on a valid Livestock Inspectors' Office standard form. Each livestock buyer's license or temporary permit shall be issued in the name of the applicant and is not transferable or assignable to another Person.

(D) Buyers who have consistently conducted livestock purchasing transactions within the Tohono O'odham Nation for the past five years from the enactment of this Chapter are exempt from the application process. Exempt buyers will fill out and submit a Buyer Exemption Form, which will also be signed by the Brand Inspector Supervisor, and will be kept on file in the same manner as the livestock buyer application.

(E) Exempt Buyers must remain in good standing subject to the approval of the Brand Inspector Supervisor and pay the yearly license fee.

Section 5203 Applicant Qualifications for a Livestock Buyer's License

No applicant shall be issued a livestock buyer's license if the Livestock Inspectors' Office determines that the applicant has:

- (A) Less than three years experience in handling livestock. (If the applicant is a member of the Nation, the years of experience shall be verified with the Range Boss(es) of the community.)
- (B) Been convicted of any offense relating to the possession, ownership, purchase, sale, or transportation of livestock within five years of submitting the livestock buyer's application.
- (C) Knowingly and willfully provided false statements or information on a livestock buyer's application.
- (D) Been determined to be a Person whose prior activities, including a criminal record, poses a threat to the public or creates or enhances unsuitable, unfair or illegal practices, methods or activities during the purchase of livestock, or has been known to conduct any illegal business or financial transactions.

Section 5204 Applicant's Ability to Provide a Bond

- (A) Each applicant for a livestock buyer's license or license renewal, pursuant to Section 5205, at the time of application, shall provide a bond on a valid Livestock Inspectors' Office standard form, in the amount of \$10,000 and issued by a certified guaranty company approved by the Livestock Inspectors' Office. The bond shall be for the same period as the Livestock Buyer's license and no licensee may purchase livestock without a bond.
- (B) The bond shall be issued to allow the Nation and any customer of the licensee to recover a judgment for damages resulting from the licensee's violation of laws or regulations. The Nation or customer of the licensee may sue on the bond registered in that buyer's name. The bond may be applied to satisfy judgments for damages resulting from the violation of this Chapter or any rule or regulation enacted in conformity herewith.
- (C) Enrolled members of the Nation are exempt from the bonding requirement.

Section 5205 Livestock Buyer's License Validation Period and Renewal Process

- (A) The livestock buyer's license shall be valid for one year from the date of issuance.
- (B) The livestock buyer's license may be renewed for additional one year periods provided that the applicant has submitted a written application for renewal to the Livestock Inspectors' Office not less than one month prior to the expiration of the existing livestock buyer's license and is qualified to obtain the livestock buyer's license at the time of renewal.

(C) The Brand Inspector Supervisor will consider an application for renewal if submitted more than three months prior to the expiration of the existing livestock buyer's license.

(D) A temporary permit shall not be valid for a period of more than 15 calendar days from the date of issuance.

(E) Prior to the expiration of an existing livestock buyer's license, the Brand Inspector Supervisor shall approve or deny the application for license renewal and notify the applicant.

(1) The Brand Inspector Supervisor may deny the license renewal for the following, which includes but is not limited to:

- (a) incorrect bill of sales held by the buyer;
- (b) complaints from customers about the buyer;
- (c) the buyer substituting animals;
- (d) knowingly and willfully providing false statements or information on a livestock buyer's renewal application;
- (e) the buyer being under the influence of drugs or alcohol while handling livestock; or
- (f) the buyer being convicted of violating any tribal law(s) since the initial application was submitted.

Section 5206 Livestock Buyer's License and Temporary Permit Fees

(A) The livestock buyer shall pay the non-refundable license application fee at the Nation's Treasurer's Office before the application is submitted and include a copy of the receipt with the application to the Livestock Inspector's Office. The livestock buyer shall pay the license and renewal fees after the Livestock Inspector's Office approves of the buyer's application. The fees include:

- (1) License:
 - (a) Initial Application Fee \$150
 - (b) License Fee \$300
 - (c) Annual Renewal Fee \$300
- (2) Temporary Permit Initial Application Fee: \$10 per animal

(B) The Livestock Inspector's Office may recommend to amend the fees set forth in this Section or adopt additional fees, provided that the public shall be given public notice and the opportunity to submit written comments to the Livestock Agricultural Committee, such amendments for a period of not less than 30 Business Days in advance. Any recommended amendments to the fees are subject to Legislative Council approval.

Section 5207 Bill of Sale Forms

All livestock transactions shall be recorded on an approved Bill of Sale form, which is available for purchase at the Tohono O'odham Nation's Department of Property and Supply.

ARTICLE 3 - VIOLATIONS, JURISDICTION, AND JUDICIAL REVIEW

Section 5301 Violations and Jurisdiction

(A) Prior to proceeding to judicial review, a Person may seek administrative review of the Livestock Inspector's Office's actions according to the requirements of the Nation's adopted personnel policies.

(B) Any Person who has violated any prohibition contained in this Chapter or who has violated a term or condition included in a livestock buyer's license and temporary permit under this Chapter shall be liable in a civil action by the Nation for civil penalties. Such action shall be brought in the Tohono O'odham Judicial Court (Court) and the civil penalties assessed shall be in an amount not less than the value of the livestock involved in the violation, plus the cost of seizure, feed, and board, if applicable. The civil penalties shall be paid into the Nation's General Fund.

(C) The Court retains jurisdiction over all actions or claims brought under this Chapter. In addition to civil penalties and remedies, the Court may grant other relief deemed necessary to enforce this Chapter including, but not limited to:

- (1) The seizure and forfeiture of livestock, and
- (2) Injunctive relief.

(D) All actions for seizure and forfeiture under this Chapter shall be considered *in rem*, against a Person's property and not against the Person.

Section 5302 Notice of Violation and Notice of Final Action

(A) If any Person violates any prohibition contained in this Chapter, the Livestock Inspector's Office may issue a notice of violation to the violating Person who shall have 15 Business Days to correct the violation.

(B) If the violation is not corrected within 15 Business Days from the date the notice of violation is issued, the Livestock Inspector's Office shall issue a notice of final action.

Section 5303 Judicial Review

(A) Any Person or entity that has been issued a notice of final action by the Livestock Inspectors' Office may petition the Court for judicial review of such notice of final action. Any applicant of a Livestock Buyer's license, temporary permit or any Person or entity licensed under this Chapter may petition the Court for judicial review of a final action of the Livestock Inspectors' Office.

(B) Any such petition filed for judicial review must be made within 15 Business Days of receipt of the notice of final action of the Livestock Inspectors' Office. The Person or entity requesting judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

(C) The Court shall determine the relevancy of legal arguments, interpret constitutional and statutory provisions, and evaluate the basis for the action taken by the Livestock Inspectors' Office. The Court shall uphold the action of the Livestock Inspectors' Office unless the Court determines that the action was:

- (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) Contrary to constitutional right, power, privilege, or immunity;
- (3) In excess of statutory jurisdiction, authority or limitations, or in violation of statutory right;
- (4) Without observance of procedure required by law; or
- (5) Unsupported by substantial evidence.

ARTICLE 4 – SOVEREIGN IMMUNITY; PRIVATE RIGHT OF ACTION

Section 5401 Limited Waiver of Sovereign Immunity

The sovereign immunity of the Nation extends to its officers, employees, and agents, and is in no way waived except for the limited waiver of sovereign immunity contained herein. The sovereign immunity of the Nation is hereby waived to the limited extent that lawsuits may be brought against the Nation under Section 5303 in Court for injunctive relief or for declaratory judgment only, but not for damages (compensatory, consequential, or punitive), penalties, attorneys' fees, court costs, or any other remedy.

Section 5402 Private Right of Action

Any Person may sue any other Person in the Court to enforce the provisions of this Chapter or the regulations issued hereunder, or to allege a failure of the Brand Inspector

Supervisor of the Livestock Inspectors' Office to perform any act or duty under this Chapter. In lawsuits against parties other than the Nation, the Court, in its discretion, may award damages, penalties, attorneys' fees, or court costs to the prevailing party.

Section 5403 Restriction

No one may file a lawsuit under this Chapter (1) within 60 calendar days after notifying the Livestock Inspectors' Office and the alleged violator in writing of the violation complained of, or (2) if the Livestock Inspectors' Office, in the name of the Nation, has filed and is diligently pursuing an enforcement action in Court against the same violation.

Section 5404 Statute of Limitation

Subject to the provisions of Section 5401 and Section 5403, any lawsuit brought under Section 5402 must be filed within two years after discovery of the act or violation complained of. In the event that the Livestock Inspectors' Office, in the name of the Nation, has filed and is diligently pursuing an enforcement action in Court against the same alleged violator for the same violation, the two year time period shall be tolled and shall begin to run on the date of the final order or judgment by the Court in the action.

Section 5405 Intervention

The Nation, if not a party to the action, may intervene as a matter of right in any action under this Chapter.

ARTICLE 5 – EXCLUSION OF LIABILITY AND INDEMNIFICATION

Section 5501 Exclusion of Liability and Indemnification

The Nation or any of its officers, agents or employees shall not be liable for any loss, damage or injury of any kind to Persons, property, resources, or the environment caused by any Person or licensee who transports or handles livestock within the Nation. Any Person, licensee, or permit holder who transports or handles livestock, shall indemnify the Nation, its members, officers, agents, or employees and shall defend and hold them harmless from any claims and liabilities of any nature whatsoever arising from actions of the Person, licensee, or permit holder taken under this Chapter, licenses or permits issued under this Chapter.

ARTICLE 6 – SEVERABILITY

Section 5601 Severability

If any provision(s) of this Chapter is determined to be invalid, unenforceable, illegal, or inoperable by a court of competent jurisdiction, its invalidity shall not affect the validity and effect of the other provisions hereof.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Tohono O'odham Code Title 2, Chapter 5 - Livestock Buyers, and
Repealing Inconsistent Laws)

RESOLUTION NO. 08-697

1 **WHEREAS, the Legislative Council is vested with the power to provide laws "to promote, protect**
2 **and provide for public health, peace, morals, education and general welfare of the**
3 **Tohono O'odham Nation and its members," and to "[f]ulfill the responsibilities of**
4 **each generation as trustee of the environment for succeeding generations"**
5 **(Constitution of the Tohono O'odham Nation, Article VI, Section (1)(c)(2) and Article**
6 **XVIII, Section 2(a)); and**

7 **WHEREAS, in recognition of the central importance of livestock on the Nation, the former**
8 **Papago Council enacted numerous laws governing livestock brands, control of**
9 **livestock, permits for livestock buyers, and other matters (Ordinance No. 22;**
10 **Ordinance No. 12, as amended; Ordinance No. 35, as amended); and**

11 **WHEREAS, in an effort to update tribal livestock laws, some of which have been in existence**
12 **without amendments since 1939, representatives of the Papago Council and, later, the**
13 **Legislative Council have drafted numerous versions of an updated, comprehensive**
14 **Nation's livestock ordinance over the last 30 years (e.g., Resolution No. 403-87**
15 **(defeated)); and**

16 **WHEREAS, over the past three years, the Legislative Agricultural Committee has worked with the**
17 **Nation's Natural Resources Department to draft livestock laws that are more limited**
18 **in scope; and**

19 **WHEREAS, as a result, a draft Livestock Buyers law, which would regulate the licensing and**
20 **bonding of livestock buyers on the Nation, has been drafted and codified for inclusion**
21 **in the Tohono O'odham Code as Title 2, Chapter 5 - Livestock Buyers; and**

22 **WHEREAS, Chapter 5 - Livestock Buyers has been reviewed with the public at livestock summits**
23 **and other public meetings and was distributed for 30-day public comment periods**
24 **on August 18, 2006 and March 16, 2007; and May 17, 2007; and July 2, 2008; and July 31,**
25 **2008; and**

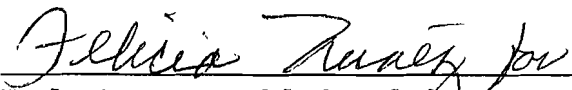
26 **WHEREAS, it is in the Nation's best interest to update the Nation's livestock laws by enacting**
27 **Tohono O'odham Code as Title 2, Chapter 5 - Livestock Buyers.**

28 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts**
29 **and enacts Tohono O'odham Code Title 2, Chapter 5 - Livestock Buyers.**

1 **BE IT FINALLY RESOLVED** by the Tohono O'odham Legislative Council that it hereby repeals the
2 **following:**
3 **(1) Resolution No. 48-363, Authorizing Livestock Forms;**
4 **Resolution No. 50-463, Tribal Brand Committee;**
5 **Resolution No. 50-464, Appointing 5 Members to Tribal Brand Committee;**
6 **Resolution No. 71-80, Requiring Bond for Livestock Purchase Permits;**
7 **Resolution No. 146-80, Increasing Livestock Fees; and**
8 **Resolution No. 147-80, Setting Fees for Livestock Bill Sale Forms.**
9 **(2) Ordinance No. 10-44, Control Surplus of Livestock, as amended;**
10 **Ordinance No. 22-51, Branding Recording Ordinance;**
11 **Ordinance No. 35-58, Livestock Buyers Permits; and**
12 **Ordinance No. 36-58, Livestock Buyers Permits.**
13 **(3) Any other provisions of the laws of the Nation that directly conflict with the**
14 **provisions of Tohono O'odham Code Title 2, Chapter 5 - Livestock Buyers;**
15 **provided that such conflicting provisions shall be deemed repealed only to the**
16 **extent of the conflict and shall otherwise remain valid.**

17 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 03RD Day**
18 **of DECEMBER, 2008 at a meeting at which a quorum was present with a vote of 1,522.1 FOR; 643.9**
19 **AGAINST; 368.5 NOT VOTING; and [07] ABSENT, pursuant to the powers vested in the Council by**
20 **Section (1)(c)(2)(d) and (4) of Article VI and Section 2(a) of Article XVIII of the Constitution of the**
21 **Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and**
22 **approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986,**
23 **pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).**

24
25 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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28 
29 **Verlon M. Jose, Legislative Chairman**
30
31 10th day of December, 2008

32
33 **ATTEST:**

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37 **Lucille Lopez, Acting Legislative Secretary**

38
39 03 day of December, 2008.

RESOLUTION NO. 08-697

(Enacting Tohono O'odham Code Title 2, Chapter 5 - Livestock Buyers, and Repealing Inconsistent Laws)
Page 3 of 3

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Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 11th day of December, 2008 at 9:18 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.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Felicia Neeritz for
Verlon M. Jose, Legislative Chairman

APPROVED

on the 15 day of December, 2008

DISAPPROVED

at 8:27 o'clock, A.M.

Ned Norris, Jr.
NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 15 day of

December, 2008, at 8:50 o'clock, A.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary