

LEGISLATIVE ORDER OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting Rules for April 12, 2001 Hearing of Appeal from District Schedule of
Representative Adjustment)

LEGISLATIVE ORDER NO. 01-165

1 **WHEREAS, the Tohono O'odham Legislative Council has authority to hear appeals from a**
2 **district's adjustment of its schedule of representatives pursuant to Article VI, Section**
3 **3(B) of Ordinance No. 03-86, the Uniform Election Ordinance ("Election Ordinance");**
4 **and**

5 **WHEREAS, the Council has received Harriet Toro's appeal from the Chukut Kuk District's**
6 **adjustment of its schedule of representatives and, by Legislative Order No. 01-152, has**
7 **set a schedule adjustment appeal hearing for April 12, 2001 to consider this appeal;**
8 **and**

9 **WHEREAS, it is necessary to adopt procedures to govern such appeals in order to assure a fair**
10 **and timely hearing in accordance with due process of law; and**

11 **WHEREAS, the Rules Committee has reviewed the attached "Rules of Procedure For Appeal from**
12 **District Schedule of Representative Adjustment" ("Rules of Procedure") and**
13 **recommends its adoption.**

14 **NOW, THEREFORE, BE IT ORDERED THAT the following Rules of Procedure shall govern**
15 **appeals from a district's adjustment to its schedule of representatives and are hereby**
16 **adopted for the April 12, 2001 hearing to consider Harriet Toro's appeal from the**
17 **Chukut Kuk District's adjustment to its schedule of representatives:**

RULES OF PROCEDURE FOR APPEAL FROM DISTRICT
SCHEDULE OF REPRESENTATIVE ADJUSTMENT

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22 **1. Filing Appeal. The village, community, or member appealing a district's adjustment**
23 **of its schedule of representatives pursuant to Article VI, Section 3(B) of Ordinance No.**
24 **03-86, the Uniform Election Ordinance ("Election Ordinance"), shall file twenty-six (26)**
25 **copies of a brief written statement describing the grounds for the appeal and any**
26 **supporting exhibits (collectively, "Appeal") with the Tohono O'odham Legislative**
27 **Secretary during normal business hours.**

1 **Presiding Officer shall notify the members of the Legislative Council of the hearing**
2 **schedule. All members of the Election Board shall attend unless excused by the**
3 **Presiding Officer.**

4 **8. Hearing Marshall. Prior to the hearing, the Presiding Officer shall secure the presence**
5 **of an officer of the Tohono O'odham Police Department to act as Marshall of the**
6 **hearing and may secure the presence of one or more additional Marshals to help keep**
7 **order.**

8 **9. Clerk of the Hearing. The Legislative Council Secretary shall serve as the Clerk of the**
9 **hearing and shall administer the oath to all witnesses, keep the minutes of the hearing**
10 **and preform all other duties as assigned by the Presiding Officer. An Assistant Clerk**
11 **may also be appointed.**

12 **10. Record. A sound recording of the hearing shall be made and kept by the Clerk, and a**
13 **copy thereof shall be provided to each party upon request as soon as practicable after**
14 **the Council's verdict is rendered. The requesting party shall bear the cost of copying**
15 **such recordings.**

16 **11. Open Session. Council members, personnel, the Appellant, District representatives,**
17 **witnesses, and legal counsel shall be permitted in the Council chambers during the**
18 **hearing. Subject to seating capacity limitations of the Council chambers, members**
19 **of the public may observe the hearing. The hearing shall be closed to the press unless**
20 **prior permission is given by the Legislative Council.**

21 **12. Legal Representation. The Appellant and District shall have the right to be**
22 **represented by an attorney or other representative at their own expense. The**
23 **Legislative Council's attorney shall be present to advise the Presiding Officer, the**
24 **Clerk, and the Legislative Council.**

25 **13. Documentary Evidence. The Appellant and District shall file with the Legislative**
26 **Council Secretary twenty-six (26) copies of each document they intend to introduce at**
27 **the hearing. Except by a majority vote of members of the Legislative Council present,**

1 no document, other than those filed with the Secretary, shall be produced or accepted
2 into evidence at the hearing by the parties.

3 **14. Legislative Rules.** The Presiding Officer may refer to the Legislative Rules of the
4 Tohono O'odham Council for guidance on procedures or rules not provided in these
5 hearing rules.

6 **15. Rules of Evidence; Objections.** All testimonial and documentary evidence must be
7 relevant to the issues raised by the appeal or valid defenses to the appeal. Other rules
8 of evidence applicable in judicial proceedings shall not apply. Decisions relating to
9 limitations on testimony, the form and extent of questioning, and other procedural
10 matters may be resolved by the Presiding Officer or may be referred to the Council for
11 resolution at the Presiding Officer's direction.

12 **16. Appearance.** On the day set for the hearing, the business of the Council shall be
13 suspended except as otherwise ordered by the Council, and the Council shall convene
14 the hearing. If the Appellant fails to appear, the appeal shall be dismissed. If the
15 Appellant does appear, the Appeal statement shall be read or, if the statement is
16 lengthy, may be summarized. The Presiding Officer shall call the District Chairperson
17 or his or her designee or representative to appear and respond by indicating whether
18 the District contests the Appeal. The Clerk shall record any response entered to the
19 Appeal by or on behalf of a District. If the District does not contest the Appeal,
20 judgement shall be entered for the Appellant and the District's adjustment to its
21 schedule of representatives shall be declared invalid. If the District Chairperson, or
22 his or her designee or representative appears and contests the Appeal or any part of
23 the Appeal, the Council shall immediately hear the Appeal. If the District Chairperson,
24 or his or her designee or representative does not appear, either personally or by
25 counsel, the failure to appear shall be recorded and the hearing shall be conducted
26 as though the District was present and contested the Appeal.

27 **17. Instructions.** At any time, the Presiding Officer may request instructions from the

1 Council on procedural matters.

2 18. **Maintaining Order.** The Presiding Officer shall have the power to preserve order and
3 to make all lawful orders that may be necessary for that purpose. Persons attending
4 the proceedings will, at the direction of the Presiding Officer, be ejected from the
5 Council chambers by the Marshall if they are under the influence of drugs or alcohol,
6 or in any way interrupt, disrupt or interfere with the proceedings.

7 19. **Relevance of Documentary Evidence.** Any motion to challenge the relevance of any
8 documentary evidence submitted and disclosed to the opposing party in advance of
9 the hearing may be made in writing or made orally prior to opening statements. Any
10 arguments related to such motions shall not exceed a total of fifteen minutes, unless
11 extended by a majority vote. The Presiding Officer shall rule upon any objections to
12 the relevance of documentary evidence or may instruct the Council to decide by roll
13 call vote whether the evidence is relevant and shall be heard or is irrelevant and not
14 be heard.

15 20. **Burden of Proof.** The Appellant shall have the burden of proving by a preponderance
16 of the evidence that the District's adjustment of its schedule of representatives was
17 invalid.

18 21. **Procedure.**

19 (a) **Examination of Witnesses.** Only one individual representing each party may
20 examine any given witness. The Presiding Officer shall permit redirect
21 examination and may permit re-cross examination.

22 (b) **Documentary Evidence.** After preliminary motions are heard and decided,
23 documentary evidence to which there is no objection, or which has been found to
24 be relevant, may be produced at the hearing and considered by the Legislative
25 Council in reaching its verdict.

26 (c) **Opening Statement.** The Appellant and District may each make an opening
27 statement not exceeding thirty minutes per side.

1 (d) **Oaths.** Before any witness gives testimony, the witness shall subscribe to the
2 following oath:

3 *Do you solemnly swear or affirm that the testimony that you are about to give in*
4 *this hearing will be the truth, the whole truth, and nothing but the truth, so help*
5 *you God?*
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7 Upon request of a witness, the Presiding Officer may substitute an alternate form of
8 oath or affirmation as may be required to preserve the freedom of worship.

9 (e) **Witnesses Called in Support of Appeal.** Following opening statements, the
10 Appellant may testify, call and question witnesses, and introduce documents or
11 other evidence provided that twenty-six (26) copies of such documents or evidence
12 have been submitted to the Legislative Secretary as required pursuant to Section
13 11 of these Rules. At the conclusion of any witness's testimony, the District or its
14 counsel may cross-examine each witness called. After cross-examination,
15 members of the Legislative Council may question the witness for a reasonable
16 period of time to be determined by the Presiding Officer. Re-direct and Re-cross-
17 examination may be limited by the Presiding Officer.

18 (f) **Witnesses Called in Support of Adjustment.** After all Appellant's witnesses have
19 been heard, the District may call and question witnesses, and introduce
20 documents or other evidence provided that twenty-six (26) copies of such
21 documents or evidence have been submitted to the Legislative Secretary as
22 required pursuant to Section 11 of these Rules. At the conclusion of any witness's
23 testimony, the Appellant or Appellant's counsel may cross-examine the witness.
24 After cross-examination, members of the Legislative Council may question the
25 witness for a reasonable period of time to be determined by the Presiding Officer.
26 Re-direct and Re-cross-examination may be limited by the Presiding Officer.

27 (g) **Additional Witnesses and Evidence.** The Council may, at the Presiding Officer's
28 direction or by majority vote, call other witnesses having relevant information
29 pertaining to the adjustment. Members of the Legislative Council may question

1 the witness for a reasonable period of time to be determined by the Presiding
2 Officer. At the conclusion of the witness's testimony, the Appellant or Appellant's
3 counsel may cross-examine the witness, followed by the District or its counsel.

4 **22. Closing Arguments.** After all witnesses have been heard, the Appellant shall have the
5 opportunity to make a closing argument in support of the invalidating the District's
6 adjustment to its schedule of representatives. The District's Council or any one of the
7 District's representatives shall then have the opportunity to make a closing argument
8 defending its adjustment. Each of these closing arguments shall be limited to thirty
9 (30) minutes per side. The time allotted for closing argument may be extended by a
10 majority vote.

11 **23. Verdict and Judgment.**
12 **(a) Voting.** After closing arguments, a single vote shall be taken and all members of
13 the Council present at the hearing shall be required to vote on the question
14 whether to grant or deny the Appeal.

15 **(b) Verdict.** A majority vote to grant the appeal means the Council has found that the
16 District's adjustment to its schedule of representatives was invalid and the
17 adjustment is therefore void. If the appeal is granted, the District's official
18 schedule of representative shall be the schedule last certified to the Election
19 Board prior to the adjustment that is the subject of the appeal. A majority vote
20 to deny the appeal means the Council has determined that the adjustment is valid
21 or there was insufficient evidence to grant the appeal. If the appeal is denied, the
22 adjustment that has been certified to the Election Board and is the subject of the
23 appeal shall remain in effect.

24 **(c) Order.** A legislative order reflecting the Legislative Council's verdict shall be
25 executed and copies provided by the Secretary of the Council to the parties and
26 Chairperson of the Election Board within five (5) business days following the date
27 of the decision.

LEGISLATIVE ORDER NO. 01-165

(Adopting Rules for April 12, 2001 Hearing of Appeal from District Schedule of Representative Adjustment)

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24. Pursuant to the Election Ordinance, Article VI, Section 3(B), the decision of the Legislative Council shall be final.

The foregoing Order was passed by the Tohono O'odham Legislative Council on the 06TH Day of APRIL, 2001 at a meeting at which a quorum was present with a vote of 1,911.75 FOR; 111.3 AGAINST; 142.45 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1 (a) of Article VI 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

ATTEST:


Julianna Saraficio, Acting Legislative Secretary

ACTION: ADOPTING RULES FOR APRIL 12, 2001 HEARING OF APPEAL FROM DISTRICT SCHEDULE OF REPRESENTATIVE ADJUSTMENT

MOVED: COUNCILWOMAN MARY ANN ANTONE

SECOND: VICE CHAIRMAN AMBROSE ENCINAS

DATE: APRIL 06, 2001

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 171.8	1. MARY ANN ANTONE (Darlene Andrew)	85.9	X			
	2. RITA MARTINEZ (Nicholas Jose)	85.9	X			
SELLS 372.7	1. DENNIS E. JOSE ()	186.35	X			
	2. EVELYN JUAN ()	186.35	X			
SCHUK TOAK 133.4	1. MARY FLORES ()	66.7	X			
	2. AMBROSE ENCINAS ()	66.7	X			
SAN XAVIER 165.9	1. TONY BURRELL ()	82.95	X			
	2. DENNIS RAMON ()	82.95	X			
BABOQUIVARI 286.5	1. FRANCES MIGUEL ()	143.25	X			
	2. FRANCES G. ANTONE (Edward N. Kisto)	143.25	X			X
GU ACHI 209.6	1. CAMILLUS LOPEZ ()	104.8	X			
	2. ALEX J. RAMON ** ()	104.8	X			
PISINEMO 156.8	1. BARBARA SALVICIO (Alex Antone)	78.4	X			
	2. JOHNSON JOSE ()	78.4			X	
SAN LUCY 128.1	1. ALBERT MANUEL, JR. ()	64.05	X			
	2. GLORIA RAMIREZ ()	64.05			X	
GU VO 160.0	1. FERN SALCIDO ()	80.0	X			X
	2. GLORIA MONTANA (Phillip Antone)	80.0	X			
HICKIWAN 158.1	1. SHIRLEY MOLINA ()	79.05	X			
	2. LLOYD FRANCISCO (Susan Sam)	79.05	X			
CHUKUT KUK 222.6	1. KENNETH WILLIAMS ()	111.3	X			
	2. DAVID GARCIA (Mary Audrey Juan)	111.3		X		
TOTAL		2,165.5	1,911.75	111.3	142.45	[02]

**PASSED VOTES