

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Repealing Papago Law and Order Code Chapter One and Ordinance No. 01-89 and
Enacting and Codifying Tohono O'odham Code Title 6, Chapter 1, Courts and
Procedures)**

RESOLUTION NO. 08-704

- 1 **WHEREAS, the Constitution of the Tohono O'odham Nation vests the Tohono O'odham Legislative**
2 **Council with the power to set judicial compensation, appoint judges, approve Judicial**
3 **Branch budgets, and enact laws governing certain other aspects of the Nation's courts**
4 **(Constitution, Article V, Section 1, Article VI, Section 1 and Article VIII); and**
- 5 **WHEREAS, in 1945 the Papago Council enacted and adopted Law and Order Code Chapter 1,**
6 **"Papago Tribal Courts," to provide for the jurisdiction of the Nation's courts,**
7 **qualifications and appointment of judges, court procedures, and other matters**
8 **pertaining to the Judicial Branch; and**
- 9 **WHEREAS, in 1983 Law and Order Code Chapter 1 was amended by Ordinance No. 05-83 to revise**
10 **provisions governing the appointment of judges and the court of appeals; and**
- 11 **WHEREAS, Law and Order Code Chapter 1, as amended, was never repealed and several of its**
12 **provisions, such as the length of judicial terms and the Council's role in adopting**
13 **court procedures, conflict with the 1986 Constitution of the Tohono O'odham Nation;**
14 **and**
- 15 **WHEREAS, in 1989 Ordinance No. 01-89, "Designating Judicial Branch Rules and Procedures as**
16 **Title II with the Enactment of Chapters 1 & 2," was approved and codified as Title II**
17 **of the Laws of the Tohono O'odham Nation; and**
- 18 **WHEREAS, Ordinance No 01-89 addresses many of the same subjects appearing in Law and Order**
19 **Code Chapter 1, creating conflicts between these laws; and**
- 20 **WHEREAS, the Legislative Council Judiciary Committee has reviewed the Nation's Constitution**
21 **and existing court laws, and has redrafted and reorganized Ordinance No. 01-89 as**
22 **a new law that, if enacted, would be codified as Tohono O'odham Code as Title 6,**
23 **Chapter 1, Courts and Procedures; and**
- 24 **WHEREAS, on October 21, 2005, the Judicial Court submitted written comments on draft**
25 **amendments to Ordinance No. 01-89; and**
- 26 **WHEREAS, in March 2006, the Judiciary Committee provided a subsequent draft Title 6, Chapter**
27 **1, Courts and Procedures law to the Judicial Court and met the Court judges to**
28 **discuss issues raised in the draft; and**
- 29 **WHEREAS, the Committee provided the Court with an opportunity to submit additional**

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1 **comments, incorporated a number of suggested amendments into the draft law, and**
2 **on May 16, 2006 provided a written response to the Court's suggestions; and**
3 **WHEREAS, on August 15, 2006, a copy of the proposed Chapter 1, Courts and Procedures, was**
4 **provided to all districts with 30-day public notice requesting comments; and**
5 **WHEREAS, while the Legislative Council adopted Title 6, Chapter 1, by Resolution No. 06-818, the**
6 **resolution was vetoed and the veto was not overridden; and**
7 **WHEREAS, the Judiciary Committee subsequently met with the Judicial Court judges in 2007 and**
8 **2008 to discuss the Court's comments and make additional amendments which have**
9 **been incorporated into the revised Title 6, Chapter 1 that has now been presented to**
10 **the Legislative Council; and**
11 **WHEREAS, if enacted, Title 6, Chapter 1, Courts and Procedures would**
12 **• create a "holdover" clause providing that sitting judges remain in office; after**
13 **the end of their respective terms until a successor is appointed and sworn in;**
14 **• set education and experience requirements for full-time judges;**
15 **• require that judges certify that their decisions are issued within 60 days;**
16 **• provide that court rules be published in a single volume and made available to**
17 **practitioners;**
18 **• require that court rules are enforced by all judges;**
19 **• require that appellate decisions and certain trial court decisions be published**
20 **annually;**
21 **• require that attorneys and lay advocates be authorized to practice;**
22 **• grant litigants the right "to a change of judge as of right without cause and**
23 **providing a process for disqualifying judges for cause";**
24 **• allow the Court to set reasonable fees, subject to Council approval;**
25 **• delete references to court-appointed commissioners, masters, and referees from**
26 **the existing law; and**
27 **WHEREAS, the Judiciary Committee has recommended (1) that Ordinance No. 01-89 be repealed**
28 **and replaced with "Tohono O'odham Code Title 6, Chapter 1, Courts and Procedures,"**
29 **which is incorporated by this reference and (2) that Law and Order Code Chapter 1,**
30 **"Papago Tribal Courts," and its amendments be repealed; and**

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1 **WHEREAS, the Judiciary Committee has also recommended that the minimum qualifications for**
2 **judges appearing in Section 1103(C) of Title 6, Chapter 1 should apply only to future**
3 **judicial appointments and should not be interpreted to remove any current Judicial**
4 **Court judge from office; and**

5 **WHEREAS, it is in the Nation's best interest to clarify the law governing the Nation's courts,**
6 **repeal conflicting and unconstitutional provisions of the law, and otherwise enact**
7 **Tohono O'odham Code Title 6, Chapter 1, Courts and Procedures.**

8 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that Law and**
9 **Order Code Chapter 1, "Papago Tribal Courts," as amended, and Ordinance No. 01-89**
10 **are hereby repealed.**

11 **BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that Tohono O'odham Code**
12 **Title 6, Chapter 1, Courts and Procedures is hereby enacted; provided that (1) Section**
13 **1103(C) shall apply only to judicial appointments made after the effective date of this**
14 **resolution and shall not be interpreted to remove any current Judicial Court judge**
15 **from office, and (2) any references in the laws of the Nation to the provisions of**
16 **Ordinance No. 01-89 shall be construed as referring to the corresponding,**
17 **renumbered sections of Tohono O'odham Code Title 6, Chapter 1 as enacted by this**
18 **Resolution.**

19 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05TH. Day**
20 **of DECEMBER, 2008 at a meeting at which a quorum was present with a vote of 2,534.5 FOR; -0-**
21 **AGAINST; -0- NOT VOTING; and [08] ABSENT, pursuant to the powers vested in the Council by**
22 **Section 1 of Article V, Section 1 of Article IV, and Article VIII of the Constitution of the Tohono**
23 **O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by**
24 **the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to**
25 **Section 16 of the Act of June 18, 1934 (48 Stat. 984).**

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TOHONO O'ODHAM LEGISLATIVE COUNCIL


Verlon M. Jose, Legislative Chairman

10th day of December, 2008

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(Repealing Papago Law and Order Code Chapter One and Ordinance No. 01-89, and Enacting and Codifying Tohono O'odham Code Title 6, Chapter 1, Courts and Procedures)

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ATTEST:

Lucille Lopez

Lucille Lopez, Acting Legislative Secretary

15 day of December, 2008.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 10th day of December, 2008 at 2:16 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 Munoz for Verlon M. Jose
Verlon M. Jose, Legislative Chairman

APPROVED

on the 12th day of December, 2008

DISAPPROVED

at 3:00 o'clock, P.M.

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

Returned to the Legislative Secretary on the 12 day of

December, 2008, at 3:02 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

ACTION: REPEALING PAPAGO LAW AND ORDER CODE CHAPTER ONE AND ORDINANCE NO. 01-89, AND ENACTING AND CODIFYING TOHONO O'ODHAM CODE TITLE 6, CHAPTER 1, COURTS AND PROCEDURES

MOVED: COUNCILWOMAN KIMBERLY LISTO

SECOND: COUNCILWOMAN ETHEL GARCIA

DATE: DECEMBER 05, 2008

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
BABOQUIVARI 316.9	1. FRANCES MIGUEL (<i>Absent</i>) (Roberta Harvey)(<i>Present</i>)	158.45	X			
	2. FRANCES G. ANTONE (Vernon Smith)	158.45	X			X
CHUKUT KUK 264.8	1. ETHEL GARCIA ()	132.40	X			
	2. VERLON M. JOSE ()	132.40	X			
GU ACHI 227.9	1. TIMOTHY L. JOAQUIN (Louis L. Johnson)	113.95	X			
	2. CYNTHIA E. MANUEL ()	113.95	X			X
GU VO 199.2	1. GRACE MANUEL ()	99.60	X			
	2. RAYMOND VICTOR ()	99.60	X			X
HICKIWAN 172.0	1. MICHELLE ORTEGA ()	86.00	X			X
	2. SANDRA ORTEGA ()	86.00	X			
PISINEMO 182.4	1. CHESTER ANTONE (Tony Murrietta)	91.20	X			X
	2. GERALD FAYUANT ()	91.20	X			
SAN LUCY 181.1	1. LORRAINE EILER ()	90.55	X			
	2. GLORIA RAMIREZ ()	90.55	X			
SAN XAVIER 196.5	1. FELICIA NUÑEZ (Adam P. Andrews)	98.25	X			
	2. OLIVIA VILLEGAS-LISTON (Eileen A. Estrada-Lopez)	98.25	X			X
SCHUK TOAK 154.6	1. FRANCES B. CONDE (Frederick Jose)	77.30	X			
	2. PHYLLIS CACHORA (Agnes Joaquin)	77.30	X			X
SELLS 444.7	1. KIMBERLY LISTO ()	222.35	X			
	2. EVELYN B. JUAN MANUEL ()	222.35	X			
SIF OIDAK 194.4	1. WAVALENE ROMERO ()	97.20	X			
	2. MARY LOPEZ ()	97.20	X			X
TOTAL		2,534.5	2,534.5	-0-	-0-	[08]

**PASSED VOTES