

**PART II**  
**CODE OF ORDINANCES**

Chapter 1

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**ARTICLE I. CODE****Sec. 1-1. Codification ratified.**

All of the ordinances of the Community deemed suitable for inclusion heretofore enacted pursuant to the Constitution and bylaws of the Community are hereby codified under the following chapter numbers and descriptive headings:

*Chapter:*

- (1) General Provisions and Enterprises, Divisions and Boards.
- (2) Community Membership.
- (3) Voting and Elections.
- (4) Courts Generally.
- (4.5) Law Enforcement and Legal Offices.
- (5) Civil and Criminal Procedure.
- (5.5) Civil Offenses.
- (6) Criminal Code.
- (6.5) Sex Offender Registration and Community Notification.
- (7) Extradition and Exclusions.
- (8) Sentencing.
- (9) Probate.
- (10) Domestic Relations.
- (11) Minors.
- (12) Animals and Fowl.
- (13) Health and Sanitation.
- (14) Alcoholic Beverages and Prohibited Substances.
- (15) Licensing and Permits.
- (15.1) Taxation.
- (15.5) Gaming.
- (16) Traffic and Motor Vehicles.
- (17) Development, Real Property and Housing.
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- (18) Water and Other Natural Resources.
- (19) Cultural Resources.

(20) Finances.

(21) Graffiti.

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(24) Business and Commerce.

(Code 1976, § 1; Code 1981, § 1-1; Code 2012, § 1-1; Ord. No. SRO-102-86, 7-23-1986; Ord. No. SRO-129-90, 6-27-1990; Ord. No. SRO-134-91, 10-31-1990; Ord. No. SRO-185-95, 10-26-1994; Ord. No. SRO-212-96, 11-8-1995; Ord. No. SRO-256-2000, 10-6-1999; SRO-294-03, 2-19-2003; Ord. No. SRO-305-05, 8-31-2005; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-352-10, 10-14-2009; Ord. No. SRO-361-2010, 3-31-2010; Ord. No. SRO-402-2012, § 1-1, 5-30-2012)

**Sec. 1-2. Publication required.**

The secretary of the Community shall, no less often than once every three months, beginning July 1, 1976, prepare, arrange and collate for publication the ordinances enacted during the prior three-month period which have not already been prepared, arranged and collated for publication.

(Code 1976, § 2; Code 1981, § 1-2; Code 2012, § 1-2; Ord. No. SRO-402-2012, § 1-2, 5-30-2012)

**Sec. 1-3. Powers of codifier.**

The secretary of the Community, in carrying out the provisions of section 1-2, shall not alter the sense, meaning or effect of any ordinance of the Community Council or any referendum or initiative enacted by the Community, but may renumber sections and parts of sections; rearrange sections, articles, chapter and titles; change reference numbers to agree with renumbered sections, articles, chapters or titles; substitute the proper section, article, chapter or title for the terms "the preceding section," "this article," "this ordinance" and like terms; strike out figures where they are merely a repetition of written words; change capitalization for the purpose of uniformity and correct manifest clerical or typographical errors. The secretary shall omit all temporary laws, all titles to ordinances, all enacting and repealing clauses, and all purpose, validity and construction clauses unless, from their nature, it

may be necessary to retain some of them to preserve the full meaning and intent of the law. The secretary shall not undertake to make any changes in existing laws, it being the intention of this section that the secretary shall in no manner assume to exercise legislative power.

(Code 1976, § 3; Code 1981, § 1-3; Code 2012, § 1-3; Ord. No. SRO-402-2012, § 1-3, 5-30-2012)

#### **Sec. 1-4. History notes.**

The secretary shall cause to be published in the codification of the ordinances of this Code annotations which indicate the effective date of various sections of this Community Code of Ordinances as well as historical notations relevant to this Community Code of Ordinances.

(Code 1976, § 4; Code 1981, § 1-4; Code 2012, § 1-4; Ord. No. SRO-402-2012, § 1-4, 5-30-2012)

#### **Sec. 1-5. Enacting, repealing, and amending sections within the Community Code of Ordinances.**

(a) *Repeal or amendment of sections of the Code of Ordinances as affecting existing liabilities:*

- (1) The repeal or amendment of any section of the Community Code of Ordinances shall not affect, release or extinguish any penalty, forfeiture, or civil or criminal liability incurred under such section prior to any such repeal or amendment unless the repeal or amendment expressly provides otherwise, and such section shall be treated as still remaining in force in any proper action or prosecution for the enforcement of such penalty, forfeiture, or civil or criminal liability.
- (2) The expiration of a section of the Community Code of Ordinances that includes a fixed termination date shall not affect, release or extinguish any penalty, forfeiture, or civil or criminal liability incurred under such section, unless such section expressly provides otherwise, and such section shall be treated as still remaining in force in any proper action or prosecution for the enforcement of such penalty, forfeiture, or civil or criminal liability.

(b) *Savings clause of repealed and amended sections of the Community Code of Ordinances.* All suits, proceedings, or prosecutions whether civil or criminal for causes arising or acts done or committed prior to any repeal or amendment of the Community Code of Ordinances may be commenced and prosecuted as if said repeal or amendment had not been made, unless the act of repeal or amendment expressly provides otherwise.

(Ord. No. SRO-424-2013, § 1-4.01, 6-12-2013)

#### **Sec. 1-6. Construction of Community Code of Ordinances provisions.**

The Community has the inherent sovereign authority and sovereignty to regulate the conduct of persons and activities within its territory and jurisdiction. The provisions of this Community Code of Ordinances shall be liberally construed in accordance with the fullest interpretation of the Community's regulatory authority and jurisdiction as permitted by applicable laws, including the provisions of the Constitution of the Community.

(Code 2012, § 1-5; Ord. No. SRO-402-2012, § 1-5, 5-30-2012)

#### **Sec. 1-7. Construction of catchlines.**

The catchlines of the sections of this Community Code of Ordinances printed in boldface type and the subcatchlines printed in italic type are intended as mere catchwords to indicate the contents of the sections and subsections and shall not be deemed or taken to be titles of such sections or subsections nor as a substantive part of any section or subsection, unless so indicated.

(Code 1981, § 1-9; Code 2012, § 1-9; Ord. No. SRO-402-2012, § 1-9, 5-30-2012)

#### **Sec. 1-8. Severability of parts of Code.**

If for any reason any part, section, subsection, sentence, clause or phrase of this Community Code of Ordinances or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of Community Code of Ordinances.

(Code 1981, § 1-10; Code 2012, § 1-10; Ord. No. SRO-402-2012, § 1-10, 5-30-2012)

**Sec. 1-9. Amendments to Code.**

(a) *Amending existing provisions.* Amendments to any of the provisions of this Community Code of Ordinances may be made by amending such provisions by specific reference to the section number of this Community Code of Ordinances in substantially the following language: "section \_\_\_\_\_ of the Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended to read as follows: . . . ." The new provisions should then be set out in full as desired.

(b) *Adding.* In the event a new section not heretofore existing in Community Code of Ordinances is added, the following language is suggested: "The Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended by adding a section, to be numbered \_\_\_\_\_, which said section reads as follows: . . . ." The new section should then be set out in full as desired.

(c) *Repealing.* All sections, articles, chapters or provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be.  
(Code 1981, § 1-11; Code 2012, § 1-11; Ord. No. SRO-402-2012, § 1-11, 5-30-2012)

**Secs. 1-10—1-34. Reserved.****ARTICLE II. COMMUNITY,  
ENTERPRISES, DIVISIONS AND BOARDS****DIVISION 1. PREAMBLE TO ENTERPRISES****Sec. 1-35. Authorization.**

Article VII, section (1)(c)(5) and (f) of the Constitution of the Salt River Pima-Maricopa Indian Community ("Community") authorizes the Community Council to adopt ordinances that provide for the public welfare and to organize enterprises for business or charitable purposes that are subordinate economic organizations/entities and arms of which act for and on behalf of the Community as follows:

- (1) The Community Council adopts this preamble to the enterprise ordinances as

a brief statement of intent on how enterprises are related to the Community. Notwithstanding any other provision of Community law, including chapter 1, article II, Community, Enterprises, Divisions and Boards, sections 15.1-25 and 15.1-26, and chapter 24, article I, Limited Liability Company Act, section 1-35 shall govern over any conflicting language in any ordinance, company documents, bylaws, or any other document relating to all Community enterprises, including all divisions, limited liability companies formed under chapter 24, article 1 that are wholly owned by the Community, and entities which the Community owns a majority interest as recognized in sections 15.1-25 and 15.1-26 ("Enterprises").

- (2) From time to time the Community Council has adopted ordinances to organize enterprises, some of which include:

- a. Ordinance SRO-258-2000, established the Salt River Pima-Maricopa Community Schools as "a division of the Community."
- b. Ordinance SRO-363-2010, established the Salt River Community Gaming Enterprises as "a division of the Community."
- c. Ordinance SRO-237-1998, established the Salt River Community Housing Division as "a division of the Community."
- d. Ordinance SRO-339-2008, established the Salt River Commercial Landfill Company as "a division of the Community."
- e. Ordinance SRO-172-1994, established the Phoenix Cement Company as "a division of the Community."
- f. Ordinance SRO-266-2000, established the Salt River Community Property Development and Asset Management Company as "a division of the Community."



- g. Ordinance SRO-276-2001, established the Saddleback Communications Company as "a division of the Community."
  - h. Ordinance SRO-168-1993, established the Salt River Sand and Rock Company as "a division of the Community."
  - i. Ordinance SRO-350-2009, established the Salt River Community Golf Enterprises as "a division of the Community."
  - j. Ordinance SRO-311-2006, established the Salt River Financial Services Institution as "an institution of the Community."
  - k. Ordinance SRO-370-2011, established Salt River Fields at Talking Stick as "a subordinate economic enterprise of Community."
- (3) The Community is the exclusive owner of the enterprises listed in subsection (2) of this section and of its wholly owned Community limited liability companies, and these enterprises act for the exclusive benefit of the Community and, with the exception of housing, schools, and the Salt River Financial Services Institute, the Community is the exclusive recipient of enterprise funds in excess of the operating needs.
- (4) The Community has established its enterprises to promote Community self-sufficiency and self-determination, promote Community economic development, generate employment for Community members, promote Pima and Maricopa cultural awareness, and generate government tax and other revenue to support the operation of Community government and the provision of governmental services and programs to Community members. All such enterprises shall be considered subordinate economic organizations/entities and arms of the Community. While each enterprise may have a unique purpose, authority, and responsibility, each enterprise shall

remain subject to the overriding and paramount purpose, authority, and responsibility of the Community.

- (5) The Community intends that all of its enterprises are entitled to all of the privileges and immunities of the Community, including, but not limited to, immunities from suit, arbitration or other legal process in federal, state and tribal courts and administrative tribunals, and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law.
- (6) The annual budget of income and expenses for all enterprises of the Community are subject to the final approval by the Community Council.
- (7) All enterprises of the Community shall periodically transfer to the Community funds excess to the needs of the enterprise. All enterprises of the Community shall make such transfers at the direction of the Community Council.
- (8) Unless prohibited by federal law, the Community Council may remove any board member(s) at-will and in its sole discretion.

(Ord. No. SRO-532-2021, 4-7-2021)

**Editor's note**—Ord. No. SRO-532-2021, adopted April 7, 2021, deleted § 1-35 and enacted a new section as set out herein. Formerly, § 1-35 pertained to similar subject matter and derived from Code 2012, § 1-20 and Ord. No. SRO-402-2012, § 1-20, adopted May 30, 2012.

## **Secs. 1-36—1-58. Reserved.**

### **DIVISION 2. SALT RIVER PIMA-MARICOPA COMMUNITY SCHOOLS DIVISION**

#### **Sec. 1-59. Established.**

(a) There is established a division of the Community to be known as Community schools.

(b) The Community schools division shall maintain its principal place of business and offices in the Community.



(c) The Community schools division shall be in the business of developing and operating a pre-K through 20 grades educational structure as designated by the Community Council through the budget process or otherwise and may also operate a child care and Head Start, GED, vocational education, adult education, post-secondary education, library and such other related activities as the Community Council deems necessary and appropriate.

(d) The purposes of the Community schools division are to promote educational excellence within the Community so as to enable the Community to survive and prosper as an independent Indian Community by educating the students of the schools to reach their highest potential.

(e) In furtherance, and not in limitation, of the general powers conferred by the Community schools division of the Community and of the purposes hereinbefore stated and in conformity with the policies of the Community Council, the Community schools division shall also have the following powers which shall be exercised by the board of the Community schools division or delegated by it to the Community schools division officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, country, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. The Community schools division shall not enter into any lease of real property without the approval of the Community Council.
  - b. The Community schools division shall not enter into any contract which requires expenditures from the Community schools division in excess of the Community schools division's board-approved budget for the subject matter of any such contract without an amendment to the Community schools division's budget.

- (2) To borrow money for any of the purposes of the Community schools division, and in connection therewith to make, draw, execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other evidences of indebtedness, negotiable or nonnegotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral) the board may grant collateral or other security other than purchase money collateral or security as described herein and with such approval issue jointly with any other person, associates or firm any evidences of indebtedness as described in this subsection with the specific approval of the Community Council. Any borrowing by the Community schools division from the Community shall be treated as a like borrowing from any commercial lender.
- (3) To adopt an annual budget of income and expenses approved by the Community Council.
- (4) To conduct banking relationships necessary to the operation of the Community schools division, to establish a uniform system of accounting, and to provide for the annual auditing by a certified public accountant of the books of the Community schools division and to report the financial condition of the Community schools division to the Community Council quarterly at such time as appropriate regulations or management guidelines are adopted by the board and approved by the Community Council and until such adoption and approval such functions shall be assumed by the finance department of the Community.
- (5) To periodically transfer to the Community funds excess to the operating needs of the Community schools division. The Community schools division shall

make such transfers at the direction of the board or at the direction of the Community Council.

- (6) To enter into agreements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as the board may from time to time determine and to enter into contracts for goods and services with any division of the Community. Until such policies and procedures are approved by the Community Council, such functions shall be governed by the Community policies and procedures and managed by the Community human resources department.
- (7) To hire, promote and discharge such personnel as may be required to conduct the affairs of the Community schools division; provided that the terms and conditions of employment, including wages and benefits (including any pension plans or other deferred compensation arrangements) paid and personnel policies used and disciplinary procedures utilized shall be subject to the approval of the Community Council.
- (8) To conduct the business of the Community schools division in accordance with the laws, and, except as the Community schools division policies and procedures have been approved by the Community Council, the policies and procedures of the Community.
- (9) To apply for and expend according to agreements entered into grants and gifts for the purposes of enhancing the educational services performed by the Community schools division, with federal, state and municipal governments as well as private foundations and persons.
- (10) To exercise such powers as are necessary to effect the purposes for which the Community schools division is organized and consistent with this division within this Community Code of Ordinances.

(f) The Community schools division shall engage in activities as described in subsection (c) of this section at the specific direction of the Community Council. The Community schools division shall carry out the plan of development for the development and operation of such activities as shall be directed by the Community Council within the schedule determined by the council.

(g) The general business of the Community schools division shall be conducted by a board which shall consist of seven voting members who shall be appointed by the Community Council and one ex officio nonvoting member. The qualifications of the members are as follows:

- (1) The education director of the Community department of education shall be the chief executive officer of the Community schools division.
- (2) The appointed members of the board shall consist of seven members: three enrolled Community members; two professionals, at least one of whom must be a Community member; and two Community Council members. The two council members shall serve on the board until the expiration of his or her council terms or until replaced by council, whichever occurs earlier. The other five board members shall serve staggered terms, with the expiration date of each position to be as assigned on the board roster of January 19, 1999. These five board members shall serve three-year terms subject to removal by the Community Council. Two members of the board shall have extensive professional or management experience. One person appointed under this subsection shall be an enrolled member of the Community and the other appointee may be a nonmember. The council will accord preference to Native Americans in the appointment under this subsection.
- (3) The education director of the Community department of education shall be the ex

officio nonvoting member who will serve as CEO during the term of his or her service as education director.

- (4) Any board member who is qualified under subsection (g)(2) of this section shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for their term or hereafter until their successors are appointed by the Community Council. Any board member who is a member of the council shall serve at the pleasure of the Community Council during such council member's term of office as a council member.

(h) The officers of the board shall consist of a chairperson of the board, vice-chairperson, and secretary/treasurer, and such additional officers as the board may deem necessary. The officers elected by the board shall hold office for a period of one year, or until their successors are elected and shall have qualified, unless removed from office by the board as provided in the policies. The president of the Community may from time to time assign employees of the Community to perform functions for the Community schools division and attend board meetings of the Community schools division.

(i) The board shall have the power to adopt, amend, rescind and repeal policies and to elect and appoint such agents and committees as it may deem necessary, with such powers as it may confer.

(j) The highest amount of indebtedness or liability, direct or contingent, to which the Community schools division may at any time subject itself shall be determined, from time to time, by the Community Council.

(k) The board members and officers of the Community schools division shall not be liable for the debts of the Community schools division, the private property of the board members and officers of the Community schools division shall be forever exempt from its debts and the Community indemnifies and shall hold harmless Community schools division employees, the board members and officers from liability or other

claim arising out of their duties of or function as Community schools division employees, board members or officers.

(l) Nothing in this division within this Community Code of Ordinances shall exempt the Community schools division from full compliance with ordinances of the Community and this division within this Community Code of Ordinances does not repeal or amend any other ordinance or resolution of the Community. (Code 1981, § 2-45; Code 2012, § 1-25; Ord. No. SRO-258-2000, 12-8-1999; Ord. No. SRO-329-08, 4-2-2008; Ord. No. SRO-402-2012, § 1-25, 5-30-2012; Ord. No. SRO-495-2017, 8-30-2017; Ord. No. SRO-511-2019, 5-14-2019)

#### **Sec. 1-60. Capitalization; financial responsibility.**

(a) The Community schools division shall be capitalized as shall be determined by the Community Council.

(b) The Community schools division shall be responsible for the payment of all indebtedness of the Community schools division and the Community hereby expressly waives any and all defenses based on its sovereign immunity from suit with respect to any action:

- (1) Based on contract for money;
- (2) Based on the replevin of personal property; and
- (3) For damages arising out of tort when the damage claim is fully covered by insurance owned by the Community schools division, and provided in each case that such action is brought in the Community court and no other court of the United States or of any state.

(c) This waiver and consent is limited to any assets of the Community which are held in the accounts of the Community schools division in the name of the Community schools division; provided, however, that such waiver and consent shall not extend to assets transferred from the accounts of the Community schools division to other accounts of the Community, and to amounts payable to the Community by the Community schools division. All obligations incurred in con-

nection with the Community schools division shall be special obligations of the Community schools division payable solely from the assets described in this subsection. The Community schools division shall accept service of process upon the Community schools division by delivery to any officer or managing agent of the Community schools division.

(Code 1981, § 2-46; Code 2012, § 1-26; Ord. No. SRO-258-2000, 12-8-1999; Ord. No. SRO-402-2012, § 1-26, 5-30-2012)

**Secs. 1-61—1-78. Reserved.**

**DIVISION 3. COMMUNITY HOUSING PROGRAM\***

**Sec. 1-79. Community housing program; purpose and responsibilities.**

(a) The Community tribal housing program shall consist of four department divisions of the Salt River Pima-Maricopa Indian Community ("Community") government established to manage the Community's housing program. The four department divisions are:

- (1) Housing maintenance division of the engineering and construction services department;
- (2) Housing property management division of the Community development department known as the resident resources and services division;
- (3) Housing finance division of the Community finance department; and
- (4) Housing services division of the health and human services department.

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\***Editor's note**—Ord. No. SRO-448-2014, adopted Aug. 20, 2014, repealed the former div. 3, §§ 1-79 and 1-80, and enacted a new div. 3 as set out herein in § 1-79. The former div. 3 pertained to Salt River Community Housing Division and derived from Code 1981, §§ 17-21, 17-22; Code 2012, §§ 1-40, 1-41; Ord. No. SRO-232-97, adopted Sept. 30, 1997; Ord. No. SRO-237-1998, §§ A, B, adopted Apr. 15, 1998; and Ord. No. SRO-402-2012, §§ 1-40, 1-41, adopted May 30, 2012.

(b) The purpose of these department divisions is to promote the development of affordable, well-constructed, modern, reasonably energy efficient, and culturally relevant homes and related services within the Community.

(c) The department divisions shall work with other Community departments to plan, develop, construct, maintain and operate various housing systems for members of the Community.

(d) The department divisions shall assume all of the benefits and responsibilities of the Salt River Housing Authority, including but not limited to: contractual obligations; grant obligations; responsibilities and benefits undertaken pursuant to the 1937 Housing Act as amended; ownership of all real and personal property; accounts payable; accounts receivable; and all financial assets including amounts due under the 1937 Housing Act as amended. The department divisions shall also assume the benefits and responsibilities of the Community's tribal designated housing entity.

(e) The department divisions shall exercise all rights and perform all duties of the housing division under the Amended and Restated Agreement of Limited Partnership of Canal Side Limited Partnership dated May 9, 2000, the Amended and Restated Agreement of Limited Partnership of Canalside II Limited Partnership dated December 1, 2000, and all agreements, leases, declarations, covenants, and other documents related to those limited partnerships.  
(Ord. No. SRO-448-2014, § 1-79, 8-20-2014)

**Secs. 1-80—1-103. Reserved.**

**DIVISION 4. SALT RIVER COMMUNITY PROPERTY DEVELOPMENT AND ASSET MANAGEMENT COMPANY**

**Sec. 1-104. Established.**

(a) There is established a division of the Salt River Pima-Maricopa Indian Community ("Community") which is an unincorporated subordinate economic organization of the Community to be known as Salt River Community Property

(b) The Community property development and asset management division shall maintain its principal place of business and offices in the Community.

(c) The Community property development and asset management division shall be in the business of developing real property within the Community and managing commercial developments and such other business enterprises and related activities as the Community Council may from time to time determine the Community property development and asset management division shall develop, manage and operate.

(d) The purposes of the Community property development and asset management division are to promote commercial development within the Community so as to enable the Community to survive and prosper as an independent Indian Community by creating a viable economy for the Community.

(e) In furtherance, and not in limitation, of the general powers conferred by this division within this Community Code of Ordinances of the Community and of the purposes hereinbefore stated and in conformity with the policies of the Community Council, the Community property development and asset management division shall also have the following powers which shall be exercised by the board of the Community property development and asset management division or delegated by it to Community property development and asset management division officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, country, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. Development of real property. The Community property development and asset management division may in the ordinary course of its business, lease land owned by the Community upon the approval of the Community Council and land owned by allotted landowners upon the

approval of the allotted landowners or accept designations of use of Community-owned land by the Community Council and develop such land as commercial property for sublease, all according to law. Every lease or designation of use entered





Development and Asset Management Company ("DEVCO"). DEVCO shall act for the exclusive benefit of the Community and on its behalf.

(b) DEVCO shall maintain its principal place of business in the Community.

(c) DEVCO shall be in the business of acquiring, developing and managing real property and commercial developments both within and outside of the Community, and such other business enterprises and activities as the Community Council may from time to time determine.

(d) DEVCO shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. DEVCO is and shall function as an unincorporated subordinate economic organization of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of DEVCO, unless expressly approved in writing by the Community Council. Instead, the debts, liabilities and obligations of DEVCO shall be paid and discharged exclusively by DEVCO and from assets or accounts held in its name.

(e) The primary purpose of DEVCO is:

- (1) To promote the economic self-sufficiency of the Community, so as to enable the Community to survive and prosper as an independent Indian Community by generating government revenue to sustain and enhance the Community's necessary programs,
- (2) To enable the Community to further develop and enhance its self-determination,
- (3) To promote Community economic development, generate employment for Community members, and promote the Pima and Maricopa culture, and
- (4) To generate government tax and other revenues to support operation of Community government and the provision of governmental services and programs to Community members and the public at large.

(f) In furtherance of the general powers conferred by this division 4 of chapter 1, article II of the Community Code of Ordinances, and in conformity with the established policies of the Community Council, DEVCO shall also have the following powers which, unless such powers are revoked by the Community Council, shall be exercised by the board of DEVCO or delegated by it to DEVCO's officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, county, country, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. DEVCO shall not enter into any contract which requires expenditures from DEVCO in excess of the DEVCO budget as approved by the Community Council as provided in subsection (f)(6) of this section for the subject matter of any such contract without an amendment to DEVCO's budget approved by the Community Council.
- (2) Development of real property within the Community. DEVCO may in the ordinary course of its business, lease land owned by the Community upon the approval of the Community Council and land owned by allotted landowners upon the approval of the allotted landowners or accept designations of use of Community-owned land by the Community Council and develop such land as commercial property for sublease, all according to law. Every lease or designation of use entered into by DEVCO shall be subject to the requirements of chapter 17 and all other provisions of law relating to the lease of land in Indian country, and the development of such land shall be subject to the Community's zoning and building codes, vision statement and all other provisions of Community law. DEVCO shall not have any more authority to lease or develop land within the Community than any other person.



- (3) Development and management of real property and business assets. DEVCO may enter into contracts to acquire, develop and manage real property and business assets, both within and outside of the Community. DEVCO shall manage such assets as are designated by the Community Council for such management, as well as real property leased to DEVCO as lessee or owned by DEVCO. DEVCO may act as leasing agent, developer and asset manager for land leased or owned by DEVCO, a limited liability company of DEVCO or business assets or real property designated by the Community Council for such purposes.
- (4) Assistance to allotted landowners within the Community. DEVCO shall respond to landowner requests for assistance in the leasing or development of their landholdings. Such assistance shall include review and analyses of economic proposals made to landowners, reviewing the background and experience of proposed lessees or developers, assisting in the negotiation of leases and other instruments to protect the interests of landowners, providing assistance in the drafting of such documents and generally assisting landowners in the development of their land.
- (5) To borrow money for any of the purposes of DEVCO, and in connection therewith to make, draw, execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other evidences of indebtedness, negotiable or nonnegotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral). The board may grant collateral or other security other than purchase money collateral or security as described herein and issue itself or jointly with any other person, associate or firm, any evidences of indebtedness as above described with the specific approval of the Community Council. Any borrowing by DEVCO from the Community shall be treated as like borrowing from any commercial lender.
- (6) To prepare an annual budget of income, expenses and capital expenditures in a form approved by the Community's treasurer and to adopt an annual budget that is approved by the Community Council.
- (7) To conduct banking relationships necessary to the operation of DEVCO, with notice to the Community treasurer prior to establishing bank accounts.
- (8) To establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant of the books of DEVCO and to report the financial condition of DEVCO to the Community treasurer monthly. Upon request of the Community treasurer, DEVCO's primary financial officer shall timely prepare specified financial reports, projections, or provide data in a form and substance reasonably acceptable to the Community treasurer (financial data). Copies of all financial data and other information provided by the primary financial officer to the Community treasurer shall concurrently be provided by the primary financial officer to the CEO of DEVCO. The Community treasurer shall attend meetings of DEVCO's board or officers, and DEVCO's officers shall meet with the treasurer upon request so as to facilitate the treasurer in performing fiduciary and other duties assigned by the Community Council. In addition, the primary financial officer and CEO of DEVCO shall timely inform the Community treasurer regarding operational matters which are likely to significantly affect DEVCO's annual budget, its strategic planning, financial results, internal controls, operating efficiency, or financial planning.

- (9) To periodically transfer to the Community funds excess to the operating needs of DEVCO. DEVCO shall make such transfers at the direction of the Community Council.
- (10) To enter into arrangements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as the management of DEVCO may from time to time determine and to enter into contracts for goods and services with any other enterprise or division of the Community.
- (11) To hire, promote and discharge such personnel as may be required to conduct its business. DEVCO shall maintain effective policies for giving preference in hiring, promotion, and training to qualified Community members in all levels of employment, including specifically in the employment of officers and other management employees. Community member and Indian preference policies shall be adopted and implemented by DEVCO consistent with Community law and any other applicable law.
- (12) To conduct the business of DEVCO in accordance with the laws of the Community.
- (13) To adhere to the vision statement of the Community so as to develop commercial structures which fully meet the aesthetic and cultural requirements of the Community.
- (14) To exercise such powers as are necessary to accomplish the purposes for which DEVCO is organized.
- (15) To own and hold real or personal property, subject to the limitations listed in subsection (f)(1)(a) above, in the name of DEVCO and limited liability companies of DEVCO (whether a wholly owned company formed under Chapter 24 or a "Community-owned entity" under section 15.1-25(c)).
- (16) To retain attorneys under a written agreement, subject to the prior express approval of the Community's general counsel, provided that no attorney-client, work-product or other privilege shall prevent communication of any matter or distribution of any document between such attorneys and the Community's general counsel. The Community's general counsel shall attend meetings and/or may appoint attorneys to attend meetings of DEVCO's board or officers.
  - (g) The board shall engage in activities as described in subsection (c) of this section at the specific direction of the Community Council exercised through the budget process or otherwise.
  - (h) The general business of DEVCO shall be conducted by a board which shall consist of seven voting members who shall be appointed by the Community Council. The qualifications of the members are as follows:
    - (1) The CEO of DEVCO.
    - (2) Four members shall be members of the Community, of whom one shall be a member of the Community Council.
    - (3) Two members shall have extensive professional experience in real estate development, asset management, banking or finance. Such members may be nonmembers. The Council will accord preference to Native Americans in the appointments under this subsection.

Any board member who is qualified under subsections (h)(2) and (3) of this section shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for a three-year term or thereafter until their successors are appointed by the Community Council. Any board member who is a member of the Community Council shall serve at the pleasure of the Community Council during such council member's term of office as a council member. Except for the CEO and council representatives, the terms of the board members shall be staggered.

(i) The officers of DEVCO shall consist of a chairperson of the board, secretary and treasurer, and such additional officers as the board may deem necessary. The chairperson of the board and all other officers shall be subject to annual election by the board at its annual meeting. The officers elected by the board shall hold office for a period of one year, or until their successors are elected, unless removed from office by the board as provided in the bylaws. Except for the chairperson, officers need not be members of the board. The president of the Community may from time-to-time assign employees of the Community to perform functions for DEVCO and attend board meetings of DEVCO.

(j) The board shall have the power to adopt, amend, rescind and repeal bylaws, subject to approval of the Community Council.

(k) The highest amount of indebtedness or liability, direct or contingent, to which DEVCO may at any time subject itself shall be determined, from time to time, by the Community Council.

(l) The board members and officers of DEVCO shall not be liable for the debts of DEVCO, the private property of the board members and officers of DEVCO shall be forever exempt from DEVCO's debts and the Community shall indemnify and hold harmless DEVCO employees, the board members and officers from liability or other claim arising out of their duties or function as DEVCO employees, board members or officers, provided they acted in good faith.

(m) The board shall perform the following functions:

- (1) *Budget.* Each fiscal year the board shall meet with the CEO and primary financial officer and develop a proposed annual budget which the board shall approve, subject to final approval of the Community Council.
- (2) *Compliance with law and ethical business environment.* The board shall endeavor to have DEVCO operate as an ethical entity that is compliant with all applicable laws and requirements. The board is responsible for periodically reviewing and assessing whether

DEVCO's code of ethics and business practices are consistent with applicable law, reviewing any changes to them that may be made from time to time by management, and monitoring DEVCO's compliance with them.

- (3) *Risk oversight.* The board will periodically review with management the principal topics relating to or arising out of risks inherent in DEVCO's business and assess the effectiveness of DEVCO's measures to address these risks.
- (4) *Provision of oversight.* The board shall:
  - a. Periodically review and, if necessary, revise the mission and purpose statement for DEVCO;
  - b. Review the performance of the CEO annually;
  - c. Review and approve DEVCO financial and management policies;
  - d. Review management's strategic plans for DEVCO and determine if goals have been met and if such plans should be revised;
  - e. Review monthly financial statements; and
  - f. Assess the performance of the board.
- (5) *Board meetings.* The board shall meet no more frequently than 12 times per fiscal year. However, the board may meet more than 12 times per fiscal year:
  - a. If unanticipated circumstances arise that are likely to have a significant effect on DEVCO's budgeted revenues or expenses, and if an additional meeting(s) is necessary in order for the board to reasonably learn how management will be addressing those unanticipated circumstances,
  - b. For board member interviews,
  - c. For strategic planning, and
  - d. For board member training.

- (6) *Board committees.* The board may organize committees whose charters shall be consistent with this article.
- (7) *Committee meetings.* A board committee shall meet no more frequently than five times per fiscal year. However, a board committee may meet more than five times per fiscal year if unanticipated circumstances arise that are likely to have a significant effect on DEVCO's budgeted revenues or expenses, and if an additional meeting is necessary in order for the committee to perform its functions under its charter and assist the board in learning how management will be addressing those unanticipated circumstances.
- (8) *Stipends.* Compensation for members of the board to attend board and committee meetings shall be set by the Community Council.

(n) Nothing in this division 4 of chapter 1, article II of the Community Code of Ordinances shall exempt DEVCO from full compliance with ordinances of the Community.

(Code 1981, § 2-55; Code 2012, § 1-45; Ord. No. SRO-266-00, 2-9-2000; Ord. No. SRO-402-2012, § 1-45, 5-30-2012; Ord. No. SRO-496-2018, 10-18-2017, eff. 2-17-2018; Ord. No. SRO-554-2023, 11-16-2022)

#### **Sec. 1-105. Capitalization; privileges and immunities.**

(a) DEVCO shall be capitalized as determined by the Community Council.

(b) DEVCO is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. DEVCO is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law. DEVCO's immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive DEVCO's immunity from

suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.

- (2) The board of DEVCO may grant a written waiver of DEVCO's immunity from suit for contract amounts not to exceed \$500,000.00, provided that the waiver of sovereign immunity is limited to enforcement of the dispute resolution provisions agreed to in the agreement:

- a. The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transactions and the claims or classes of claims for which the waiver is granted, the property of DEVCO which may be subject to execution to satisfy any award or judgment which may be entered in the claim, and shall state whether DEVCO consents to suit in court or to arbitration, mediation or other alternative dispute resolution mechanism, and if consenting to suit in court, identify the court or courts in which suit against DEVCO may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.

- b. Any waiver shall be limited to claims arising from the acts or omissions of DEVCO, its employees or agents, and shall be limited to and construed only to affect property held in the name of DEVCO and the income and accounts of DEVCO.

- c. Nothing in this division 8 of chapter 1, article II of the Community Code of Ordinances, and no waiver of immunity of DEVCO granted by the board, shall be construed as a waiver of the sovereign immunity of the Community or any other Community-owned enterprise or division, and no such waiver of immunity of DEVCO shall create any liability on the part of the Community or any other Community-owned



enterprise or division for the debts and obligations of DEVCO, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-owned enterprise or division based on any action, adjudication, or other determination of liability of any nature incurred by DEVCO.

- d. The immunity of DEVCO shall not extend to actions brought by the Community.
- e. No waiver of immunity of DEVCO shall extend to or in any manner affect the assets of the Community. All obligations and indebtedness incurred by DEVCO shall be special obligations solely of DEVCO and payable solely from the assets of DEVCO.

(Code 1981, § 2-56; Code 2012, § 1-46; Ord. No. SRO-266-00, 2-9-2000; Ord. No. SRO-402-2012, § 1-46, 5-30-2012; Ord. No. SRO-554-2023, 11-16-2022)

#### **Secs. 1-106—1-123. Reserved.**

### **DIVISION 5. SALT RIVER COMMUNITY GOLF ENTERPRISES**

#### **Sec. 1-124. Established.**

(a) There is established a division of the Community to be known as Salt River Community Golf Enterprises ("Talking Stick Golf").

(b) The golf enterprises division shall maintain its principal place of business and offices on lands of the Community Maricopa County, Arizona.

(c) The golf enterprises division shall be in the business of developing and operating two 18-hole golf courses known as the Talking Stick Golf Club and such other businesses as Talking Stick Golf or the Community Council may from time to time determine.

(d) In conducting its business, Talking Stick Golf shall act for and on behalf of the Community. Talking Stick Golf shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. It shall function as an instrumentality of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of Talking Stick Golf. Instead, the debts, liabilities and obligations of Talking Stick Golf shall be paid and discharged exclusively by Talking Stick Golf and from assets or accounts held in the name of Talking Stick Golf, as provided in this article. The purposes for organizing Talking Stick Golf include, but are not limited to, enabling the Community to further develop and enhance its self-sufficiency, promote Community economic development, generate employment for Community members, promote Pima and Maricopa cultural awareness by hosting Community and Native American events at the facility, and generate government tax and other revenues to support operation of Community government and provision of governmental services and programs to Community members.

(e) In furtherance of the general powers conferred by this division within the Community Code of Ordinances and in conformity with the established policies of the Community Council, the golf enterprises division shall also have the following powers which, unless such powers are revoked by the Community Council, shall be exercised by the board of the golf enterprises division or delegated by it to golf enterprises division officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, county, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. The golf enterprises division shall not enter into any lease of real property without the approval of the Community Council.

- b. The golf enterprises division shall not enter into any contract which requires expenditures from the accounts of the golf enterprises division in excess of amounts in the golf enterprises division's board-approved budget for the subject matter of any such contract without an amendment to the golf enterprises division's budget and council approval of such amendment.
- (2) To borrow money for any of the purposes for which the golf enterprises division is organized, and in connection therewith to make, draw, execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other evidences of indebtedness, negotiable or nonnegotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness, provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral) and, with the express approval of the Community Council, the board may grant collateral or other security other than purchase money collateral or security as described herein and with such approval issue jointly with any other person, associates or firm any evidences of indebtedness as above described. Any borrowing by the golf enterprises division from the Community shall be documented and treated as borrowing from any commercial lender.
- (3) To prepare an annual budget of income, expenses and capital expenditures in a form approved by the Community's treasurer and to adopt an annual budget that is approved by the Community Council.
- (4) To conduct banking relationships necessary to the operation of the golf enterprises division, to establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant, of the books of the golf enterprises division and to report the financial condition of the golf enterprises division to the Community Council quarterly.
- (5) Upon direction of either the Community treasurer or the Community Council, to periodically transfer to the Community monies deemed in excess of the golf enterprises operating and capital expenditure needs and financial commitments. The golf enterprises division may also make such transfers at the direction of the board.
- (6) To enter into arrangements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as the board may from time to time determine and to enter into contracts for goods and services with any other enterprise or division of the Community.
- (7) To hire, promote and discharge such personnel as may be required to conduct the affairs of the golf enterprises division; provided that the terms and conditions of employment, including wages and benefits (including any pension plans or other deferred compensation arrangements) paid shall be subject to the approval of the Community Council.
- (8) To conduct the business of the golf enterprises division in accordance with the laws of the Community.
- (9) To exercise such powers as are necessary to implement the purposes for which the golf enterprises division is organized and consistent with this division within this Community Code of Ordinances.
- (10) To own and hold real or personal property in the name of the golf enterprises division or the Community.
- (11) To retain attorneys under a written agreement, subject to the prior express approval of the Community's general counsel, provided that no attorney-client, work-product or other privilege shall prevent communication of any matter or distribu-

tion of any document between such attorneys and the Community's general counsel.

(f) The board shall create separate management arrangements, budgets and books of account for each of the businesses conducted by the golf enterprises division.

(g) The general business of the golf enterprises division shall be conducted by a board which shall consist of seven voting members who shall be appointed by the Community Council, and who may be removed with or without cause by the Community Council. The qualifications of the members are as follows:

- (1) Two elected council members of the Community Council.
- (2) Reserved.
- (3) Three members shall be members of the Community.
- (4) Two members of the board shall have extensive professional or management experience in the golfing, commercial development or banking and finance business. The council will accord preference to Native Americans in the appointments under this subsection.

All board members shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for staggered terms of three years or thereafter until their successors are appointed by the Community Council or if a member of the Community Council, for the period of such member's council term and a successor elected by the Community Council.

(h) The officers of the golf enterprises division shall consist of a chairperson of the board, vice-chairperson of the board, secretary and treasurer, and such additional officers as the board may deem necessary. All officers except the treasurer and secretary shall be elected by the board at its annual meeting. The treasurer of the Community or his or her designee will serve as treasurer of the golf enterprises division and the general counsel of the Community or his or her designee will serve as secretary of the golf

enterprises division. The officers elected by the board shall hold office for a period of one year, or until their successors are elected and shall have qualified, unless removed from office by the board as provided in the bylaws. The president of the Community may from time to time assign employees of the Community to perform functions for the golf enterprises division and attend board meetings of the golf enterprises division.

(i) The board shall have the power to adopt, amend, rescind and repeal bylaws and to elect and appoint such agents and committees as it may deem necessary, with such powers as it may confer.

(j) The highest amount of indebtedness or liability, direct or contingent to which the golf enterprises division may at any time subject itself shall be determined, from time to time, by the Community Council.

(k) The board members and officers of the golf enterprises division shall not be liable for the debts of the golf enterprises division, the private property of the board members and officers of this golf enterprises division shall be forever exempt from its debts and the Community indemnifies and shall hold harmless the golf enterprises division employees, the board members and officers (indemnified parties) from liability or other claim arising as a result of the indemnified parties acting in their official capacity and within the scope and the course and scope of their authority.

(l) Nothing in this division within this Community Code of Ordinances shall exempt the golf enterprises division from full compliance with ordinances of the Community and this division within this Community Code of Ordinances does not repeal or amend any other ordinance of the Community.

(Code 1981, § 2-75; Code 2012, § 1-55; Ord. No. SRO-269-00, 7-5-2000; Ord. No. SRO-350-09, 9-16-2009; Ord. No. SRO-402-2012, § 1-55, 5-30-2012; Ord. No. SRO-461-2015, 4-1-2015; Ord. No. SRO-485-2017, 1-18-2017)

#### **Sec. 1-125. Capitalization; sovereign immunity.**

(a) The golf enterprises division shall be capitalized as shall be determined by the Community Council after consultation with the Community treasurer.



(b) The golf enterprises division is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. The golf enterprises division is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law. The golf enterprises division's immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive the golf enterprises division's immunity from suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.
- (2) The board of the golf enterprises division may grant a written waiver of the golf enterprises division's immunity from suit, subject to the following terms, conditions and limitations:
  - a. The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transactions and the claims or classes of claims for which the waiver is granted, the property of the golf enterprises division which may be subject to execution to satisfy any award or judgment which may be entered in the claim, and shall state whether the golf enterprises division consents to suit in court or to arbitration, mediation or other alternative dispute resolution mechanism, and if consenting to suit in court, identify the court or courts in which suit against the golf enterprises division may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.
  - b. Any waiver shall be limited to claims arising from the acts or omissions of the golf enterprises division, its employees or agents, and shall be

limited to and construed only to affect property held in the name of the golf enterprises division and the income and accounts of the golf enterprises division.

- c. Nothing in this division within this Community Code of Ordinances, and no waiver of immunity of the golf enterprises division granted by the Community Council or the board, shall be construed as a waiver of the sovereign immunity of the Community or any other Community-owned enterprise or division, and no such waiver of immunity of the golf enterprises division shall create any liability on the part of the Community or any other Community-owned enterprise or division for the debts and obligations of the golf enterprises division, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-owned enterprise or division based on any action, adjudication, or other determination of liability of any nature incurred by the golf enterprises division.
- d. The immunity of the golf enterprises division shall not extend to actions brought by the Community.
- e. No waiver of immunity of the golf enterprises division shall extend to or in any manner affect the assets transferred from the accounts or business of the golf enterprises division to other accounts of the Community, nor to amounts payable to the Community by the golf enterprises division. All obligations and indebtedness incurred by the golf enterprises division shall be special obligations solely of the golf enterprises division and payable solely from the assets described in this section.

(Code 1981, § 2-76; Code 2012, § 1-56; Ord. No. SRO-269-00, 7-5-2000; Ord. No. SRO-350-09, 9-16-2009; Ord. No. SRO-402-2012, § 1-56, 5-30-2012; Ord. No. SRO-461-2015, 4-1-2015)

**Secs. 1-126—1-148. Reserved.****DIVISION 6. SALT RIVER FINANCIAL SERVICES INSTITUTION\*****Sec. 1-149. Established.**

(a) There is established an institution of the Community to be known as the Salt River Financial Services Institution (the "institution"). The institution is currently a certified United States Department of the Treasury, Community Development Financial Institution.

(b) The institution shall maintain its principal place of business and office on the lands of the Community.

(c) The institution shall promote community development by providing housing and business development in the Community through loan products, financial education, credit counseling and business coaching with the ultimate goal of spurring economic growth and opportunity in the Community and for individual Community members.

(d) The institution is a non-profit organization and its primary purpose is to improve the living standards, education, health and general welfare of the members of the Community.

(e) The institution shall be a separate legal entity.

(Ord. No. SRO-479-2016, 3-23-2016)

**Sec. 1-150. Purpose and powers of the institution.**

(a) The institution is empowered to:

- (1) Adopt home, consumer and business lending procedures and policies to ensure that all lending conducted by the institution is an arms-length transaction;

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\***Editor's note**—Ord. No. SRO-479-2016, adopted March 23, 2016, amended Div. 6 in its entirety, in effect repealing and replacing said division to read as set out herein. The former Div. 6, §§ 1-149—1-158, pertained to similar subject matter and derived from §§ 17-301—17-306 and 17-308—17-310 of the 1981 Code; §§ 1-60—1-65 and 1-67—1-69 of the 2012 Code; Ord. No. SRO-311-06, adopted April 5, 2006; and Ord. No. SRO-402-2012, §§ 1-60—1-65 and 1-67—1-69, adopted May 30, 2012.

- (2) Lend funds for the purpose of providing affordable home ownership opportunities to Community members and their families;
- (3) Lend funds for the purpose of promoting greater economic opportunity and job development in and around the Community by providing business, consumer and credit improving opportunities;
- (4) Solicit, apply, accept and implement grant and other public and private funding to help leverage the institution's resources; and
- (5) Administer and operate loan programs autonomously and independently from political influence;
- (6) Provide financial education and counseling services; and
- (7) Own, hold, or convey real or personal property, including leasehold interests, in the name of the institution for the purposes of promoting homeownership and business development by Community members; provided at no time will the institution enter into a transaction that would endanger the trust status of the underlying Indian allotted lands.

(Ord. No. SRO-479-2016, 3-23-2016)

**Sec. 1-151. The board and loan committee.**

(a) *Powers of the board.*

- (1) The board shall advise the institution in:
  - a. Providing meaningful programs to improve economic opportunity and growth for the Community and its members through greater financial literacy and education, and providing a variety of products that improve a person's credit worthiness, and provide affordable homeownership and business ownership opportunities;
  - b. Accessing grant and other outside funding sources to leverage the Com-

munity's and institution's resources to assist more Community members in the mission of the institution;

- c. The board also has authority to approve the institution's budget, quarterly and yearly financial statements, contracts and agreements that borrow money or that waive the institution's sovereign immunity, consistent with the requirements of this division; and
- d. The board shall periodically develop a strategic five-year plan for the institution that is consistent with the provisions of this division.

(b) *Composition of the board.*

- (1) The board shall consist of seven voting members who are appointed for three-year terms. The board shall have staggered terms, and this board shall be a separate and independent governing board from that of the Community government.
- (2) All board members shall be appointed by a majority vote of the existing board members, except for the council representative who is appointed by the council. Any vacancy of the board shall be filled by the board for the remainder of the term that is vacated. A board member may be removed involuntarily from the board if they are convicted of a felony or any financially related misdemeanor during their term, or if they engage in conduct that is deemed inconsistent with the mission of the institution by the remaining members of the board.
- (3) At least four members of the board shall be enrolled members of the Community, and one of which shall be a member of the council. The board should have at least one member who is a community member and who owns a home or who owns a voting control of a business.
- (4) The three remaining board members shall have professional or management experience in the banking industry, mortgage

or business lending industry, or in the credit counseling, financial management and education industry.

- (5) A quorum of four board members is required for any action taken by the board.
- (6) The board shall appoint a chairperson who will preside at the board's meetings, and will serve as the primary liaison from the board to the Community Council.

(c) *Standing loan committee.* The board shall appoint a committee of three members of the board to review and approve all loans entered into by the institution to ensure that all loan transactions are an arms-length transaction consistent with the institution's established loan policies and procedures. The council representative who sits on the board shall not be a member of the loan committee.

(d) *Advisors to the board.* The Community's Office of the Treasurer shall serve as a non-voting advisory member of the board.

(e) *Legal advice to the institution.* The Community's Office of the General Counsel shall serve as the legal counsel for the institution.

(f) *Meetings of the board and committee.*

- (1) The board shall meet quarterly, and if necessary a special meeting or an e-vote may be called to conduct immediate or urgent business. Recorded minutes must be kept for all regular and special meetings, and for any e-votes, the outcome must be read into the record at the next regular meeting.
- (2) The loan committee shall meet monthly, if necessary. Also, the loan committee may meet for a special meeting if there is an immediate or urgent business need to meet.
- (3) The fees or stipend for the board and any the committees shall be set by the board, but consistent with the Community's overall board stipend policies and practices.

(g) *Conflict of interest.* No board member, officer or contractor of the institution may have any direct or indirect financial or other interest that conflicts or appears to conflict with their responsibilities and duties as board members, officers and contract employees. In addition, no board member shall engage in financial transactions as a result of, or otherwise make use of for private gain, information obtained through his or her status as a board member of the institution.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Sec. 1-152. Program administrator.**

(a) *Conducting day-to-day business.* The institution's program administrator shall also have the following powers to conduct day-to-day business:

- (1) To enter into, make and perform grants, contracts or agreements with any person, bank, entity, tribal government, county, state or local government or agency that is in furtherance of the institution's mission of providing business loans, consumer and home loans, financial literacy and education, business coaching, savings programs and other similar programs consistent with the provision of this division and the Community Council approved budget.
- (2) To manage the board and Community Council approved annual budget of income, expenses and capital expenditures.
- (3) To conduct and manage banking relationships necessary to the operation of the institution.
- (4) To establish and manage a uniform system of accounting, to provide for the annual auditing by a certified public accountant, of its books and to report its financial condition to the Community Council and the board at least quarterly.
- (5) To enter into agreements with the Community regarding the contracting of employees and services to assist the institution in carrying out its mission.

(6) To manage the day-to-day operations of the institution and provide oversight to the contract services to ensure that the institution conducts its business in accordance with the laws of the Community, and relevant federal laws, including those that govern the certification of Federal Community Development Financial Institutions.

(7) To exercise such powers as are necessary to govern the day-to-day activities of the institution that are not reserved for the board or the Community Council.

(8) The program administrator is a non-voting member of the advisory board.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Sec. 1-153. Contracted services.**

(a) *Contracted services.* The institution may enter into agreements and contracts with the Community and other third parties to provide for the following services: program personnel, accounting and financial, information technology, human resources, realty, legal services, purchasing or other services as the board may from time to time determine.

(b) *Contracted program administrator services.* The institution shall have a program administrator. The program administrator must be a senior level manager or director within the Community government. The program administrator will be responsible for ensuring that the institution's fulfills their mission and day-to-day responsibilities to ensure quality services to the target market. The program administrator shall be responsible in implementing the strategic vision of the board.

(c) *Appointment of program administrator services.* The Community Manager, through consultation with the board, shall appoint this role.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Sec. 1-154. Non-profit status.**

(a) *Improve the health and welfare of the Community.* The institution shall be a non-profit entity whose primary purpose is to improve the



quality of living of its target market, the Community and its members, by providing loan products and educational programs that encourage affordable home, credit building and business ownership opportunities.

(b) *Tax-deductible donation.* Contributions to the institution shall be treated as contributions to the Community and as such shall qualify as charitable deductions for federal and Arizona state income, estate and gift tax purposes pursuant to the terms of the Internal Revenue Code § 7871(a)(1) and the Arizona state tax statutes pertaining to the deductibility of such contributions. All such contributions shall be dedicated exclusively to the purposes of the institution, including without limitation the payment of the expenses of operating the institution, and such contributions shall not be applied to any extent whatever by the council or the institution toward any other purpose.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Sec. 1-155. Immunity from suit.**

(a) *Immunity from suit.* The institution is an instrumentality of and a subordinate entity of the Community and entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community or federal law.

(b) *Limited waiver.* Only the Community Council, by approval of the majority, may expressly approve a limited waiver of the institution's immunity from suit.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Sec. 1-156. Miscellaneous.**

(a) *Not personally liable.* The board members or contract employees of the institution shall not be liable for the debts of the institution, and the private property of board members and contract employees of the institution shall be forever exempt from its debts. The institution shall indemnify and hold harmless institution officers and board members (indemnified parties) from liability or other claim arising as a result of the

indemnified parties acting in their official capacity and within the course and scope of their authority.

(b) *Compliance with the law.* Nothing in this division within this Community Code of Ordinances shall exempt the institution from full compliance with ordinances of the Community.

(Ord. No. SRO-479-2016, 3-23-2016)

#### **Secs. 1-157—1-184. Reserved.**

### **DIVISION 7. SADDLEBACK COMMUNICATIONS COMPANY**

#### **Sec. 1-185. Established.**

(a) There is established a division of the Community to be known as Saddleback Communications Company.

(b) The communications division shall maintain its principal place of business and offices in the Community.

(c) The communications division shall be in the business of developing and operating an electronic communications business utilizing Telephony and Central Office Equipment and such other related activities as the Community Council may from time to time determine the communications division shall undertake.

(d) The purposes of the communications division are to provide telephony and related communications services to members of the Community and to commercial enterprises located within the Community in order to promote commercial development within the Community so as to enable the Community to survive and prosper as an independent Indian Community by creating a viable economy for the Community.

(e) In furtherance, and not in limitation, of the general powers conferred by this division of the Community and of the purposes hereinbefore stated and in conformity with the policies of the Community Council, the communications division shall also have the following powers which

shall be exercised by the board of the communications division or delegated by it to communications division officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, country, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. The communications division may lease real property from another, or sublease or permit the use of real property to another, only with the approval of the Community Council. It may lease real property from the Community or receive the use of real property by a designation of use of real property by the Community Council.
  - b. The communications division shall not enter into any contract that requires expenditures from the communications division in excess of the communications division's board-approved budget for the subject matter of any such contract without an amendment to the communications division's budget.
- (2) To borrow money for any of the purposes of the communications division, and in connection therewith to make, draw, execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other evidences of indebtedness, negotiable or nonnegotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness, provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral), and with the specific approval of the Community, the board may grant collateral or other security other than purchase money collateral or security as described herein

and with such approval issue jointly with any other person, associates or firm any evidences of indebtedness as described in this subsection. Any borrowing by the communications division from the Community shall be treated as a like borrowing from any commercial lender.

- (3) To adopt an annual budget of income, expenses and capital expenditures approved by the Community Council.
- (4) To conduct banking relationships necessary to the operation of the communications division, to establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant, of the books of the communications division and to report the financial condition of the communications division to the Community Council quarterly.
- (5) To periodically transfer to the Community funds excess to the operating needs of the communications division. The communications division will make such transfers at the direction of the board or at the direction of the Community Council.
- (6) To enter into arrangements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as the board may from time to time determine and to enter into contracts for goods and services with any division of the Community or other business entities.
- (7) To hire, promote and discharge such personnel as may be required to conduct the affairs of the communications division, provided that the terms and conditions of employment, including wages and benefits (including any pension plans or other deferred compensation arrangements) paid and personnel policies used and disciplinary procedures utilized shall be subject to the approval of the Community Council.
- (8) To conduct the business of the communications division in accordance with the

laws, and except as communications division policies and procedures have been approved by the Community Council, the policies of the Community.

- (9) To exercise such powers as are necessary to effect the purposes for which the division is organized and consistent with this division within this Community Code of Ordinances.

(f) The communications division shall carry out such activities as shall be directed by the Community Council.

(g) The general business of the communications division shall be conducted by a board which shall consist of seven voting members who shall be appointed by the Community Council. The qualifications of the members are as follows:

- (1) The general manager of the communications division.
- (2) A member of the Community Council, who shall serve at the pleasure of the council.
- (3) Three members shall be members of the Community.
- (4) Two members of the board shall have extensive professional or management experience in electronic communications and telecommunications development, maintenance, operation and/or banking and finance business. The Community Council will accord preference to Native Americans in the appointments under this subsection.

The general manager will serve as a member of the board during the term of his or her employment. The member of the Community Council appointed under subsection (g)(2) of this section shall serve for the period of such member's council term or thereafter until a successor is appointed by the Community Council. Upon the recommendation of the board and subsequent ratification by the Community Council the appointment of board members (representing subsection (g)(3) and (4) of this section) shall be modified as follows. One of the three board members in subsection (g)(3) of this section shall

have a one-year term, one a two-year term, and one a three-year term. One of the two board members in subsection (g)(4) of this section shall have a two-year term and one a three-year term. Members who are thereafter appointed for a full term will serve a three-year term as provided hereinafter. All other board members shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for a term of three years or thereafter until their successors are appointed by the Community Council.

(h) The officers of the communications division shall consist of a chairperson of the board, president, secretary and treasurer, and such additional officers, as the board may deem necessary. The general manager shall serve as president of the communications division. The board at its annual meeting shall elect all officers except the president, treasurer and secretary. The treasurer of the Community or his or her designee will serve as treasurer of the communications division and the general counsel of the Community or his or her designee will serve as secretary of the communications division. The officers elected by the board shall hold office for a period of one year, or until their successors are elected, unless removed from office by the board as provided in the bylaws. Except for the chairperson and the president, officers need not be members of the board. The president of the Community may from time to time assign employees of the Community to perform functions for the communications division and attend board meetings of the communications division.

(i) The board shall have the power to adopt, amend, rescind and repeal bylaws and to elect and appoint such agents and committees as it may deem necessary, with such powers as it may confer.

(j) The highest amount of indebtedness or liability, direct or contingent to which the communications division may at any time subject itself shall be determined, from time to time, by the Community Council.

(k) The board members and officers of the communications division shall not be liable for the debts of the communications division, the



private property of the board members and officers of this communications division shall be forever exempt from its debts and the Community indemnifies and shall hold harmless the communications division employees, the board members and officers from liability or other claim arising out of their duties of or function as communications division employees, board members or officers.

(1) Nothing in this division within this Community Code of Ordinances shall exempt the communications division from full compliance with ordinances of the Community and this division within this Community Code of Ordinances does not repeal or amend any other ordinance or resolution of the Community.

(Code 2012, § 1-75; Ord. No. SRO-276-01, 3-21-2001; Ord. No. SRO-402-2012, § 1-75, 5-30-2012)

**Sec. 1-186. Capitalization; financial responsibility.**

(a) The communications division shall be capitalized as shall be determined by the Community Council.

(b) The communications division shall be responsible for the payment of all indebtedness of the communications division and the Community hereby expressly waives any and all defenses based on its sovereign immunity from suit with respect to any action:

- (1) Based on contract for money;
- (2) Based on the replevin of personal property; and
- (3) For damages arising out of tort when the damage claim is fully covered by insurance owned by the communications division;

and provided in each case that such action is brought in the Community court and no other court of the United States or of any state.

(c) The waiver and consent in subsection (b)(1) and (2) of this section is limited to any assets of the Community which have been obtained by the communications division as a result of the operation of the business of the communications division or held in the accounts of the communications

division in the name of the communications division; provided, however, that such waiver and consent shall not extend to assets transferred from the communications division to accounts in the name of the Community, and to amounts payable to the Community by the communications division. All obligations incurred in connection with the communications division shall be special obligations of the communications division payable solely from the assets described in this subsection. The communications division shall accept service of process upon the communications division by delivery to any officer or managing agent of the communications division. (Code 2012, § 1-76; Ord. No. SRO-276-01, 3-21-2001; Ord. No. SRO-402-2012, § 1-76, 5-30-2012)

**Secs. 1-187—1-210. Reserved.**

**DIVISION 8. PHOENIX CEMENT COMPANY**

**Sec. 1-211. Established.**

(a) There is established a division of the Salt River Pima-Maricopa Indian Community ("Community") which is a subordinate economic organization and arm of the Community to be known as Phoenix Cement Company ("PCC"). PCC shall act for the exclusive benefit of the Community and on its behalf.

(b) PCC shall maintain its principal place of business and office in the Community.

(c) PCC shall be in the business of cement manufacturing and marketing and such other related business as the Community Council may determine from time to time.

(d) PCC shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. PCC is and shall function as a subordinate economic organization or arm of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of PCC, unless expressly approved in writing by the Community Council. Instead, the debts, liabilities and obligations of

PCC shall be paid and discharged exclusively by PCC and from assets or accounts held in its name.

(e) The primary purpose of PCC is:

- (1) To promote the economic self-sufficiency of the Community, so as to enable the Community to survive and prosper as an independent Indian Community by generating government revenue to sustain and enhance the Community's necessary programs,
- (2) To enable the Community to further develop and enhance its self-determination,
- (3) To promote Community economic development, generate employment for Community members, and promote the Pima and Maricopa culture, and
- (4) To generate government tax and other revenues to support operation of Community government and the provision of governmental services and programs to Community members and the public at large.

(f) In furtherance of the general powers conferred by this division 8 of chapter 1, article II of the Community Code of Ordinances, and in conformity with the established policies of the Community Council, PCC shall also have the following powers which, unless such powers are revoked by the Community Council, shall be exercised by the board of PCC or delegated by it to PCC's officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, county, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. PCC shall not enter into any lease of real property or contract for the purchase or sale of real property without the prior approval of the Community Council.

b. PCC shall not enter into any contract which requires expenditures from PCC in excess of its budget for the subject matter of any such contract without an amendment to the PCC's budget, and Community Council approval of such amendment.

(2) To borrow money for any of the purposes of PCC, and, in connection with such borrowing:

a. Without approval of the Community Council, grant collateral or other security to secure the indebtedness provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral); or

b. With the express approval of the Community Council, hypothecate, encumber and grant security interests in PCC's property to secure repayment thereof.

Any borrowing by PCC from the Community shall be treated in a manner similar to borrowing from any commercial lender.

(3) To prepare an annual budget of income, expenses and capital expenditures in a form approved by the Community's treasurer and to adopt an annual budget that is approved by the Community Council.

(4) To conduct banking relationships necessary to the operation of PCC, with notice to the Community treasurer prior to establishing bank accounts.

(5) To establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant of the books of PCC and to report the financial condition of PCC to the Community treasurer monthly. Upon request of the Community treasurer, PCC's primary financial officer shall timely prepare specified financial reports, projections, or provide data in a form and substance reasonably

acceptable to the Community treasurer (financial data). Copies of all financial data and other information provided by the primary financial officer to the Community treasurer shall concurrently be provided by the primary financial officer to the chief executive officer of PCC. The Community treasurer shall attend meetings of PCC's board or officers, and PCC's officers shall meet with the treasurer upon request so as to facilitate the treasurer in performing fiduciary and other duties assigned by the Community Council. In addition, the primary financial officer and chief executive officer of PCC shall timely inform the Community treasurer regarding operational matters which are likely to significantly affect PCC's annual budget, its strategic planning, financial results, internal controls, operating efficiency, or financial planning.

- (6) To periodically transfer to the Community funds excess to the operating needs of PCC. PCC shall make such transfers at the direction of the Community Council.
  - (7) To enter into arrangements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as management of PCC may from time to time determine and to enter into contracts for goods and services with any other enterprise or division of the Community.
  - (8) To hire, promote and discharge such personnel as may be required to conduct its business. PCC shall maintain effective policies for giving preference in hiring, promotion, and training to qualified Community members in all levels of employment, including specifically in the employment of officers and other management employees. Community member and Indian preference policies shall be adopted and implemented by PCC consistent with Community law and any other applicable law.
  - (9) To conduct the business of PCC in accordance with the laws of the Community.
  - (10) To exercise such powers as are necessary to accomplish the purpose for which PCC is organized.
  - (11) To own and hold real or personal property, subject to the limitations listed in subsection (f)(1)(a) above, in the name of PCC, limited liability companies of PCC (whether a wholly owned company formed under chapter 24 or a "Community-owned entity" under section 15.1-25(c)), or the Community.
  - (12) To retain attorneys under a written agreement, subject to the prior express approval of the Community's general counsel, provided that no attorney-client, work-product or other privilege shall prevent communication of any matter or distribution of any document between such attorneys and the Community's general counsel. The Community's general counsel shall attend meetings and/or may appoint attorneys to attend meetings of PCC's board or officers.
- (g) PCC shall create separate budgets and books of account for each of the businesses conducted by PCC.
- (h) The PCC board shall consist of seven members who shall be appointed by the Community Council. The qualifications of the members are as follows:
- (1) The chief executive officer of PCC.
  - (2) The general manager of Salt River Sand and Rock Company (SRSR), a division of the Community.
  - (3) Four members shall be members of the Community and two of them shall be members of the Community Council. If the chief executive officer of PCC and the general manager of SRSR are the same person, then a third member of the Community Council shall serve to make a seven-member board.

- (4) One member of the board shall have extensive professional or management experience in the cement or allied construction industry, banking and finance or structural or civil engineering.

The general manager of Salt River Sand and Rock Company and the chief executive officer of PCC shall serve as members of the board for the time that member occupies the office which qualifies such member to serve as board member. Any board member who is qualified under this subsection shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for a term of three years or thereafter until their successors are appointed by the Community Council. Except for the chief executive officer, the general manager of SRSR and council representatives, the terms of the board members shall be staggered.

(i) The officers of the board shall consist of a chairperson, vice-chairperson and secretary, and such additional officers as the board may deem necessary. All officers shall be subject to annual election by the board at its annual meeting. The officers elected by the board shall hold office for a period of one year, or until their successors are elected, unless removed from office by the board as provided in the bylaws. The president of the Community may from time to time assign employees of the Community to perform functions for PCC and attend board meetings of PCC.

(j) The board shall have the power to adopt, amend, rescind and repeal bylaws, subject to approval by the Community Council.

(k) The highest amount of indebtedness or liability, direct or contingent to which PCC may at any time subject itself shall be determined, from time to time, by the Community Council.

(l) The board members and officers of PCC shall not be liable for the debts of PCC, the private property of the board members and officers of PCC shall be forever exempt from PCC's debts, and PCC and the Community shall indemnify and hold harmless the board members and officers from liability or other claim arising out of their duties or function as board members or officers, provided they acted in good faith.

(m) The board shall perform the following functions:

- (1) *Budget.* Each fiscal year the board shall meet with the chief executive officer and primary financial officer and develop a proposed annual budget which the board shall approve, subject to final approval of the Community Council.
- (2) *Compliance with law and ethical business environment.* The board shall endeavor to have PCC operate as an ethical entity that is compliant with all applicable laws and requirements. The board is responsible for periodically reviewing and assessing whether PCC's code of ethics and business practices are consistent with applicable law, reviewing any changes to them that may be made from time to time by management, and monitoring PCC's compliance with them.
- (3) *Risk oversight.* The board will periodically review with management the principal topics relating to or arising out of risks inherent in PCC's business and assess the effectiveness of PCC's measures to address these risks.
- (4) *Provision of oversight.* The board shall:
  - a. Periodically review and, if necessary, revise the Mission and Purpose statement for PCC;
  - b. Review the performance of the CEO annually;
  - c. Review management's strategic plans for PCC and determine if goals have been met and if such plans should be revised;
  - d. Review and approve PCC financial and management policies;
  - e. Review monthly financial statements; and
  - f. Assess the performance of the board.
- (5) *Board meetings.* The board shall meet no more frequently than 12 times per fiscal year. However, the board may meet more than 12 times per fiscal year:
  - a. If unanticipated circumstances arise that are likely to have a significant

adverse effect on PCC's budgeted revenues or expenses, and if an additional meeting is necessary in order for the board to reasonably learn how management will be addressing those unanticipated circumstances,

- b. For board member interviews, and
- c. For board member training.

- (6) *Board committees.* The board may organize committees whose charters shall be consistent with this division.
- (7) *Committee meetings.* A board committee shall meet no more frequently than five times per fiscal year. However, a board committee may meet more than five times per fiscal year if unanticipated circumstances arise that are likely to have a significant adverse effect on PCC's budgeted revenues or expenses, and if an additional meeting is necessary in order for the committee to perform its functions under its charter and assist the board in learning how management will be addressing those unanticipated circumstances.
- (8) *Stipends.* Compensation for members of the board to attend board and committee meetings shall be set by the Community Council.

(n) Nothing in this division 8 of chapter 1, article II of Community Code of Ordinances shall exempt the PCC from full compliance with ordinances of the Community.

(Code 2012, § 1-80; Ord. No. SRO-172-94, 3-30-1994; Ord. No. SRO-402-2012, § 1-80, 5-30-2012; Ord. No. SRO-487-2017, 1-18-2017; Ord. No. SRO-522-2020, 8-19-2020; Ord. No. SRO-546-2022, 4-13-2022)

## **Sec. 1-212. Capitalization; privileges and immunities.**

(a) PCC shall be capitalized by ownership of all of the equipment, vehicles, buildings, accounts receivable, cash and all other assets held in the

name of the Phoenix Cement Company, a division of the Community and as determined by the Community Council.

(b) PCC is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. PCC is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law. PCC's immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive PCC's immunity from suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.
- (2) The board of PCC may grant a written waiver of PCC's immunity from suit for:
  - a. Contract amounts not to exceed \$500,000.00, or
  - b. Rail car leases provided that the waiver of sovereign immunity is limited to:
    - 1. Enforcement of the dispute resolution provisions agreed to in the lease agreement; and
    - 2. Enforcement of any remedies available at law or in equity in order to repossess rail cars in the jurisdiction in which the rail cars may be located; or
  - c. Industry track agreements and other rail transportation agreements with railroad companies regulated by the U.S. Department of Transportation for rail facilities located outside of Community property.
- (3) All waivers are subject to the following terms, conditions and limitations:
  - a. The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transactions and the claims or classes of claims for which



the waiver is granted, the property of PCC which may be subject to execution to satisfy any award or judgment which may be entered in the claim, and shall state whether PCC consents to suit in court or to arbitration, mediation or other alternative dispute resolution mechanism, and if consenting to suit in court, identify the court or courts in which suit against PCC may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.

- b. Any waiver shall be limited to claims arising from the acts or omissions of PCC, its employees or agents, and shall be limited to and construed only to affect property held in the name of PCC and the income and accounts of PCC.
- c. Nothing in this division 8 of chapter 1, article II of the Community Code of Ordinances, and no waiver of immunity of PCC granted by the board, shall be construed as a waiver of the sovereign immunity of the Community or any other Community-owned enterprise or division, and no such waiver of immunity of PCC shall create any liability on the part of the Community or any other Community-owned enterprise or division for the debts and obligations of PCC, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-owned enterprise or division based on any action, adjudication, or other determination of liability of any nature incurred by PCC.
- d. The immunity of PCC shall not extend to actions brought by the Community.
- e. No waiver of immunity of PCC shall extend to or in any manner affect

the assets transferred from the accounts or business of PCC to other accounts of the Community, nor to amounts payable to the Community by PCC. All obligations and indebtedness incurred by PCC shall be special obligations solely of PCC and payable solely from the assets described in this section.

(Code 2012, § 1-81; Ord. No. SRO-172-94, 3-30-1994; Ord. No. SRO-402-2012, § 1-81, 5-30-2012; Ord. No. SRO-546-2022, 4-13-2022)

#### **Secs. 1-213—1-232. Reserved.**

### **DIVISION 9. SALT RIVER SAND AND ROCK COMPANY**

#### **Sec. 1-233. Established.**

(a) There is established a division of the Salt River Pima-Maricopa Indian Community ("Community") which is a subordinate economic organization and arm of the Community to be known as Salt River Sand and Rock Company ("SRSR"). SRSR shall act for the exclusive benefit of the Community and on its behalf.

(b) SRSR shall maintain its principal place of business and office in the Community.

(c) SRSR shall be in the business of mining, manufacturing and sales of sand, gravel, rock and like materials, the sales of ready-mix material and operation of associated equipment and engaging in the earth moving and excavating and such other related business as the Community Council may determine from time to time.

(d) SRSR shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. SRSR is and shall function as a subordinate economic organization or arm of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of SRSR, unless expressly approved in writing by the Community Council. Instead, the debts, liabilities

and obligations of SRSR shall be paid and discharged exclusively by SRSR and from assets or accounts held in its name.

(e) The primary purpose of SRSR is:

- (1) To promote the economic self-sufficiency of the Community, so as to enable the Community to survive and prosper as an independent Indian Community by generating government revenue to sustain and enhance the Community's necessary programs,
- (2) To enable the Community to further develop and enhance its self-determination,
- (3) To promote Community economic development, generate employment for Community members, and promote the Pima and Maricopa culture, and
- (4) To generate government tax and other revenues to support operation of Community government and the provision of governmental services and programs to Community members and the public at large.

(f) In furtherance of the general powers conferred by this division 9 of chapter 1, article II of the Community Code of Ordinances, and in conformity with the established policies of the Community Council, SRSR shall also have the following powers which, unless such powers are revoked by the Community Council, shall be exercised by the board of SRSR or delegated by it to SRSR's officers or employees:

- (1) To enter into, make and perform contracts of every kind and description with any firm, person, association or corporation, tribal government, municipality, county, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. SRSR shall not enter into any lease of real property or contract for the purchase or sale of real property without the prior approval of the Community Council.

- b. SRSR shall not enter into any contract which requires expenditures from SRSR in excess of its budget for the subject matter of any such contract without an amendment to SRSR's budget, and Community Council approval of such amendment.

- (2) To borrow money for any of the purposes of SRSR, and, in connection with such borrowing:

- a. Without the approval of the Community Council, grant collateral or other security to secure the indebtedness provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral); and
- b. With the express approval of the Community Council, hypothecate, encumber and grant security interests in SRSR's property to secure repayment thereof.

Any borrowing by SRSR from the Community shall be treated in a manner similar to borrowing from any commercial lender.

- (3) To prepare an annual budget of income, expenses and capital expenditures in a form approved by the Community's treasurer and to adopt an annual budget that is approved by the Community Council.
- (4) To conduct banking relationships necessary to the operation of SRSR, with notice to the Community treasurer prior to establishing bank accounts.
- (5) To establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant of the books of SRSR and to report the financial condition of SRSR to the Community treasurer monthly. Upon request of the Community treasurer, SRSR's primary financial officer shall timely prepare specified financial reports, projections, or



provide data in a form and substance reasonably acceptable to the Community treasurer (financial data). Copies of all financial data and other information provided by the primary financial officer to the Community treasurer shall concurrently be provided by the primary financial officer to the general manager of SRSR. The Community treasurer shall attend meetings of SRSR's board or officers, and SRSR's officers shall meet with the treasurer upon request so as to facilitate the treasurer in performing fiduciary and other duties assigned by the Community Council. In addition, the primary financial officer and general manager of SRSR shall timely inform the Community treasurer regarding operational matters which are likely to significantly affect SRSR's annual budget, its strategic planning, financial results, internal controls, operating efficiency, or financial planning.

- (6) To periodically transfer to the Community funds excess to the operating needs of the SRSR. SRSR shall make such transfers at the direction of the Community Council.
  - (7) To enter into arrangements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as management of SRSR may from time to time determine and to enter into contracts for goods and services with any other enterprise or division of the Community.
  - (8) To hire, promote and discharge such personnel as may be required to conduct its business. PCC shall maintain effective policies for giving preference in hiring, promotion, and training to qualified Community members in all levels of employment, including specifically in the employment of officers and other management employees. Community member and Indian preference policies shall be adopted and implemented by PCC consistent with Community law and any other applicable law.
  - (9) To conduct the business of SRSR in accordance with the laws of the Community.
  - (10) To exercise such powers as are necessary to accomplish the purpose for which SRSR is organized.
  - (11) To own and hold real or personal property, subject to the limitations listed in subsection (f)(1)(a) above, in the name of SRSR or the Community.
  - (12) To retain attorneys under a written agreement, subject to the prior express approval of the Community's general counsel, provided that no attorney-client, work-product or other privilege shall prevent communication of any matter or distribution of any document between such attorneys and the Community's general counsel. The Community's general counsel appointed attorney shall attend meetings of SRSR's board or officers.
- (g) SRSR shall create separate budgets and books of account for each of the businesses conducted by SRSR.
- (h) The SRSR board shall consist of seven members who shall be appointed by the Community Council. The qualifications of the members are as follows:
- (1) The chief executive officer of the Phoenix Cement Company ("PCC"), a division of the Community.
  - (2) The general manager of SRSR.
  - (3) Four members of the board shall be members of the Community and two of them shall be members of the Community Council. If the general manager of SRSR and the chief executive officer of PCC are the same person, then a third member of the Community Council shall serve to make a seven-member board.
  - (4) One member of the board shall have extensive professional or management experience in the aggregate or some allied construction industry, banking and finance or structural or civil engineering.

The general manager of SRSR and the chief executive officer of PCC shall serve as members of the board for the time that member occupies the office which qualifies such member to serve as board member. Any board member who is qualified under this subsection shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for a term of three years or thereafter until their successors are appointed by the Community Council. Except for the chief executive officer of PCC, the general manager of SRSR and council representatives, the terms of the board members shall be staggered.

(i) The officers of the board shall consist of a chairperson, vice-chairperson and secretary, and such additional officers as the board may deem necessary. All offices shall be subject to annual election by the board at its annual meeting. The officers elected by the board shall hold office for a period of one year, or until their successors are elected, unless removed from office by the board as provided in the bylaws. The president of the Community may from time-to-time assign employees of the Community to perform functions for SRSR and attend board meetings of SRSR.

(j) The board shall have the power to adopt, amend, rescind and repeal bylaws, subject to approval by the Community Council.

(k) The highest amount of indebtedness or liability, direct or contingent to which SRSR may at any time subject itself shall be determined, from time to time, by the Community Council.

(l) The board members and officers of SRSR shall not be liable for the debts of SRSR, the private property of the board members and officers of SRSR shall be forever exempt from SRSR's debts and the Community shall indemnify and hold harmless the board members and officers from liability or other claim arising out of their duties of or function as board members or officers, provided they acted in good faith.

(m) The board shall perform the following functions:

- (1) *Budget.* Each fiscal year the board shall meet with the general manager and

primary financial officer and develop a proposed annual budget which the board shall approve, subject to final approval of the Community Council.

- (2) *Compliance with law and ethical business environment.* The board shall endeavor to have SRSR operate as an ethical entity that is compliant with all applicable laws and requirements. The board is responsible for periodically reviewing and assessing whether SRSR's code of ethics and business practices are consistent with applicable law, reviewing any changes to them that may be made from time to time by management, and monitoring SRSR's compliance with them.
- (3) *Risk oversight.* The board will periodically review with management the principal topics relating to or arising out of risks inherent in SRSR's business and assess the effectiveness of SRSR's measures to address these risks.
- (4) *Provision of oversight.* The board shall:
  - a. Periodically review and, if necessary, revise the Mission and Purpose statement for SRSR;
  - b. Review the performance of the General Manager annually;
  - c. Review and approve SRSR financial and management policies
  - d. Review management's strategic plans for SRSR and determine if goals have been met and if such plans should be revised;
  - e. Review monthly financial statements; and
  - f. Assess the performance of the board.
- (5) *Board meetings.* The board shall meet no more frequently than 12 times per fiscal year. However, the board may meet more than 12 times per fiscal year:
  - a. If unanticipated circumstances arise that are likely to have a significant adverse effect on SRSR's budgeted revenues or expenses, and if an additional meeting is necessary in

order for the board to reasonably learn how management will be addressing those unanticipated circumstances,

- b. For board member interviews, and
  - c. For board member training.
- (6) *Board committees.* The board may organize committees whose charters shall be consistent with this division.
- (7) *Committee meetings.* A board committee shall meet no more frequently than five times per fiscal year. However, a board committee may meet more than five times per fiscal year if unanticipated circumstances arise that are likely to have a significant adverse effect on SRSR's budgeted revenues or expenses, and if an additional meeting is necessary in order for the committee to perform its functions under its charter and assist the board in learning how management will be addressing those unanticipated circumstances.
- (8) *Stipends.* Compensation for members of the board to attend board and committee meetings shall be set by the Community Council.

(n) Nothing in this division 9 of chapter 1, article II of the Community Code of Ordinances shall exempt SRSR from full compliance with ordinances of the Community.

(Code 2012, § 1-85; Ord. No. SRO-168-93, 6-30-1993; Ord. No. SRO-402-2012, § 1-85, 5-30-2012; Ord. No. SRO-488-2017, 1-18-2017; Ord. No. SRO-523-2020, 8-19-2020; Ord. No. SRO-547-2022, 4-13-2022)

#### **Sec. 1-234. Capitalization; privileges and immunities.**

(a) SRSR shall be capitalized by ownership of all of the equipment, vehicles, buildings, accounts receivable, cash and all other assets held in the name of the Salt River Sand and Rock Company, a division of the Community and as determined by the Community Council.

(b) SRSR is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. SRSR is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law. SRSR's immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive SRSR's immunity from suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.
- (2) The board of SRSR may grant a written waiver of SRSR's immunity from suit for contract amounts not to exceed \$500,000.00, subject to the following terms, conditions and limitations:
  - a. The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transactions and the claims or classes of claims for which the waiver is granted, the property of SRSR which may be subject to execution to satisfy any award or judgment which may be entered in the claim, and shall state whether SRSR consents to suit in court or to arbitration, mediation or other alternative dispute resolution mechanism, and if consenting to suit in court, identify the court or courts in which suit against SRSR may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.
  - b. Any waiver shall be limited to claims arising from the acts or omissions of SRSR, its employees or agents, and shall be limited to and construed only to affect property held in the name of SRSR and the income and accounts of SRSR.

- c. Nothing in this division 9 of chapter 1, article II of the Community Code of Ordinances, and no waiver of immunity of SRSR granted by the board, shall be construed as a waiver of the sovereign immunity of the Community or any other Community-owned enterprise or division, and no such waiver of immunity of SRSR shall create any liability on the part of the Community or any other Community-owned enterprise or division for the debts and obligations of SRSR, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-owned enterprise or division based on any action, adjudication, or other determination of liability of any nature incurred by SRSR.
- d. The immunity of SRSR shall not extend to actions brought by the Community.
- e. No waiver of immunity of SRSR shall extend to or in any manner affect the assets transferred from the accounts or business of SRSR to other accounts of the Community, nor to amounts payable to the Community by SRSR. All obligations and indebtedness incurred by SRSR shall be special obligations solely of SRSR and payable solely from the assets described in this section.

(Code 2012, § 1-85; Ord. No. SRO-168-93, 6-30-1993; Ord. No. SRO-402-2012, § 1-86, 5-30-2012; Ord. No. SRO-547-2022, 4-13-2022)

**Secs. 1-235—1-261. Reserved.**

**DIVISION 10. SALT RIVER COMMERCIAL LANDFILL COMPANY**

**Sec. 1-262. Established.**

(a) There is established a division of the Community to be known as the Salt River Commercial Landfill Company, a division of the Community.

(b) The commercial landfill division is an integral part of the Community organized to perform an essential governmental function of the Community. As such, it is subject to the ultimate financial and management control by the council of the Community. The commercial landfill division accordingly has, in the exercise of the powers delegated to it by the council, the full measure of the Community's sovereign immunity, the Community's exemption from federal and state taxation, and the Community's right to be treated as a state government for the purposes of section 7871 of the Internal Revenue Code of 1986, as such section may be amended or recodified from time to time.

(c) The purpose of this division within this Community Code of Ordinances is promote the economic self-sufficiency of the Community by constructing, maintaining, managing and operating one or more commercial landfills and related facilities and functions for the Community and other entities or jurisdictions with which it might enter into agreements, and to undertake such other responsibilities as may be assigned to it from time to time by the Community Council. (Code 2012, § 1-90; Ord. No. SRO-339-08, § I, 9-24-2008; Ord. No. SRO-402-2012, § 1-90, 5-30-2012)

**Editor's note**—Ord. No. SRO-339-2008 also repealed Ord. No. SRO-322-2008.

**Sec. 1-263. Powers.**

(a) The commercial landfill division shall have the power to administer and operate its business enterprise and manage such assets as the Community assigns to the commercial landfill division. In so doing, the commercial landfill division shall function autonomously on a day-to-day basis while remaining ultimately accountable to the Community, and specifically to the Community Council.

(b) In exercising the power to manage and operate its designated business enterprise, the commercial landfill division may enter into contractual transactions without specific approval of the council only in the following circumstances:

- (1) Subject to compliance with the provisions of this section, and subject to the

limitations in subsection (c)(1) of this section, the commercial landfill division may enter into contracts without specific approval of the council where the following requirements of the transaction in question are satisfied:

- a. Is part of the commercial landfill division's ordinary and routine course of business;
- b. Is specifically beneficial to the commercial landfill division; and
- c. Is funded by and consistent with the specific allocations of a commercial landfill division budget that has been approved pursuant to section 1-263(c)(1).

The commercial landfill division is required to regularly consult with the Community's general counsel or his or her designee to determine whether contracts entered into pursuant to this provision are consistent with Community law and satisfactorily protective of the Community's political integrity. Any contract that contains, appears to contain, or may be interpreted to contain a waiver of sovereign immunity must be reviewed and approved by the Community office of the general counsel.

- (2) Subject to compliance with the provisions of this section, and subject to limitations in subsection (c)(1) of this section, and consistent with its approved budget, the commercial landfill division may incur debt for the lease or purchase of equipment and give a security interest in the leased or purchased equipment as collateral for such debt. Any transaction to lease or purchase equipment:
  - a. Must be authorized by a budget that has been approved by the commercial landfill division's board of directors and the council pursuant to subsection (c)(1) of this section; and
  - b. The significant terms of such transaction must be included in the commercial landfill division's report

to the council for the quarterly period in which the transaction took place.

- (3) The commercial landfill division shall not enter into any contract or partake in any transaction, without the approval of the Community Council, which requires expenditures or involves financial obligations in excess of the budget approved pursuant to subsection (c)(1) of this section.





- (4) Community Council approval is required for any acquisition, conveyance, leasing or other disposition of real property by the commercial landfill division. For any acquisition by the commercial landfill division of real property, the Community Council shall determine, by resolution, whether such land shall be owned in fee simple absolute by the commercial landfill division, in fee simple absolute by the Community or by the United States in trust for the Community.
- (c) Limitation of liability and financial obligations of the commercial landfill division.
- (1) Unless specifically provided otherwise in a separate resolution adopted by the Community Council, the commercial landfill division's aggregate liability, obligation and financial exposure shall always remain limited solely and specifically to the assets of the commercial landfill division, obtained through the operation of its designated business enterprise. Barring Community Council directive providing otherwise, such liability, obligation and financial exposure shall never include or obligate any real property, personal property or accounts or any other assets of the Community itself, or any other Community division, department, authority, enterprise, subdivision or entity. Barring Community Council directive providing otherwise, no liability, obligation, financial exposure or debt of the commercial landfill division shall extend to those assets transferred from the accounts or business of the commercial landfill division to the accounts of the Community or to amounts payable to the Community by the commercial landfill division.
  - (2) All obligations incurred in connection with the commercial landfill division shall be special obligations of the commercial landfill division payable solely from the assets of the commercial landfill division, separate and apart from the assets of the Community.
  - (3) The commercial landfill division's obligations are not general obligations of the Community and are limited only to those assets of the commercial landfill division pertaining to any agreement executed pursuant to section 1-262 and this section.
  - (4) Unless specifically provided otherwise in a separate resolution adopted by the Community Council, the commercial landfill division may assume responsibility and be liable only in its own name, and never in the name of the Community, or any other Community division, department, authority, affiliate, enterprise, subdivision or entity.
  - (5) No claim for liability or any other payment obligation in relation to the activities of the commercial landfill division may be brought against the Community or the Community's other assets or property, including those of other divisions, departments, authorities, affiliates, enterprises, subdivisions or entities of the Community.
  - (6) Unless specifically provided otherwise in a separate resolution adopted by the Community Council, the commercial landfill division's liability for a specific project, undertaking or act shall always be expressly limited to actual compensatory damages and shall not include consequential, special or punitive damages.
  - (7) Unless specifically provided otherwise in a separate resolution adopted by the Community Council, the commercial landfill division may expressly or impliedly waive its sovereign immunity only under the following circumstances:
    - a. Any waiver of sovereign immunity shall be solely for the limited purpose of:
      - 1. Commencing arbitration;
      - 2. Enforcing the obligation to arbitrate disputes; and
      - 3. Enforcing arbitration decisions or awards in accordance with the dispute resolution provisions herein.

Such limited waiver shall extend solely to parties to the documents executed by the Institution and/or affiliated parties, third-party beneficiaries thereto, beneficiaries thereto by virtue of agreements made a part thereof by attachment, incorporation by reference or integration therewith, and any approved successors and assigns. Such limited waiver of sovereign immunity does not extend to any person or entity other than such parties, beneficiaries, approved successors and assigns, or any claims for consequential or punitive damages;

b. The limited waiver of sovereign immunity shall require that the resolution of disputes is to be conducted solely through binding arbitration under the following conditions:

1. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association or, in the case of contracts dealing with a specialized subject matter for which another arbitration system is commonly recognized, in accordance with the rules of such other arbitration system;
2. The arbitration hearing will be conducted in Phoenix, Arizona, before three arbitrators designated in accordance with the AAA rules. In the alternative, the parties to a dispute may mutually agree to submit the matter for consideration by a single arbitrator;
3. The arbitrator(s) shall have no power to depart from or change any provisions of the underlying contract or the applicable arbitration rules, as modified herein;
4. The arbitrator's power, jurisdiction, decisions, and award allowed under the applicable ar-

bitration rules are limited by the choice of law and sovereign immunity provisions herein, or by such provisions as are approved by the Community Council in a separate adopted resolution;

5. The arbitration award or obligation to arbitrate may be enforced only in the Community court or, where authorized by federal law, the United States District Court for the District of Arizona;
6. Any consent to jurisdiction under the applicable arbitration rules is limited to the Community court or, where applicable, United States District Court for the District of Arizona, and excludes jurisdiction in any state court; and
7. The contract or transaction shall provide for such other terms regarding arbitration as are reasonable or customary, including that the arbitrator(s) be knowledgeable in federal Indian law.

c. In the alternative to the arbitration requirements set forth in subsections (c)(7)a and (c)(7)b of this section, and subject to the remaining limitations set forth in subsections (b)(1) through (6) of this section, the commercial landfill division may waive sovereign immunity for the purpose of adjudicating disputed matters in the Community court.

- (8) No provisions herein and no action of the commercial landfill division shall be deemed or construed to waive the sovereign immunity of the Community, or any other Community division, department, authority, affiliate, enterprise, subdivision or entity.

(d) The commercial landfill division's board of directors may seek permission from the Community Council for consent to enter into transactions that are not within the powers delegated to the commercial landfill division under subsections (a)—(c) of this section, including the following:

- (1) Purchasing or leasing real property on behalf of the SRPMIC or encumbering real property owned by the Community, provided that the subleasing of real property may be conducted by the commercial landfill division without the SRPMIC council's approval should a master lease or other document covering such real property and approved by the Community Council so provide;
- (2) Entering into any contract or otherwise incurring any obligation in connection with an activity that is not within the ordinary course of the commercial landfill division's business such as, by way of example, construction of significant improvements in real property owned by the Community and the entry into a new business activity;
- (3) Entering into any financial obligation, and executing any associated loan documents, which designate, as collateral or security, property other than that which is identified in subsection (b) of this section;
- (4) Any transaction or act that involves liability, obligation or financial exposure in excess of that which is permitted under the terms of this section and section 1-264.

(e) Notwithstanding the provisions set forth in this section, the Community Council retains discretion to veto agreements and transactions, and to withhold any associated waivers of sovereign immunity, on a case-by-case basis where specific questions are raised regarding certain agreements that are otherwise authorized under this section and sections 1-262 and 1-264. Furthermore, the Community Council retains discretion to prospectively limit, by resolution, the types of agreements in which sovereign

immunity may be waived even if such agreements otherwise satisfy the requirements set forth herein.

(Code 2012, § 1-91; Ord. No. SRO-339-08, § II, 9-24-2008; Ord. No. SRO-402-2012, § 1-91, 5-30-2012)

#### **Sec. 1-264. Financial duties and responsibilities.**

(a) The commercial landfill division shall maintain financial books and records of account separate and apart from those of the Community and shall generate and maintain reports accurately reflecting the financial position, revenues and disbursements of the commercial landfill division in accordance with generally accepted accounting principles and following the Community's fiscal year. Upon reasonable notice and justification, the commercial landfill division's business and financial records shall be available for inspection and copying by the Community Council and/or treasurer, or their designees. The commercial landfill division's books of account and financial reports shall be audited by an independent and reputable firm of certified public accountants, approved by the Community Council, and the corresponding audit reports shall be presented to the Community Council and to the Community treasurer in such format as they may from time to time prescribe. Upon reasonable justification, the Community Council may order a special audit of the commercial landfill division, to be performed either by an independent and reputable firm of certified public accountants or by the Community internal auditor(s) and/or the treasurer.

(b) In order to properly track the assets of the commercial landfill division, the commercial landfill division shall maintain a separate tax identification number issued by the United States Internal Revenue Service.

(c) The commercial landfill division shall adopt an annual operating budget of revenues and expenditures and a capital expenditures budget based upon the Community's fiscal year which shall be in such form as may be prescribed from time to time by the Community Council and the Community treasurer. The capital expenditures

budget shall define the division's plans for capital investments, including material operating leases, and shall state whether the planned investments are intended to be made from cash flow accumulations or from borrowing. The budget shall be approved by the commercial landfill division's board of directors before it is presented to the Community Council for its approval. The Community Council must approve the budget and appropriate money before the commercial landfill division can expend such funds. Any amendments to an approved budget that would exceed the total amount of the approved budget also must be approved by the council before the commercial landfill division can expend such funds.

(d) The commercial landfill division shall transfer to the Community its cash flow accumulations to the extent that they exceed the commercial landfill division's operational, capital investment and other requirements, as determined by consultation with the Community treasurer and pursuant to guidelines adopted by the Community Council.

(e) The highest dollar amount of indebtedness or liability, direct or contingent, to which the commercial landfill division may at any time subject itself, either in the aggregate, or for a specific transaction or undertaking, shall be determined and directed, from time to time, by the Community Council. Review and approval by the Community Council shall be required only for any transaction or undertaking in excess of such amount.

(f) At least twice each fiscal year, the commercial landfill division shall appear before and report to the Community Council regarding its activities.

(Code 2012, § 1-92; Ord. No. SRO-339-08, § III, 9-24-2008; Ord. No. SRO-402-2012, § 1-92, 5-30-2012)

#### **Sec. 1-265. Chief executive officer.**

The commercial landfill division's board of directors, by vote of an absolute majority of all members, shall appoint and retain a chief executive officer to act as the high-ranking full-time employee of the commercial landfill division.

The chief executive officer is the chief administrative officer of the commercial landfill division, subject to the authority of the board of directors, and shall perform such duties as are designated in a position description approved by the board of directors, as well as such further duties as are assigned to him or her by the board of directors. The chief executive officer shall consult monthly with the commercial landfill division's administrative and fiscal staff to prepare monthly reports on the division's income, expenses and operations. The chief executive officer shall also oversee the preparation of the commercial landfill division's budgets. The chief executive officer shall supervise the commercial landfill division's efforts in connection with all audits and ensure that all financial reports and records are timely submitted to the agency requesting such reports and records or to whom such reports and records are due. The chief executive officer shall attend meetings of the board of directors and, subject to the conditions below, may serve as a voting member of the board. While in service for the commercial landfill division, the chief executive officer shall be ineligible to sit on the board of directors for any other Community division, enterprise, affiliate or entity.

(Code 2012, § 1-93; Ord. No. SRO-339-08, § IV, 9-24-2008; Ord. No. SRO-402-2012, § 1-93, 5-30-2012)

#### **Sec. 1-266. Board of directors.**

(a) The affairs of the commercial landfill division shall be governed by a board of directors.

(b) The board of directors shall be comprised of nine voting members.

(1) The qualifications of members shall be as follows:

- a. Two elected council members of the Community Council.
- b. Reserved.
- c. At least three members shall be enrolled members of the Community who are not members of the council or employees of the commercial landfill division.



- d. At least two members shall be persons who have extensive professional or management experience in the construction or waste management industry, experience in banking and finance and/or experience in structural, environmental, or civil engineering and who are not members of the Community Council or employees of the commercial landfill division. The council shall give preference to qualified Community members in making these appointments.
  - e. At least one member shall be from the Salt River District, and at least one member shall be from the Lehi District, and one member shall be at large with preference for a resident of the Lehi District where the commercial landfill division facility is physically located. These requirements may be fulfilled only through the representatives designated in subsection (b)(1)c and d of this section.
  - f. The chief executive officer.
- (2) Subject to the requirements of existing Community or Community Council policy regarding appointment of board members, the commercial landfill division's board members, other than the council representatives designated in subsections (b)(1)a and b of this section and the chief executive officer, shall be selected through an application process prescribed in the commercial landfill division's bylaws. Based on such process, the active board of directors shall recommend board candidates to the council. The Community Council shall then appoint board members in accordance with the requirements of this division within this Community Code of Ordinances and existing Community or Community Council policy regarding appointment of board members.
  - (3) Other than the council representatives and the chief executive officer, the terms of these The terms of these board members shall be for a period of three years; provided that the Community Council, however, may provide for shorter terms of certain appointees for the purpose of staggering the board members' terms and other purposes the Community Council deems fit; and provided further that the council reserves the right to remove and replace board members at any time in its sole discretion. The council representatives who are members of the board and the chief executive officer shall serve as members of the board for the time that each such member occupies the office which qualifies such member to serve as a board member.
  - (4) Any board member may resign at any time by giving written notice to the chairperson of the board and the Community Council. Resignations shall become effective at the time specified in writing therein; the acceptance of such resignation shall not be necessary to make it effective. Any time there is a resignation or vacancy, the board shall notify the Community Council. Any vacancy on the board because of death, resignation, removal, or other cause shall be filled for the unexpired portion of that term in accordance with subsection (b)(3) of this section.
  - (5) In the event a board member becomes temporarily incapacitated or otherwise unable to perform his or her duties as defined herein, the remainder of the board, by a simple majority vote, may appoint an interim board member to serve as a replacement, subject to the approval of the Community Council. An interim board member may serve no more than six months, at which point the temporarily replaced board member must reassume his or her position, or the position shall be declared vacant and filled in accordance with subsection (4) of this section.
  - (6) Removal for cause. A board member may be removed involuntarily from the board

prior to the expiration of his or her term in accordance with the following procedures:

- a. A request for removal of a board member may be initiated by filing with the chairperson of the board a written notice specifying the cause for removal signed by not less than three members of the Community Council.
- b. The cause for removal shall be limited to the following during the terms of membership:
  1. Conviction or judgment of liability in any federal, state, or tribal court of a felony or of any of the following offenses, as defined in this Community Code of Ordinances:
    - (i) Violence of assault on a Community law enforcement officer or judge; obstructing criminal investigation or prosecution;
    - (ii) Destroying evidence;
    - (iii) Perjury;
    - (iv) Bribery;
    - (v) Cheats and frauds;
    - (vi) Extortion;
    - (vii) Forgery;
    - (viii) Embezzlement;
    - (ix) Disposing of property of an estate;
    - (x) Theft; or
    - (xi) Misbranding;
  2. Gross neglect of duty;
  3. Malfeasance in office or conduct which amounts to gross and intentional disregard of the laws and procedures applicable to the affairs of the commercial landfill division; or
  4. Any other conduct, act or omission that could reasonably be characterized as posing a

significant risk to the health, safety, welfare, reputation, integrity and/or prosperity of the board of directors, the commercial landfill division and/or the Community.

- c. Not less than 15 nor more than 30 days following receipt of the written request for removal, the Community Council shall conduct a hearing and vote on the removal or retention of the board member. Before any vote is taken, the board member shall be given a full opportunity, either in person or through a representative of his or her choice, to answer or otherwise respond to any and all charges against them.
  - d. To remove a board member from the board for cause, the affirmative vote of at least two-thirds of the members of the Community Council present at the meeting shall be required.
- (7) Regular meetings of the board of directors shall be held at least once every three months for the purpose of reviewing the commercial landfill division's recent operations, making plans for ensuing operations, and the transaction of such other business as may come before these meetings. The annual meeting of the board of directors shall be held in the month of November. At the annual meeting, the board of directors shall review the preceding year's operations and transact such other business as may come before the meeting. The chairperson of the board of directors and the chief executive officer shall present reports of the year's activities to commercial landfill division representatives and other attendees at the annual meeting. The regular meetings shall be held at the time and place specified by the chairperson of the board. Recorded minutes must be kept for all annual and regular meetings.
  - (8) Special meetings of the board of directors may be called by the chairperson of the

board or jointly by any three members of the board of directors. Meetings shall be held at the time and place specified by the person or persons calling such meeting. Written minutes must be kept for all special meetings.

- (9) Five board members present shall constitute a quorum for the transaction of business at any meeting of the board of directors.
- (10) The act of a majority of the board members present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required elsewhere in this article. Each member of the board of directors, including the board member presiding at the meeting of the board of directors, shall be entitled to one vote.
- (11) The board of directors shall adopt:
  - a. Bylaws and other policies for the governance of the commercial landfill division;
  - b. Personnel policies that will include procedures for the resolution of grievances of nonprobationary employees, which policies must be approved by the Community Council; and
  - c. An ethics policy for board members that includes a conflict of interest statement in a form approved by the office of the general counsel and the Community Council to be reviewed and signed by all board members prior to a continuing member voting at the second board meeting after the effective date of the ordinance from which this division within this Community Code of Ordinances is derived and a new member attending any board meeting.
- (12) The fees or stipend for the board of directors under this division within this Community Code of Ordinances shall be by the board of directors, but shall at all times be subject to any effective Com-

munity and/or Community Council policies with respect to board fees and stipends, including without limitation the Community human resources policies regarding work hours and attendance of board meetings during work hours. The board may request a variance from the council at any time but in no event more often than once per year.

- (13) No board member, officer or employee may have any direct or indirect financial interest that conflicts or appears to conflict substantially with the responsibilities and duties as board members, officers and employees. No board member, officer or employee of the commercial landfill division shall engage in financial transactions as a result of, or otherwise make use of for private gain, information obtained through his or her status as a board member, officer or employee of the commercial landfill division. In addition, no board member, officer or employee of the commercial landfill division shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value, from any person, corporation, group or entity that has interests in or relationship with, or is seeking to obtain contractual or other business of financial relationship with the commercial landfill division, or that conducts or seeks to conduct operations or activities that are regulated by the commercial landfill division, or that has interests that may be affected by the board member's, officer's or employee's performance or nonperformance of his or her official duties for the commercial landfill division. Board members, officers and employees may, however, accept within the bounds of good taste, social amenities and tokens of negligible monetary value as are consistent with generally prevailing customs. Board members, officers and employees may not use any property of the commercial landfill division for purposes other than officially approved activities.

(Code 2012, § 1-94; Ord. No. SRO-339-08, § V, 9-24-2008; Ord. No. SRO-402-2012, § 1-94, 5-30-2012; Ord. No. SRO-486-2017, 1-18-2017)

**Sec. 1-267. The officers.**

(a) The officers of the commercial landfill division shall include a chairperson, a president, a secretary, a treasurer and additional officers as determined by the board. Unless otherwise indicated in this section, the board of directors shall elect each officer from its voting members and ex officio members. Other officers and assistant officers as may be deemed necessary may be elected by an absolute majority of all members of the board of directors, and their duties may be defined in the commercial landfill division's bylaws. Unless approved by a unanimous vote of the board of directors and confirmed by the Community Council, or unless temporarily holding an office on an emergency basis, no person may simultaneously hold more than one office.

- (1) The board may elect such other officers of the commercial landfill division as it may deem appropriate in the interests of the efficient management of the commercial landfill division's enterprise.
- (2) All officers elected by the board shall hold office for a period of one year, or until their successors are elected, unless removed from office by the board as provided in the bylaws or by the Community Council.

(b) In the event an officer becomes temporarily incapacitated or otherwise unable to perform his or her duties as defined herein, the remainder of the board, by a simple majority vote, may appoint an interim officer to serve as a replacement. An interim officer may serve no more than three months, at which point the temporarily replaced officer must reassume his or her position, or the board must elect a permanent replacement officer in accordance with subsection (a) of this section.

(c) Chairperson of the board. If present, the chairperson of the board shall preside at the meetings of the board of directors. Together with the chief executive officer and Community Council representatives, the chairperson shall act as the commercial landfill division's primary liaison to the Community and to the Community Council. As such, the chief executive officer and chairperson

shall be responsible for presenting reports and requests to the Community Council as necessary. Subject to the board of directors' control, the chief executive officer shall supervise the business and affairs of the commercial landfill division, and together with the commercial landfill division's administrative and fiscal staff, all assets of the commercial landfill division. The chairperson or chief executive officer, or an authorized designee thereof, shall sign any contract, purchase order, check or other instrument which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be especially delegated by the board of directors or by this division to some other officer or agent of the commercial landfill division, or shall be required by law to be otherwise signed and executed. The chairperson of the board shall perform such other duties as from time to time may be prescribed by the board of directors and/or set forth in the commercial landfill division's bylaws.

(d) Vice-chairperson. In the absence of the chairperson of the board, or in the event of the chairperson's death, inability or incapacity to act, the vice-chairperson shall perform the duties of the chairperson of the board and, when so acting, shall have all the powers and be subject to all restrictions upon the chairperson of the board. The vice-chairperson shall perform such other duties as from time to time may be prescribed by the board of directors and/or set forth in the commercial landfill division's bylaws.

(e) Treasurer. Among officers that may be appointed upon determination of the board of directors is a treasurer, who shall perform such other duties as from time to time may be prescribed by the board of directors and/or set forth in the commercial landfill division's bylaws. In lieu of electing a treasurer from the board's membership, the board may appoint the Community treasurer, or his or her authorized designee, as the commercial landfill division's treasurer, subject to Community Council action as defined in subsection (a) of this section. In any event, if he or she is not otherwise an active voting board member, the Community treasurer or the controller of the commercial landfill divi-

sion, or an authorized designee thereof, shall attend board meetings as an ex officio (nonvoting) member of the board.

(Code 2012, § 1-95; Ord. No. SRO-339-08, § VI, 9-24-2008; Ord. No. SRO-402-2012, § 1-95, 5-30-2012)

**Sec. 1-268. Indian preference in employment.**

The commercial landfill division shall maintain effective policies for giving preference in hiring,





promotion, and training to qualified Community members in all levels of employment, including specifically in the employment of officers and other management employees. Effective preference policies shall be developed and adopted by the commercial landfill division consistent with Community law and policies. The commercial landfill division shall, in furtherance of the policies so developed, advise Community employment officials of job openings as soon as possible and give full consideration to any Community member referred to the commercial landfill division for any job opening. The Indian preference policies shall provide for and require training programs to prepare Community members for hiring and promotion in all levels of employment.

(Code 2012, § 1-96; Ord. No. SRO-339-08, § VII, 9-24-2008; Ord. No. SRO-402-2012, § 1-96, 5-30-2012)

#### **Sec. 1-269. Reports to the Community Council.**

(a) The commercial landfill division shall provide written reports to the Community Council on its operations and significant activities and events in each calendar quarter within 45 days after the close of the quarter. The reports shall include at least the following information as well as any other information the council may request:

- (1) Income statements showing revenues and disbursements for the quarter and for the fiscal year to date with comparisons to the operating budget and capital expenditures with comparisons to the capital expenditures budget.
- (2) A description of all limited waivers of sovereign immunity given in connection with a routine business transaction pursuant to section 1-263, or in connection with any transaction entered into by the commercial landfill division pursuant to subsection (a)(1) of this section.
- (3) A list and brief description of any claims asserted against the commercial landfill division by way of lawsuit. It shall also advise of any threats of lawsuit.

- (4) An assessment of the impact of the commercial landfill division's activities on the Community's sovereign political status and on the Community's cultural preservation objectives.
- (5) The report shall state the number of persons employed by the commercial landfill division, the number of employees who are members of the Community, and the number of employees who are enrolled members of other Indian tribes and the number of Community member employees who left employment during that period.

(b) Prior to the end of each fiscal year the commercial landfill division shall present to the Community Council and obtain approval of its budget for the next fiscal year, first from the commercial landfill division's board of directors and then from the Community Council. This presentation shall be made both orally and in writing. Any amendment to the budget following its original adoption shall be reported to the council as part of the report for the quarter in which the amendment was approved by the commercial landfill division's board of directors.

(c) The commercial landfill division's report for the fourth quarter of each fiscal year shall be made by written and oral presentation to the council and shall include, in addition to the information requested in subsection (a) of this section, financial statements for the concluded fiscal year.

(d) From time to time the Community treasurer's office may provide formats for the quarterly presentations and may request that additional information be included.

(e) The Community Council may request additional or supplemental reports at any time. (Code 2012, § 1-97; Ord. No. SRO-339-08, § VIII, 9-24-2008; Ord. No. SRO-402-2012, § 1-97, 5-30-2012)

#### **Sec. 1-270. Miscellaneous.**

(a) The Community's general counsel or his or her designee shall serve as legal counsel to the commercial landfill division. The general counsel or his or her designee shall be present during all

board meetings. Outside legal counsel may be retained by the commercial landfill division with approval by the Community Council and the Community's general counsel and in accordance with an approved budget.

(b) The board of directors is responsible for determining management's compensation based upon the goals of the commercial landfill division.

(c) The board of directors shall appoint an audit committee comprised of at least three members of the board, as well as one other person with a financial or auditing background who will provide advice and counsel to the audit committee. The audit committee shall meet with the external auditors of the commercial landfill division prior to the beginning of the audit to advise them of any concerns or areas of emphasis for the audit, as well as after the audit is completed to receive and review the audit report.

(d) The board members and officers of the commercial landfill division shall not be liable for the debts of the commercial landfill division, the private property of the board members and officers of this commercial landfill division shall be forever exempt from its debts and the Community indemnifies and shall hold harmless the commercial landfill division employees, the board members and officers from liability or other claim arising out of their duties of or function as commercial landfill division employees, board members or officers. This indemnity and protection from personal liability shall not extend to those actions or activities of the board members or officers, and commercial landfill division employees, who create liability for themselves or the commercial landfill division by exceeding the scope of their official duties, responsibilities or obligations.

(Code 2012, § 1-98; Ord. No. SRO-339-08, § IX, 9-24-2008; Ord. No. SRO-402-2012, § 1-98, 5-30-2012)

#### **Sec. 1-271. Repeal of prior ordinances.**

SRO-322-08, enacted October 3, 2007, is hereby repealed in its entirety.

(Code 2012, § 1-99; Ord. No. SRO-339-08, § X, 9-24-2008; Ord. No. SRO-402-2012, § 1-99, 5-30-2012)

#### **Sec. 1-272. Effective date.**

This will take effect when enacted, except that any change in the composition of the board of directors that may be required by section 1-266 shall become effective at such time as the Community Council may direct.

(Code 2012, § 1-100; Ord. No. SRO-339-08, § XI, 9-24-2008; Ord. No. SRO-402-2012, § 1-100, 5-30-2012)

#### **Secs. 1-273—1-292. Reserved.**

### **DIVISION 11. SALT RIVER COMMUNITY GAMING ENTERPRISES**

#### **Sec. 1-293. Established.**

(a) There is established a division of the Salt River Pima-Maricopa Indian Community to be known as Salt River Community Gaming Enterprise ("Gaming Enterprise"). The Gaming Enterprise shall act for the exclusive benefit of the Community and on its behalf.

(b) The gaming enterprise shall maintain its principal place of business and office in the Community.

(c) The gaming enterprise shall be in the business of developing and operating gaming casinos, restaurants, hotels and convention centers and such other related business as the Community Council may from time to time determine.

(d) The gaming enterprise shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. The gaming enterprise is and shall function as a subordinate economic organization of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of the gaming enterprise, unless expressly approved in writing by the Community Council. Instead, the debts, liabilities and obligations of the gaming enterprise shall be paid and discharged exclusively by the gaming enterprise and from assets or accounts held in its name.

(e) The primary purpose of the gaming enterprise is (i) to promote the economic self-sufficiency of the Community, so as to enable the Community to survive and prosper as an independent Indian Community by generating government revenue to sustain and enhance the Community's necessary programs, (ii) to enable the Community to further develop and enhance its self-determination, (iii) to promote Community economic development, generate employment for Community members, and promote Pima and Maricopa cultural awareness by displaying Pima and Maricopa art and hosting Community and Native American events, and (iv) to generate government tax and other revenues to support operation of Community government and the provision of governmental services and programs to Community members and the public at large.

(f) In furtherance of the general powers conferred in this section and in conformity with the policies of the Community Council, the gaming enterprise shall also have the following powers:

- (1) To enter into, make and perform contracts of every kind and description with any firms, person association or corporations, tribal government, municipality, county, territory, state government or dependency thereof, subject only to the following restrictions:
  - a. The gaming enterprise shall not enter into any lease of real property or contract for the purchase of real property without the prior approval of the Community Council.
  - b. The gaming enterprise shall not enter into any contract which requires expenditures in excess of its budget for the subject matter of any such contract without an amendment to the gaming enterprise's budget.
- (2) To borrow money for any of the purposes of the gaming enterprise, and in connection therewith to make, draw execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other evidences of indebtedness, negotiable or non-negotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral) and with the specific approval of the Community Council, the gaming enterprise may grant collateral or other security other than purchase money collateral or security as described herein and with such approval issue jointly with any other person, associates or firms any evidences of indebtedness as above described. Any borrowing by the gaming enterprise from the Community shall be treated in a manner similar to a borrowing from any commercial lender.
- (3) To adopt an annual budget of income and expenses subject to final approval by the Community Council.
- (4) To conduct banking relationships necessary to the operation of the gaming enterprise, to establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant of the books of the gaming enterprise and to report the financial condition of the gaming enterprise to the Community Council each month. Upon request of the Community treasurer, the gaming enterprise's CFO shall timely prepare specified financial reports, projections, or provide data in a form and substance reasonably acceptable to the Community treasurer (financial data). Copies of all financial data and other information provided by the CFO to the Community Treasurer shall concurrently be provided by the CFO to the chief executive officer of the gaming enterprise. The Community treasurer may attend meetings of the gaming enterprise's board or officers, and gaming enterprise's officers shall meet with the treasurer upon request so as to facilitate the treasurer in performing fiduciary and other duties assigned

by the Community Council. In addition, the CFO and chief executive officer of the gaming enterprise shall immediately inform the treasurer regarding operational matters which are likely to significantly affect the gaming enterprise's annual budget, its strategic planning, financial results, internal controls, operating efficiency, or financial planning.

- (5) To periodically transfer to the Community funds excess to the operating needs of the gaming enterprise. The gaming enterprise shall make such transfers at the direction of the Community Council.
- (6) To enter into agreements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as management of the gaming enterprise may from time to time determine and to enter into contracts for goods and services with any division of the Community.
- (7) To hire, promote and discharge such personnel as may be required to conduct its business.
- (8) To conduct the business of the gaming enterprise in accordance with the laws of the Community and the gaming compact entered into between the Community and the State of Arizona.
- (9) To exercise such powers as are necessary to accomplish the purpose for which the gaming enterprise is organized.

(g) The gaming enterprise shall create separate budgets and books of account for each of the businesses conducted by the gaming enterprise.

(h) The gaming enterprise shall engage in businesses as described in subsection (c) of this section at the specific direction of the Community Council. The gaming enterprise shall carry out the plan of development for the development and operation of businesses as shall be directed by the Community Council within the schedule determined by the Council.

(i) The general oversight of the operation of the gaming enterprise shall be conducted by a board which shall consist of nine voting members who shall be appointed by the Community Council. The qualifications of the ten board members are as follows:

- (1) The chief executive officer of the gaming enterprise shall be on the board but shall be a non-voting member.
- (2) Seven members shall be enrolled members of the Community, and two shall be members of the Community Council.
- (3) Two members shall have extensive professional or management experience in the gaming, restaurant, hotel, convention center, resort operations, [8] banking, or finance business. The Council will accord preference to Native Americans in the appointments under this subsection.

Members of the Community Council who are members of the board and the chief executive officer of the gaming enterprise shall serve as members of the board for the time that each such member occupies the office which qualifies such member to serve as a board member. Any board member who is qualified under subsection (i)(2) or (3) of this section shall serve at the pleasure of the Community Council and if not earlier removed by the Community Council shall serve for a term of three years or thereafter until their successors are appointed by the Community Council or if members of the Community Council, until their council term has expired and their successors appointed by the Community Council. Except for the chief executive officer and council representatives, the terms of the board members shall be staggered.

(j) The officers of the board shall consist of a chair person, vice chairperson, and secretary, and such additional officers as the board may deem necessary. All offices shall be subject to annual election by the board at its annual meeting. The officers elected by the board shall hold office for a period of one year, or until their successors are elected and shall have qualified,



unless removed from office by the board as provided in the bylaws. The president of the Community may from time to time assign employees of the Community to perform functions for the gaming enterprise and attend board meetings of the gaming enterprise.

(k) The board shall have the power to adopt, amend, rescind and repeal bylaws, subject to Community Council approval.

(l) The highest amount of indebtedness or liability, direct or contingent, to which the gaming enterprise may at any time subject itself shall be determined, from time to time, by the Community Council.

(m) The board members and officers of the gaming enterprise shall not be liable for the debts of the gaming enterprise, the private property of the board members and officers of the gaming enterprise shall be forever exempt from its debts, and the Community indemnifies and shall hold harmless gaming enterprise employees, board members and officers from liability or other claim arising out of their duties as employees, board members or officers, provided they acted in good faith.

(n) The business of the enterprise shall be under the general oversight of the board, as provided in this section. The board shall perform the following functions.

- (1) *Budget.* Each fiscal year the board shall meet with the chief executive officer and chief financial officer and develop a proposed annual budget which the board shall approve, subject to final approval of the Community Council.
- (2) *Compliance with law and ethical business environment.* The board shall endeavor to have the enterprise operate as an ethical entity that is compliant with all applicable laws and requirements of the gaming compact. The board is responsible for reviewing and assessing that the enterprise's code of ethics and business practices are consistent with applicable law, reviewing any changes

to them that may be made from time to time by management, and monitoring the enterprise's compliance with them.

- (3) *Risk oversight.* The board will periodically review with management the principal topics relating to or arising out of risks inherent in the enterprise's business and assess the effectiveness of the enterprise's measures to address these risks.
- (4) *Provision of oversight.* The board shall (a) periodically review and, if necessary, revise the mission and purpose statement for the enterprise; (b) review the performance of the CEO annually; (c) review management's strategic plans for the enterprise and determine if goals have been met and recommend if such plans should be revised by management; (d) review monthly financial statements; and (e) assess the performance of the board.
- (5) *Board meetings.* The board shall meet no more frequently than 12 times per fiscal year. However, the board may meet more than 12 times per fiscal year:
  - a. If unanticipated circumstances arise that are likely to have a significant adverse effect on the enterprise's budgeted revenues or expenses, and if an additional meeting is necessary in order for the board to reasonably learn how management will be addressing those unanticipated circumstances;
  - b. For board member interviews, or
  - c. For board member training.
- (6) *Board committees.* The board may organize committees whose charters shall be consistent with this section.
- (7) *Committee meetings.* A board committee shall meet no more frequently than five times per fiscal year. However, a board committee may meet more than five times per fiscal year if unanticipated circumstances arise that are likely to have a significant adverse effect on the

enterprise's budgeted revenues or expenses, and if an additional meeting is necessary in order for the committee to perform its functions under its charter and assist the board in learning how management will be addressing those unanticipated circumstances.

- (8) *Stipends.* Members of the board shall receive a fixed stipend each month, regardless of the number of meetings that the board or its committees hold. The amount of the monthly stipend shall be set by the Community Council.

(Ord. No. SRO-533-2021, 5-19-2021; Ord. No. SRO-545-2022, 3-30-2022)

**Editor's note**—Ord. No. SRO-533-2021, adopted May 19, 2021, deleted § 1-293 and enacted a new section as set out herein. Formerly, § 1-293 pertained to similar subject matter and derived from Code 2012, § 1-105; Ord. No. SRO-363-2010, adopted April 7, 2010; Ord. No. SRO-402-2012, § 1-105, adopted May 30, 2012; and Ord. No. SRO-508-2019, adopted May 1, 2019.

**Sec. 1-294. Capitalization; privileges and immunities; sovereign immunity.**

(a) The gaming enterprise shall be capitalized as shall be determined by the Community Council after consultation with the Community treasurer.

(b) The gaming enterprises is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. The gaming enterprise is entitled to all of the privileges and immunities of the Community, including, but not limited to, immunities from suit, arbitration or other legal process in federal, state and tribal courts and administrative tribunals, and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law.

(c) Nothing in this section shall be deemed a waiver of the sovereign immunity of the gaming enterprise. The authority to waive the sovereign immunity of the gaming enterprise rests solely with the Community Council.

(Ord. No. SRO-533-2021, 5-19-2021)

**Editor's note**—Ord. No. SRO-533-2021, adopted May 19, 2021, deleted § 1-294 and enacted a new section as set out herein. Formerly, § 1-294 pertained to similar subject matter

and derived from Code 2012, § 1-105; Ord. No. SRO-363-2010, adopted April 7, 2010; and Ord. No. SRO-402-2012, § 1-106, adopted May 30, 2012.

**Secs. 1-295—1-321. Reserved.**

**DIVISION 12. SALT RIVER FIELDS AT TALKING STICK**

**Sec. 1-322. Enterprise established.**

(a) There is established a subordinate economic enterprise of the Community to be known as Salt River Fields at Talking Stick ("Salt River Fields").

(b) Salt River Fields shall maintain its principal place of business and office on lands of the Community.

(c) Salt River Fields shall be in the business of developing and operating the Community's spring training and Community recreational facility ("facility"), and such other related business as Salt River Fields or the Community Council may from time to time determine.

(d) In conducting its business, Salt River Fields shall act for and on behalf of the Community. Salt River Fields shall be and at all times shall remain exclusively owned and controlled by the Community, acting through the Community Council. It shall function as an instrumentality of the Community; provided, however, under no circumstances shall the Community be responsible for any debt, liability or obligation of Salt River Fields. Instead, the debts, liabilities and obligations of Salt River Fields shall be paid and discharged exclusively by Salt River Fields and from assets or accounts held in the name of Salt River Fields, as provided in this article. The purposes for organizing Salt River Fields include, but are not limited to, enabling the Community to further develop and enhance its self-sufficiency, promote Community economic development, generate employment for Community members, promote Pima and Maricopa cultural awareness by hosting Community and Native American events at the facility, and generate government tax and other revenues to support operation of Community government and provision of governmental services and programs to Community members.

(e) In furtherance of the general powers conferred by this division within this Community Code of Ordinances, and in conformity with the established policies of the Community Council, Salt River Fields shall also have the following powers which, unless such powers are revoked by the Community Council, shall be exercised by the board of Salt River Fields or delegated by it to Salt River Fields' officers or employees:

- (1) To enter into, make and perform contracts with any person, entity, tribal government, county, state or local government or agency thereof, subject only to the following restrictions:
  - a. Salt River Fields shall not enter into any lease of real property without the approval of the Community Council.
  - b. Salt River Fields shall not enter into any contract which requires expenditures from the accounts of Salt River Fields in excess of the board-approved budget for the subject matter of any such contract, without an amendment to its budget and council approval of such amendment.
- (2) To borrow money for any of the purposes for which Salt River Fields is organized, and in connection therewith to make, draw execute, accept, endorse, discount, pledge, issue, sell or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other evidences of indebtedness, negotiable or nonnegotiable, transferable or not transferable, and grant collateral or other security to secure the indebtedness, provided that the collateral or security are the thing or things purchased with the funds borrowed in the same transaction (purchase money collateral) and, with the express approval of the Community Council, the board may grant collateral or other security other than purchase money



collateral or security as described herein and with such approval issue jointly with any other person or entity any evidences of indebtedness as above described. Any borrowing by Salt River Fields from the Community shall be documented and treated as borrowing from any commercial lender.

- (3) To prepare an annual budget of income, expenses and capital expenditures in a form approved by the Community's treasurer and to adopt an annual budget that is approved by the Community Council.
- (4) To conduct banking relationships necessary to the operation of Salt River Fields, to establish a uniform system of accounting, to provide for the annual auditing by a certified public accountant, of its books and to report its financial condition to the Community Council at least quarterly. In addition, with respect to the preparation of financial data, as such term is defined below, the controller or chief financial officer (CFO) of Salt River Fields shall report to and be subject to the direction of:
  - a. The enterprise's general manager; and
  - b. The Community's treasurer;

provided, however, that if directions issued to the CFO by the Salt River Fields' general manager and Community treasurer shall be in conflict or inconsistent, then the direction from the Community treasurer shall control. Upon request of the Community treasurer, the CFO of Salt River Fields shall timely prepare specified financial reports, projections, or provide data in a form and substance acceptable to the Community treasurer (financial data). Copies of all financial data and other information provided by the CFO to the Community treasurer may concurrently be provided by the CFO to the general manager of Salt River Fields. The Community treasurer and the Community's general counsel may attend all meetings of the board and officers of Salt River Fields, and Salt River Fields' em-

ployees and officers shall meet with the treasurer upon request so as to facilitate the treasurer performing fiduciary and other duties assigned by the Community Council. In addition, the CFO and the general manager of Salt River Fields shall keep the treasurer informed on a timely basis regarding operational matters which may significantly affect the enterprise, its annual budget, strategic planning, financial results, internal controls, operating efficiency, or financial planning. Except as provided above, however, the Community treasurer shall have no management authority over Salt River Fields, its officers or employees. All books and records of Salt River Fields shall be deemed owned by Salt River Fields and the Community and shall at all times be open to inspection by the Community Council and its authorized representatives.

- (5) Upon the direction of either the Community treasurer or the Community Council, to periodically transfer funds to the Community deemed in excess of Salt River Fields' operating needs and financial commitments. Salt River Fields may also make such transfers at the direction of the board.
- (6) To enter into agreements with departments of the Community to provide assistance in accounting, personnel selection, purchasing or other services as the board may from time to time determine and to enter into contracts for goods and services with any other enterprise or division of the Community.
- (7) To hire, promote and discharge such personnel as may be required to conduct its affairs, provided that the terms and conditions of employment, including wages and benefits (including any pension plans or other deferred compensation arrangements) paid and shall be subject to the approval of the Community Council.
- (8) To conduct its business in accordance with the laws of the Community.
- (9) To exercise such powers as are necessary to implement the purposes for which Salt



River Fields is organized, consistent with this division within this Community Code of Ordinances.

- (10) To own and hold real or personal property in the name of Salt River Fields or the Community.
- (11) To retain attorneys under a written agreement, subject to the prior express approval of the Community's general counsel, provided that no attorney-client, work-product or other privilege shall prevent communication of any matter or distribution of any document between such attorneys and the Community's general counsel.

(f) The general business of Salt River Fields shall be conducted by a board which shall consist of seven voting members who shall be appointed by, and who may be removed with or without cause by the Community Council. The qualifications of the members are as follows:

- (1) Four members shall be members of the Community, and at least one of them shall be a member of the Community Council.
- (2) Two members of the board shall have extensive professional or management experience in one of the following areas:
  - a. Cactus League baseball operations;
  - b. The hospitality industry;
  - c. Facility management;
  - d. Marketing and advertising; or
  - e. Entertainment.
- (3) At least one member shall have extensive experience in financial management.

Members of the Community Council who are members of the board shall serve as members of the board until removed by the council or during the time that each such member occupies the office which qualifies such member to serve as a board member. All board members shall serve at the pleasure of the Community Council and, if not earlier removed by the Community Council, shall serve for staggered terms of three years or thereafter until their successors are appointed by the Community Council or if members of the Commu-

nity Council, until their council term has expired and their successors elected by the Community Council.

(g) The president of the Community may from time to time assign employees of the Community to perform functions for the enterprise and attend board meetings.

(h) The board shall have the power to adopt, amend, rescind and repeal bylaws consistent with this division within this Community Code of Ordinances.

(i) The highest amount of indebtedness or liability, direct or contingent, to which Salt River Fields may at any time subject itself may be determined, from time to time, by the Community Council.

(j) The board members and officers of Salt River Fields shall not be liable for the debts of Salt River Fields, and the private property of board members and officers of Salt River Fields shall be forever exempt from its debts. Salt River Fields shall indemnify and hold harmless Salt River Fields' employees and board members (indemnified parties) from liability or other claim arising as a result of the indemnified parties acting in their official capacity and within the course and scope of their authority.

(k) Nothing in this division within this Community Code of Ordinances shall exempt Salt River Fields from full compliance with ordinances of the Community and this division within this Community Code of Ordinances does not repeal or amend any other ordinance or resolution of the Community.

(Code 2012, § 110; SRO-370-2011, 10-6-2010; Ord. No. SRO-381-2011, 7-13-2010; Ord. No. SRO-402-2012, § 1-110, 5-30-2012)

### **Sec. 1-323. Capitalization; financial responsibility.**

(a) Salt River Fields shall be capitalized as shall be determined by the Community Council after consultation with the Community treasurer.

(b) Salt River Fields is, and shall function as, an instrumentality of and a subordinate economic organization of the Community. Salt River Fields

is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided by Community law. Salt River Fields' immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive Salt River Fields' immunity from suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.
- (2) The board of Salt River Fields may grant a written waiver of Salt River Fields' immunity from suit, subject to the following terms, conditions and limitations:
  - a. The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transactions and the claims or classes of claims for which the waiver is granted, the property of Salt River Fields which may be subject to execution to satisfy any award or judgment which may be entered in the claim, and shall state whether Salt River Fields consents to suit in court or to arbitration, mediation or other alternative dispute resolution mechanism, and if consenting to suit in court, identify the court or courts in which suit against Salt River Fields may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.
  - b. Any waiver shall be limited to claims arising from the acts or omissions of Salt River Fields, its general manager, employees or agents, and shall be limited to and construed only to affect property held in the name of Salt River Fields and the income and accounts of Salt River Fields.
  - c. Nothing in this division within this Community Code of Ordinances, and no waiver of immunity of Salt River Fields granted by the Community Council or the board, shall be con-

strued as a waiver of the sovereign immunity of the Community or any other Community-owned enterprise or division, and no such waiver of immunity of Salt River Fields shall create any liability on the part of the Community or any other Community-owned enterprise or division for the debts and obligations of Salt River Fields, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-owned enterprise or division based on any action, adjudication, or other determination of liability of any nature incurred by Salt River Fields.

- d. The immunity of Salt River Fields shall not extend to actions brought by the Community.
- e. No waiver of immunity of Salt River Fields shall extend to or in any manner affect the assets transferred from the accounts or business of Salt River Fields to other accounts of the Community, nor to amounts payable to the Community by Salt River Fields. All obligations and indebtedness incurred by Salt River Fields shall be special obligations solely of Salt River Fields and payable solely from the assets described in this section.

(Code 2012, § 111; SRO 370-2011, 10-6-2010; Ord. No. SRO-381-2011, 7-13-2010; Ord. No. SRO-402-2012, § 1-111, 5-30-2012)

#### **Sec. 1-324. Spectator injuries.**

(a) *Findings.* The council of the Community recognizes that persons who attend baseball activities at Salt River Fields at Talking Stick may incur injuries as a result of the risks involved in being a spectator at such baseball activities. However, the council also finds that attendance at such baseball activities provides a wholesome and healthy family activity which should be encouraged. The council further finds that the Community will derive economic benefit and tax revenues from spectators attending baseball activities. It is, therefore, the intent of the Community Council

to encourage attendance at baseball activities conducted at Salt River Fields at Talking Stick. Limiting the civil liability of those who own baseball teams and facilities at Salt River Fields at Talking Stick will help contain costs, keeping ticket prices more affordable.

(b) *Spectators to assume the inherent risks.* Spectators of baseball activities are presumed to have knowledge of and to assume the inherent risks of observing baseball activities. These assumed risks include, but are not limited to:

- (1) Injuries which result from being struck by:
  - a. A baseball;
  - b. A baseball bat or fragments thereof;
  - c. Equipment or pieces thereof; or
  - d. Thrown, dropped or launched items or projectiles; and similar hazards; and
- (2) Other hazards or distractions, including spectator conduct, and incidents or accidents associated with groups or crowds of people.

(c) *Assumption of risk except as provided in subsection (d) of this section.* Except as provided in subsection (d) of this section, the assumption of risk set forth in subsection (b) of this section shall be a complete bar to suit and shall serve as a complete defense to a suit against an owner by a spectator for injuries resulting from the assumed risks. Except as provided in subsection (d) of this section, an owner shall not be liable for an injury to a spectator resulting from the inherent risks of attending a baseball activity, and, except as provided in subsection (d) of this section, no spectator or spectator's representative shall make any claim against, maintain an action against, or recover from an owner for injury, loss or damage to the spectator resulting from any of the inherent risks of attending a baseball activity.

(d) *Subsection (c) of this section does not limit liability.* Nothing in subsection (c) of this section shall prevent or limit the liability of an owner who intentionally injures a spectator.

(e) *This division does not preclude spectator from suing.* Nothing in this division within this Community Code of Ordinances shall preclude a spectator from suing another spectator for any injury to person or property resulting from such other spectator's acts or omissions.

(f) *Definitions.* As used in this division within this Community Code of Ordinances:

*Baseball activity* means any baseball or softball game or activity conducted or occurring at Salt River Fields at Talking Stick, including, without limitation, games played or activities undertaken by professional, amateur, collegiate, high school or other players, whether for exhibition, practice or competition, and which includes any type of warm-ups, practices, and competitions associated with baseball or softball, and all pregame and postgame activities, regardless of the time of day when the game is played or the activity occurs.

*Owner.*

- (1) The term "owner" means:
  - a. A person, federally recognized Indian tribe, corporation, limited liability company, partnership, Community college district, college, university, political subdivision or other legal entity that is in lawful possession and control of a baseball team; and
  - b. The Community or other entity that is in lawful possession and control of Salt River Fields at Talking Stick.
- (2) The term "owner" includes the owner's affiliates, and the owner's and its affiliates' respective owners, shareholders, partners, directors, officers, members, managers, players, employees and agents.

*Spectator* means a person who is present at a baseball activity, whether or not the person pays an admission fee or is compensated to observe the activity.

(g) *This division does not waive sovereign immunity.* Nothing in this division within this Community Code of Ordinances is intended or shall be

deemed or construed to waive the sovereign immunity of the Community or any enterprise, division or affiliate of the Community.

(Code 2012, § 112; Ord. No. SRO-374-2011, §§ 1—7, 12-1-2010; Ord. No. SRO-402-2012, § 1-112, 5-30-2012)

**Secs. 1-325—1-340. Reserved.**

### ARTICLE III. COMMITTEES

#### DIVISION 1. GENERALLY

**Secs. 1-341—1-346. Reserved.**

#### DIVISION 2. RETIREMENT/BENEFIT PLAN COORDINATION OF LAW

##### **Sec. 1-347. Definitions.**

The following words, terms and phrases, when used in this division within this Community Code of Ordinances, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Community* means the Salt River Pima-Maricopa Indian Community and its departments, divisions and enterprises.

*Community court* means the Salt River Pima-Maricopa Indian Court as established pursuant to the Constitution of the Community.  
(Code 2012, § 2-151; Ord. No. SRO-388-2012, § 85(I), 11-30-2011; Ord. No. SRO-402-2012, § 1-151, 5-30-2012)

##### **Sec. 1-348. Coordination of federal and tribal law.**

(a) Governing law for retirement benefits claims. In order to provide participants and beneficiaries under those Community benefit plans classified as government status plans under section 906 of the Pension Protection Act of 2006 ("PPA"), an established system for the administration of benefit claims and due process, the Community hereby adopts as its law the employee protections afforded under the Employee Retirement Income Security Act ("ERISA"), title I, sections 404(a) and

(c) (Fiduciary Duties) and section 503 (Participant Claims Procedures), subject to the following modifications:

- (1) Community court jurisdiction shall be substituted wherever state or federal court are referenced therein.
- (2) Incorporation of said portions of ERISA into Community law shall not be construed to cede any jurisdiction or enforcement authority to the United States Department of Labor, the Internal Revenue Service or other federal or state authorities, to the extent a government status plan is otherwise exempt from such jurisdiction or enforcement authority.
- (3) Nothing herein shall subject the Community, or their plans, to penalties, sanctions or filing requirements which do not apply to a government status plan.
- (4) Dispute resolution of plan claims, following administrative exhaustion, shall be resolved:
  - a. Through Community Council-approved binding arbitration which, in the event of an ERISA governed plan, shall be conducted in accordance with the Federal Arbitration Act; or
  - b. In the absence of such procedures through the Community courts.
- (5) Incorporation of said portions of ERISA is not to be construed as the incorporation of any federal regulations or other agency guidance under ERISA that were not subject to consultation as required by Executive Order 13175.
  - (b) Until final federal regulations are issued following consultation as required by Executive Order 13175, in determining the government status of any plan of the Community, the following factors shall be used in determining whether an employee is engaged in an essential government function or a commercial activity as those terms are used in the PPA:
    - (1) The historic functions performed by the Community government;



- (2) The Community's role as defined in its Constitution, ordinances, resolutions, judicial decisions, customs and traditions;
- (3) The functions carried on by other governmental employers, including the federal government, states, counties, cities and other local governments;
- (4) The use of revenues generated by activities in question (whether inuring to the benefit of the Community and the provision of public services, or whether inuring to private interests); and
- (5) Whether the entity or division is treated as a nonprofit or for-profit entity for tax or other purposes.

(c) The Community Council shall, in the absence of final federal regulations that are the product of consultation pursuant to Executive Order 13175, have the sole sovereign power and discretion to determine what is an essential government function of the Community and what is a commercial activity.

(d) In the event that a federal agency hereafter publishes guidance or regulations which contradict this division within this Community Code of Ordinances, the Community hereby asserts its right to individual consultation over the conflict prior to enforcement of such federal guidance or regulations, as provided in Executive Order 13175, section 5(f). The Community also asserts its right to seek a waiver of any such conflicting requirements as provided in Executive Order 13175, section 6.

(e) All references to Executive Order 13175 shall also refer to future executive orders to the extent they are consistent with the government-to-government consultation provisions incorporated herein.

(f) Adoption by the Community of policies or procedures modeled after the private sector ERISA rules shall not be construed as a waiver of government status or sovereignty to which the Community or their respective plans may be entitled to at law or in equity.

(g) The Community reserves the right to make further changes to its pension and welfare benefit plans as permitted under the PPA through any applicable transition date(s), as the same may be modified with further guidance from the Department of Treasury, the Internal Revenue Service, the Department of Labor and other federal agencies as may have jurisdiction over specific changes at hand.

(h) This division within this Community Code of Ordinances shall not be construed as a waiver of sovereign immunity which may be waived only by express resolution of the Community Council.

(i) With regard to those plans of the Community that are governed by ERISA because the plans are classified as commercial plans or plans covering employees who do not perform essential government functions, as defined under the PPA, the following rules shall apply:

- (1) Community court exhaustion is not waived.
- (2) The Community court shall be recognized under the ERISA jurisdictional provisions to the fullest extent permitted at law.
- (3) The dispute resolution provisions of subsection (a)(1) and (4) of this section shall apply to the fullest extent permitted under law.
- (4) The Community shall receive relief from current and future regulations under ERISA and the Community Code of Ordinances that are not developed through government-to-government consultation, to the full extent permitted under Executive Order 13175.

(j) Except as otherwise directed in a Community Council resolution or in a plan document approved by the Community Council:

- (1) Each plan level administrator shall be the "named fiduciary" of the benefit plan or plans over which they are primarily responsible for plan administration; and
- (2) The Community shall be the plan sponsor. (Code 2012, § 2-152; Ord. No. SRO-237-08, § I, 12-19-2007; SRO 388-2012, § 85(II), 11-30-2011; Ord. No. SRO-402-2012, § 1-152, 5-30-2012)



**Secs. 1-349—1-353. Reserved.****DIVISION 3. SENIOR HOME REPAIR OR REPLACEMENT PROGRAM COMMITTEE\*****Sec. 1-354. Title.**

The Salt River Pima-Maricopa Indian Community Council (Community Council) established the Senior Home Repair or Replacement Program (SHRRP).  
(SRO-472-2015, 8-5-2015)

**Sec. 1-355. Purpose.**

(a) *Generally.* The purpose of the SHRRP is to provide assistance to senior or disabled Community members to improve their housing conditions by providing them the opportunity for a safe and healthy home that facilitates a suitable quality of life.

(b) *Historic needs.* The program is intended to address and reverse historic patterns of inadequate housing within the Community, and to ensure that seniors, elders and people with disabilities continue to live within the reservation as a way to preserve the culture and traditions of Community.

(c) *Need based program.* The SHRRP is a social benefit program established pursuant to the sovereign authority of the Community in order to promote the general welfare and meet specific needs of the Community. The program is intended to qualify for tax-free assistance to the extent permitted under the IRS general welfare doctrine. As such, all benefits are provided on a needs basis (which may be based on individual and/or Community need); program benefits may not be conditioned on the performance of services; and all program expenditures must serve a

\***Editor's note**—Ord. No. SRO-472-2015, adopted Aug. 5, 2015, repealed Div. 3 in its entirety and enacted a new division as set out herein. The former Div. 3, §§ 1-354—1-367, pertained to similar subject matter and derived from §§ 15.6-1—15.6-3, 15.6-3.1, 15.6-4—15.6-7, and 15.6-9—15.6-13 of the 1981 Code; §§ 1-155—1-162 and 1-164—1-168 of the 2012 Code; Ord. No. SRO-320-07, adopted Sept. 26, 2007; and Ord. No. SRO-402-2012, §§ 1-155—1-162 and 1-164—1-168, adopted May 30, 2012.

social benefit to the Community. Only those benefits administered pursuant to the IRS requirements shall be provided on a tax-free basis.  
(SRO-472-2015, 8-5-2015)

**Sec. 1-356. Senior home repair or replacement program (SHRRP) committee.**

(a) A SHRRP committee shall be established for the purpose of administering this program. The committee shall consist of seven representatives, one designee from each of the following:

- (1) Senior services department;
- (2) Health and human services department;
- (3) Engineering and construction services department;
- (4) Community Council representative;
- (5) Senior and disabled community advisory committee (SDCAC) representative;
- (6) Lehi community representative; and
- (7) Salt River community representative.

(b) The two Community representatives shall be from the senior and disabled population of the Community (one from Lehi and one from Salt River), and the committee representatives under section 1-356(a)(4)—(7) shall be appointed by the Community Council and will serve a two-year term in duration.

(c) The committee shall adopt policies and procedures for the purpose of carrying out this division and ensure compliance with the requirements of those policies and procedures.  
(SRO-472-2015, 8-5-2015)

**Sec. 1-357. Definitions.**

The following words, terms and phrases, when used in this division within this Community Code of Ordinances, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building code* means construction, safety, and development standards adopted by the Community.

*Community member* means an individual duly registered on the Community enrollment rolls.

*Disability or disabled* means a Community member with a chronic impairment (physical, mental, emotional, psychological or social) and including those receiving regular dialysis treatment which interferes with meeting their needs for self-sufficiency.

*Non-enrolled member* means an individual not duly registered on the Community enrollment rolls.

*Primary residence* means the home or dwelling located in the Community where the applicant is physically residing for at least one continuous calendar year.

*Senior* means any individual 55 years of age or older.  
(SRO-472-2015, 8-5-2015)

#### **Sec. 1-358. Eligibility and prioritization.**

(a) *General criteria.* An individual (applicant) applying to SHRRP shall:

- (1) Be a Community member; and
- (2) Be a senior or disabled; and
- (3) Have an existing home that is used as the applicant's primary residence; and
- (4) Have a home that creates life, safety, health and welfare risks to the applicant due to building code violations or other risk factors.

(b) *Priority status.* Prioritization for services to applicants will be based upon critical life safety concerns and related needs.

(c) *Needs basis.* All benefits under this program must be administered on a needs basis. Before benefits are paid, a determination must be made that the benefits are necessary to satisfy an individual need of the applicant and/or an overriding need of the Community:

- (1) *Community need determinations.* Repairs that are necessary to keep a home in compliance with Community health and

safety building codes are presumed to meet an overriding need of the Community.

- (2) *Individual need determinations.* Individuals who have income below 100 percent of the Maricopa County area median income, as adjusted annually by the United States Department of Housing and Urban Development (HUD), shall be presumed to have a financial need.

- (3) *Facts and circumstances.* Individuals who have income above the median income guidelines may demonstrate financial need on a facts and circumstances basis, for example, by showing household expenses and financial obligations that evidence a financial need. The committee may also consider Community need determinations based on individual circumstances that do not fit within an existing Community health and safety code; provided that the committee determines that repairs are necessary for the overall health and safety of the Community regardless of individual need.

- (4) *Individual certification.* Each applicant shall certify his or her eligibility for program benefits under penalties of perjury. Applicants receiving individual income based benefits and who are above the presumptive income guidelines will be required to provide additional financial information as requested by the committee. All certifications of eligibility may need to be verified periodically for continued program eligibility.

- (5) *Committee certification.* The committee shall certify on each application that it has made a determination that program benefits are necessary to achieve a stated program purpose and benefits satisfy an individual need of the applicant and/or an overriding need of the Community.

(d) *Committee role.* The committee shall be responsible for determining whether an individual meets all applicable section 1-358 criteria and will determine prioritization of services based upon life safety needs.

(e) *Non-enrolled members.* Non-enrolled members of the Community who meet the eligibility criteria in this subsection (e) may receive SHRRP assistance upon recommendation from the committee to the Community Council for approval. To meet the non-enrolled member eligibility criteria the applicant shall:

- (1) Be a senior or disabled; and
- (2) Have an existing home that is used as the applicant's primary residence; and
- (3) Have a home that creates a risk to the life, health, safety, or welfare of the applicant due to building code violations or other risk factors.

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-359. Categories.**

SHRRP assistance will be provided, subject to the availability of funds, in the following categories:

- (a) Category "A": For repairs to housing to meet life and safety compliance standards;
- (b) Category "B": For emergency repair service;
- (c) Category "C": For new housing or structural renovation to an existing house.

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-360. Purpose of category "A."**

The purpose of category "A" assistance is to provide for maintenance or repairs to eligible applicants. No applicant may receive maintenance or repair service to more than one primary residence under this category "A."

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-361. Purpose of category "B."**

The purpose of category "B" assistance is to provide weekend and evening emergency home repairs for eligible applicants. Only repairs needed to the applicant's heating/cooling system (HVAC) or plumbing will qualify for category "B" assistance. No applicant may receive emergency repairs to more than one primary residence under this category "B."

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-362. Purpose of category "C."**

(a) The purpose of category "C" assistance is to construct a new home or structurally renovate an existing home when the SHRRP committee determines that the applicant's current home cannot be repaired pursuant to category "A" life and safety compliance standards.

(b) To inform and educate category "C" applicants on the maintenance of their home, use of utilities, insurance and basic home repairs.

(c) No applicant may receive more than one renovated or replacement home under this category "C."

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-363. Application.**

An applicant shall apply for assistance and provide any information determined necessary by the committee. A SHRRP representative shall be responsible for assisting Community members in gathering the information necessary for completion of the application process.

(SRO-472-2015, 8-5-2015)

#### **Sec. 1-364. Application review.**

(a) Upon completion of the application process, a SHRRP representative shall present the applications to the committee. Applicants meeting all applicable section 1-358 requirements will be reviewed and ranked by the committee to determine whether:

- (1) Assistance is to be provided;
- (2) The type of assistance to be provided; and
- (3) The order among recipients by which assistance will be provided.

(b) The factors the committee shall consider when reviewing and ranking applications shall include health, welfare and safety issues, urgency of need, and financial need. The committee shall make a decision according to the criteria identified in this section.

(SRO-472-2015, 8-5-2015)

**Sec. 1-365. Funding.**

Funding for SHRRP will be provided for from net gaming revenues. Assistance is limited to funds available. The SHRRP committee makes no guarantee that funds for the program will be available or that successful applicants will receive the maximum benefit under any category of assistance. Program benefits cannot be assigned, pledged or alienated, and shall be considered unfunded for tax purposes.  
(SRO-472-2015, 8-5-2015)

**Sec. 1-366. Appeals.**

Appeals from decisions of the committee may be made to the Community Council. Appeals shall be in writing, under the rules and procedures established by the Community Council. Decisions of the Community Council are final.  
(SRO-472-2015, 8-5-2015)

**Secs. 1-367—1-392. Reserved.**

## **ARTICLE IV. NONPROFIT ORGANIZATIONS**

**Sec. 1-393. Established.**

There is established by the council of the Community a division of the Community government that is named The Salt River Community Children's Foundation (the foundation).  
(Code 1981, § 22-21; Code 2012, § 1-170; Ord. No. SRO-294-03, § 2, 2-19-2003; Ord. No. SRO-402-2012, § 1-170, 5-30-2012)

**Sec. 1-394. Purposes of the foundation.**

The foundation is established pursuant to the powers of the council under the Community Constitution as an integral part of the Community government to sponsor and promote programs and activities for the improvement of the education, health and general welfare of the children of the Community and to this end to seek contributions from all sources and to enter

into contracts for the purchase of personal property and for the lease of real property as may be reasonably necessary to its purposes.  
(Code 1981, § 22-22; Code 2012, § 1-171; Ord. No. SRO-294-03, § 2, 2-19-2003; Ord. No. SRO-402-2012, § 1-171, 5-30-2012)

**Sec. 1-395. Board of trustees; duties; fiscal year.**

(a) The affairs of the foundation will be managed by a board of trustees comprised of five persons who shall be appointed by the council to serve at the pleasure of the council for a term of three years each, provided that the three-year term of any particular board member shall begin on the date when that particular board member is appointed by the council.

(b) The duties of the board shall be to manage the affairs of the foundation, to carry out its purposes by sponsoring and promoting healthful youth programs and activities, to raise funds from public and private contributions and grants in furtherance of its purposes, to borrow funds from the Community or from other sources, to manage prudently the funds of the foundation, to disburse the funds of the foundation in furtherance of its purposes, and to report to the council upon its activities and financial affairs annually or more frequently if so directed by the council.

(c) The board of trustees shall be subject at all times and as to all of its activities and functions to the supervision and control of the council in recognition of the foundation's status as an integral part of the Community.

(d) The foundation's fiscal year shall commence on October 1.  
(Code 1981, § 22-23; Code 2012, § 1-172; Ord. No. SRO-294-03, § 2, 2-19-2003; Ord. No. SRO-316-07, 2-21-2007; Ord. No. SRO-402-2012, § 1-172, 5-30-2012)

**Sec. 1-396. Contributions to the foundation.**

Contributions to the foundation shall be contributions to the Community and as such shall qualify as deductions for federal and Arizona state income, estate and gift tax purposes pursu-



ant to the terms of the Internal Revenue Code and the Arizona state tax statutes pertaining to the deductibility of such contributions. All such contributions shall be dedicated exclusively to the purposes of the foundation including the payment of the expenses of operating the foundation and such contributions shall not be applied to any extent whatever by the council or the foundation toward any other purpose.

(Code 1981, § 22-24; Code 2012, § 1-173; Ord. No. SRO-294-03, § 2, 2-19-2003; Ord. No. SRO-402-2012, § 1-173, 5-30-2012)

**Secs. 1-397—1-499. Reserved.**

**ARTICLE V. LOCAL EMERGENCIES AND DISASTERS**

**Sec. 1-500. Local emergency declaration process.**

(a) *Declaration of a local emergency.* The president or in his/her absence, the vice president, may issue a local emergency declaration when an emergency arises and the Community government needs to invoke special or additional procurement and safety procedures to protect the public health, welfare, safety and property, or in efforts to lessen a catastrophe. Some examples of a local emergency include a natural disaster, man-made disaster, epidemics, riots, and equipment failure.

(b) *Authority of executive to secure and protect.* If the president or vice president has issued a declaration of a local emergency, then the president or in his/her absence the vice president, will have the authority to:

- (1) Establish curfews, blockades and limits on utility usage;
- (2) Authorize evacuations;
- (3) Implement necessary security measures; and
- (4) Put in place reasonable measures to maintain order and protect lives and property.

(Ord. No. SRO-476-2016, 10-14-2015)

**Sec. 1-501. Major disaster declaration process.**

(a) *Declaration of a major disaster.* The Community Council may issue a major disaster declaration when there exists a serious threat to public health, welfare, property or safety. If appropriate, the Community Council may also apply for federal emergency assistance by enacting a resolution declaring that a major disaster exists within the Community's boundaries, and this emergency is above and beyond the Community's capability to recover without outside assistance. Major disasters can be natural events, including any tornado, storm, high water, wind-driven water, earthquake, landslide, mudslide, snowstorm, drought, or other non-natural event arising from a fire, flood, explosion or anything defined as a major disaster by federal law.

- (1) Before requesting a major disaster declaration, the Community's emergency manager shall conduct a damage assessment to assess the impact and magnitude of the disaster on Community members and their families, businesses within the Community, and the Community government and its enterprises.
- (2) The community manager and the emergency manager will make a joint recommendation to the council on whether or not a major disaster declaration is warranted.
- (3) The community council shall determine whether to request assistance from the federal government either directly or through the state based on what is in the Community's best interest.
- (4) In a catastrophic event where it is not possible for a quorum of the community council to convene, the president or the vice president is delegated the authority to declare a major disaster and seek federal assistance pursuant to this article.

(c) *Authority of executive to secure and protect.* If the Community has declared a major disaster then the president, or in his/her absence the vice president, will have the authority to:

- (1) Establish curfews, blockades and limits on utility usage;



- (2) Authorize evacuations;
- (3) Implement necessary security measures;
- (4) Inform other local, state and federal governments and agencies of the situation;
- (5) Request outside assistance; and
- (6) Put in place reasonable measures to maintain order and protect lives and property.

(Ord. No. SRO-476-2016, 10-14-2015)

### **Sec. 1-502. Emergency procurement.**

(a) *Emergency procurement.* Upon declaration of a local emergency or major disaster, the community manager may make or authorize others to make emergency procurements if there exists a threat to public health, welfare, property or safety or if a situation exists which makes compliance with the Community's Procurement Policy, Policy 3-5, impracticable, unnecessary or contrary to the public interest.

- (1) Either the declaration of a local emergency or major disaster creates an immediate and serious need for commodities, services or construction that cannot be met through normal procurement methods and threatens the functioning of the Community government, the preservation of property or public health or safety.
- (2) Such emergency procurements shall be made with such competition and preference that is practicable under the circumstances.
- (3) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(b) *Department purchases.* If either a local emergency or major disaster declaration has been issued, a Community department director may proceed with an emergency procurement without the approval of the community manager if the emergency necessitates immediate response and it is impracticable to contact the community manager. Any department conducting emergency procurement shall limit the procurement to such

actions necessary to address the emergency. The affected department director shall keep a record of all emergency procurements and ensure that all costs are charged to account string that is set up for this specific event by the finance department.

(Ord. No. SRO-476-2016, 10-14-2015)

### **Sec. 1-503. Violation of a local emergency declaration or major disaster declaration.**

(a) *Civil offense.* Any person or business who knowingly or intentionally fails or refuses to obey any lawful order or regulation issued from a local emergency declaration or a major disaster declaration shall be held responsible for a civil offense. A first violation for a person shall result in a fine of \$250.00 and a second or subsequent violations for a person shall result in a fine of \$500.00. All ordered fines shall be automatically deducted out of the individual's per capita distribution(s) if applicable. If the individual does not receive per capita, the court shall order the individual to pay the fine by a specified due date determined at the discretion of the court. A first violation for a business shall result in a fine of \$2,500.00 and a second or subsequent violations for a business shall result in a fine of \$5,000.00.

(b) *Commencement of civil proceeding.* A civil allegation under section 1-503(a) shall be commenced by the filing of a civil complaint by the office of the general counsel or a citation by the Salt River Police Department.

(c) *Contents of a civil complaint or citation.* The complaint shall be in writing and contain a brief statement of the essential facts constituting the offense charged, the name of the accused person, the approximate date and time of the offense charged, the place where the offense occurred, and a citation of the provision under which the offense is charged. The complaint shall bear the signature of an advocate or attorney from the office of general counsel which can include an electronic signature.

(d) *Initial hearing.* Upon receipt of the complaint or citation, the court shall set an initial hearing at a time not less than ten calendar days and no more than 20 calendar

days. The accused person shall enter a plea of responsible or denial to the allegation(s) in the complaint or citation at the time of the initial hearing.

(e) *Plea of responsible.* If the accused person enters a plea of responsible, the court shall move to enter judgment and disposition immediately.

(f) *Plea of denial.* If the accused person denies the allegations in the complaint or citation at the initial hearing, the matter shall be heard in an informal hearing before a judge of the Community court. The hearing shall be heard not less than ten calendar days and no later than 20 calendar days after the initial hearing. The hearing shall be informal and without a jury. Witnesses may testify in narrative form. The Community shall have the burden of proof and shall prove the civil violation by a preponderance of the evidence. The rules of evidence do not apply, except for provisions relating to privileged communications. If the accused person is found responsible, the court shall move to enter judgment and disposition immediately.  
(Ord. No. SRO-518-2020, 4-15-2020; Ord. No. SRO-535-2022, 10-20-2021)

**Secs. 1-504—1-599. Reserved.**

**ARTICLE VI. COUNCIL PROCESS WHEN HEARING FORMAL APPEALS**

**Sec. 1-600. Appeal process.**

In certain matters, the council is required by the Community Code of Ordinances to hear appeals of certain matters. This section shall provide the general procedures for hearing such an appeal, if no such procedures have already been established in the Community Code of Ordinances.  
(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-601. Filing and scheduling of appeal.**

Where otherwise authorized by law, when an appellant files an appeal before the council, either the appellant or their authorized legal representative, may file a written statement

appealing the suspension, revocation, or denial (hereafter, "adverse decision") of the appellant's application, license, etc.

- (1) The appellant's written appeal must provide a detailed statement of reasons for the appeal.
- (2) The appellant must file his or her written appeal with the council secretary within 14 calendar days from the date of service of the Community's adverse decision, unless the Community Code or Ordinance requires a different time-frame. If the appellant mails the written appeal request, it must be postmarked within 14 calendar days from the date of service of the adverse decision.
- (3) The council secretary shall forward the appeal request to the council within seven business days of receiving the request, at which time, the council shall determine if there is a claim upon which relief can be granted and as such warrants a hearing upon the merits.
- (4) The Community Council shall schedule a hearing within 14 business days after receiving the appeal from the council secretary.
- (5) The council secretary shall notify the appellant and the relevant Community department (hereinafter, "appellee") of the hearing's date, time and place.
- (6) Appellate hearings involving the enrollment or membership status of a minor under the age of 18; or matters of confidential or sensitive nature shall be conducted in executive session. All other hearings shall be conducted in open general session.  
(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-602. Secretary to coordinate information.**

The council secretary shall coordinate any required legal review or programmatic informa-

tion that council determines is necessary to evaluate the appeal and appellee's adverse decision.

(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-603. Burden of proof with applicant.**

The appellant has the burden to prove that the appellee's adverse decision should be overturned or modified.

(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-604. Appeal hearing.**

(a) The appellee shall first present an explanation of its decision. The appellee may present evidence and witnesses on their behalf.

(b) After the appellee has presented its case, the appellant may provide evidence and present witnesses.

(c) The standard of review for the hearing is de novo.

(d) The formal rules of evidence shall not apply.

(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-605. Council decision.**

The Community Council shall make a decision within ten business days after the hearing. The council secretary shall notify the appellant and appellee in writing of the council's decision. Notice to the applicant shall be provided via certified or registered mail, or email.

(Ord. No. SRO-536-2022, 10-20-2021)

**Sec. 1-606. Finality of Community Council decision.**

The council's decision shall be final, and is not subject to review by the SRPMIC court.

(Ord. No. SRO-536-2022, 10-20-2021)