**SALT RIVER PIMA-MARICOPA**
**INDIAN COMMUNITY**
10005 East Osborn Road
Scottsdale, Arizona 85256

**ORDINANCE NUMBER: SRO-612-2026**

**AN ORDINANCE TO AMEND THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY'S GENERAL WELFARE ORDINANCE TO PROVIDE THE FLEXIBILITY NOW RECOGNIZED UNDER THE TRIBAL GENERAL WELFARE EXCLUSION ACT OF 2014 FOR THE PURPOSE OF ENHANCING THE SERVICES AND MONETARY ASSISTANCE THAT THE COMMUNITY CAN OFFER TO ITS MEMBERS TAX-FREE.**

**BE IT ENACTED:**

Chapter 20, Article IV is hereby repealed and replaced. And the following will be enacted in its place:

## Art. IV Welfare Assistance

### Sec. 20-86. Enactment and purpose.

(a) *Welfare of the Onk Akimel O'odham and the Xalychidom Piipaash.* Article VII, section 1 of the Community's Constitution directs the Community Council, in exercising its sovereign powers, to protect the public health, morals and private property rights of its members, to provide for the public welfare and particularly the welfare and protection of children, the poor, unfortunate, disabled and aged, and to preserve the history and culture of the Onk Akimel O'odham and the Xalychidom Piipaash.

(1) The Community has historically exercised its sovereign power to provide member assistance through the Internal Revenue Service's ("IRS") general welfare exclusion, under which the IRS recognized a common law right of sovereign governments, including federally recognized Indian tribes, to provide public health, safety, basic need and financial support assistance to individuals under certain circumstances on a nontaxable basis.

(2) The Community thereafter continued to exercise these sovereign powers consistent with changes in guidance under the general welfare exclusion, including IRS Notice 2011-94 opening consultation on the application of the general welfare exclusion to Indian tribes, followed by "safe harbor" guidance in IRS Notice 2012-75, updated safe harbor guidance in IRS Revenue Procedure 2014-35, the passage of the Tribal General Welfare Exclusion Act and new Internal Revenue Code Section 139E in 2014, and the issuance of proposed

Treasury Regulation Section 1.139E-2 on September 17, 2024, and then the issuance of final federal regulations at 1.139E-1 on December 16, 2025.

(3) The Community, as a sovereign government, exercises its right to provide general welfare assistance through the Community Council's approval of the budget and programs to promote the general welfare including programs designed to foster the Community's and its members health, safety, basic needs, and cultural preservation, to promote education, safe housing, the needs of elders and disabled members, and to provide financial assistance to Community members consistent with the general welfare exclusion on a nontaxable basis.

(4) The first purpose of this article is to memorialize the procedures used by the Community to determine what services or programs are needed to promote the general welfare of the Community.

(5) The second purpose of this article is to establish basic guidelines and procedures for programs to follow in ensuring compliance with the general welfare exclusion and Internal Revenue Code Section 139E.

(b) *Ratification of prior acts; intent of legislation.* Assistance provided prior to the enactment of this article is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Community Constitution and the Community's good faith application guidance then in effect. This article and amendments added to reflect changes in statutory and agency guidance is intended to establish a framework to improve the coordination of the Community's compliance with the general welfare exclusion without waiving the Community's common law and statutory rights and powers.

(c) *General welfare exclusion.* This article is intended to preserve the Community's right to provide tax free general welfare assistance under the common law as well as tax free Indian general welfare benefits under the Tribal General Welfare Exclusion Act of 2014, including Internal Revenue Code Section 139E. The assistance payments and services authorized by this article are intended to qualify for favorable tax treatment to the fullest extent permitted by law. All amounts budgeted by the Community for welfare assistance payments shall remain general assets of the Community until such payments are disbursed; the welfare assistance payment arrangement authorized by this article shall be an unfunded arrangement, and shall be limited to appropriated funds at the discretion of the Community Council from time-to-time.

(d) *Nonresource / income designation.* General welfare services and payments provided for under this ordinance are paid from assets of the Community government; all payments are based on budget availability of the Community government, and the Community government does not guarantee any payments hereunder. General welfare benefits shall not be treated as income or a resource of the member for any purpose, including eligibility for federal or state assistance. The Community Council reserves the right to cancel, adjust, modify or revoke any benefits that would disqualify a Community member from state or federal assistance. The Community further reserves the right to implement assistance based on need / ABON requirements as needed to preserve Community member rights to state or federal benefits. Tribal benefits are intended to supplement and not supplant other available assistance.

(e) *Federal trust obligations; executive orders.* The Community reserves the right to provide assistance, including circumstances where federal funding is insufficient to operate federal programs designed to benefit Community members. The Community's adoption of approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein, shall waive the Community's right to seek funding shortfalls or to enforce the trust rights of the Community and its members.

(f) *Governing law.* All rights and liabilities associated with the enactment of this article, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Community. Community programs designed to comply with the General Welfare Exclusion Act of 2014 shall further be construed to meet all applicable requirements of Internal Revenue Code Section 139E.

(g) *Sovereignty.* Nothing in this article or the related policies or procedures, if any, shall be construed as or interpreted to constitute a waiver of sovereign immunity or to make applicable any laws or regulations which the Community is entitled to exemption from in accordance with its sovereign status.

**Sec. 20-87. Definitions.**

*Approved program* means any program or programs approved by the Community Council, including through the budget process, to provide assistance intended to qualify for treatment under the general welfare exclusion. A program must be established by the Community, administered under specific guidelines, and cannot discriminate in favor of members of the governing body of the Community. A program shall not fail to be treated as an Indian tribal government program solely by reason of the program being established by tribal custom or government practice.

*Assistance* means benefits or payments under an approved program, which are paid to or on behalf of a beneficiary pursuant to this article and the definition of the term "general welfare exclusion" in this section. Assistance includes Indian general welfare benefits pursuant to Internal Revenue Code Section 139E.

*Beneficiary* or *Program Participant* means a Community member entitled to receive welfare assistance payments or services pursuant to this article or an approved program. The Community Council may, but need not, expand beneficiaries to include the spouse of a Community member within the meaning of 26 CFR § 301.7701-18, the spouse of a Community member under applicable Community law, the dependent of a Community member, or other individual who has been determined by the Community Council to be eligible for a Community General Welfare Benefit because such individual is, with respect to a Community member, an ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner. At the direction of the Community Council, and solely for purposes of ceremonial or cultural activities, the term program participant may also include a member or citizen of a Tribe other than the Community (per Prop Treas Reg Section 1.139E-1(e)).

*Code* means the Internal Revenue Code of 1986, as amended.

*Community member* means an enrolled member of the Community.

*Compensation* generally refers to the remuneration or payment made to an individual for the services they have rendered, and may take various forms, including salaries, wages, bonuses, commissions, and other monetary benefits. Notwithstanding that definition, compensation does not include payments recognized by the IRS, or by statute, regulation or common law, as an exception to compensation such as but not limited to job training and other programs that provide job-training skills to unemployed or underemployed Community members (which includes meals, travel, transportation, subsistence, emergency or other payments made so that the trainee can engage in the work training experience); or any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture.

*Constitution* means the Constitution of the Salt River Pima-Maricopa Indian Community.

*Community Council* means the Salt River Pima-Maricopa Indian Community Council.

*General welfare exclusion* means assistance that qualifies for tax exemption under the common law general welfare doctrine, IRS guidance under the general welfare exclusion as applied to Indian tribal governments, or the Tribal General Welfare Exclusion Act of 2014, including Internal Revenue Code section 139E.

*Lavish and Extravagant* for purposes of this article will be based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances include the Community's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of a Community program.

*Promotion of the general welfare* shall mean a benefit that the Community Council determines to be for the promotion of general welfare at the time it establishes a program. The Community has sole discretion to determine whether a benefit is for the promotion of general welfare and the IRS must defer to the Community's determination that a benefit is for the promotion of general welfare (per Treas Reg 1.139E).

*Qualified nonmember* means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of an Indian tribe.

*Ordinance* or *article* means the Community's General Welfare Ordinance, Chapter 20, Article IV, as amended.

*Subsistence* means food, shelter, sewer, sanitation, utilities and services that provide for the basic needs of a person or family to survive.

## Sec. 20-88. Provision of general welfare assistance – Internal Revenue Code Section 139E.

(a) Each payment made or service provided to or on behalf of a qualified program participant and which meet the following criteria shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate financial or individual need:
   (1) The program is administered under guidelines and does not discriminate in favor of the members of the governing body of the Community;
   (2) Program benefits are available to any Community member who meets such guidelines;
   (3) Program benefits are for the promotion of the general welfare;
   (4) Program benefits are not lavish or extravagant; and
   (5) Program benefits are not compensation for services.

**Sec. 20-89. Provision of general welfare assistance – Safe harbor programs**

(a) Programs that meet the following general criteria for safe harbor treatment within the meaning of Rev. Proc. 2014-35 or any other pronouncements amending, replacing or modifying said Revenue Procedure, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion Act without the applicant having to demonstrate financial or individual need:

   (1) The benefit is provided under an approved program of the Community.
   (2) The program has written guidelines specifying how individuals may qualify for the benefit.
   (3) The benefit is available to any Community member, Qualified Nonmember (as defined in Rev. Proc. 2014-35), or identified group of Community members or Qualified Nonmembers who satisfy the program guidelines, subject to budgetary restraints.
   (4) The distribution of benefits from the program does not discriminate in favor of the governing body of the Community.
   (5) The benefit is not compensation for services; and
   (6) The benefit is not lavish or extravagant under the facts and circumstances.

(b) Safe Harbor benefits may include any benefits that are consistent with Revenue Procedure 2014-35, as the same may hereafter be amended, including the following categories identified therein: housing programs; educational programs; elder and disabled programs; cultural and religious programs; and other qualifying assistance programs.

**Sec. 20-90. Provision of general welfare assistance – Other exempt programs**

(a) Nothing in this Ordinance or the Community's use of IRS safe harbor guidance shall limit the Community's right to provide assistance under Internal Revenue Code Section 139E, the common law general welfare doctrine, or other statutory exemptions such as but not limited to Internal Revenue Code Section 139D (member health benefits) or other tax exemptions under Titles 25 or 26 of the United States Code so long as the conditions for exemption are met. *See also*, 25 U.S.C. Sections 1407 and 1408.

**Sec. 20-91. Program eligibility; Substantiation**

(a) *Individual program rules.* Each individual program guideline or description shall set forth the eligibility rules and limitations applied to that program. Each designated department or Community division shall identify General Welfare programs and their program descriptions, which include eligibility rules and limitations, along with any necessary application forms and procedures. Without the need to repeat the text of this Ordinance, all programs shall automatically incorporate by this reference the minimum criteria for tax exemption set forth in Sections 20-88 through 20-90, as applicable.

(b) *Substantiation.* The Community reserves the right to require members to substantiate program compliance. Each member is required to maintain records to substantiate compliance in the event of an IRS or Community review.

(c) *Determination of Need.* Benefits may be provided without regard to the financial or other need of program participants and may be provided on a uniform or pro-rata basis to program participants.

(d) *Optional Community income and need guidelines.* The Community Council, in its sole discretion, may establish financial or other need criteria for purposes of determining a beneficiary's qualification for program benefits hereunder. The Community Council may look for guidance from federal guidelines such as the federal poverty levels, federal earned income credit levels, and median income figures for national, state, local and/or other communities. These guidelines may be designed to satisfy assistance based on need / ABON criteria in order to prevent Community members from being denied eligibility for other federal or state programs. These guidelines may also be applied to prioritize Community budget allocations.

(1) However, the Community Council, as the sovereign government of the Community, shall retain ultimate authority in establishing minimum standards of living within the Community. In doing so, the Community Council may take into account such issues as the number of dependents in a household, the level of household income, and household expenditures, the average and median Community incomes, traditional and cultural values and financial matters unique to the Community.

(2) Different approved programs may include different income and need guidelines. It is recognized, for example, that certain programs with federal or state funding may require additional guidelines, and programs with limited funding may need to implement additional restrictions to meet program specific budget limitations.

(3) In the absence of a specific program guideline to the contrary, for programs that the Community Council elects apply a financial need requirement, the Community shall use median income guidelines that are published by the Census Bureau or other federal agencies and adjusted annually.

**Sec. 20-92. Coordination with gaming distributions; Trusts; No source limitation.**

(a) *No limitation on source of funds.* Program benefits may be funded by any source of revenue or funds, including by way of example, funds derived from levies, taxes, and service fees; settlements; revenues from Community-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under a program.

(b) *Benefits funded by net gaming revenues.* Benefits under a Community program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E. For purposes of section 139E and this section, a payment is a per capita payment if it is expressly identified by the Community as "a per capita payment" in a Revenue Allocation Plan that is approved by the Department of the Interior. *See* 25 U.S.C. 2710(b)(3) and 25 CFR 290.11.

(c) *Deferred benefits and benefits paid from trusts.* To the extent not inconsistent with final regulations issued under Internal Revenue Code Section 139E, the Community reserves the right to allow members to defer annual general welfare benefits for larger future needs that meet program guidelines, and to pay general welfare benefits from grantor trusts. To the extent not inconsistent with final regulations issued under Internal Revenue Code Section 139E, this shall specifically include the ability to distribute general welfare benefits to minors from their minors trust accounts in lieu of tax deferred per capita.

(d) *RAP and Trust Amendments Required.* Payment of general welfare from gaming revenues or trusts must be coordinated with confirming changes as needed for consistency with trust and revenue allocation plan documents.

**Sec. 20-93. Limitation on payments; annual budgeting.**

(a) *Limitations on welfare assistance payments.* The Community Council, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum assistance payments to be made to Community members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments or Community divisions charged with administering particular programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Community Council hereunder.

(b) *Annual budgeting; unfunded program.* The Community Council, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of assistance benefits. Notwithstanding anything to the contrary, the assistance payments authorized hereunder shall be "unfunded" for tax purposes and no beneficiary shall have an interest in or right to any funds budgeted for or set aside for assistance payments until actually paid. Assistance benefits shall remain assets of the Community until distributed, and the approved programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.

**Sec. 20-94. Forfeiture of welfare assistance rights.**

(a) *Limited use of assistance payments/services.* All assistance disbursed or provided pursuant to this article must be used for the purpose stated in the approved program description, and the Community member's application for the relevant assistance. In the event that assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved program or the beneficiary's application, the Community Council or designee shall require the repayment of the welfare assistance payment. The Community Council or designee is authorized to offset any other payments owed to a Community member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this subsection.

(b) *Forfeiture.* Notwithstanding anything herein to the contrary, assistance benefits may be revoked or forfeited for any beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as income or a resource to the detriment of the Community or a beneficiary. The Community shall have a right of recovery with regard to any excess or improper payments hereunder.

(c) *Due process.* Each program shall offer procedures that afford a beneficiary an opportunity to address forfeiture issues or concerns with the program director or designee.

**Sec. 20-95. Inalienability of welfare assistance benefit rights.**

A Community member's rights to apply for welfare assistance payments and/or services under this article are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors of the Community member or his or her beneficiaries.

**Sec. 20-96. Administration.**

The Community government departments and divisions shall be charged with the responsibility and authority to administer the welfare assistance payment and service programs called for by this article. All duties performed by an employee or official of the Community in accordance with this article or an approved program are deemed to be conducted in his or her official capacity.

**Sec. 20-97. Privacy; Information Sharing.**

The Community will maintain records regarding sensitive Community and Community member matters, including tribal customs, religion and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis, or any successor thereto. Confidential Community information shall not be shared in a manner that would open up additional disclosure, for example, under information sharing agreements where the recipient's information may be subject to disclosure under the Freedom of Information Act.

**Sec. 20-98. Construction; Future Guidance.**

This Ordinance shall be construed to afford maximum flexibility for the Community to establish and administer general welfare assistance in accordance with the Tribal General Welfare Exclusion Act and other applicable law. As of the approval of this Ordinance, the United States Treasury Department is in the process of considering final regulations under Internal Revenue Code Section 139E. If or when issued, the Community by this reference expressly incorporates (1) all minimum criteria for favorable tax treatment, and (2) any additional flexibility afforded under the final regulations, to the extent not otherwise covered by the terms of this Ordinance. The Community further reserves any transition relief afforded under final regulations when issued.

## C_E_R_T_I_F_I_C_A_T_I_O_N

Pursuant to the authority contained in Article VII, Section 1(c)(5) of the Constitution of the Salt River Pima-Maricopa Indian Community ratified by the Tribe, February 28, 1990, and approved by the Secretary of the Interior, March 19, 1990, and most recently amended by the Tribe, May 5, 2024, the foregoing ordinance was adopted this 26th day of August, 2026, in a duly called meeting of the Community Council at Salt River, Arizona, at which a quorum of 8 members was present, by a vote of 7 for; 0 opposed; 0 abstained; 1 away at time of vote; and 1 excused.

**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL**

Martin Harvier, President

ATTEST:

Erica Harvier, Council Secretary

Approved as to Form by the Office of the General Counsel
Theresa Rosier
August 17, 2026