

**TOHONO O'ODHAM CODE**

**CONSTITUTION**

Constitution of the Tohono O'odham Nation

## CONSTITUTION OF THE TOHONO O'ODHAM NATION

*History: The Constitution of the Tohono O'odham Nation was adopted on January 18, 1986 in an election in which at least 30% of the Nation's qualified voters cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and was approved by the Acting Deputy Assistant Secretary for Indian Affairs, and became effective, on March 6, 1986.*

*Related History: The Constitution and By-laws of the Papago Tribe were ratified by the adult Indians of the Papago Tribe on December 12, 1936 in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, and were approved by the Secretary of the Interior and became effective on June 18, 1937. The Constitution and By-laws of the Papago Tribe, as amended, were repealed and superceded by the Constitution of the Tohono O'odham Nation effective March 6, 1986.*

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# CONSTITUTION OF THE TOHONO O'ODHAM NATION

## PREAMBLE

We, the members of the Tohono O'odham Nation, formerly known as the Papago Tribe, do ordain and establish this constitution for the people of this nation, in order to affirm our sovereign powers of self-government, to preserve, protect and build upon our unique and distinctive culture and traditions, to conserve our common resources, to establish a responsive form of government, to provide for the free expression of our people, to promote the rights, education and welfare of the present and future generations of our people and to show our gratitude to I'itoi our Maker. This constitution when duly adopted and approved shall supersede the Constitution and Bylaws of the Papago Tribe, Arizona, as amended, ratified by the adult Indians of the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937.

## ARTICLE I - JURISDICTION

Section 1. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and of its government shall extend to all lands within the boundaries of the Tohono O'odham Nation established by Executive Orders: December 12, 1882, modified June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917, the Act of February 21, 1931 (Sells); the Act of September 10, 1978, (Florence); and to such other lands as may have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.

Section 2. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and its government shall extend to all persons and activities carried on within the boundaries of the Tohono O'odham Nation consistent with federal law.

Section 3. The sovereign powers, authority and jurisdiction of the Tohono O'odham Nation and its government over members of the Tohono O'odham Nation shall extend beyond the geographical boundaries of the Tohono O'odham Nation.

## ARTICLE II - MEMBERSHIP

Section 1. The membership of the Tohono O'odham Nation shall consist of the following:

- (a) All Indians whose names appear on the official census rolls of the Sells and Gila Bend Reservations as of January 1, 1937, and of the San Xavier Reservation as of January 1, 1940, provided that additions and changes may be made to said rolls by the Tohono O'odham Council, subject to the approval of the Secretary of the Interior.
- (b) All children born to resident members.

Section 2. The council shall have the power to adopt into membership anyone who is one-half (1/2) degree or more of Papago-Tohono O'odham Indian blood.

Section 3. Membership in the Tohono O'odham Nation and all rights deriving therefrom shall be lost or relinquished if a person is or becomes enrolled as a member in another Indian nation, tribe, community or band, provided such person shall first be given an opportunity to relinquish membership in such other nation, tribe, community or band.

### ARTICLE III - RIGHTS OF MEMBERS

Section 1. All political power is inherent in the people. The government of the Tohono O'odham Nation derives its powers from the consent of the governed and is established to protect and maintain their individual rights. It shall not deny to any member of the Tohono O'odham Nation the equal protection of its laws or deprive any member of liberty or property without due process of law.

Section 2. All members of the Tohono O'odham Nation shall have the freedom of worship, speech, press and assembly.

Section 3. All members of the Tohono O'odham Nation shall be given equal opportunity to participate in the economic resources and activities of the Tohono O'odham Nation.

Section 4. The listing of the foregoing rights shall not be construed as denying or abridging other fundamental rights of the people guaranteed by Title II of the Indian Civil Rights Act of April 1, 1968 (82 Stat. 77).

### ARTICLE IV - FORM OF GOVERNMENT

The government of the Tohono O'odham Nation shall be composed of three independent branches: the LEGISLATIVE, consisting of the Tohono O'odham Council; the EXECUTIVE, consisting of the office of Chairman of the Tohono O'odham Nation; and the JUDICIAL, consisting of the Tohono O'odham Judiciary.

### ARTICLE V - LEGISLATIVE BRANCH

Section 1. All legislative powers of the Tohono O'odham Nation shall be vested in the Tohono O'odham Council, which shall consist of two representatives, or their alternates, elected from each of the districts of the Tohono O'odham Nation.

Section 2. Each district shall be entitled to as many votes on the Tohono O'odham Council (divided by ten) as there are members of the Tohono O'odham Nation residing in the district. Such votes may be cast by either or both of the district representatives, or their alternates, who are present and voting. In the event the two representatives of a district, or their alternates, should

divide their votes, each shall be entitled to vote one-half (1/2) of the votes their particular district is entitled to cast. A majority of the votes cast shall govern the action of the Tohono O'odham Council.

Section 3. No business shall be transacted by the Tohono O'odham Council unless a quorum is present. A quorum shall exist when the representatives, or their alternates, present are entitled to cast a majority of the total votes which all representatives would be entitled to cast.

Section 4. The Tohono O'odham Council shall elect from among its own membership a chairman and vice-chairman. The chairman, or in his absence, the vice-chairman shall preside at all meetings of the council, shall perform all duties of a chairman and exercise any authority delegated to him by the council. He shall be entitled to cast his vote as the representative of his district on any question before the council.

Section 5. The Tohono O'odham Council shall select from outside of its own membership a secretary and such other officers as may be necessary. They shall serve until replaced by the council.

Section 6. Voting on any law, ordinance or resolution, in all council meetings, shall be by roll call vote and each vote shall be recorded by the secretary.

#### ARTICLE VI - POWERS OF THE TOHONO O'ODHAM COUNCIL

Section 1. The Tohono O'odham Council shall have all of the legislative powers vested in the Tohono O'odham Nation and shall, in accordance with established customs of the Tohono O'odham Nation and subject to the express limitations contained in this constitution and the laws of the United States, have the power:

- (a) To establish rules and procedures to regulate all meetings of the Tohono O'odham Council, standing committees, boards and special committees.
- (b) To provide for, appoint, or provide for the appointment of, and prescribe the duties and powers of committees, boards, officers and agents; to establish and regulate subordinate organizations for business purposes; provided that no such committee, board, officer, agent or organization shall exercise powers of the Tohono O'odham Council unless they are expressly delegated by the Tohono O'odham Council.
- (c) To exercise the inherent powers of the Tohono O'odham Nation by providing laws, ordinances or resolutions:
  - (1) to govern the conduct of members of the Tohono O'odham Nation and other persons within its jurisdiction;

- (2) to promote, protect and provide for public health, peace, morals, education and general welfare of the Tohono O'odham Nation and its members;
  - (3) to regulate the domestic affairs of members of the Tohono O'odham Nation and to provide for the appointment of guardians or custodians for minors and incapacitated persons.
  - (4) to regulate the use and disposition of private property within its territory insofar as such use and disposition may affect the welfare of the Tohono O'odham Nation at large;
  - (5) to regulate inheritance of personal property and interests in lands other than allotments consistent with federal law;
  - (6) to provide for the maintenance of law and order and the administration of justice; to establish law enforcement agencies; to enact criminal and civil laws governing the conduct of any person within the Tohono O'odham Nation consistent with federal law;
  - (7) to provide for removal or exclusion from the Tohono O'odham Nation of non-members whose presence may be injurious to the peace, health or welfare of the Tohono O'odham;
  - (8) to preserve and cultivate native arts, crafts and traditions.
- (d) To exercise the following fiscal powers:
- (1) to prevent the use, disposition or encumbrance of fiscal assets of the Tohono O'odham Nation.
  - (2) to manage any funds within the exclusive control of the Tohono O'odham Nation, including proceeds derived from lands and resources of the Tohono O'odham Nation, and to appropriate these funds for the benefit of the nation and its members. All expenditures of these funds shall be pursuant to appropriations or budgets authorized under resolutions or in accordance with ordinances of the Tohono O'odham Council, and the amounts so expended shall be a matter of public record to members of the nation and authorized persons at all reasonable times.
  - (3) to adopt, approve and amend annual budgets and to authorize the expenditure of funds in accordance with these budgets;

- (4) to levy duties, fees, taxes and assessments on any person, corporation or association residing or doing business within the Tohono O'odham Nation; and for such purposes to establish assessment, tax, fee or duty districts or zones;
  - (5) to borrow money for public purposes and to secure the repayment thereof;
  - (6) to issue revenue bonds payable solely from lease, rental or purchase price installments to finance the cost of acquiring, constructing, reconstructing and improving industrial, manufacturing, commercial and residential facilities, including pollution control facilities, utilities and other appurtenances thereto, for lease or sale, all for the purpose of stimulating industrial, manufacturing, commercial and residential development within the boundaries of the Tohono O'odham Nation.
- (e) To authorize, charter and regulate public or private corporations and associations whether organized for profit, or for non-profit or charitable purposes.
  - (f) To consult, negotiate and conclude agreements and contracts on behalf of the Tohono O'odham Nation with Federal, State and local governments and other Indian tribes or their departments, agencies, or political subdivisions, or with private persons or organizations on all matters within the authority of the Tohono O'odham Council.
  - (g) To enact laws and ordinances for conducting and regulating elections.
  - (h) To enact laws and ordinances governing the enrollment and adoption of members and the relinquishment and loss of membership consistent with Article II of this constitution.
  - (i) To administer land and other public property, and by law, ordinance or resolution:
    - (1) to prevent the sale, disposition, lease, use or encumbrance of Tohono O'odham national lands, interests in lands, rights-of-way, or other public resources when such sale, disposition, lease, use or encumbrance will, in the opinion of the Tohono O'odham Council, be injurious to the best interests of the Tohono O'odham Nation as a whole;



- (2) to manage, protect, preserve and regulate the use of the property, wildlife, land, air and natural resources (including surface and ground waters) of the Tohono O'odham Nation;
  - (3) to purchase or otherwise acquire property;
  - (4) to acquire property for public purposes by power of eminent domain, consistent with federal law, paying just compensation therefor;
  - (5) to transfer or convey assets to the Tohono O'odham Nation.
- (j) To consult with the Congress of the United States and appropriate federal agencies regarding federal activities that affect the Tohono O'odham Nation and all federal appropriation estimates and projects for the benefit of the Tohono O'odham Nation before such estimates and projects are submitted to Congress and other federal agencies;
  - (k) To advise and make recommendations to the Secretary of the Interior concerning the appointment or removal of federal employees assigned to duties with the Tohono O'odham Nation;
  - (l) To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers.

Section 2. In addition to the foregoing powers, the Tohono O'odham Council shall, in accordance with the established customs of the Tohono O'odham Nation and subject to the express limitations contained in this constitution or applicable federal law, have the following powers, which powers shall be subject to approval by the Secretary of the Interior or his authorized representative, but only to the extent and for so long as such approval is expressly required by federal statutes:

- (a) To employ legal counsel for the protection and advancement of the rights of the Tohono O'odham Nation; the choice of counsel and the fixing of fees are subject to approval by the Secretary of the Interior so long as such approval is required by federal law.
- (b) To manage and make expenditures for national purposes from any funds which are held in trust by the Federal Government and which, by appropriation of Congress or otherwise, have become available for use by the Tohono O'odham Nation.
- (c) To make and enforce laws and ordinances covering the right of the Tohono O'odham Nation to levy taxes and license fees on traders licensed by the Bureau of Indian Affairs.

- (d) To manage and lease or otherwise deal with lands, or interests in land, and resources of the Tohono O'odham Nation, including the use, permit or lease of lands for mining purposes (including oil and gas), and the use, permit, lease, sale or disposition of other resources (including surface and ground waters).

Section 3. The Tohono O'odham Council may exercise such further powers as may in the future be delegated to the Tohono O'odham Nation by the Secretary of the Interior, or by any other duly authorized official or agency of the United States Government.

#### ARTICLE VII - EXECUTIVE BRANCH

Section 1. The executive power of the Tohono O'odham Nation shall be vested in the office of the Chairman of the Tohono O'odham Nation. The chairman together with the vice chairman shall be elected at large by a majority of votes cast by all qualified voters for a term of four years.

Section 2. The chairman shall be the chief executive officer of the Tohono O'odham Nation and shall exercise the following powers, subject to all express limitations contained in this constitution:

- (a) To oversee the administration and management of the government in accordance with an administrative plan adopted by the Tohono O'odham Council.
- (b) To have veto power over enactments of the Tohono O'odham Council as provided in section 5 of this article.
- (c) To oversee the implementation of all laws, ordinances, resolutions and rules made by the Tohono O'odham Council.
- (d) To exercise all other powers delegated to him by the Tohono O'odham Council.
- (e) With the approval of the Tohono O'odham Council, to appoint the treasurer, and other officers and heads of all governmental departments, who shall serve until replaced at the request of the chairman.
- (f) To act as the official representative of the Tohono O'odham Nation.
- (g) To communicate to the Tohono O'odham Council the condition of the Tohono O'odham Nation and recommend such matters as he shall deem expedient.
- (h) To call the Tohono O'odham Council into special session.

Section 3. The vice chairman shall assist the chairman when requested to do so, and in the absence of the chairman, shall have the powers and be subject to the responsibilities of the chairman.

Section 4. The chairman and vice chairman shall receive for their services a compensation to be established by the Tohono O'odham Council, which shall not be diminished during their continuance in office.

Section 5. Every law, ordinance, resolution or separate appropriation item passed by the Tohono O'odham Council shall be presented to the chairman for his approval before it becomes effective. If he approves, he shall sign it. But if he disapproves, he shall return it to the Tohono O'odham Council within forty-eight (48) hours, with his objections. If after consideration, it again passes the council by a majority of two-thirds (2/3) of the votes cast, it shall become law and he shall sign it notwithstanding his objections.

#### ARTICLE VIII - JUDICIAL BRANCH

Section 1. The judicial power of the Tohono O'odham Nation shall be vested in the Tohono O'odham Judiciary, which shall consist of the Tohono O'odham Courts and such inferior courts as the Tohono O'odham Council may from time to time ordain and establish.

Section 2. The judicial power of the Tohono O'odham Judiciary shall extend to all cases and matters in law and equity arising under this constitution, the laws and ordinances of or applicable to the Tohono O'odham Nation, and the customs of the Tohono O'odham Nation.

Section 3. The Tohono O'odham Courts shall be courts of record and shall consist of at least six (6) judges appointed by the Tohono O'odham Council. The courts shall be open for the transaction of business, except on non-judicial days. In the determination of causes, all decisions of the courts shall be in writing, and the grounds of the decision shall be stated.

Section 4. Within sixty (60) days after the effective date of this constitution, the Tohono O'odham Council shall appoint at least six (6) judges of the Tohono O'odham Courts, as follows: Two (2) judges for terms of two (2) years, two (2) for terms of four (4) years, and two (2) for terms of six (6) years. Thereafter their terms shall be six (6) years and staggered so that approximately one-third (1/3) of the judges shall be appointed every other year.

Section 5. The judges of the Tohono O'odham Courts shall select a chief judge from among their number, who shall be the chief administrative officer of the Tohono O'odham Judiciary and shall serve in that capacity for a term of two (2) years.

Section 6. The chief judge shall each year designate one or more of the judges of the Tohono O'odham Courts as judge(s) of the children's court, who shall preside over the children's court, a division of the Tohono O'odham Courts.

Section 7. The appellate power of the Tohono O'odham Nation shall be vested in the court of appeals, which shall have jurisdiction to hear all appeals from the Tohono O'odham Courts. Decisions of the court of appeals on all matters within its appellate jurisdiction shall be final.

Section 8. The court of appeals shall consist of three (3) judges of the Tohono O'odham Courts designated by the chief judge, none of whom shall have presided at the trial of the case appealed.

Section 9. The judges of the Tohono O'odham Courts shall receive for their services a compensation to be established by the Tohono O'odham Council, which shall not be diminished during their continuance in office.

Section 10. The Tohono O'odham Judiciary shall have the power to:

- (a) Interpret, construe and apply the laws of, or applicable to, the Tohono O'odham Nation.
- (b) Declare the laws of the Tohono O'odham Nation void if such laws are not in agreement with this constitution.
- (c) Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus to any part of the Tohono O'odham Nation upon petition by, or on behalf of, any person held in actual custody.
- (d) Establish court procedures for the Tohono O'odham Judiciary.

#### ARTICLE IX - DISTRICT COUNCIL ORGANIZATION

Section 1. The Tohono O'odham Nation consists of eleven (11) districts: BABOQUIVARI, CHUKUT KUK, GU ACHI, GU VO, HICKIWAN, PISINEMO, SCHUK TOAK, SAN XAVIER, SAN LUCY (Gila Bend), SELLS and SIF Oidak.

Section 2. The Tohono O'odham Council may by ordinance change the foregoing number and boundaries of districts.

Section 3. Each district shall have a governing body known as the district council, which shall consist of at least five (5) representatives, or their alternates, elected either from the district at large, or from communities consisting of villages or groups of villages within the district and recognized or established as separate voting constituencies pursuant to an ordinance of the Tohono O'odham Council, and of a chairman and vice chairman elected from the district at large.

Section 4. Each district council shall select from within or without its own elected membership a secretary and treasurer who shall serve until replaced by the district council.

Section 5. Each district shall govern itself in matters of local concern, except that in any matter involving more than one district in which there is a dispute, the Tohono O'odham Council shall decide the matter.

Section 6. Each district council shall submit copies of its minutes to the office of the secretary of the Tohono O'odham Council within ten (10) days after formal approval thereof.

Section 7. No district council shall expend district funds except pursuant to budgets authorized under resolutions of the district council and approved by the Tohono O'odham Council. The management of these funds shall be only by a treasurer or other authorized officer of the district council who has furnished a surety bond satisfactory to the treasurer of the Tohono O'odham Nation, and all expenditures of these funds shall be by checks signed by such treasurer or other authorized officer and the chairman or vice chairman of the district council.

#### ARTICLE X - ELECTIONS

Section 1. All members of the Tohono O'odham Nation who have reached the age of eighteen (18) years prior to the election date shall have the right to vote, provided they comply with any and all ordinances regulating elections authorized by this constitution.

Section 2. General elections shall be held every other year at a date set in an election ordinance to be enacted by the Tohono O'odham Council, provided, however, that the council is authorized to extend on a one-time basis the terms of office of its members to permit tribal elections to coincide with federal elections.

Section 3. No person holding an elective public office of the Tohono O'odham Nation shall hold any other elective office of the Tohono O'odham Nation.

Section 4. A candidate for the office of chairman of the Tohono O'odham Nation or of chairman of the district council must, at least sixty (60) days prior to the general election, file a declaration of candidacy which shall contain the name of the candidate he has selected to run with him for the office of vice chairman, and shall bear the signatures of both candidates and the signatures of one hundred (100) or more registered voters if the declaration of candidacy is for the office of chairman of the Tohono O'odham Nation, or of twenty-five (25) or more registered voters if the declaration of candidacy is for the office of chairman of the district council.

Section 5. If there are more than two (2) sets of candidates for the offices of chairman and vice chairman of the Tohono O'odham Nation or of chairman and vice chairman of the district council, there shall be a primary election for such offices and the two (2) sets of candidates receiving the greatest number of votes shall stand for election in the general election.

Section 6. The candidates for the offices of representative or alternate to the Tohono O'odham Council or the district council receiving the greatest number of votes from their respective constituencies shall be elected representatives to such council and the candidates receiving the next greatest number of votes shall be elected as alternates.

Section 7. The Tohono O'odham Council shall enact an election ordinance which shall prescribe rules for the apportionment of representatives to each district council when elections of such representatives are from communities within the district and not from the district at large, and for the setting and holding of primary elections for the offices of chairman and vice chairman of the Tohono O'odham <sup>NATION</sup> Council and of the district council, and which shall prescribe the qualifications of candidates, the registration requirements for voting and such other rules and procedures necessary to the orderly conduct of elections, including but not limited to procedures for validation of petitions and the settlement of any and all election disputes. The decision of the Tohono O'odham Council in all election matters, including the eligibility and qualifications of candidates, shall be final.

#### ARTICLE XI - TENURE OF OFFICE

Section 1. The terms of office of all elected officers of the Tohono O'odham Nation shall be four (4) years, unless extended by the Tohono O'odham Council for the necessary time to cover a postponed election as provided in Section 2 of Article X, and they shall hold their offices until their successors have been certified and seated.

Section 2. The terms of office of representatives and alternates to the Tohono O'odham Council and the district council shall be staggered so that half or approximately half their seats shall be open for election at each biennial election.

Section 3. Upon adoption of this constitution, the chairman and vice chairman of the Papago Council shall assume the offices of chairman and vice chairman of the Tohono O'odham Nation, and all other elected public officers of the Tohono O'odham Nation shall continue in office for the remainder of their respective terms.

#### ARTICLE XII - ABSENCES AND VACANCIES

Section 1. If a representative to the Tohono O'odham Council or the district council is unable to attend a meeting, the alternate of the representative shall attend.

Section 2. If a vacancy should occur in the office of an elected public officer of the Tohono O'odham Nation by reason of death, resignation or legal incapacity, the office shall be filled as follows:

- (a) If the vacancy is in the office of the chairman of the Tohono O'odham Nation, the vice chairman shall immediately succeed to the office of the chairman and the vice chairman's office shall be vacant.
- (b) If the vacancy is in the offices of both the chairman and the vice chairman of the Tohono O'odham Nation, the chairman of the Tohono O'odham Council shall act as temporary chairman of the Tohono O'odham Nation and shall, within ten (10) days of the vacancy, call a special meeting of the Tohono O'odham Council to appoint a chairman and vice chairman from within the Tohono O'odham Nation who shall hold their offices for the unexpired terms of their predecessors.
- (c) If the vacancy is in the office of a representative to the Tohono O'odham Council or the district council, the alternate of that representative shall immediately succeed to the office of the representative and the council of the district or of the community from which they are elected shall appoint an alternate who shall hold office for the unexpired term of his or her predecessor.
- (d) If the vacancy is in the office of the chairman of the district council, the vice chairman shall immediately succeed to the office of chairman and the vice chairman's office shall be vacant.
- (e) If the vacancy is in the offices of both the chairman and vice chairman of the district council, the secretary of the district council shall act as temporary chairman and shall, within ten (10) days of the vacancy, call a special meeting of the district council to appoint a chairman and vice chairman within the district who shall hold their offices for the unexpired terms of their predecessors.

#### ARTICLE XIII - REMOVAL AND RECALL

Section 1. Any representative of the Tohono O'odham Council, elected officer, or judge of the Tohono O'odham Nation who, during the term for which he is elected or appointed, is convicted of any felony or crime involving dishonesty, in any court of competent jurisdiction, shall automatically forfeit his office effective on the date of his initial conviction in court. Any representative of the Tohono O'odham Council, elected officer or judge of the Tohono O'odham Nation found guilty of a misdemeanor involving moral turpitude, gross neglect of duty, malfeasance in office, or misconduct reflecting on the dignity and integrity of the tribal government shall be removed from office by majority vote of the Tohono O'odham Council. Before any vote for removal is taken, the representative, officer or judge shall be given a written statement of the charges against him or her at least ten (10) days before the meeting of the council called to consider the removal action.

The accused representative, officer or judge shall be given an opportunity to answer any and all charges at the designated council meeting. No representative or officer shall preside over the meeting at which his removal is being considered. The decision of the Tohono O'odham Council shall be final.

Section 2. The eligible voters of the Tohono O'odham Nation shall have the right to recall any representative, or elected officer by filing a petition with the secretary of the Tohono O'odham Council signed by at least thirty percent (30%) of the eligible voters. Upon receipt of a valid petition, it shall be the duty of the Tohono O'odham Council to call a special election within forty (40) days of the receipt of the petition upon the question of recall of any representative or officer named in the petition. No representative or elected officer may be recalled unless a majority of the eligible voters vote in favor of the recall and unless at least thirty percent (30%) of the eligible voters vote in the election.

Section 3. The Tohono O'odham Council shall enact such ordinances as are necessary to implement removal and recall elections consistent with this article. The ordinance shall also prescribe when an office subject to removal or recall has been vacated and who shall fill such office consistent with Article XII.

ARTICLE XIV - REFERENDUM

The Tohono O'odham Council shall, either at the direction of the Council itself, or upon receipt of a petition signed by not less than three hundred registered voters of the Tohono O'odham Nation, submit any enacted or proposed ordinance, resolution or other national legislation to a referendum of the registered voters. The council shall call a referendum within ninety (90) days from the date of the receipt of a valid petition, and shall prescribe the manner in which it is to be conducted. The decision of a majority of the voters voting in a referendum shall be binding on the council.

ARTICLE XV - INITIATIVE

The members of the Tohono O'odham Nation reserve the power to independently propose ordinances, resolutions or other legislation affecting the Tohono O'odham Nation. Any proposed initiative measure shall be presented to the council accompanied by a petition signed by not less than three hundred (300) registered voters of the Tohono O'odham Nation. Upon receipt of the petition, the council shall either adopt the initiative measure by a majority vote without alteration, or call a special election for the purpose of allowing the members of the Tohono O'odham Nation to vote on the initiative measure. The election shall be held within ninety (90) days from the date a valid petition is presented and shall be conducted in the manner prescribed by the council. The decision of a majority of the voters in such an election shall be binding on the council.



ARTICLE XVI - LAND POLICY

Section 1. The unallotted lands of the Tohono O'odham Nation and all lands hereafter acquired by the nation, or held for the use of the nation or its members, are a valuable public resource and shall be held as national lands forever. Control and management thereof are vested in the Tohono O'odham Council, which may enact laws governing the use, assignment, permit, lease or other disposition of lands, interests in land and resources of the nation consistent with Federal law:

Section 2. All allotted lands, including heirship lands, and all improvements thereon shall continue to be held by their present owners under existing laws.

Section 3. Inasmuch as the lands of the Tohono O'odham Nation are held in common, district boundaries shall not prevent any member of the nation from going into any district to live or beneficially use the lands in accordance with the customary procedures of the district.

Section 4. Lands of the Tohono O'odham Nation may be assigned to members of the nation in accordance with the following provisions:

- (a) Assignments of homesites for beneficial use and occupancy shall be made by the district councils under the customary procedures of their respective communities, or in accordance with ordinances enacted by the Tohono O'odham Council and approved by the district councils.
- (b) Every member of the Tohono O'odham Nation who is the head of a family that does not own any land under allotment, or who agrees to transfer such land, including interests in land in heirship status, to the Tohono O'odham Nation, shall be entitled to receive a homesite assignment if land is available.
- (c) Any member of the Tohono O'odham Nation who owns an allotment of land or any share in heirship land or any deeded land may, ~~with the approval of the Secretary of the Interior,~~ voluntarily transfer interests in such land to the Tohono O'odham Nation and receive therefor an assignment to the same land or to land of equal value.

Section 5. Lands of the Tohono O'odham Nation which are not under use, permit, lease or other disposition authorized by the Tohono O'odham Council, and which are not under assignment made by a district council, may be used for communal pastures and gardens by the various districts, or for public purposes of any sort. Such lands may be leased by the district council consistent with federal law and one-half (1/2) of the proceeds of such leases shall accrue to the Tohono O'odham Council and one-half (1/2) to the district council; provided that such leases are subject to approval by the Secretary of the Interior and all leases

to nonmembers, and leases to members in excess of a reasonable acreage, shall be subject to the approval of the Tohono O'odham Council.

Section 6. To the extent consistent with federal law, all individual developments on lands of the Tohono O'odham Nation, such as water developments, farms and homes, shall be held as personal property and shall be subject to disposal in accordance with the customary procedures of the district council or in accordance with ordinances enacted by the Tohono O'odham Council and approved by the district council.

Section 7. The right to continued use and occupancy of buildings and grounds for religious and educational purposes, which were in use for these purposes by any church or missionary organization on January 1, 1936, is hereby confirmed; provided that the buildings and grounds shall, in the discretion of the Tohono O'odham Council, revert to the Tohono O'odham Nation when no longer used for such religious or educational purposes by such church or missionary organization.

Section 8. It shall be the policy of the Tohono O'odham Nation to encourage owners of allotted lands not to devise, sell or give such lands to any person who is not a member of the Tohono O'odham Nation without giving the Tohono O'odham Nation an opportunity to purchase such lands.

Section 9. It shall be the policy of the Tohono O'odham Nation to seek the return to the Tohono O'odham Nation of lands and natural resources, including minerals and water rights, within or adjacent to the Tohono O'odham Nation, or which originally were a part of the historic Papagueria.

Section 10. In order to carry out the foregoing policies, it shall be the continuing responsibility of the Tohono O'odham Council each year to designate a certain percentage of the proceeds derived from natural resources of the Tohono O'odham Nation and, consistent with other essential considerations of Tohono O'odham national policy, to allocate and invest the designated proceeds for the purpose of acquiring such lands, natural resources, minerals and water rights.

#### ARTICLE XVII - WATER POLICY

Section 1. All waters which originate in or flow in, into or through the Tohono O'odham Nation, or which are stored in the Tohono O'odham Nation, whether found on the surface or underground, are a valuable public resource of the Tohono O'odham Nation to be protected for the present and future use of the Tohono O'odham Nation as a whole.

Section 2. The Tohono O'odham Council shall have, ~~consistent with federal law,~~ the control and management of these waters and shall have the power to:

- (a) Determine how these waters shall be developed, used and conserved for the greatest public benefit.

- (b) Enter into agreements, compacts or other contracts for the beneficial use, sale, or lease or distribution of these waters.
- (c) Regulate all water use within the Tohono O'odham Nation through a system of non-perpetual permits and to maintain a registry of such permits.
- (d) Establish a water commission or board which shall, subject to the direction of the council, have general supervision of these waters and of the licensing, measurement, use and distribution thereof.

#### ARTICLE XVIII - ENVIRONMENTAL POLICY

Section 1. It shall be the policy of the Tohono O'odham Nation to encourage productive and enjoyable harmony between members of the nation and their environment; to promote efforts which will preserve and protect the natural and cultural environment of the Tohono O'odham Nation, including its lands, air, water, flora and fauna, its ecological systems, and natural resources, and its historic and cultural artifacts and archeological sites; and to create and maintain conditions under which members of the nation and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of members of the Tohono O'odham Nation.

Section 2. In order to carry out the foregoing policy, it shall be the continuing responsibility of the Tohono O'odham Council to use all practical means, consistent with other essential considerations of Tohono O'odham national policy, to improve and coordinate its plans, functions, programs and resources to the end that the Tohono O'odham Nation may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all members safe, healthful, productive and esthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural and natural aspects of Tohono O'odham national heritage, and maintain, wherever possible, an environment which supports diversity and a variety of individual choice;
- (e) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

ARTICLE XIX - SUPREMACY OF CONSTITUTION

Section 1. Any existing resolutions, ordinances or other legislation heretofore enacted by the Papago Tribe shall remain in full force and effect to the extent that they are consistent with this constitution.

Section 2. The provisions of this constitution are mandatory unless by express words they are declared to be otherwise.

ARTICLE XX - SEVERABILITY

If any provisions of this constitution, or the applicability thereof, be held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions which can be given effect without the invalid provisions, and to this end, the provisions of the constitution are declared to be severable.

ARTICLE XXI - REPEAL

The Constitution and Bylaws of the Papago Tribe, as amended, ratified by the adult Indians of the Papago Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, is hereby repealed and superseded by this constitution.

ARTICLE XXII - AMENDMENTS

Section 1. Any rights and powers heretofore vested in the Tohono O'odham Nation, but not expressly referred to in this constitution, shall not be abridged by this constitution, but may be exercised by the members of the Tohono O'odham Nation through the adoption of appropriate constitutional amendments.

Section 2. This constitution may be amended by a majority vote of the registered voters of the Tohono O'odham Nation voting in an election called for that purpose by the Secretary of the Interior provided that at least thirty percent (30%) of those duly registered to vote shall vote in such an election; but no amendment shall become effective ~~until it has been approved by the Secretary of the Interior.~~ It shall be the duty of the Secretary of the Interior to call an election for any proposed amendment at the request of the Tohono O'odham Council or upon receipt of a petition signed by at least one-third of the registered voters of the Tohono O'odham Nation.

ARTICLE XXIII - ADOPTION

This constitution, when adopted by a majority vote of the qualified voters of the Tohono O'odham Nation, voting at an election called for that purpose by the Secretary of the Interior in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and, if approved, shall be effective from the time of such approval.

## ARTICLE XXIV - CERTIFICATE OF RESULTS OF ELECTIONS

Pursuant to an order issued August 26, 1985, by John W. Fritz  
 Deputy Assistant Secretary - Indian Affairs (Operations), the foregoing  
 Constitution of the Tohono O'odham Nation was submitted for adoption to the  
 qualified voters of the nation and was on January 18, 1986, duly adopted/  
 rejected by a vote of 1,236, for, and 944 against, in an election in which  
 at least thirty percent (30%) of the 3,336 entitled to vote, cast their  
 (number)  
 ballots in accordance with Section 16 of the Indian Reorganization Act of  
 June 18, 1934 (48 Stat. 984) as amended by the Act of June 15, 1935  
 (49 Stat. 378) and May 1, 1936 (49 Stat. 1250).

Trillie Garcia  
 Election Board Member

James A. Barber  
 Chairman, Election Board

Rosemary Lopez  
 Election Board Member

William Lewis  
 Election Board Member

Daniel Lopez  
 Election Board Member

Paul H. Smith Sr.  
 Election Board Member

## ARTICLE XXV - APPROVAL

I, Ronald L. Esquerro, Deputy Assistant Secretary -  
 Indian Affairs (Operations) by virtue of the authority granted to the Secretary  
 of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and  
 delegated to me by 209 D.M. 8.3, do hereby approve the Constitution of the  
 Tohono O'odham Nation. It is effective as of this date; provided that  
 nothing in this approval shall be construed as authorizing any action under  
 this document that would be contrary to Federal law.

Ronald L. Esquerro  
 Acting Deputy Assistant Secretary -  
 Indian Affairs (Operations)

Washington, D.C.

Date: MAR 6 1986