

TITLE 17 - HEALTH AND SAFETY

CHAPTER 3 - RESTAURANT SANITATION REGULATIONS

Legislative History: Ordinance No. 38, "Regulations Governing Sanitation of Eating and Drinking Establishments," was enacted by the Papago Council on May 6, 1960 and approved by the Papago Agency Superintendent on May 16, 1960 and became effective on November 4, 1960.

Note: The certification for Ordinance No 38 notes that it was originally enacted on January 8, 1960 and reenacted May 6, 1960 "with correction in wording per Tribal Council Resolution No. 1108."

TITLE 17 – HEALTH AND SAFETY

CHAPTER 3 – RESTAURANT SANITATION REGULATIONS

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ORDINANCE NO. 38-60

ORDINANCE
OF THE Papago
Tribal COUNCIL

REGULATIONS GOVERNING SANITATION AT EATING AND DRINKING
ESTABLISHMENTS

Ordinance
of the Papago
Tribal Council

Regulations Governing Sanitation at Eating and Drinking
Establishments

WHEREAS:

1. The privilege of operating eating and drinking establishments on the Papago Reservation is subject to all lawful Papago Tribal Council Ordinances and resolutions effecting such operations.

2. The health of the Papago Tribe is to be safeguarded in every manner possible.

NOW THEREFORE BE IT RESOLVED THAT:

The following regulations defining restaurant, itinerant restaurant, employee, utensils, Health Advisor, etc., requiring permits for the operation of such establishments, prohibiting the sale of adulterated, unwholesome or misbranded food or drink; authorizing inspection and providing penalties for violations; are hereby adopted.

SECTION I

DEFINITIONS: For the purpose of this Ordinance the following definitions shall apply.

1. The term "restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, sandwich stand, soda, fountain, and all other eating and drinking establishments, as well as kitchens or other places in which food or drink is prepared for sale elsewhere.

2. The term "itinerant restaurant" shall mean one operating for a temporary period in connection with a fair, rodeo, carnival, circus, or public exhibition.

3. The term "employee: shall mean any individual who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, employed in a room in which food or drink is prepared or served.

4. "Utensils" shall include any kitchenware, table ware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation or serving.

5. Health Advisor shall mean the United States Public Health Service, Papago Reservation Medical Officer in charge or his designated representative.

6. Person shall mean any individual, firm, corporation, partnership, corporate group, or association.

7. The Tribal Council shall mean the Papago Tribal Council. For the purpose of issuing permits for "itinerant restaurants" while the Papago Tribal Council is not in session, authorized representative shall mean the Chairman of the Papago Council.

SECTION II

PERMITS:

1. No person shall operate a restaurant within the Papago Reservation or Trust Land who does not possess a valid permit from the Papago Tribal Council. Such permit shall be posted in a

conspicuous place. Only persons who comply with the requirements or these regulations shall be entitled to receive and retain such a permit. A person conducting an itinerant restaurant shall be required to secure a permit.

2. Such a permit may be temporarily suspended by the Tribal Council upon the violation by the holder of any of the terms of these regulations, or revoked after an opportunity for a hearing by the Tribal Council upon serious or repeated violation.

3. No permit shall be transferrable. Every person who succeeds to ownership or control of a restaurant shall give notice in writing to the Tribal Council within 24 hours after having purchased, received by transfer or gift, or otherwise acquired interest in or control of any restaurant. Such notice shall include the name and address of the previous owner of the restaurant.

4. Each person who succeeds to ownership or control of a restaurant shall within ten days file application for a Restaurant Permit in the manner provided in these regulations. Failure to file such application for a Restaurant Permit within the said ten day period shall result in suspension of the privilege to operate such restaurant until compliance with this provision.

Application for permits shall be in writing, signed by the applicant and shall include the following:

A. The name and address of the applicant.

- B. The location, name, and legal description of Restaurants location.
- C. A description of the type of restaurant operation.
- D. Before a permit is issued, the Health Advisor shall inspect the restaurant for which an application for permit has been filed to determine its compliance with these regulations.

6. Upon certification of the Health Advisor that a restaurant for which an application for permit has been filed, meets the requirements of these regulations, the Tribal Council may issue a permit.

7. Any person whose application for permit under these regulations has been denied may request and will be granted a hearing before the Tribal Council under the procedure provided by Section V of this regulation.

8. Whenever upon inspection of any restaurant which holds a permit, conditions or practices exist which are in violation of any provisions of these regulations, the Tribal Council should give notice in writing to the person whom the permit was issued; and unless such conditions or practices are corrected within a reasonable period of time, as recommended by the Health Advisor, the permit shall be suspended. At the end of such period, the Health Advisor shall reinspect such restaurant and, if such conditions or practices have not been corrected he shall so advise the Tribal Council, which give notice in writing to whom the permit was issued that the permit has been suspended. Upon receipt of notice of suspension such person shall cease operation of such restaurant at once.

9, Any person whose permit has been suspended, or has received notice from the Tribal Council that his permit will be suspended unless certain conditions or practices at the restaurant are corrected, may request and will be granted a hearing on the matter before the Tribal Council as provided by Section V of these regulations; Provided that when no petition for such hearing shall have been filed within ten days following the day when such permit was suspended such permit shall be deemed to have been automatically revoked.

10. The failure to obtain or maintain a Restaurant Permit may be cause for termination of any lease as negotiated between restaurant operator and the Papago Tribe.

SECTION III

EXAMINATION AND CONDEMNATION OF UNWHOLESOME OR ADULTERATED FOOD OR DRINK:

1. Samples of food, drink, and other substances may be taken and examined by the Health Advisor as often as may be necessary for the detection of unwholesomeness or adulteration. The Health Advisor may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or adulterated.

SECTION IV

INSPECTIONS:

1. The Tribal Council and Health Advisor are hereby empowered and authorized to make inspections and to obtain food samples for laboratory analysis to determine the conditions of the restaurants.

2. They shall have the power to enter at reasonable times the property and buildings of the restaurant for the purpose of inspecting and investigating conditions relating to the enforcement of these regulations.

3. It shall be the duty of owner or person in charge of the restaurant to give the Tribal Council or Health Advisor free access to such premises at reasonable times for the purposes of inspections.

4. Inspections of restaurants will be made at least once every six months or more often if the Tribal Council or Health Advisor deems it necessary for the protection of the health of the people.

5. When the inspection is made by the Health Advisor, he will leave with the management or person in charge, a copy of the complete inspection report which indicates the sanitary conditions of the restaurant which shall be displayed in a prominent place on the premises, and forward two copies to the Tribal Council with the recommendations as to necessary action. The Tribal Council will forward one copy of the report to the appropriate person in the Bureau of Indian Affairs responsible for the licensing of restaurant operations. Another copy of the inspection report will be filed with the records of the Health Advisor.

SECTION V

NOTICES, HEARING AND ORDERS:

1. When the Health Advisor recommends action pursuant to violation of any of these regulations, the Tribal Council will give notice of such alleged violation to the person or persons

responsible therefore as hereinafter provided: Such notice will: A., Be in writing; B., Include a statement of the reasons for its issuance; C., Allow a reasonable time for the performance of any action required; D., Be served upon the owner or his Agent; Provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address; or when he has been served by any other method authorized by the Tribal Council; E., Contain an outline of remedial action, which if taken will effect compliance with the provisions of this Ordinance.

2. Any person affected by any notice which has been issued in connection with the enforcement of any provision of these regulations may request and will be granted a hearing on the matter before the Tribal Council: Provided, that such person shall file in the office of the Tribal Secretary a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within ten days after the day notice was served. Upon receipt of such petition the Tribal Council will set a time and place for such hearing and will give the petitioner written notice thereof. At the hearing, petitioner will be given an opportunity to be heard, and to show why such notice should be modified or withdrawn. The hearing will be commenced not later than ten days after the day on which the petition was filed: provided that upon application of the petitioner, the Tribal Council may postpone the date of the hearing for a reasonable time

beyond such ten-day period if the petitioner has submitted a good and sufficient reason for such postponement.

3. After such hearing the Tribal Council with the consultation of the Health Advisor, will sustain, modify or withdraw the notice, depending on the findings as to the compliance or non-compliance with these regulations. If the Tribal Council shall sustain or modify such notice, it shall be deemed to be an order. Any notice served pursuant to Section V of these regulations shall automatically become an order if a written petition for hearing shall not have been filed in the office of the Tribal Secretary within ten days after such notice was served. After a hearing in the case of any notice suspending any permit required by these regulations, when such notice shall have been sustained by the Tribal Council, the permit shall be deemed to have been revoked.

4. The proceedings at such hearings including the findings and decisions of the Tribal Council shall be reduced to writing and entered as a matter of public record in the office of the Secretary of the Tribal Council. Such record shall include every notice or order issued in connection with the matter.

5. Whenever the Health Advisor or the Tribal Council find that an emergency matter exists which requires immediate action to protect public health, the Tribal Council will without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of these regulations, such order shall be effective immediately, but

upon petition to the Tribal Council, petitioner will be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or non-compliance with the provisions of these regulations the Tribal Council may continue the order in effect, modify it or revoke it.

6. The Tribal Council upon the advice of the Health Advisor, may condemn and order the removal and destruction of food or drink which is deemed unwholesome, adulterated or misbranded under the Federal Drug and Cosmetic Act.

SECTION VI

SANITATION REQUIREMENTS FOR RESTAURANTS:

All restaurants shall comply with all of the following items of Sanitation:

Item 1. Floors: - The floors of all rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

Item 2. Walls and Ceilings: - Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is stored or prepared shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed, shall have a smooth, washable surface up to the level reached by splash or spray.

Item 3. Doors and Windows: - When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing, unless other effective means are provided to prevent the entrance of flies.

Item 4. Lighting: - All rooms in which food or drink is stored or prepared in in which utensils are washed shall be well lighted.

Item 5. Ventilation: - All rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be well ventilated.

Item 6. Toilet Facilities: - Every restaurant shall be provided with adequate and conveniently located toilet facilities for its employees. In restaurants hereinafter constructed toilet rooms shall not open directly into any room in which food, drink, or utensils are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well lighted and ventilated. Hand-washing signs shall be posted in each toilet room used by employees.

Item 7. Water Supply: - Running water under pressure shall be easily accessible to all rooms in which food is prepared or utensils are washed, and the water supply shall be adequate, and of a safe, sanitary quality.

Item 8. Laboratory Facilities: - Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap and approved towels. The use of a common towel is prohibited. No employee shall resume work after using the

toilet room without first washing his hands.

Item 9. Construction of Utensils and Equipment: - All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned. and shall be kept in good repair. Utensils containing or plated with cadmium or lead shall not be used: Provided, that solder containing lead may be used for jointing.

Item 10. Cleaning and Bactericidal Treatment of Utensils and Equipment: -

1. All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods, and sinks shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by waiters, chefs, and other employees shall be clean. Single service containers shall be used only once.

2. All multi-use eating and drinking utensils shall be thoroughly cleaned and effectively subjected to an approved bactericidal process after each usage. All multi-use utensils used in the preparation or serving of food and drink shall be thoroughly cleaned and effectively subjected to an approved bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose.

3. No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of utensils.

Item 11. Storage and handling of Utensils and Equipment: - After bactericidal treatment utensils shall be stored in a clean, dry place protected from flies, dust, and other contamination as far as practicable. Single-service containers shall be purchased only in sanitary containers, shall be stored therein a clean, dry place until used, and shall be handled in a sanitary manner.

Item 12. Disposal of Wastes: - All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles in such manner as not to become a nuisance.

Item 13. Refrigeration: - All readily perishable food and drink shall be kept at below 50° F. except when being prepared or served. Waste water from refrigeration equipment shall be properly disposed of.

Item 14. Wholesomeness of Food and Drink: - All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. All milk, fluid milk products, ice cream and other frozen desserts served shall be from approved sources. Milk and fluid milk products shall be served in the individual original containers in which they were received from the distributor or from a bulk container equipped

with an approved dispensing device. Provided that this requirement shall not apply to cream, which may be served from the original bottle or from a dispenser approved for such service. All oysters, clams, and mussels shall be from approved sources, and if shucked shall be kept until used in the containers in which they were placed at the shucking plant.

Item 15. Storage, Display, and Serving of Food and Drink: - All food and drink shall be so stored, displayed, and served as to be protected from dust, flies, vermin, depredation, and pollution by rodents, unnecessary handling, droplet infection, overhead leakage, and other contamination. No animal or fowl shall be kept or allowed in any room in which food or drink is prepared or stored. All means necessary for the elimination of flies, roaches, and rodents shall be used.

Item 16. Cleanliness of Employees: - All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink utensils, or equipment. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared.

Item 17, Miscellaneous: - The premises of all restaurants shall be kept clean and free of litter or rubbish. None of the operations connected with a restaurant shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and

shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

ITINERANT RESTAURANTS:

Itinerant Restaurants shall be constructed and operated in a manner approved by the Health Advisor

SECTION VII

RESTAURANTS WHICH MAY OPERATE:

From and after 12 months from the date on which this Ordinance takes effect no restaurant shall be operated within the Papago Reservation unless it conforms with the requirements of this Ordinance: Provided, that when any restaurant fails to qualify the Tribal Council is authorized to suspend the permit.

SECTION VIII

REINSTATEMENT OF PERMIT:

1. Any restaurant, the permit of which has been suspended may at any time make application for the reinstatement of the permit.
2. Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision or provisions of the Ordinance have been conformed with, the Health Advisor shall make a re-inspection, and thereafter as may re-inspections as he may deem necessary to assure himself that the applicant is again complying with the requirements, and, in case the findings indicate compliance, shall recommend reinstatement of the permit within one week after such compliance.

SECTION IX

DISEASE CONTROL:

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any restaurant, and no restaurant shall employ any such person or any person suspected of being affected with any disease in a communicable form or being a carrier of such disease. If the restaurant manager suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Advisor immediately. A placard containing this section shall be posted in all toilet rooms.

As a condition precedent to employment, all employees shall be required to obtain a physical examination by a licensed physician within thirty (30) days of the commencement of such employment.

SECTION X

PROCEDURE WHEN INFECTION SUSPECTED:

When suspicion arises as to the possibility of transmission of infection from any restaurant employee, the Tribal Council upon recommendation of the Health Advisor is authorized to require any or all of the following measures:

1. The immediate exclusion of the employee from all restaurants.
2. The immediate closing of the restaurant concerned until no further danger of disease outbreak exists, in the opinion of the Health Advisor.

3. Adequate medical examinations of the employee and of his associates, with such laboratory examinations as may be indicated.

SECTION XI

ENFORCEMENT INTERPRETATION:

This Ordinance shall be enforced by the Tribal Council in accordance with the interpretations thereof contained in the latest edition of the U. S. Public Health Service Code Regulation Eating and Drinking Establishments, a certified copy of which shall be on file in the Tribal Executive Secretary's office, and the recommendations of the Health Advisor.

SECTION XII

PENALTIES:

Any person found in violation of these regulations and who remains in violation after exhausting remedies provided in Section VIII may forfeit his right to do business within the Papago Reservation.

SECTION XIII

CONFLICT OF ORDINANCES OR RESOLUTIONS:

Effect of Partial Invalidity.

1. In any case where a provision of this Ordinance is found to be in conflict with the provision of another Ordinance or Resolution in existence on the Papago Reservation, on the effective date of the Ordinance, the provision which in the judgment of the Tribal Council, with the consultation of a Health

Advisor, establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such provision shall not affect the remaining portions of this Ordinance, but shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION XIV

REVIEW OF PLANS:

Whenever any alterations, modifications or new construction of a restaurant or itinerant restaurant is contemplated by the operator or prospective operator, three sets of plans and specifications will be submitted to the Health Advisor for review of such plans, and he will recommend approval or such modifications necessary for approval.

SECTION XV

EFFECTIVE DATE:

This Ordinance shall be effective on and after November 4, 1960 from and after twelve months from the date of this Ordinance takes effect. No restaurant shall be operated within the boundaries of the Papago Reservation and Trust Lands unless it conforms with all requirements of this Ordinance.

CERTIFICATION

I hereby certify that the foregoing Ordinance was duly considered by the Papago Tribal Council at a duly called meeting at Sells, Arizona, at which a quorum was present and that same was passed by a vote of 16 in favor and 0 opposed, this 4th day of November 1960

/S/ Enos Francisco Jr.
Presiding Chairman

Agency copy

ORDINANCE
OF THE
PAPAGO COUNCIL

ORD. NO. 38

WHEREAS, At its meeting July 10, 1959, the Papago Tribal Council stated it wished to have sanitary regulations brought up to date covering reservation eating places, and stores on the Reservation, and

WHEREAS, At the present time, Section VII of Ordinance 14 is the only regulation the Tribe has for this purpose, passed in June, 1947, over 10 years ago, and it is not very complete, and

WHEREAS, The U. S. Public Health Service has set up a model ordinance and code regulating eating and drinking establishments, per Public Health Bulletin No. 280, and it also recommends adoption of Pima County Ordinance 1955-66, Item No. 6, covering meat markets, stores, and shops, and

WHEREAS, The Council feels that the Public Health Service is best qualified to recommend the type of Sanitary regulations to be put into effect, and also to see that these regulations are complied with.

THEREFORE, LET IT BE ORDAINED by the Papago Council that the Council adopt the Ordinance and Code regulating eating and drinking establishments recommended by the Public Health Service as printed in Public Health Bulletin 280, and that the Council also adopt Pima County Ordinance No. 1955-66, Item No. 6, covering meat markets, stores and shops, and

LET IT FURTHER BE ORDAINED that Section VII of Ordinance 14, and the portion of Section VI dealing with termination of license for violation of Section VII, as well as any other Ordinances, Resolutions or portions thereof, in conflict with this Ordinance be rescinded, and

LET IT BE FURTHER ORDAINED that the United States Public Health Service, division of Indian Health, be requested to carry out the inspections necessary for the enforcement of this Ordinance through the Medical Officer in Charge of the Papago Health Program, and his delegated representatives, and report its findings to the Papago Tribal Council together with any recommendations for action, it being understood that the Tribal Council shall act as enforcement authority, and

LET IT BE FURTHER ORDAINED that the Ordinance become effective 6 months from the date of its passage, and

LET IT BE FURTHER ORDAINED that the Council may revoke the license of any establishment covered by these regulations which violates them, any such action to be taken after considering reports submitted by the Public Health Service, together with their recommendations for action.

The foregoing Ordinance, originally enacted January 8, 1960, was reenacted May 6, 1960 by a vote of 19 for, 0 against & 1 not voting with correction

In wording per Tribal Council Resolution No. 1108 passed on the same day, pursuant to authority vested in it by Section 2 (h) & Section 3 (e) of Article V of the Constitution of the Tribe ratified by the Tribe on December 12, 1936, and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984). Said Ordinance is effective as of the date of its approval by the Superintendent of the Papago Agency, Subject to rescission by the Secretary of the Interior pursuant to Section 6, Article V of the Constitution of the Papago Tribe.

THE PAPAGO COUNCIL

BY:

Enos J. Francisco
Enos J. Francisco, Chairman

ATTEST:

Evelyn Antone
Evelyn Antone, Secretary

APPROVED: May 16, 1960

Harry W. Gilmore
Harry W. Gilmore, Superintendent

Extras

RESOLUTION
OF THE
PAPAGO COUNCIL

RES. NO. 1108

WHEREAS, Ordinance 38, passed on January 8, 1960, says: "Let it be further ordained that the personnel of the U. S. Public Health Service, Division of Indian Health, be authorized to enforce the applicable portions of these two Ordinances on the Papago Indian Reservation", and

WHEREAS, The Public Health Service recently notified the Tribal Council it cannot act as an enforcement agent, but it is up to the Tribal Council to enforce the Ordinance, and

WHEREAS, The Papago Tribal Council is willing to take the responsibility of enforcing the Ordinance,

THEREFORE, LET IT BE RESOLVED that Ordinance 38 be rescinded, eliminating the above paragraph and replacing it with a new paragraph to read "Let it be further ordained that the United States Public Health Service, Division of Indian Health, be requested to carry out the inspections necessary for the enforcement of this Ordinance through the Medical Officer in Charge of the Papago Health Program, and his delegated representatives, and report its findings to the Papago Tribal Council together with any recommendations for action, it being understood that the Tribal Council shall act as enforcement authority", and

LET IT FURTHER BE RESOLVED that the rest of the Ordinance remain the same.

The foregoing Resolution was duly enacted by the Papago Council on May 6, 1960 with a vote of 19 for, 0 against and 1 not voting, during a meeting at which quorum was present, pursuant to authority vested in it by Article V, Section 2 (h), and Section 5 (e) of the Constitution of the Tribe ratified by the Tribe on December 12, 1936 and approved by the Secretary of the Interior on January 6, 1937, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 964). Said Resolution is effective as of the date of its approval by the Superintendent of the Papago Agency, and is subject to the rescission by the Secretary of the Interior, pursuant to Section 6 of Article V of the Constitution and By-Laws of the Papago Tribe.

THE PAPAGO COUNCIL

BY:

Enos J. Francisco
Enos J. Francisco, Chairman

ATTEST:

Evelyn Antone
Evelyn Antone, Secretary

APPROVED: May 16, 1960

Harry W. Gilmore
Harry W. Gilmore, Superintendent

Ordinance