

## **TITLE 2 - AGRICULTURE AND LIVESTOCK**

### **CHAPTER 4 - LIVESTOCK OWNERS**

*Legislative History: Tohono O'odham Code Title 2, Chapter 4, Livestock Owners, was enacted and codified effective December 15, 2008 by Resolution No. 08-695, which repealed a number of prior livestock-related laws.*

*Related Legislation: Resolution No. 144, requiring that all horses on the Papago Reservation be tested for dourine, was enacted by the Papago Council on March 19, 1941 and approved by the Sells Indian Agency Superintendent on March 28, 1941.*

*Ordinance No. 7, authorizing testing of all horses on the Papago Reservation for dourine, was enacted by the Papago Council on April 5, 1941 and approved by the Sells Indian Agency Superintendent on May 8, 1941. By its own terms, Ordinance No. 7 was to remain in effect "until all horses shall have been tested and declared clear and until the quarantine shall have been lifted from the entire Papago Reservation" (Ordinance No. 7, Section 2).*

**TOHONO O’ODHAM CODE**

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<b>Purpose</b>	.....	1
<b>Article 1</b>	<b>Definitions</b> .....	1
Section 4101	For the purposes of this Chapter and Chapter 5 of this Article .....	1
<b>Article 2</b>	<b>Open Range and Liability</b> .....	2
Section 4201	Open Range and Enclosed Areas .....	2
Section 4202	Liability.....	2
<b>Article 3</b>	<b>The Livestock Inspector’s Office</b> .....	3
Section 4301	Authority of the Livestock Inspector’s Office .....	3
<b>Article 4</b>	<b>District and Holding Brands and Earmarks</b> .....	4
Section 4401	District and Holding Brand Requirements.....	4
Section 4402	Earmark Requirements .....	4
Section 4403	District Brand and Holding Brand Recording Process .....	4
Section 4404	Holding Brand Renewal Process .....	6
Section 4405	Holding Brand Recording Fees.....	6
<b>Article 5</b>	<b>Livestock Inspection, Sale, and Transport</b> .....	7
Section 4501	Livestock Inspection Requirements .....	7
Section 4502	Location and Time of Livestock Inspections.....	8
Section 4503	Record of Livestock Inspection .....	8
Section 4504	Livestock Inspection to Determine Ownership.....	9
Section 4505	Livestock bill of Sale Requirements .....	9
Section 4506	Authorized Transport of Livestock.....	9
<b>Article 6</b>	<b>Seizure of Livestock</b> .....	9
Section 4601	Livestock Seizure by the Livestock Inspector’s Office .....	9
Section 4602	Disposition of Seized Livestock by the Livestock Inspectors’ Office... ..	10
Section 4603	Responsibility of the Livestock Inspectors’ Office .....	10
Section 4604	Issuance of a Summons and Date of Hearing .....	10
Section 4605	Adjudication by Default.....	11
Section 4606	Hearing Procedures and Right to an Appeal.....	11
Section 4607	Sale of Seized Livestock and the Disposition of the Sale Proceeds .....	12
<b>Article 7</b>	<b>Violations, Jurisdiction, and Judicial Review</b> .....	12
Section 4701	Violations and Jurisdiction .....	12

Section 4702	Notice of Violation and Notice of Final Action.....	13
Section 4703	Judicial Review.....	13
<b>Article 8</b>	<b>Sovereign Immunity of the Nation and the Private Right of Action.....</b>	<b>13</b>
Section 4801	Limited Waiver of Sovereign Immunity.....	13
Section 4802	Private Right of Action.....	14
Section 4803	Restriction.....	14
Section 4804	Statute of Limitation.....	14
Section 4805	Intervention.....	14
<b>Article 9</b>	<b>Exclusion of Liability and Indemnification.....</b>	<b>14</b>
Section 4901	Exclusion of Liability and Indemnification.....	14
<b>Article 10</b>	<b>Severability.....</b>	<b>15</b>
Section 41001	Severability.....	15

# TOHONO O'ODHAM CODE

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#### PURPOSE

The purpose of this Chapter is to regulate the branding verification and brand transfers, sale, inspection, transport, and seizure of livestock on the Tohono O'odham Nation ("Nation"). This Chapter does not apply to nor is it intended to address liability with respect to State Highway 86, Federal Route 15, or other right-of-ways.

#### ARTICLE I – DEFINITIONS

##### **Section 4101 For the purposes of this Chapter and Chapter 5 of this Article:**

- (A) *Adequate Fence* means a well-constructed fence with at least four barbed wires stretched tightly and securely fastened to the fence post to turn livestock. All fences constructed with other material and equally effective to turn livestock shall be deemed adequate according to this Chapter.
- (B) *Business Day* means any day other than a Saturday, Sunday, or any day designated as a holiday by the Tohono O'odham Nation.
- (C) *Dissolution* means the act of the Tohono O'odham Probate Court terminating a Person's ownership right(s) to his Holding Brand and the Probate Court declaring that such Holding Brand can never be owned or used by any other Person.
- (D) *District Brand* means the brand that the District has selected to be the official permanent mark to be placed on livestock permitted to roam the District's range. This brand will be recorded with the Nation's Livestock Inspectors' Office.
- (E) *Earmark* means the mark that an individual livestock owner has selected as the permanent mark of ownership. This mark will be recorded with the Nation's Livestock Inspectors' Office.
- (F) *Evidentiary hearing* means a court hearing to determine whether and to what extent criminal and civil causes of actions will be heard and what evidence will be admitted.
- (G) *Holding Brand* means the brand that an individual or entity owning livestock has selected as the permanent mark of ownership. This brand will be recorded with the Nation's Livestock Inspectors' Office.

- (H) *In rem* refers to a lawsuit or other legal action directed toward property, rather than toward a particular Person.
- (I) *Livestock* means animals of the family Bovidae, including cows, bulls, steers, and calves and the family Equidae, including horses, mules, and donkeys.
- (J) *Livestock Association or Livestock Committee* means a district level association or community recognized committee according to custom or tradition with regulatory authority over livestock owned in its district or community.
- (K) *Maverick* means any weaned animal not with its mother whose ownership cannot be determined.
- (L) *Occupant* means a Person, organization, or entity recognized by the Nation, District, or Community as having a home site, lease, or other authorization to occupy land within the Nation.
- (M) *Open Range* means the Nation’s lands on which livestock is permitted, by custom, license, or permit, to roam or feed.
- (N) *Organized Roundup* means the authorized roundup of livestock by a Person or Persons, in accordance with the customary practices of the community or livestock association, in the District’s range where the livestock are present.
- (O) *Person* means (1) a human being, or (2) an association, committee, or other entity recognized as having authority over livestock, or (3) a partnership, corporation, or other entity that is recognized by law as having the rights and duties of a human being.

**ARTICLE 2 – OPEN RANGE AND LIABILITY**

**Section 4201 Open Range and Enclosed Areas**

- (A) The Nation’s lands where livestock are permitted, by custom, license, or permit to roam and feed, are considered Open Range, except those lands enclosed by an Adequate Fence.
- (B) Except as otherwise provided in the Agricultural and Range Resource Management Trespass Ordinance, Ordinance No. 03-111, or any other law of the Nation, an Occupant within the Open Range is not entitled to recover for damages resulting from the trespass of livestock unless the Occupant’s land is enclosed within an Adequate Fence.

**Section 4202 Liability**

- (A) Each livestock owner shall be liable to any Occupant within Open Range whose land is enclosed by an Adequate Fence, when his or her livestock damages crops, fences, or any other personal property or fixtures within the enclosed land.
- (B) The Occupant, whose property has been damaged, may bring a civil action against the livestock owner in the Tohono O’odham Judicial Court (“Court”) to recover damages.

## **ARTICLE 3 – THE LIVESTOCK INSPECTORS’ OFFICE**

### **Section 4301 Authority of the Livestock Inspectors’ Office**

The Livestock Inspectors’ Office shall have civil regulatory authority over the branding verification and brand transfers, sale, inspection, transport, and seizure of livestock within the Nation. The Brand Inspector Supervisor and the Livestock Brand Inspector shall have the authority to carry out these functions.

## **ARTICLE 4 – DISTRICT AND HOLDING BRANDS AND EARMARKS**

### **Section 4401 District and Holding Brand Requirements**

(A) All livestock within the Nation shall be branded with both a District Brand and a Holding Brand. It shall be the responsibility of the livestock owner to brand his or her livestock with the appropriate and required brands.

(B) Each District Brand shall be recorded by the Brand Inspector Supervisor with the Arizona Department of Agriculture, Animal Services Division, in the name of the Nation. The Livestock Inspectors’ Office shall pay any fees required for registering the District Brand with the State of Arizona. The District Brand is for identification only and the Nation shall have no claim of ownership of such branded livestock.

(C) The District Brand shall be located on the right hip of cattle and the right shoulder of horses, mules, or donkeys with the exceptions of Gu Vo and Sif Oidak Districts. As of March 30, 2005, the Gu Vo District Brand will be placed on the right shoulder for cattle. The District Brand will remain on the right shoulder on horses, mules, or donkeys. After March 30, 2005, the Sif Oidak District Brand will be placed on the left shoulder for cattle, horses, mules, or donkeys.

(D) A Holding Brand shall be adopted, recorded, and used by each Person owning livestock within the Nation.

(E) The Holding Brand is the property of the Person who adopts and records such brand.

### **Section 4402 Earmark Requirements**

(A) An Earmark on livestock shall be adopted, recorded, and used by any Person owning livestock on the Nation. One Earmark may be used with different brands as long as both are recorded with the Livestock Inspectors’ Office at the same time.

(B) The District Council shall approve a new Earmark where the livestock reside, unless the District Council has delegated this authority to the applicable Livestock Committee or Livestock Association.

### **Section 4403 District Brand and Holding Brand Recording Process**

(A) District Brands, Holding Brands, and Earmarks are not valid unless recorded by the Livestock Inspectors' Office.

(B) Each District Brand shall be recorded with the Livestock Inspectors' Office by an authorized representative of each District Council. The District Council may delegate this authority to the applicable Livestock Committee or Livestock Association.

(C) Each Holding Brand shall be recorded with the Livestock Inspectors' Office by its livestock owner.

(D) Each Earmark shall be first approved by the District Council as authorized by Section 4402 (B) and then recorded with the Livestock Inspectors' Office by its livestock owner.

(E) The following information shall be recorded on a valid Livestock Inspectors' Office standard application form. A valid Livestock Inspectors' Office standard application form will include:

- (1) A drawing or other reasonable depiction of the Holding Brand.
- (2) The name, residence, and mailing address of the Person adopting the Holding Brand.
- (3) Date and time of application and recording.
- (4) The type of livestock to be branded.
- (5) The location on the livestock where the Holding Brand is to be placed.
- (6) Additional information the Livestock Inspector's Office deems necessary, including legal documents and information provided by the Districts, Communities, and Range Bosses.

(F) The Livestock Inspectors' Office may reject or refuse to approve or record a Holding Brand that is similar in design or figure to any other Holding Brand recorded with the Livestock Inspectors' Office.

(G) Each applicant recording a Holding Brand shall submit an affidavit on a form approved by the Livestock Inspectors' Office. The affidavit shall explain the applicant's claim and entitlement to record the Holding Brand and affirm to the best of the affiant's knowledge that the Holding Brand is not similar in design or figure to another Holding Brand recorded with the Livestock Inspectors' Office.

(H) Prior to the recording of a Holding Brand, the Livestock Inspectors' Office shall advertise the Holding Brand application in every District Council Office for 30 Business Days. The last

day of the 30 Business Day application advertisement period shall be clearly stated in the advertisement itself.

(I) Any Person or District Council may file a written objection with cause to the application with the Livestock Inspectors' Office. The written objection must be delivered to the Livestock Inspectors' Office prior to the expiration of the application advertisement period. The Livestock Inspectors' Office shall provide its decision within 15 Business Days after the expiration date of the advertisement noted in subsection (H) above. The Livestock Inspectors' Office shall keep a record of the date, location, and manner of advertisement.

(1) When a written objection to an application is timely filed with the Livestock Inspectors' Office, the Livestock Inspectors' Office shall send its written decision to the Person objecting and to the applicant.

(a) If the objection is valid and upheld, the Livestock Inspectors' Office shall send a letter, along with its written decision, through certified U.S. Mail to the applicant informing the applicant that he or she has 15 Business Days to submit new drawings of Holding Brands to the Livestock Inspector's Office.

(i) If the applicant does not submit new drawings within 15 Business Days, his or her application will no longer be considered and the applicant will have to resubmit a new application for Holding Brands.

(ii) If the applicant timely submits new drawings to the Livestock Inspectors' Office within the 15 Business Days, the Livestock Inspectors' Office will advertise the application pursuant to subsection (H).

(b) If the objection is not valid, the Livestock Inspectors' Office shall send a letter to the Person objecting notifying him or her of the decision. The Livestock Inspectors' Office shall then proceed with review of the application.

(2) When a written objection to an application is not timely filed with the Livestock Inspectors' Office, the Livestock Inspectors' Office shall send a letter to the Person objecting notifying him or her that the objection was filed after the end of the 30 day advertisement period and that the Person's untimely objection, therefore, will not be considered.

(J) If after the 30 day advertisement period noted above has passed and no objections were submitted and received by the Livestock Inspectors' Office, the Livestock Inspectors' Office shall proceed with review of the application.

(1) If the application meets the requirements, the Livestock Inspectors' Office shall approve the application and notify the applicant of the approval in writing no later than 15 Business Days after the 30 day deadline expires.



(2) If the application does not meet the requirements, the Livestock Inspectors' Office shall inform the applicant in writing:

(a) that the application is denied and the reason(s) for the denial; and

(b) that the applicant has 15 Business Days from the date of the letter to submit new drawings of the Holding Brand.

(K) The Livestock Inspectors' Office shall then re-advertise the new drawings and follow the advertisement procedures required in Section 4403(H) for the new drawings.

(L) Holding Brands are valid for five years following the date recorded.

(M) Each transfer of ownership of a Holding Brand shall be recorded by the Livestock Inspector's Office.

#### **Section 4404 Holding Brand Renewal Process**

(A) Each owner of a Holding Brand shall renew his or her Holding Brand every five years with the Livestock Inspector's Office. Every Holding Brand not renewed shall be deemed abandoned if the Brand is not subject to any legal proceeding, such as probate proceedings. After two years, abandoned brands shall be available to other members of the Nation. A listing of abandoned brands, which shall also contain descriptions, shall be available at the Livestock Inspectors' Office.

(B) The secretary of the Livestock Inspectors Office shall notify each recorded Holding Brand owner of the expiration of the five year period within 90 Business Days of the expiration. The Livestock Inspectors' Office shall send return-receipt mail to the owner's last known mailing address on record with the Livestock Inspectors' Office and to the owner's respective District Council Office.

(C) Holding Brand renewals will be recorded in the same manner as the original recording. However, Holding Brand renewals do not require advertisement.

(D) The Livestock Inspectors' Office shall maintain a list of Holding Brands that are no longer available for use due to Dissolution.

(E) The Tohono O'odham Judicial Court shall include the Livestock Inspectors' Office on its applicable Court Orders' distribution list if the Court terminates Holding Brand ownership by Dissolution.

#### **Section 4405 Holding Brand Recording Fees**

(A) The livestock owner shall pay all fees at the Nation's Treasurer's Office and submit a copy of the receipt to the Livestock Inspector's Office. The processing fees include:

- |     |   |      |
|-----|---|------|
| (1) | Recording of a new Holding Brand.                 | \$75 |
| (2) | Recording of sale or transfer of a Holding Brand. | \$45 |
| (3) | Renewal of a Holding Brand.                       | \$45 |

(B) The Livestock Inspectors' Office may recommend to amend the fees set forth in this Section or adopt additional fees, provided that the public shall be given public notice and the opportunity to submit written comments to the Legislative Agricultural Committee, such amendments for a period of not less than 30 Business Days in advance. Any recommended amendments to the fees are subject to Legislative Council approval.

**ARTICLE 5 – LIVESTOCK INSPECTION, SALE, AND TRANSPORT**

**Section 4501 Livestock Inspection Requirements**

(A) Every livestock sale or transfer of livestock ownership shall require an inspection by the Brand Inspector Supervisor or Livestock Brand Inspector.

(B) A certificate of inspection shall be issued at the time of inspection by the Brand Inspector Supervisor or Livestock Brand Inspector and shall be valid for as long as the livestock remain within the boundaries of the Nation. If the livestock is transferred off the Nation, the certificate of inspection shall be valid for a period of four Business Days after issuance.

(C) The Brand Inspector Supervisor or Livestock Brand Inspector shall grant a certificate of inspection if:

- (1) The Holding Brand and/or Earmark can be ascertained;
- (2) The Holding Brand and Earmark are currently recorded with the Livestock Inspectors' Office as required by this Chapter;
- (3) The Person requesting the inspection is the recorded livestock owner with the Livestock Inspectors' Office or has written authorization from the recorded livestock owner with the Livestock Inspectors' Office to handle his or her livestock. The written authorization shall be recorded on a valid Livestock Inspectors' Office authorization form. Valid authorization forms shall be made available by the Livestock Inspectors' Office; and
- (4) The written authorization shall be filed with the Livestock Inspectors' Office and shall be renewed every five years with the renewal of the livestock owner's Holding Brand and Earmark.

(D) The Brand Inspector Supervisor or Livestock Brand Inspector shall not grant a certificate of inspection for newly branded livestock unless:

- (1) The Brand Inspector Supervisor or Livestock Brand Inspector has personal information that the livestock was branded at an Organized Roundup in accordance with the customary practices of the Community or Livestock Association and the Range Boss of an Organized Roundup has signed the certification of inspection or bill of sale.
- (2) The Brand Inspector Supervisor or Livestock Brand Inspector has personal information that the branded livestock was a maverick whose rightful owner could not be determined by the Range Boss(es) of the Community or Livestock Association, but was branded by or at the direction of the Range Boss(es) or Livestock Association at an Organized Roundup in accordance with the customary practices of the Community or Livestock Association.
- (3) The branded livestock is an unweaned animal running with its mother as determined by the visual inspection of the Brand Inspector Supervisor or Livestock Brand Inspector, as well as the Range Boss(es) of the Community or Livestock Association.

#### **Section 4502 Location and Time of Livestock Inspections**

- (A) The Brand Inspector Supervisor or Livestock Brand Inspector shall inspect livestock for each Holding Brand at the location where the livestock is gathered to be sold and/or transported.
- (B) The livestock inspection shall be conducted during daylight, within the normal working hours of the Brand Inspector Supervisor or Livestock Brand Inspector, and in a manner that allows the Brand Inspector Supervisor or Livestock Brand Inspector to inspect and record every Holding Brand.
- (C) The Brand Inspector Supervisor or Livestock Brand Inspector shall be notified at least three to five Business Days in advance of any livestock to be sold outside the Nation.
- (D) Livestock loaded to go directly to auction may be unloaded for inspection at the direction of the Brand Inspector Supervisor or Livestock Brand Inspector.

#### **Section 4503 Record of Livestock Inspection**

- (A) The Brand Inspector Supervisor or Livestock Brand Inspector shall make a record of all inspections, including the location, date, time and purpose of inspection, the sex of the livestock, and Holding Brands or other information necessary to identify the livestock. The names of the sellers and destination of shipment will be recorded.
- (B) The record of inspection shall be made in triplicate on valid Livestock Inspectors' Office certificate of inspection forms. The original copy will be filed with the Livestock Inspectors' Office and the duplicate and triplicate copies will be given to the Person having the inspection. The certificate of inspection shall not be accepted as a lawful bill of sale.

#### **Section 4504 Livestock Inspection to Determine Ownership**

The Brand Inspector Supervisor or Livestock Brand Inspector may require the livestock owner or the authorized Person in charge of the livestock to produce a copy of the Holding Brand recording certification. The Brand Inspector Supervisor or Livestock Brand Inspector shall determine by inspection of the livestock that the authorized Person in charge is the livestock owner or is authorized in writing by the livestock owner to handle the livestock.

#### **Section 4505 Livestock Bill of Sale Requirements**

- (A) Every sale or transfer of livestock ownership shall be accompanied by a written bill of sale signed by the seller/transferor and buyer/transferee.
- (B) Valid bill of sale forms shall be made available for a fee by the Tohono O'odham Nation's Department of Property and Supply to cover cost of duplication and issuance.

#### **Section 4506 Authorized Transport of Livestock**

- (A) Any Person who transports livestock off the Nation must be the recorded owner of the livestock or authorized in writing to transport the livestock. Written authorization shall be provided to the Brand Inspector Supervisor or Livestock Brand Inspector upon demand.
- (B) A livestock owner who authorizes another Person to transport his or her livestock shall provide written authorization including the name of the authorized Person, a listing of the Holding Brand(s) authorized to be handled, the number of livestock authorized to be handled, and the location and destination of the livestock.

### **ARTICLE 6 – SEIZURE OF LIVESTOCK**

#### **Section 4601 Livestock Seizure by the Livestock Inspectors' Office**

The Brand Inspector Supervisor or Livestock Brand Inspector, with the cooperation of the Tohono O'odham Police Department and Ranger Program, may seize livestock, except an unweaned animal running with its mother, when:

- (A) The livestock is not branded as required by this Chapter;
- (B) The Brand Inspector Supervisor or Livestock Brand Inspector or another Person questions the livestock ownership with reasonable cause;
- (C) The livestock's Holding Brand is indistinct or cannot be identified due to mutilation or disfigurement;
- (D) The livestock has a Holding Brand and Earmark that is not recorded;

(E) The livestock has a Holding Brand that is not the recorded Holding Brand of the Person claiming to be the owner; or

(F) The livestock has been abandoned.

#### **Section 4602 Disposition of Seized Livestock by the Livestock Inspectors' Office**

(A) Livestock seized by the Livestock Inspectors' Office shall be kept at the Livestock Facilities in Sells, Arizona, until the Court has made a determination of ownership or forfeiture, in accordance with this Chapter. During the period of confinement, any Person claiming to be the livestock owner may inspect the livestock.

(B) The expense of seizure, feed, and care for the livestock during the confinement period shall be charged against the livestock owner.

#### **Section 4603 Responsibility of the Livestock Inspectors' Office**

(A) Pursuant to this Chapter, the Brand Inspector Supervisor or Livestock Brand Inspector shall file a Petition to Determine Livestock Ownership with the Clerk of the Court within three to five Business Days of any livestock seizure.

(B) The Petition to Determine Livestock Ownership shall state:

- (1) a general description of the livestock seized, Holding Brand, and Earmark;
- (2) the location of the seizure;
- (3) the reason(s) for the seizure in brief and concise statements of fact;
- (4) the number of livestock seized;
- (5) the estimated value of livestock;
- (6) the owner of record and his address (if known); and,
- (7) the basis for jurisdiction

(C) The Brand Inspector Supervisor or Livestock Brand Inspector shall request that the Court issue a summons to the alleged livestock owner(s) to appear in court to prove ownership.

#### **Section 4604 Issuance of a Summons and Date of Hearing**

(A) The Clerk of the Court shall file the Brand Inspector Supervisor's or Livestock Brand Inspector's petition and docket it as an action by the Nation against the owner of record. If the owner(s) is unknown, the action will be against the unknown owner(s).

(B) The Clerk of the Court shall issue a summons within two Business Days of the filing of the petition.

(C) The Clerk of the Court shall direct the issuance of a summons to the owner of record of the seized livestock. Service of the summons shall be at least ten Business Days before the scheduled hearing date and time.

(D) The Clerk of the Court shall set a date and time for an evidentiary hearing to determine livestock ownership after the Court issues a summons. The hearing will take place at least 12 Business Days and not more than 20 Business Days after the date a summons is issued.

(E) The Clerk of the Court shall issue a summons requiring Person(s) claiming any or all of the livestock to appear at the scheduled hearing in order to determine ownership. At this evidentiary hearing, all Person(s) may offer proof of ownership.

(F) If no owner of record is identified, the Clerk of the Court shall give a copy of the summons to the Brand Inspector Supervisor or Livestock Brand Inspector who shall post copies of the summons in at least three public places within the Nation.

(1) At minimum, one copy of the summons shall be posted in the District where the livestock was seized.

(2) If the seized livestock does not have a Holding Brand and Earmark or the record owner of the livestock with a Holding Brand and Earmark cannot be located using the records from the Livestock Inspectors' Office, posting copies of the summons in public places shall be deemed sufficient notice to all Persons claiming livestock ownership.

(G) The evidentiary hearing shall be heard as a civil action.

#### **Section 4605 Adjudication by Default**

At the evidentiary hearing, if a determination is made that the summons has been properly served in accordance with this Chapter, and no one claims any of the seized livestock, the Court shall adjudicate the livestock as forfeited to the Nation and shall order the livestock sold pursuant to this Chapter.

#### **Section 4606 Hearing Procedures and Right to an Appeal**

(A) If a Person is present at the evidentiary hearing and claims all or part of the seized livestock, the Court shall state on the record that a claim has been made. The hearing shall proceed as a civil action.

(B) The seized livestock shall be disposed of in the following manner:

(1) Upon judicial determination of ownership, the seized livestock shall be released to the adjudged owner upon payment to the Nation's Livestock Facilities for transporting, care and feeding charges; or

(2) Seized livestock, whose ownership cannot be determined to the satisfaction of the Court, shall be deemed forfeited to the Nation and ordered to be sold by the Livestock Inspectors' Office at a public auction upon proper notification of the auction's date, time and location.

(C) An appeal against a judgment from the Court shall proceed as a civil action.

### **Section 4607 Sale of Seized Livestock and the Disposition of the Sale Proceeds**

(A) The Brand Inspector Supervisor or Livestock Brand Inspector shall execute the order of sale pursuant to Section 4606(B)(2) and shall deliver a bill of sale to the buyer describing the livestock sold and the amount obtained from the sale. A duplicate of the bill of sale will be kept at the Livestock Inspectors' Office. Upon delivery of the bill of sale, title to the livestock shall be passed to the buyer.

(B) Immediately after the sale pursuant to Section 4606(B)(2), the Brand Inspector Supervisor or Livestock Brand Inspector shall remit the sale proceeds to the Nation's Treasurer or designated financial officer for deposit in the Nation's General Fund or to a Livestock Facilities revenue account. An itemized statement of the expense of the seizure and sale shall accompany the sale proceeds.

## **ARTICLE 7 - VIOLATIONS, JURISDICTION, AND JUDICIAL REVIEW**

### **Section 4701 Violations and Jurisdiction**

(A) Prior to proceeding to judicial review, a Person may seek administrative review according to the requirements of the Nation's adopted personnel policies.

(B) Any Person who has violated any prohibition contained in this Chapter shall be liable in a civil action by the Nation for civil penalties. Such action shall be brought in the Court and the civil penalties assessed shall be in an amount not less than the value of the livestock involved in the violation, plus the cost of transporting, care and feed.

(C) The Court retains jurisdiction over all actions or claims brought under this Chapter. In addition to civil penalties and remedies, the Court may grant other relief deemed necessary to enforce this Chapter including, but not limited to:

- (1) The seizure and forfeiture of livestock, and
- (2) Injunctive relief.

(D) All actions for seizure and forfeiture under this Chapter shall be considered *in rem*, against a Person's property and not against the Person.

#### **Section 4702 Notice of Violation and Notice of Final Action**

(A) If any Person violates any prohibition contained in this Chapter, the Livestock Inspector's Office may issue a notice of violation to the violating Person who shall have 15 Business Days to correct the violation.

(B) If the violation is not corrected within 15 Business Days from the date the notice of violation is issued, the Livestock Inspector's Office shall issue a notice of final action.

#### **Section 4703 Judicial Review**

(A) Any Person or entity that has been issued a notice of final action by the Livestock Inspectors' Office may petition the Court for judicial review of such notice of violation.

(B) Any such petition for judicial review must be made within 15 Business Days of receipt of the notice of the final action of the Livestock Inspectors' Office. The Person or entity requesting the judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

(C) The Court shall determine the relevancy of legal arguments, interpret constitutional and statutory provisions, and determine the basis for the action taken by the Livestock Inspectors' Office. The Court shall uphold the action of the Livestock Inspectors' Office unless the Court determines that the action was:

- (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- (2) Contrary to constitutional right, power, privilege, or immunity;
- (3) In excess of statutory jurisdiction, authority or limitations, or in violation of statutory right;
- (4) Without observance of procedure required by law; or
- (5) Unsupported by substantial evidence.

### **ARTICLE 8 – SOVEREIGN IMMUNITY OF THE NATION AND THE PRIVATE RIGHT OF ACTION**

#### **Section 4801 Limited Waiver of Sovereign Immunity**

The sovereign immunity of the Nation extends to its officers, employees, and agents, and is in no way waived except for the limited waiver of sovereign immunity contained herein. The



sovereign immunity of the Nation is hereby waived to the limited extent that lawsuits may be brought against the Nation under Section 4802 in Court for injunctive relief or for declaratory judgment only, but not for damages (compensatory, consequential, or punitive), penalties, attorneys' fees, court costs, or any other remedy.

### **Section 4802 Private Right of Action**

Any Person may sue any other Person in the Court to enforce the provisions of this Chapter or the regulations issued hereunder, or to allege a failure by the Livestock Inspectors' Office to perform any act or duty under this Chapter. In lawsuits against parties other than the Nation, the Court, in its discretion, may award damages, penalties, attorneys' fees, or court costs to the prevailing party.

### **Section 4803 Restriction**

No one may file a lawsuit under this Chapter either: (1) within 60 calendar days of notifying the Livestock Inspectors' Office and the alleged violator in writing of the violation complained of; or (2) if the Livestock Inspectors' Office in the name of the Nation has filed and is diligently pursuing an enforcement action in Court against the same violation.

### **Section 4804 Statute of Limitation**

Subject to the provisions of Section 4801 and Section 4803, any lawsuit brought under Section 4802 must be filed within two years after discovery of the act or violation complained of. In the event that the Livestock Inspectors' Office, in the name of the Nation, has filed and is diligently pursuing an enforcement action in Court against the same alleged violator for the same violation, the two year time period shall be tolled and shall begin to run on the date of the final order or judgment by the Court in the action.

### **Section 4805 Intervention**

The Nation, if not a party to the action, may intervene as a matter of right in any action under this Chapter.

## **ARTICLE 9 – EXCLUSION OF LIABILITY AND INDEMNIFICATION**

### **Section 4901 Exclusion of Liability and Indemnification**

The Nation or any of its officers, agents or employees shall not be liable for any loss, damage, or injury of any kind to Persons, property, resources, or the environment caused by any Person or licensee who transports or handles livestock within the Nation. Any Person, licensee, or permit holder who transports or handles livestock, shall indemnify the Nation, its members, officers, agents, or employees and shall defend and hold them harmless from any claims and liabilities of any nature whatsoever arising from actions of the Person, licensee, or permit holder taken under this Chapter or licenses, or permits issued under this Chapter.

## **ARTICLE 10 - SEVERABILITY**

### **Section 41001 Severability**

If any provision(s) of this Chapter is determined to be invalid, unenforceable, illegal, or inoperable by a court of competent jurisdiction, its invalidity shall not affect the validity and effect of the other provisions hereof.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Enacting Tohono O'odham Code Title 2, Chapter 4 - Livestock Owners, and**  
**Repealing Inconsistent Laws)**

**RESOLUTION NO. 08-695**

1 **WHEREAS, the Legislative Council is vested with the power to provide laws “to promote, protect**  
2 **and provide for public health, peace, morals, education and general welfare of the**  
3 **Tohono O'odham Nation and its members,” and to “[f]ulfill the responsibilities of**  
4 **each generation as trustee of the environment for succeeding generations”**  
5 **(Constitution of the Tohono O'odham Nation, Article VI, Section (1)(c)(2) and Article**  
6 **XVIII, Section 2(a)); and**

7 **WHEREAS, in recognition of the central importance of livestock on the Nation, the former**  
8 **Papago Council enacted numerous laws governing livestock brands, control of**  
9 **livestock, permits for livestock buyers, and other matters (Ordinance No. 22;**  
10 **Ordinance No. 12, as amended; Ordinance No. 35, as amended); and**

11 **WHEREAS, in an effort to update tribal livestock laws, some of which have been in existence**  
12 **without amendment since 1939, representatives of the Papago Council and, later, the**  
13 **Legislative Council have drafted numerous versions of an updated, comprehensive**  
14 **Nation's livestock ordinance over the last 30 years (e.g., Resolution No. 403-87**  
15 **(defeated)); and**

16 **WHEREAS, over the past three years, the Legislative Agricultural Committee has worked with the**  
17 **Nation's Natural Resources Department to draft livestock laws that are more limited**  
18 **in scope; and**

19 **WHEREAS, as a result, a draft Livestock Owners law, which would regulate the branding**  
20 **verification, sale, inspection, transfer, and seizure of livestock on the Nation, has**  
21 **been drafted and codified for inclusion in the Tohono O'odham Code as Title 2,**  
22 **Chapter 4 - Livestock Owners; and**

23 **WHEREAS, Chapter 4 - Livestock Owners has been reviewed with the public at livestock summits**  
24 **and other public meetings and was distributed for 30-day public comment periods**  
25 **on August 18, 2006 and March 16, 2007; and May 14, 2007; and July 2, 2008; and July 31,**  
26 **2008; and**

27 **WHEREAS, it is in the Nation's best interest to update the Nation's livestock laws by enacting**  
28 **Tohono O'odham Code as Title 2, Chapter 4 - Livestock Owners.**  
29

1 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts**  
2 **and enacts Tohono O'odham Code Title 2, Chapter 4 - Livestock Owners.**

3 **BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that it hereby repeals the**  
4 **following:**

- 5 **(1) Resolution No. 48-363, Authorizing Livestock Forms;**  
6 **Resolution No. 50-463, Tribal Brand Committee;**  
7 **Resolution No. 50-464, Appointing 5 Members to Tribal Brand Committee;**  
8 **Resolution No. 71-80, Requiring Bond for Livestock Purchase Permits;**  
9 **Resolution No. 146-80, Increasing Livestock Fees; and**  
10 **Resolution No. 147-80, Setting Fees for Livestock Bill Sale Forms.**  
11 **(2) Ordinance No. 10-44, Control Surplus of Livestock, as amended;**  
12 **Ordinance No. 22-51, Branding Recording Ordinance;**  
13 **Ordinance No. 35-58, Livestock Buyers Permits; and**  
14 **Ordinance No. 36-58, Livestock Buyers Permits.**  
15 **(3) Any other provisions of the laws of the Nation that directly conflict with the**  
16 **provisions of Tohono O'odham Code Title 2, Chapter 4 - Livestock Owners;**  
17 **provided that such conflicting provisions shall be deemed repealed only to the**  
18 **extent of the conflict and shall otherwise remain valid.**

19 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 02<sup>ND</sup>. Day**  
20 **of DECEMBER, 2008 at a meeting at which a quorum was present with a vote of 1,718.6 FOR; 643.9**  
21 **AGAINST; 172.0 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by**  
22 **Section (1)(c)(2) of Article VI and Section 2(a) of Article XVIII of the Constitution of the Tohono**  
23 **O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by**  
24 **the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to**  
25 **Section 16 of the Act of June 18, 1934 (48 Stat. 984).**

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**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

  
**Verlon M. Jose, Legislative Chairman**

**10<sup>th</sup> day of December, 2008**

RESOLUTION NO. 08-695

(Enacting Tohono O'odham Code Title 2, Chapter 4 - Livestock Owners, and Repealing Inconsistent Laws)

Page 3 of 3

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ATTEST:

*Lucille Lopez*  
Lucille Lopez, Acting Legislative Secretary

15 day of December, 2008.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 11<sup>th</sup> day of December, 2008 at 9:17 o'clock, a.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

*Felicia Kennedy for*  
Verlon M. Jose, Legislative Chairman

APPROVED

on the 15 day of December, 2008

DISAPPROVED

at 8:46 o'clock, a.M.

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

Returned to the Legislative Secretary on the 15 day of

December, 2008, at 8:50 o'clock, a.M.

*Lucille Lopez*  
Lucille Lopez, Acting Legislative Secretary