Chapter 23

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ARTICLE I. IN GENERAL

Secs. 23-1—23-18. Reserved.

ARTICLE II. RIGHT TO WORK

Sec. 23-19. Definitions.

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

Community.

(1) The term "Community" means the Salt River Pima-Maricopa Indian Community and any subdivision, agency, arm or department thereof, including, but not limited to:

a. Salt River Community Gaming Enterprises;

b. Salt River Commercial Landfill Company;

c. Salt River Sand and Rock Company;

d. Saddleback Communications Company;

e. Salt River Community Property Development and Asset Management Company;

f. Salt River Community Golf Enterprises; and

g. Other enterprises of the Community, as applicable.

(2) The term "Community" does not include any legal entity established and organized by the Salt River Pima-Maricopa Indian Community under the laws of any state with a principal place of business located outside of Community lands (as defined herein).

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

Community lands means all lands within the boundaries of the Community, established pursuant to the Act of February 28, 1859, and Executive Orders, other lands added thereto, lands owned by the Community, and all other lands subject to the jurisdiction of the Community.

Employee means any individual employed by an employer.

Employer means any person, firm, association, corporation or other entity, including the Community, that operates in or upon Community lands and directly or indirectly employs one or more employees to perform work.

Labor organization means any organization, agency, committee or plan in which employees participate that exists for the purpose of representing such employees in dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions, or grievances of any kind relating to employment.

Person means any individual, labor organization, corporation, partnership, company, association or other legal entity.
(Code 1981, § 23-21; Code 2012, § 23-21; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-21, 5-30-2012)

Sec. 23-20. Sovereign immunity.

Except as set forth explicitly in section 23-30(e), nothing in this article is intended to be or shall be construed as a waiver of the sovereign immunity of the Community, its divisions, agents, entities, instrumentalities, employees or officials.
(Code 1981, § 23-22; Code 2012, § 23-22; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-22, 5-30-2012)

Sec. 23-21. Title.

This article shall be known as the Community's "Right To Work Ordinance."
(Code 1981, § 23-23(a); Code 2012, § 23-23(a); Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-23(a), 5-30-2012)

Sec. 23-22. Authority.

This article is enacted pursuant to:

(1) Article VII of the Community's Constitution; and

(2) The Community's inherent sovereign authority to govern activities on Community lands that are based on consensual relationships with the Community or that have a direct effect on the political integrity, economic security, or health or welfare of the Community.

(Code 1981, § 23-23(b); Code 2012, § 23-23(b); Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-23(b), 5-30-2012)

Sec. 23-23. Purpose.

The purpose of this article is to ensure for all persons working for the Community and all persons working on Community lands the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment to a labor organization. This article establishes that the right of persons to work shall not be denied, abridged, restrained, or otherwise jeopardized because of membership in, affiliation with, or financial or other support of a labor organization, or refusal to join, affiliate with, or financially or otherwise support a labor organization.

(Code 1981, § 23-23(c); Code 2012, § 23-23(c); Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-23(c), 5-30-2012)

Sec. 23-24. Findings.

The Community finds that:

(1) It is in the best interests of all persons working for the Community and all persons working on Community lands to have the right to obtain and retain employment regardless of membership in, affiliation with, or financial or other support of a labor organization, or refusal to join, affiliate with, or financially or otherwise support a labor organization;

(2) Persons have the right to be free from discrimination and retaliation that is based on membership in, affiliation with, or financial or other support of a labor organization, or refusal to join, affiliate with, or financially or otherwise support a labor organization;

(3) It is the public policy of the Community that, in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of persons to work for the Community or to work on Community lands shall not be denied, abridged, restrained, or otherwise jeopardized based on membership in, affiliation with, or financial or other support of a labor organization, or refusal to join, affiliate with, or financially or otherwise support a labor organization;

(4) Given the Community's inherent authority over employment and labor relations on Community lands, the Community's regulation of employment on Community lands, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Community finds that the National Labor Relations Act (NLRA) does not apply to the Community government as an employer. Application of the NLRA to the tribal government as an employer would substantially impair the ability of the Community to exercise its sovereign authority and would subject the Community government to the threat of strikes and disrupt the Community government's ability to provide essential services to the Community;

(5) As an exercise of sovereignty and self-governance, the Community government sets standards for labor and employment within the Community that protect employees' interests with respect to issues such as hours of employment, wages, rates of pay, working conditions and grievances. The delegation of such sovereign authority, which is constitutionally vested in the Community Council, to an employer for purposes of bargaining with a labor organization is unlawful; and

(6) The Community has the right to enact this law protecting the right to work for

all persons working for the Community and all persons working on Community lands.

(Code 1981, § 23-23(d); Code 2012, § 23-23(d); Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-23(d), 5-30-2012)

Sec. 23-25. Right to work.

No person shall be required to, as a condition of employment or continuation of employment:

(1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(2) Become or remain a member of a labor organization or be affiliated with a labor organization;

(3) Pay any dues, fees, assessments or other charges of any kind or amount to a labor organization;

(4) Pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or

(5) Be recommended, approved, referred, or cleared by or through a labor organization.

(Code 1981, § 23-24; Code 2012, § 23-24; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-24, 5-30-2012)

Sec. 23-26. Unlawful agreements.

(a) Any agreement, understanding or practice, written or oral, implied or expressed, between an employer and a labor organization that violates the rights of employees guaranteed by this article shall be unlawful, null and void, and of no legal effect.

(b) Any striking, picketing, boycotting or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into any agreement prohibited by this article is hereby declared to be for an illegal purpose and a violation of this article.

(Code 1981, § 23-25; Code 2012, § 23-25; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-25, 5-30-2012)

Sec. 23-27. Deductions.

(a) Employers shall not deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received and accepted, a signed written request and authorization to deduct such amounts, which authorization may be revoked by the employee at any time by giving written notice of the revocation to the employer.

(b) Employers are under no obligation to accept any request from an employee to voluntarily deduct from the employee's wages, earnings or compensation any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization. Employers shall determine, at their discretion, whether to accept the administrative burden of making such voluntary deductions.

(Code 1981, § 23-26; Code 2012, § 23-26; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-26, 5-30-2012)

Sec. 23-28. Coercion and intimidation prohibited.

(a) It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his or her immediate family members, or by any damage or threatened damage to an employee or prospective employee's property, to compel or attempt to compel an employee or prospective employee to join, affiliate with, or financially support a labor organization, or to refrain from doing so or to otherwise forfeit the rights guaranteed by this article.

(b) It shall be unlawful to cause or attempt to cause an employee to be denied employment or to be discharged from employment because the employee supports or does not support a labor organization by inducing or attempting to induce any other person to refuse to work with the employee.
(Code 1981, § 23-27; Code 2012, § 23-27; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-27, 5-30-2012)

Sec. 23-29. Discrimination and retaliation prohibited.

No employer shall discriminate or retaliate against any employee based on the employee's membership in, affiliation with, or financial or other support of a labor organization, or the employee's refusal to join, affiliate with, or financially or otherwise support a labor organization.
(Code 1981, § 23-28; Code 2012, § 23-28; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-28, 5-30-2012)

Sec. 23-30. Enforcement.

(a) Any person who violates any provision of this article shall be subject to a fine not exceeding $1,000.00 per day per violation. Such liability shall be solely imposed on a labor organization or its representative. This provision shall not, in any way, cause a fine to be levied or become due against the Community.

(b) Any employee injured as a result of any violation or threatened violation of the provisions of this article shall be entitled to petition the Community court for injunctive relief from or against any person who violates or threatens any violation of this article, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. This remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable law.

(c) Any claim brought pursuant to this article must be commenced by the filing of a complaint with the Community court in accordance with the rules of civil procedure for the Community court within 180 days from the date of the violation or threatened violation that form the basis of the complaint.

(d) The Community court shall have jurisdiction over all causes of action alleging violations of this article.

(e) The Community hereby consents to a limited waiver of sovereign immunity from suit exclusively for claims by Community employees alleging violations of this article against the Community in the Community court. This waiver is limited as described herein, and nothing herein is intended to be or shall be construed as a waiver of the sovereign immunity of the Community in any other courts, or for any other causes of action.
(Code 1981, § 23-29; Code 2012, § 23-29; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-29, 5-30-2012)

Sec. 23-31. NLRA.

Nothing in this article is intended to be or shall be construed as an imposition of any requirements of the NLRA on the Community, its divisions, agents, entities, instrumentalities, employees or officials.
(Code 1981, § 23-30; Code 2012, § 23-30; Ord. No. SRO-349-09, 7-29-2009; Ord. No. SRO-402-2012, § 23-30, 5-30-2012)

Secs. 23-32—23-50. Reserved.

ARTICLE III. WORKERS' COMPENSATION

DIVISION 1. GENERALLY

Sec. 23-51. Title and effective date.

This article shall be known as the Community's Workers' Compensation Ordinance (article) and shall be effective in regards to all claims that arise after August 17, 2011.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 1, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-52. Purpose.

The purpose of this article is to establish a systematic and uniform procedure for the administration of workers' compensation benefits for employees of the Community and its departments, divisions and enterprises.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 2, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-53. Policy.

(a) The Community utilizes a combination of insurance and self-insurance to provide workers' compensation coverage and to administer its workers' compensation program in accordance with Community law.

(b) The Community provides workers' compensation and other applicable benefits when employees suffer a work-related injury or death arising out of and occurring in the course and scope of employment with the Community.

(c) The Community provides workers' compensation benefits through an administrative system that allows qualifying employees and their dependents to obtain prompt medical treatment and fair, adequate and reasonable income benefits without incurring the costs and delays of litigation.

(d) The Community provides workers' compensation benefits through an administrative system to restore qualifying employees physically and economically to self-sufficient status in a reasonably expeditious manner and to the greatest extent practicable.

(e) The Community's workers' compensation program constitutes the sole and exclusive source and means by which employees and their dependents may seek and qualify for remedies for work-related injuries or death arising out of and occurring in the course and scope of employment with the Community.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 3, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-54. Scope.

(a) This article applies to all employees of the Community and its departments, divisions and enterprises.

(b) All employees of the Community, as defined in section 23-55, are covered by this article for compensable injuries, whether the compensable injuries occurred on or off the Community.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 4, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-55. Definitions.

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

Administrator means the third party entity that is responsible for managing the workers' compensation program. The administrator's responsibilities include, but are not limited to:

(1) Determining the compensability of claims;

(2) Making payments to injured workers, medical providers and others;

(3) Managing a trust account, if deemed appropriate for the purpose of dispensing the Community's workers' compensation payments; and

(4) Making reports to the Community regarding its program and individual claims.

The administrator's duties are more fully described in section 23-58.

Claimant means any employee or dependent who files a claim with the administrator for benefits under this article.

Community means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribe, and all of its departments, divisions and enterprises.

Compensable injury means a work related injury to an employee, whether on or off the premises of the Community, that results in:

(1) Medical treatment, with or without lost work time; or

(2) The employee's death.

Council means the Community Council, the governing body of the Community.

Days means calendar days, unless otherwise provided.

Dependent means the spouse, parent, child, grandparent, stepparent, grandchild, sibling, half-sibling, niece, nephew or other extended family member or good faith member of the household of the employee who can prove through verifiable evidence that he or she was actually and necessarily dependent in whole or in part upon the earnings of the employee at the time of the employee's death caused by a compensable injury. The administrator shall verify that a claimed dependent qualifies for dependent status under this definition before administering dependency benefits under this article.

Designated workers' compensation liaison means the persons or entities that the Community and its departments, divisions and enterprises designate to accept incident reports and transfer them to the administrator. The Community government and each Community enterprise shall have a designated workers' compensation liaison.

Disability means an employee's incapacity, because of a work-related injury, to earn wages performing his or her job functions.

Employee.

(1) The term "employee" means a person employed by or in the service of the Community, its departments, divisions or enterprises under any appointment or contract for hire or apprenticeship, express or implied, oral or written, where the Community has the power or right to control and direct such individual, whether such individual receives a salary or wages or is a volunteer.

(2) The term "employee," for purposes of this article, does not include contractors, board or committee members or outside consultants.

Employer means the Community as defined in this article.

Impairment means any anatomic or functional abnormality or loss.

Incident means an event that causes impairment.

Independent medical examination (IME) means a medical examination and/or evaluation of the claimant scheduled by the employer or administrator, at the employer's expense, for the purpose of obtaining a medical opinion or information. The administrator may order an IME at its discretion, but normally shall order an IME when a medical dispute arises under a claim, or when the compensatory nature of an alleged injury is dependent upon a medical determination.

Managerial reviewer means a person or group of persons designated by the third party administrator to conduct an independent review of the final administrator decision issued by the claims examiner.

Mental injury means a mental, emotional, psychotic or neurotic injury, illness or condition.

Occupational disease means a disease caused by employee's performance of his or her job duties where all six of the following requirements exist:

(1) There is a direct causal connection between the conditions under which the work was performed and the occupational disease;

(2) The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) The disease can be fairly traced to the employment as the proximate cause;

(4) The disease does not come from a hazard to which workers would have been equally exposed outside of the employment;

(5) The disease is incidental to the character of the business and not independent of the relations of the employer and employee; and

(6) The disease, after its contraction, appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.

Permanent impairment means any impairment that the health care provider considers stable or nonprogressive upon evaluation after maximum medical rehabilitation has been achieved.

Permanent partial disability means as defined in section 23-61(d)(2).

Permanent total disability means as defined in section 23-61(d)(1).

Physician means a physician or surgeon holding an M.D. or D.O. degree, or a psychologist, acupuncturist, optometrist, dentist, podiatrist or chiropractic practitioner licensed under state law and practicing within the scope of his or her licensure.

Spouse means the husband or wife of the employee who was married to the employee at the time of the death caused by a compensable injury, and whose marriage is duly recognized by the laws of the state or the Community.

Temporary partial disability means as defined in section 23-61(c)(2).

Temporary total disability means as defined in section 23-61(c)(1).

Work-related injury.

(1) The term "work-related injury" means:

a. An impairment caused by an incident arising out of and occurring in the course and scope of employment;

b. An impairment caused by the willful act of a third person or third party directed against an employee during employment with the Community; or

c. An occupational disease arising out of and occurring in the course and scope of employment.

Work-related injuries under this section shall be either: specific, which means that the injury is a result of one incident or exposure that causes disability or a need for medical treatment; or cumulative, which means that the injury is a result of repetitive activities extending over a period of time that cause disability or a need for medical treatment. The date of a cumulative injury is the date upon which the employee first suffered the disability or need for medical treatment and knew, or in the exercise of reasonable diligence should have known, that the disability or need for medical treatment was caused by his or her present or prior employment.

(2) The term "work-related injury" does not include injuries caused by the acts identified in section 23-60. Mental injuries shall not be considered work-related injuries and shall not be compensable pursuant to this chapter unless an unexpected, unusual or extraordinary stress related to the employment, or a physical injury related to the employment, was a substantial contributing cause of the mental injury. Examples of mental injuries that are not considered work-related injuries and are not compensable pursuant to this chapter include, without limitation, mental injuries caused by good faith, nondiscriminatory employment actions, including termination and discipline of an employee.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 5, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-56. Exclusive remedy.

(a) The recovery of workers' compensation benefits pursuant to this article shall be the sole and exclusive remedy for all employees of the Community (including their dependents) for any liability or claims arising from any work-related injury, including death resulting from any work-related injury.

(b) The liability of the Community for any work-related injury, including death resulting from any work-related injury, shall be limited to the benefits available to claimants under this article. The Community shall not be liable for damages at common law or by statute. Such liability shall not be expanded except by amendment of this article by the council.

(c) Nothing in this article shall be deemed or construed as a waiver of the Community's sovereign immunity. The Community objects to and does not consent to the jurisdiction of:

(1) The state, including its statutory workers' compensation system and the industrial commission of the state;

(2) Any other state or municipality; or

(3) Any court of law or equity, including the Community court.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 6, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-57. Reporting obligations.

(a) The duty to report a work-related injury or death shall remain with the employee or surviving dependents until a supervisor or manager of the employee receives a report of the work-related injury or death from the employee, the surviving dependents or an authorized representative.

(b) Employees or their authorized representatives must report any work-related injury, no matter how slight, to a supervisor, higher level manager or the designated workers' compensation liaison immediately, but in no event more than 72 hours after the date of the work-related injury.

(c) Surviving dependents or their authorized representatives must report any employee death to a supervisor, higher level manager or the designated workers' compensation liaison within 30 days of the date of death.

(d) A supervisor or manager of an employee who receives a report of a work-related injury from an employee or an employee's authorized representative must present an initial report of injury to the designated workers' compensation liaison promptly, but in no event more than 90 days after the date of the work-related injury.

(e) The designated workers' compensation liaison must report a work-related injury to the administrator promptly, but in no event more than 14 days after receiving an initial report of injury.

(f) Notwithstanding any provision of this section, the time for reporting a work-related injury or death shall not begin to run until:

(1) The employee or surviving dependent is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the work-related injury or death and the employment; and

(2) The employee or surviving dependent is physically and mentally capable of reporting the work-related injury or death. Employees and surviving dependents will be presumed to be physically and mentally capable of meeting the reporting requirements unless they provide bona fide medical certification of their physical or mental incapability.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 7, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-58. Third party administrator.

The administrator will act on behalf of the Community in receiving, processing, and administering workers' compensation claims, including the payment of benefits, under this article. The responsibility of the administrator to make determinations and decisions includes, but is not limited to, the following:

(1) Based upon investigation and available information, the administrator will make a determination of the responsibility of the employer and will either accept or deny a claim. Within 90 days of receipt of an initial report of injury or death, the administrator will advise the claimant and employer of its determination or the necessity of postponing the decision for another 90-day period to obtain sufficient information to render a decision.

(2) The administrator will determine the reasonableness and necessity of medical care and charges and will determine the amounts payable under this article. The administrator will also approve or disapprove any request for a change of treating physician, referral to a physician or surgical procedure.

(3) The administrator will retain medical control for the life of the claim.

(4) The administrator will determine when the claimant has reached the point where no further material improvement from medical treatment would reasonably be expected, at which point the administra-

tor shall issue a determination that the claimant has reached the point of maximum medical improvement.

(5) Based on information supplied by the employer and/or claimant, the administrator will determine the compensation rate payable for temporary total disability, temporary partial disability, permanent partial disability, and/or permanent total disability (as defined in section 23-61(c) and (d)).

(6) The administrator will determine the eligibility of dependents and the terms of any dependency benefits payable.

(7) In the event of the need to allocate dependency benefits between dependents living in different households, the administrator will make the necessary allocation based on the obligations, legal or otherwise, of the decedent.

(8) If a claimant's claim is subject to the limitations of section 23-98, statute of limitations, the administrator shall advise the claimant and employer of the effect of the limitations in writing.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 8, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-59. Independent medical examination, assignment of treating physician and duty to submit to medical treatment.

(a) Whenever a claim for benefits under this article has been made, the claimant shall, upon the written request of the administrator, submit at reasonable intervals to an IME by a practicing physician provided and paid for by the employer.

(b) If the claimant unreasonably fails to appear for a scheduled IME, the responsibility of the employer for payment of medical expenses and/or other benefits relative to the workers' compensation claim shall cease until such time as the claimant appears for the IME.

(c) The employer, through its administrator, retains full control over claimant's medical treatment for the duration of the claim. This shall include, without limitation, sole discretion to assign or reassign claimant's treating physician, as well as to approve or deny any request for a change of treating physician or other medical provider.

(d) The administrator may reduce, suspend or terminate the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or impede his or her recovery, or who refuses to submit to medical or surgical treatment reasonably necessary to promote the claimant's recovery.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 9, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-60. Acts outside course or scope of employment.

(a) Employees determined to have been acting outside the course or scope of their employment when the incident giving rise to the work-related injury occurred shall be denied any benefits under this article.

(b) An incident that occurs while the employee is commuting to or from work does not arise out of or occur within the course and scope of employment.

(c) The Community shall not be legally liable for any injury, disease or death sustained by an employee in any of the following situations:

(1) Where alcohol intoxication or the improper or unlawful use of a controlled substance causes or contributes to the incident that gives rise to the injury, disease or death;

(2) Where the employee is under the influence of any substance that impairs the ability of the employee to perform his or her work duties in a safe manner;

(3) Where the employee has willfully and deliberately caused his or her own injury, disease or death;

(4) Where the injury, disease or death arises out of an altercation in which the injured employee is the initial physical aggressor;

(5) Where the injury, disease or death is caused by the commission of a criminal act by the employee;

(6) Where the injury, disease or death arises out of voluntary participation in any off-duty recreational, social or athletic activity not constituting a part of the employee's work-related duties, including but not limited to, voluntary intramural sporting events or activities sponsored by the employer;

(7) Where the injury, disease or death is predominantly (greater than 50 percent) caused by a preexisting condition or injury, whether or not work related;

(8) Where the injury, disease or death is actually or proximately caused by the inhalation of secondhand smoke;

(9) Where an injury is diagnosed as reflex sympathetic dystrophy (RSD) or complex regional pain syndrome (CRPS);

(10) Where the injury, disease or death is caused by an act of God, except when the employee's course and scope of work places the employee at greater risk of injury, disease or death than the general population during the act of God; or

(11) Where the injury, disease or death results from natural causes or other causes which are not caused by an employee's course and scope of work.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 10, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-61. Benefits.

(a) *Guidelines for calculating to be enacted; reviewed; adjusted.* Within 90 days of the date of enactment of this article, the administrator shall prepare written guidelines for calculating the amount of compensation benefits to be paid under this article, and these written guidelines may be comparable to benefits mandated for employees by the industrial commission of the state.

(1) The written guidelines shall not be effective until approved by a majority vote of the council.

(2) Every three years from the date of enactment of this article, the administrator shall review and adjust, if appropriate and necessary, the written guidelines for calculating the amount of compensation benefits to be paid under this article. Any adjustments to the written guidelines shall not be effective until approved by a majority vote of the council.

(b) *Customary medical and supportive care costs.*

(1) Usual and customary medical and supportive care costs will be provided under this article and may be comparable to those established by the state industrial commission. Unless there are extenuating circumstances, the administrator must preapprove medical services and providers.

(2) Supportive care is available after the claimant has reached the point of maximum medical improvement, and active medical treatment has ceased. Supportive care includes treatment for reducing pain or other care used to maintain the status quo after the claimant has reached the point of maximum medical improvement.

(c) *Temporary total and partial disability benefits.*

(1) Temporary total disability exists when the claimant is under active medical care and the work-related injury prevents the claimant from working at all.

(2) Temporary partial disability exists when the claimant is cleared by his or her medical provider to engage in some form of work-related activity while active medical care continues for the work-related injury.

(3) Temporary total and partial disability benefits will be provided under this article and may be comparable to those established by the laws of the state for comparable workers' compensation injuries, including any applicable schedules for the determination of temporary total or temporary partial disability benefits used by the industrial commission of the state. However, nothing herein shall mandate that the Community provide the same benefits recoverable under state law.

(4) Except for severe injuries that usually require extended recuperation (e.g., severe burns, amputations and major surgeries), temporary disability benefits shall not extend beyond 104 weeks. For severe injuries, temporary disability benefits shall not extend beyond 234 weeks.

(d) *Permanent total and partial disability benefits.*

(1) Permanent total disability exists when, after the administrator has determined that a claimant has reached the point of maximum medical improvement, the claimant's actual or presumed ability to engage in gainful employment is absent because of a work-related injury.

(2) Permanent partial disability occurs when, after the administrator has determined that the claimant has reached the point of maximum medical improvement, the claimant's actual or presumed ability to engage in gainful employment is reduced because of a work-related injury.

(3) Permanent partial disability benefits.

a. In determining the percentages of permanent partial disability, the administrator shall take into account the nature of the impairment, the occupation of the injured worker and the claimant's age at the time of the injury, with consideration given to the diminished ability of the claimant to compete in an open labor market within the Community or the surrounding county within which the claimant's job is located.

b. It is the intention of this article that the laws of the state for comparable workers' compensation injuries, including any applicable schedules for the determination of permanent total or permanent partial disability benefits used by the industrial commission of the state, may be used for guidance in determining permanent total or permanent partial disability benefits. However, nothing herein shall mandate that the Community provide the same benefits recoverable under state law.

c. In no event shall permanent partial disability for any and all work-related injuries combined exceed an aggregate total of 100 percent (i.e., it shall not be greater than permanent total disability).

(e) *Vocational rehabilitation.* If the claimant, because of a permanent disability, whether partial or total, is unable to return to either:

(1) His or her usual and customary work; or

(2) A permanent modified or alternate position, the Community will work with the claimant, as the administrator deems reasonably appropriate, to provide vocational rehabilitation services to assist the claimant to return to gainful employment. Claimants who fail or refuse to avail themselves of vocational rehabilitation services offered by the administrator may have their benefits under this article reduced or terminated.

(f) *Modified duty.* The Community will, within one year from the date of enactment of this article, adopt modified duty return to work policies and programs. The Community government and each division and enterprise of the Community shall adopt a modified duty return to work policy that meets the needs of its respective entity.

(g) *Aggravation of preexisting condition.* For purposes of permanent partial or permanent total disability caused by the aggravation of a preexisting condition, the amount of the award for that disability may be reduced or denied in its entirety by the administrator based upon the following:

(1) A prior settlement or award from any source for the preexisting condition; and

(2) The difference between the degree of disability of the claimant before the work-related injury and the claimant's present degree of disability.

(h) *Dependency benefits.*

(1) In case of a work-related injury causing death within three years from the date of the injury, benefits shall be payable to the employee's surviving dependents. The administrator shall determine whether the surviving dependents are qualified to receive benefits under this article, including whether the surviving dependents were necessarily totally or partially dependent upon the employee at the time of the employee's death.

(2) Upon request, a person seeking dependency benefits must furnish the administrator with proof, satisfactory to the administrator, of the nature, amount and extent of the contribution employee made to the surviving dependent's support.

(3) It is the intention of this article that state law for survivor benefits, including any applicable schedules for the determination of such benefits used by the industrial commission of the state, may be used for guidance in determining dependency benefits. However, in no event shall the aggregate total amount payable to the surviving dependents exceed $750,000.00.

(i) *Compensation limits.* In no event shall compensation payable to a claimant pursuant to this article exceed $1,250,000.00.

(j) *No compensation after death or retirement.* Compensation benefits paid to a claimant under this article shall cease upon the claimant's death or after the actual retirement of the claimant or after the claimant reaches age 65, whichever is sooner.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 11, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-62. Amendment.

This article may be amended in accordance with applicable Community law.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 19, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Secs. 23-63—23-82. Reserved.

DIVISION 2. DISPUTE RESOLUTION; APPEAL AND SETTLEMENT

Sec. 23-83. Final administrator determination.

When a final written determination has been made on a claim by the administrator, the final written determination shall include the following:

(1) A statement informing the claimant that this is a final written determination;

(2) A statement informing the claimant of his or her right to a managerial review;

(3) A statement explaining where a managerial review request should be sent; and

(4) A statement explaining that a managerial review request must be received by the administrator within 30 days of issuance of a final written determination.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(a), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-84. First level of appeal; administrator managerial review.

A managerial review request must be made in writing within 30 days of the administrator's issuance of the final written determination.

(1) The managerial review request must state in detail the basis for any disagreement with the administrator's determination.

(2) Requests for managerial review shall be made directly to the administrator.

(3) The managerial reviewer shall issue a decision in writing via certified mail to all managerial review requests within a reasonable time, not to exceed 60 days.

(4) This final managerial determination must include the following:

a. A statement informing the claimant that this is a final written managerial determination;

b. A statement informing the claimant of his or her right to file an appeal with the Community's workers' compensation appeals board;

c. A statement explaining where an appeal to the Community's workers' compensation appeals board should be sent; and

d. A statement explaining that an appeal must be received by the Community's workers' compensation appeals board within 30 days of receipt of a final written managerial determination.

In general, a claimant may not file a written request for a hearing with the Community's workers' compensation appeals board until after the claimant has received a final managerial determination. The limited exceptions to this general rule are set forth in section 23-85(b).
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(b), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-85. Final appeal; Community's workers' compensation appeals board.

(a) Within 30 days of receiving a final managerial determination, a claimant who disagrees with a final written determination made by the managerial reviewer may file a written request for a hearing before the Community's workers' compensation appeals board (appeals board).

(b) A claimant may also request a hearing before the appeals board:

(1) To address the administrator's failure to issue a written determination if, through no fault of the claimant's own, the administrator does not issue a written determination within 90 days of receipt of an initial report of a work-related injury or death;

(2) To address the administrator's failure to issue a written determination if, through no fault of the claimant's own, the administrator does not issue a written determination within 180 days of receipt of an initial report of a work-related injury or death, after the administrator has exercised the option to postpone the issuance of a written determination for 90 days; or

(3) To appeal the administrator's final written determination directly to the appeals board if, through no fault of the claimant's own, the managerial reviewer does not issue a final written determination within 60 days of receipt of a request for managerial review.

Any request for a hearing before the appeals board that is made pursuant to subsection (b)(1), (2) or (3) of this section must be filed within 30 days of the relevant lapsed deadline.

(c) A claimant who requests a hearing before the appeals board must include the following in his or her written request:

(1) The name, address and phone number of the claimant;

(2) A brief summary of the relevant facts;

(3) A brief statement of the disputed issue; and

(4) A brief statement of the relief sought.

(d) Failure by a claimant to request an appeal hearing within the timeframe specified in this article renders the previous decision by the administrator or the managerial reviewer final.

(e) A hearing before the appeals board shall be held within 90 days of receipt of a request for a hearing. The claimant may request, in writing, one extension of the hearing date for up to 90 days, which shall be granted by the appeals board.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(c), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-86. Composition of the appeals board.

(a) The Community Council shall appoint a hearing officer to serve as the appeals board. This hearing officer shall hear any issues and make any necessary final determinations that may arise under this article.

(b) The hearing officer shall be appointed by the Community Council for a two-year term and shall be an attorney licensed within the state who has either previous judicial experience or previous experience in the area of workers' compensa-

tion. The hearing officer shall not be an employee of the Community and shall serve in an objective and independent manner.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(c), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-87. Requests for appeal.

(a) Requests for appeal may be sent to:

Salt River Pima-Maricopa Indian Community

Workers' Compensation Appeals Board

c/o Office of the Treasurer, Risk Management Division

10005 East Osborn Road

Scottsdale, Arizona 85256

(b) A copy of an appeal request must also be sent to Community's office of the general counsel at the following address:

Salt River Pima-Maricopa Indian Community

Office of the General Counsel

10005 East Osborn Road

Scottsdale, Arizona 85256

Written appeal requests must be delivered by certified mail or via personal delivery.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(d), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-88. Notice of hearing date.

The appeals board shall send written notice to each party informing them of the hearing date at least 30 days prior to the hearing.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(e), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-89. Discovery.

(a) All medical reports relating to the claimed injury, disease or death must be filed with the appeals board and served by U.S. first class mail or hand delivery on all parties at least 15 days prior to the hearing date, if the reports have not been previously disclosed.

(b) Either party may request, in writing, disclosure of statements from witnesses, if any such statements exist, at least 15 days prior to the hearing date.

(c) Upon written request by a party, depositions may be ordered by the appeals board.

(1) Each party may request that the appeals board order the deposition of up to two individuals.

(2) The appeals board may, upon showing of good cause, allow a party to exceed its deposition limit and depose more than two individuals.

(3) The appeals board shall have authority in the appeals board's absolute discretion to order depositions of any number of party witnesses, including current employees of the Community.

(4) Attorneys' fees and costs associated with a deposition shall be borne by the party requesting the deposition.

(5) Claimant's refusal to submit to any deposition ordered by the appeals board may be grounds for denial of the appeal.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(f), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-90. Conduct of hearing.

The appeals board shall consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just and final determination.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(g), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-91. Standard of proof.

The appeals board shall weigh the evidence, testimony of witnesses and exhibits, and make its

decision based on the preponderance of the evidence and credibility of the evidence and witnesses.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(h), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-92. Burden of proof.

The burden of proof in any hearing before the appeals board shall be on the claimant.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(i), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-93. Right to counsel.

Both the Community and the claimant may have legal representation, including licensed attorneys, during the appeals process and at any hearing before the appeals board. The parties will each bear the fees and costs associated with their own legal representation.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(j), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-94. Applicable law.

(a) Any claim brought under this article shall be determined in accordance with the laws of the Community and the principles of law applicable to similar claims arising under applicable federal law. To the extent that Community law differs from applicable federal law, then the applicable federal law shall govern.

(b) The state workers' compensation laws, including applicable common law authority and regulations, may be used as a nonbinding source of guidance at the appeals board's sole discretion. Any use of state statutory law for guidance shall be liberally construed in favor of the employer.

(c) The use of federal, state or other case law as a source for guidance shall not be deemed or construed as a waiver of the Community's sovereign immunity.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(k), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-95. Final decision.

(a) Within 30 days of the hearing, the appeals board shall issue a written decision on the matter with copies of the decision mailed to all interested parties.

(b) The decision shall generally review the evidence and testimony and may compare the merits of the evidence or testimony of the opposing parties. The decision shall state the final determination of the appeals board on all issues before it.

(c) All decisions of the appeals board are final. There shall be no right to judicial review.

(d) Except as provided in section 23-96, no attorneys' fees, costs or punitive damages, including but not limited to, punitive damages awards for:

(1) Delay in payment of benefits;

(2) Serious and willful misconduct; or

(3) Discrimination against an injured employee, shall be awarded to any claimant.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(l), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-96. Claimant's attorneys' fees.

In a proceeding before the appeals board in which an attorney employed by the claimant has rendered services reasonably necessary in processing the claim, the appeals board, may, upon application from the claimant, order that a reasonable portion of the claimant's award be paid to the attorney as the attorney's fee.

(1) The attorney's fee shall not exceed 25 percent up to ten years from the date of the award. In cases involving solely loss of earning capacity, the maximum shall be 25 percent up to five years from the date of the final award.

(2) When the payment of the award to the claimant is made in installments, or in any manner other than a lump sum man-

ner, no more than 25 percent of the payment amount may be withheld from any single payment for the attorney's fee.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(m), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-97. Effect of request for hearing.

(a) During the pendency of the appeal, the claimant shall continue to receive all benefits approved by the administrator in its original written decision but shall not receive any new benefits claimed before the appeals board, unless and until the appeals board has issued a final written decision awarding additional benefits.

(b) Payments made to the claimant during the pendency of the action shall not be recouped or recovered by the administrator or the employer, except in the situations described in section 23-102.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 12(n), 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-98. Statute of limitations.

(a) The right to benefits under this article shall be barred if the reporting obligations described in section 23-57(b) and (c) are not met.

(b) A determination that is not appealed timely pursuant to the terms of sections 23-83 through 23-85 will render the determination final.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 13, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-99. Settlement and release.

Nothing in this article shall impair the parties' ability to settle any claim arising under this article, subject to the provisions herein. After reaching a settlement, a copy of the settlement agreement and release, signed by the parties must be sent to the Community's office of the general counsel at the address listed in section 23-87(b). If the settlement is negotiated by the administrator, then it shall be presented to the Community or its representative for approval. If approved, the administrator shall enter an award based on the release or compromise agreement.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 14, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-100. Claim closure.

The administrator shall close a claim when it determines any of the following:

(1) The claimant is not entitled to benefits under this article;

(2) All benefits payable under this article have been paid;

(3) The claimant unreasonably has failed to submit to medical treatment or has abandoned reasonable medical treatment; or

(4) Any other reason permitted under this article.

(Code 2012, art. III; Ord. No. SRO-384-2011, § 15, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-101. Claim reopening and rearrangement.

(a) The claimant may seek to reopen a previously accepted claim to secure an increase or rearrangement of benefits by filing with the administrator a petition requesting reopening of the claim no more than three years after the most recent final permanent disability award was entered on the claim.

(b) No petition to reopen shall be considered except upon proof of a new, additional or previously undiscovered temporary or permanent condition. The petition shall be accompanied by a statement from a physician setting forth the physical condition of the claimant relating to the claim.

(c) The Community retains jurisdiction to rearrange any permanent disability benefits award at any time, if the administrator determines that the claimant's earning capacity has increased or decreased. Among the bases the administrator

may consider in making this determination is proof of any change in the claimant's physical condition affecting his or her earning capacity.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 16, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-102. Recovery of payments made due to error, mistake, erroneous adjudication, fraud, etc.

(a) Whenever any payment of benefits under this article has been made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient thereof shall repay it.

(1) The administrator must make a claim for such repayment or recoupment within one year of making any such payment, or it will be deemed that the claim has been waived.

(2) Upon the approval of the Community, or a designated representative, the administrator may waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(b) Whenever the administrator has made any payment of benefits under this article pursuant to a determination, and a timely appeal therefrom has been made which results in a final decision that the claimant is not entitled to such payments, the claimant shall repay such sums. Subject to approval by the Community or its authorized representative, the administrator may waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(c) Whenever any payment of benefits under this article is found by the appeals board to be induced by fraud or misrepresentation, the recipient thereof shall repay any such benefits together with a penalty of up to 50 percent of the total of any such payments. The administrator must make a claim for such repayment or recoupment within one year after discovery of the fraud or misrepresentation, or such claim shall be deemed waived.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 17, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Sec. 23-103. Claim files and records confidentiality.

(a) Information kept in the administrator's claims files and records for any claimant under the provisions of this article shall be deemed the property of the Community, shall be treated as strictly confidential and shall not be open to public inspection.

(b) Claimants or their authorized representatives may review a claims file or receive specific, nonprivileged information therefrom upon the presentation of a signed written authorization from the claimant or authorized representative.

(c) The employer or its authorized representative may review any claims files of any claimant in connection with any pending claims filed under this article.

(d) Treating or examining physicians of employees seeking benefits under this article, or physicians giving medical advice to the administrator regarding any claim hereunder, may, at the discretion of the administrator, inspect the relevant employees' claims files and records.

(e) Employees or authorized agents of the Community may make a claims file inspection, at the administrator's discretion, when they are rendering assistance to the administrator at any stage of the proceedings on any matter pertaining to administration of this article.

(f) The information contained in claims files and records is the property of the Community and is not subject to discovery for any purpose not expressly authorized by this article. Further, nothing in this article is intended to grant any federal, state, administrative or other court, other than the appeals board, jurisdiction to compel production and discovery of such claims files and records.
(Code 2012, art. III; Ord. No. SRO-384-2011, § 16, 8-17-2011; Ord. No. SRO-402-2012, 5-30-2012)

Secs. 23-104—23-134. Reserved.

ARTICLE IV. RETIREMENT/BENEFIT COMPLIANCE AND ADVISORY COMMITTEE

Sec. 23-135. Definitions.

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

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

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

Sec. 23-136. Coordination of federal and tribal law.

(a) Governing law for retirement benefits claims. In order to provide participants and beneficiaries under those Community benefit plans classified as government status plans under section 906 of the Pension Protection Act of 2006 (PPA), an established system for the administration of benefit claims and due process, the Community hereby adopts as its law the employee protections afforded under the Employee Retirement Income Security Act (ERISA), title I, section 404(a) and (c), fiduciary duties, and section 503, participant claims procedures, subject to the following modifications:

(1) The Community court jurisdiction shall be substituted wherever state or federal court are referenced therein.

(2) Incorporation of said portions of ERISA into Community law shall not be construed to cede any jurisdiction or enforcement authority to the United States Department of Labor, the Internal Revenue Service or other federal or state authorities, to the extent a government status plan is otherwise exempt from such jurisdiction or enforcement authority.

(3) Nothing herein shall subject the Community, or their plans, to penalties, sanctions, or filing requirements which do not apply to a government status plan.

(4) Dispute resolution of plan claims, following administrative exhaustion, shall be resolved:

a. Through the Community Council approved binding arbitration which, in the event of an ERISA governed plan, shall be conducted in accordance with the Federal Arbitration Act; or

b. In the absence of such procedures through the Community courts.

(5) Incorporation of said portions of ERISA is not to be construed as the incorporation of any federal regulations or other agency guidance under ERISA that were not subject to consultation as required by Executive Order 13175.

(b) Until final federal regulations are issued following consultation as required by Executive Order 13175, in determining the government status of any plan of the Community, the following factors shall be used in determining whether an employee is engaged in an "essential" government function or a "commercial" activity as those terms are used in the PPA:

(1) The historic functions performed by the Community government;

(2) The Community's role as defined in its Constitution, ordinances, resolutions, judicial decisions, customs and traditions;

(3) The functions carried on by other governmental employers, including the federal government, states, counties, cities and other local governments;

(4) The use of revenues generated by activities in question (whether inuring to the benefit of the Community and the provision of public services, or whether inuring to private interests); and

(5) Whether the entity or division is treated as a nonprofit or for-profit entity for tax or other purposes.

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

(d) In the event that a federal agency hereafter publishes guidance or regulations which contradict this article, the Community hereby asserts its right to individual consultation over the conflict prior to enforcement of such federal guidance or regulations, as provided in Executive Order 13175, section 23-55(f). The Community also asserts its right to seek a waiver of any such conflicting requirements as provided in Executive Order 13175, section 23-56.

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

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

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

(h) This article shall not be construed as a waiver if sovereign immunity which may be waived only by express resolution of the Community Council.

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

(1) The Community court exhaustion is not waived.

(2) The Community court shall be recognized under the ERISA jurisdictional provisions to the fullest extent permitted at law.

(3) The dispute resolution provisions of section 23-136(a)(1) and (4) shall apply to the fullest extent permitted under law.

(4) The Community shall receive relief from current and future regulations under ERISA and the Code that were not (are not) developed through government-to-government consultation, to the full extent permitted under Executive Order 13175.

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

(1) Each plan level administrator shall be the "named fiduciary" of the benefit plan or plans over which they are primarily responsible for plan administration; and

(2) The Community shall be the plan sponsor.

(Code 2012, § 2-152; SRO 388-2012, § 85(II), 11-30-2011; Ord. No. SRO-402-2012, § 1-152, 5-30-2012)