

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

ORDINANCE NUMBER: SRO-509-2019

AN ORDINANCE AMENDING SECTIONS 13-3, 13-5, 13-7, AND 13-8 OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES TO CLARIFY AND ENHANCE PENALTIES FOR ILLEGAL DUMPING IN THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

BE IT ENACTED THAT:

Chapter 13, sections 3, 5, 7, and 8 of the Salt River Pima-Maricopa Indian Community Code of Ordinances shall be repealed in their entirety and replaced with the text below.

Sec. 13-3. Illegal dumping. (Criminal)

(a) Any person who shall dump any trash, garbage or refuse within the exterior boundaries of the Community, except for the designated landfill area, shall be deemed guilty of a Class C offense and upon conviction shall be subject to a fine of not less than \$100.00 or more than \$1,000.00 or to imprisonment not to exceed six months, or both, with costs.

(b) Any person who allows illegal dumping to occur on property they own in whole or part, occupy, or use shall be deemed guilty of a Class C Offense and upon conviction shall be subject to a fine of not less than \$100.00 or more than \$1,000.00 or to imprisonment not to exceed six months, or both, with costs.

(c) The Community Court is authorized to issue a garnishment order to recoup any fine or costs imposed upon any Community member landowner, allottee, or occupant found guilty of violating this section.

Sec. 13-5. Community landfill, disposal of dangerous substances.

(a) It shall be unlawful for any person to dispose of substances that pose a danger to human health or the environment in the Community landfill.

(b) For purposes of this section and for subsection (a) of this section, the term "dangerous substances" includes without limitation those substances defined as "hazardous" under federal environmental law, and "hot" loads that pose an imminent danger to combustion.

(c) It shall be unlawful for any person to dispose of sewage sludge or septic tank pumpings in the Community landfill.

(d) The Community landfill shall at all times post signs in conspicuous places along the fenced perimeter of the landfill advising the public of its prohibitions as set forth in this section

regarding trespass, disposal of hazardous and hot materials, and disposal of sewage sludge and septic tank pumpings.

Sec. 13-7. Illegal dumping. (Civil)

(a) It shall be unlawful for any person to dump any material, hazardous or not, within the Community outside of the Community landfill area at any time or to dispose of any material within the Community landfill other than during its regular business hours and pursuant to its current rules and regulations which permit proper disposal of materials.

(b) In addition to, or instead of any other penalties herein, any person who engages in the act of illegal dumping is subject to a civil fine not to exceed \$5,000.00 in addition to any costs the Community incurs to address the illegal dumping.

(c) All vehicles seized and held as evidence shall be subject to towing and storage costs based on daily fee rates until such matter is resolved.

(d) The Community Court is authorized to issue a garnishment order to recoup any fine or costs imposed upon any Community member landowner, allottee, or occupant found in violation of this section.

(e) The burden of proof for this civil violation is preponderance of the evidence.

Sec. 13-8. Impoundment; possible forfeiture of vehicles used in illegal dumping.

(a) Impoundment of vehicle; notification of owner.

(1) Any vehicle or trailer used in the illegal dumping of materials on the Community shall be impounded by law enforcement officers of the Community police department and delivered to the police chief for designation of proper storage.

(2) Upon delivery of impounded vehicles and trailers to a place of storage, the Community civil advocate shall be immediately notified.

(3) Within five business days of the date of impoundment, a notice of impoundment and possible forfeiture by certified mail, return receipt requested, shall be sent by the civil advocate to the registered owner of the vehicle informing such owner of the time and place of a hearing to determine whether the vehicle was operated in violation of section 13-7(a) and if any damages resulted from such operation, and also, of the possible forfeiture of the vehicle. Notice shall be served by the following methods:

a. Upon an owner or claimant, whose right, title or interest is of record in the division of motor vehicles of the state in which the vehicle is licensed, by mailing a copy of the notice by registered mail to the address on the records of the division of motor vehicles of said state.

b. Upon an owner or claimant, whose name and address are known, by mailing a copy of the notice by registered mail to his or her last known address.

c. Upon an owner or claimant, whose address is unknown but who is believed to have an interest in the vehicle, by publication in one issue of a newspaper of general circulation in Maricopa County, Arizona.

(4) The civil advocate shall file a copy of the notice of impoundment and possible forfeiture with the Community court and records of the notice shall be kept within the offices of the police chief and staff attorney.

(b) Owner's answer to notice.

(1) Within 30 days after the mailing or publication of the notice of impoundment and possible forfeiture, the owner of the impounded vehicle may file in the Community court, a verified answer to the allegations contained in the notice of impoundment and possible forfeiture.

(2) If a verified answer is filed, the court shall, without the requirement of further pleadings such as a request for a hearing, set a hearing not less than five business days and not more than ten business days after the answer is filed.

(3) If a verified answer to the notice of impoundment and possible forfeiture is not filed within 30 days, the court shall, without the requirement of further pleadings such as a request for hearing, set a time and place to hear evidence upon the claim of illegal use of the vehicle, order appropriate relief, and upon motion, shall order the vehicle forfeited to the Community, or the following:

a. If no claimant exists and the Community wishes to retain the vehicle for its own official use it may do so; or

b. If such vehicle is not to be retained it shall be disposed of in the manner pursuant to subsection (d)(1) of this section.

(c) Hearing.

(1) At the hearing, the court may, at its discretion, set a bond that appropriately considers the potential damages, any mitigating elements of the case and individual circumstances.

(2) At the hearing, an owner or claimant who has a verified answer on file may show by clear and convincing evidence that the vehicle was not used in the illegal dumping of materials on the Community.

(3) At the hearing, an owner who has a verified answer on file may show by clear and convincing evidence that he or she had no knowledge of and should not have known that the

vehicle would be used in the illegal dumping of materials on the Community.

(4) A claimant of any right, title or interest in the vehicle may prove:

- a. A lien, mortgage or conditional sales contract to be authentic;
- b. The right, title or interest was created after a reasonable investigation of the moral responsibility, character and reputation of the purchaser; and
- c. There was absolutely no knowledge that the vehicle was being or was to be used for the purpose charged.

(5) However, the following persons or entities are required to prove only the conditions in subsections (c)(4)a and c of this section:

- a. A person or entity who has a lien, dependent upon possession, for which he or she is legally entitled compensation for making repairs or performing labor upon and furnishing supplies and materials for, and for storage, repairs or safekeeping of any vehicle;
- b. A person or entity doing business under any law of any state or the United States relating to banks, trust companies, building and loan associates, and loan companies, and credit unions or licensed pawnbrokers or money lenders; or
- c. A person regularly engaged in the business of selling vehicles or purchasing conditional sales contracts on vehicles.

(6) A claimant may show that the legal right, title or interest is vested solely in the claimant, and that any disposition or sale of forfeited property could result in irreparable harm, injury or loss to that party or would have unfair and/or unwarranted consequences to that party.

(7) Upon the hearing, if the court determines that the vehicle was not used in illegal dumping, or that the vehicle was used in illegal dumping but the damages have been fully mitigated and/or compensated, the court shall order the vehicle released to the owner.

(8) If the court determines that the vehicle was used in the act of illegal dumping which resulted in uncompensated damages, the court may enter its judgment determining such illegal dumping, the amount of damages caused, and if appropriate, forfeiture of said vehicle.

(9) A copy of the judgment shall be forwarded to the owner of the vehicle within three business days of issuance of that judgment.

(10) If the court determines that there was illegal dumping, but forfeiture was not ordered, the court will not release the bond but shall order the Community police department to hold the

vehicle, until the owner pays to the court, for the benefit of the Community, the amount of damages the court has determined was caused by the illegal use of the vehicle.

(d) Sale of vehicle for recovery of damages.

(1) Any decision by the court under this section rendering a judgment of illegal dumping and damages shall provide that unless payment of damages is made within 30 days after the entry of judgment, the vehicle shall be sold at public auction after reasonable notice by certified mail to the owner of the vehicle of said sale.

(2) Upon payment of damages in full and within ten days of receipt, the vehicle shall be returned to the owner.

(3) Upon sale of the vehicle, the court clerk shall pay the proceeds of the sale necessary for the satisfaction of the judgment.

(4) Any excess over such judgment shall be paid:

- a. First, to satisfy the expenses incurred by the court and the Community;
- b. Second, to pay off any towing, storage and other impoundment costs; and
- c. Third, to the owner of the vehicle.

(e) Forfeiture of vehicles used in illegal dumping.

(1) If after a proper hearing pursuant to subsection (c) of this section, judgment is entered determining violation of section 13-7(a) and making a finding of one or more conditions in subsection (e)(3) of this section, the vehicle found to be used in the illegal dumping may be forfeited to the Community.

(2) If forfeiture is ordered, the interest of the legal owner of record who knew or should have known the vehicle would be used in the illegal dumping of materials on the Community shall be forfeited to the Community.

(3) In order for a vehicle to be forfeited the court must find one or more of the following circumstances by clear and convincing evidence:

- a. The vehicle was used in discarding of materials or dangerous substances that pose a hazardous condition to human health and/or the environment.
- b. For the purposes of this section, the term "dangerous substances" includes without limitation those substances defined as "hazardous" under Community or federal environmental law and "hot" loads that pose an imminent danger to combustion; or as follows:

1. The vehicle was used to discard materials equaling 1 cubic yards or more;
2. The vehicle was used to discard materials that pose serious danger to children; or
3. An offender has a prior record of involvement in illegal dumping.

(f) *Authority to compromise.*

(1) The Community shall make due provisions and take the necessary action to protect the rights of innocent or nonliable persons, as is consistent with this chapter.

(2) At any time, the Community is authorized to grant requests for mitigation or remission of forfeiture and restore forfeited property to innocent or guiltless parties.

(3) If the Community grants such a request, it shall inform the court, through its civil advocate, of the settlement and the court shall issue an order consistent with the action taken by the Community.

(g) *Authority to implement reward system.*

The Community may set up a system to award compensation to persons providing information resulting in forfeiture of property used in the act of illegal dumping.

C E R T I F I C A T I O N

This Ordinance is hereby enacted pursuant to the authority contained in Article VII, Section 1(c)(1) and (4) of the Constitution of the Salt River Pima-Maricopa Indian Community ratified by the Tribe, February 28, 1990, and approved by the Secretary of the Interior, March 19, 1990, and amended by the Tribe, February 27, 1996, and approved by the Secretary April 23, 1996, the foregoing Ordinance was adopted this 5th day of June, 2019, in a duly called meeting held by the Community Council in Salt River, Arizona at which a quorum of 8 members were present by a vote of 8 for; 0 opposed, 0 abstentions, and 1 excused.

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



Martin Harvier, President

ATTEST:



Erica Harvier, Council Secretary

Approved as to Form by the
Office of the General Counsel
Marnie Hodahkwen
June 6, 2019
