

**PUBLIC COMMENTS ON PROPOSED ORDINANCE TO CODIFY THE COMMUNITY'S  
PROCESS FOR OBTAINING A WAIVER OF SOVEREIGN IMMUNITY**

**Comment Period: May 8 – June 22, 2025**

On Wednesday May 7, 2025, the SRPMIC Council approved a 45 day public comment period for the following proposed ordinance. This ordinance would memorialize in writing the Community's long-standing process for obtaining a waiver of sovereign immunity from the SRPMIC Council. A waiver of sovereign immunity is used in certain contracts and agreements to identify the process the parties will use to resolve a dispute, if one should arise. By codifying this long-standing process, the Community is doing two things: 1) providing the ground rules to other parties who may contract or do business with the Community, and 2) holding staff accountable to follow the process to ensure that the Council has thoroughly reviewed and approved any waivers of sovereign immunity that may be granted.

Please submit all the comments in writing to either the Community's intranet "Ordinance Public Comment" page or via standing mail or email to the following:

Salt River Pima-Maricopa Indian Community  
The Office of the General Counsel  
10,005 East Osborn Road  
Scottsdale, Arizona 85256  
[OrdPublicComment@srpmic-nsn.gov](mailto:OrdPublicComment@srpmic-nsn.gov)

## **Article VII. Sovereign Immunity and Consent to Dispute Resolution**

### **Sec. 1-700. Policy & Purpose.**

- a. *Policy.* It is the policy of the Community that, as a sovereign Indian nation and pursuant to principles of tribal self-determination and self-governance, that the Community and its Subordinate Entities, are immune from lawsuits in federal, state, and tribal courts and may only be sued when the United States Congress has expressly and unequivocally authorized such suit or when the Community Council voluntarily consents to such suit through a written waiver of sovereign immunity pursuant to the terms of this ordinance.
- b. *Purpose.* The purpose of this ordinance is to memorialize the Community's process to grant a valid waiver of sovereign immunity, because such waiver of sovereign immunity is necessary to protect or further the interests of the Community and/or its Subordinate Entities.

### **Sec. 1-701. Definitions.**

***Community*** means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribal government.

***Subordinate Entities*** means any legal or political arms under the control or ownership of the Community which includes but are not limited to:

- (i) a Community-established, owned, and controlled enterprise;
- (ii) a Community-owned business enterprise;
- (iii) a Community-controlled enterprise as defined under Section;
- (iv) a wholly or majority owned Community limited liability company or corporation that is chartered by the Community, a state, or the United States; and
- (v) a limited liability company chartered by the Community and owned by a Community enterprise or owned by another Community limited liability corporation.

### **Sec. 1-702. The Doctrine of Sovereign Immunity.**

- a. *Sovereign Immunity from Suit.* The Community, including its Subordinate Entities, has inherent sovereignty and is not subject to lawsuit or legal process without express United States Congressional authorization or consent by the Community Council. The Community and its Subordinate Entities are also immune from unconsented lawsuits and legal

processes, including being compelled by subpoena or compelled to testify, produce evidence or appear in a court.

- b. *No Subject Matter Jurisdiction.* When sovereign immunity is asserted by the Community or its Subordinate Entities, it deprives any court, including a tribal, local, state, or federal court, of subject matter jurisdiction.
- c. *Waiver of Sovereign Immunity by the Community Council.* The Community Council is the only entity that may grant express and specific permission to waive the immunity of the Community and/or its Subordinate Entities pursuant to the terms of this ordinance.
- d. *Persons Protected by Sovereign Immunity.* The Community Council through this ordinance extends the Community's sovereign immunity to its elected officials, judges, employees, officers, agents, and board members of the Community and its Subordinate Entities when they are, in good faith, engaged in their official governmental or enterprise role and responsibilities.
  - 1. A person protected by sovereign immunity is immune from unconsented lawsuits and legal process, regardless of whether such lawsuit or legal process seeks payment of damages from the person individually, or if the lawsuit or legal process arises from an act or omission that occurred while the person was acting with good faith within the scope of his or her employment or official duties.
  - 2. This extension of sovereign immunity does not apply to an employee when the Community or its Subordinate Entities engage in a lawsuit and/or legal process against that particular employee.
- e. *Defense and indemnification.* Upon request of a person covered by the Community's sovereign immunity as set forth in this Article, the Community and/or its Subordinate Entities, as applicable, may agree to defend and indemnify the person against a civil claim and all related costs and damages if the claim arises from an act or omission that occurred while the person was acting with good faith within the scope of his or her employment or official duties.

#### **Sec. 1-703     Process for a Valid Waiver of Sovereign Immunity.**

There are two processes in which a waiver of sovereign immunity is valid and lawful pursuant to this ordinance. Any purported waiver of sovereign immunity that is not granted in strict compliance with this ordinance is void.

- (a) *Waiver of Sovereign Immunity by the Community Council.* The Community Council may grant a limited waiver of the Community and/or its Subordinate Entities' sovereign immunity. The Community Council's intent to waive sovereign immunity must be clearly expressed in writing, "approved as to form" by the Community's Office of the General Counsel, and approved by the Community Council.
- (b) *Delegation of Authority by the Community Council.* The Community Council may delegate authority to the Community government and Subordinate Entities to agree to limited waivers of sovereign immunity. The delegation of authority to grant a limited waiver of sovereign immunity shall be conditioned upon all of the following:
- 1) the terms, conditions, and limitations of the limited waiver of sovereign immunity shall be set forth in writing by the Community Council;
  - 2) the written delegation shall be codified in either an ordinance or resolution approved by majority vote of the Community Council;
  - 3) the dispute resolution mechanism, venue, or forum in the limited waiver of sovereign immunity shall be expressly stated in the written delegation;
  - 4) the dispute resolution shall be construed narrowly to only affect the relevant Community or Subordinate Entity's assets and property; and
  - 5) the Community's Office of the General Counsel (or outside counsel authorized by the Community's Office of the General Counsel) shall review and "approve as to form" each contract, agreement, or other document that contains, appears to contain, or may be interpreted to contain a waiver of sovereign immunity.
- (c) *Waiver does not affect a natural person covered by sovereign immunity.* No waiver of sovereign immunity granted under subsection (b) or (c) with respect to the Community or its Subordinate Entities shall waive or affect the immunity of a natural person covered by sovereign immunity from lawsuits or legal process.
- (d) *Ultra Vires Action.* Any agreement purporting to a waiver sovereign immunity without the necessary reviews and approvals or otherwise not complying with the requirements of this ordinance is void or voidable by the Community.