

TITLE 8 - CULTURE

CHAPTER 2 - REPATRIATION

Legislative History: 8 T.O.C. Chapter 2, Repatriation, was enacted and codified by Resolution No. 09-137 effective March 18, 2009.

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TITLE 8 - CULTURE

CHAPTER 2 - REPATRIATION

Section 1201 Definitions.

(A) Archeological Resources Protection Ordinance means Ordinance No. 06-84, appearing as Chapter 1 of this Title, as may be amended.

(B) Burial Site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(C) Cultural Affairs Program ("Program") is the program under the Executive Branch of the Tohono O'odham Nation responsible for preservation, repatriation, public affairs, museums and archeology in accordance with the administrative plan approved by the Legislative Council and in accordance with the Program's scope of work.

(D) Cultural Affiliation means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group, including the relationship between the Tohono O'odham and the Paleo Indian, Archaic, and Hohokam cultural groups.

(E) Cultural Items means human remains and

(1) associated funerary objects, which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(2) unassociated funerary objects, which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.

(3) sacred objects, which shall mean specific ceremonial objects which are needed by

traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.

(4) cultural patrimony which shall mean an object having ongoing historical, traditional, or cultural importance central to the Tohono O'odham, Paleo Indian, Archaic, or Hohokam cultural groups rather than property owned by an individual Tohono O'odham, Paleo Indian, Archaic, or Hohokam, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a Tohono O'odham member and such object shall have been considered inalienable by the Tohono O'odham, Paleo Indian, Archaic, or Hohokam at the time the object was separated from such group.

(F) Cultural Preservation Committee ("Committee") refers to the Legislative Council standing committee having oversight authority of any legislation or activities which would impact Tohono O'odham cultural, religious, historic, and archeological resources, sites, customs, traditions, or events.

(G) Native American Graves Protection and Repatriation Act ("NAGPRA") refers to 25 U.S.C.A. § 3001-3013, 18 U.S.C.A. § 1170, as may be amended.

Section 1202 Nation's Contact.

The Cultural Affairs Program ("Program") shall be the designated contact for the Tohono O'odham Nation on issues relating to the NAGPRA and the repatriation of all Tohono O'odham human remains and Cultural Items; provided that the Program shall promptly copy all repatriation-related notices to the Committee.

Section 1203 Filing Claims.

The Program shall develop a written policy for filing repatriation claims and otherwise accepting repatriation of Cultural Items under the NAGPRA or any other law or by voluntary repatriation. The policy shall include but not be limited to:

- (A) the types of Cultural Items that shall be claimed on behalf of the Nation;
- (B) a description of situations in which the Program will respond to NAGPRA-related and other repatriation issues;
- (C) the process by which claims are filed and repatriations accepted; and
- (D) the title of the position(s) within the Program that are vested with authority to make claims or accept the repatriation of Cultural Items to be returned to the Nation.

Section 1204 Ownership of Archeological Resources Removed from the Nation.

Archeological Resources, as that term is defined in the Archeological Resources Protection Ordinance, excavated and removed from the Nation shall remain property of the Nation and permission to remove Resources shall not imply transfer of ownership.

Section 1205 Repatriation Authority.

(A) Except as otherwise expressly delegated by the Tohono O’odham Legislative Council, the Program, acting on behalf of the Nation, shall have exclusive authority to file claims and accept the repatriation of Cultural Items from burial sites that are identified as culturally affiliated with the Tohono O’odham, Paleo Indian, Archaic, or Hohokam cultural groups.

(B) The Program may repatriate Cultural Items to the 11 districts of the Nation if the Program determines that such Cultural Items originated from sites within those district boundaries.

(C) The Legislative Council may amend this law to recognize additional district repatriation areas.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Tohono O'odham Code Title 8, Chapter 2 - Repatriation)

RESOLUTION NO. 09-137

1 **WHEREAS, the Constitution of the Tohono O'odham Nation was established "in order to affirm**
2 **our sovereign powers of self-government" and "to preserve, protect and build upon**
3 **our unique and distinctive culture and traditions" (Constitution, Preamble); and**

4 **WHEREAS, as a sovereign tribal government and pursuant to tribal, state, and federal laws,**
5 **including the Native American Graves Protection and Repatriation Act ("NAGPRA"), the**
6 **Nation is entitled to the repatriation of human remains and other cultural items that**
7 **are identified as culturally affiliated with the Tohono O'odham, Paleo Indian, Archaic,**
8 **or Hohokam cultural groups; and**

9 **WHEREAS, the Tohono O'odham Nation has consistently asserted its sovereign and human right**
10 **to recover human remains and cultural items within its ancestral lands by enacting**
11 **the Archaeological Resources Protection Ordinance (Ordinance No. 06-84); formally**
12 **establishing the Legislative Cultural Preservation Committee (Resolution No. 81-88),**
13 **approving an intertribal policy on archaeological artifacts and remains (Resolution**
14 **No. 277-89), authorizing the Nation's chairperson and the Cultural Preservation**
15 **Committee to file repatriation claims (Resolution No. 91-355); funding and otherwise**
16 **supporting reburials; and by establishing, funding, and staffing a Cultural Affairs**
17 **Program and a Cultural Center and Museum; and**

18 **WHEREAS, as a matter of practice, human remains and other cultural items recovered from**
19 **burial sites within the Tucson basin area have been repatriated to the San Xavier**
20 **District ("District"); and**

21 **WHEREAS, the Legislative Cultural Preservation Committee has worked with District**
22 **representatives and the Nation's Cultural Affairs Program to draft Tohono O'odham**
23 **Code Title 8, Chapter 2 - Repatriation.**

24 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts**
25 **and enacts Tohono O'odham Code Title 8, Chapter 2 - Repatriation; provided that 8**
26 **T.O.C. Chapter 2 shall supersede the previous delegations of authority made by**
27 **Resolution No. 94-089.**

28 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 13TH of**
29 **MARCH, 2009 at a meeting at which a quorum was present with a vote of 2,247.45 FOR; 196.5**
30 **AGAINST; 90.55 NOT VOTING; and [04] ABSENT, pursuant to the powers vested in the Council by**
31 **Article VI, Section 1 (c)(2) of the Constitution of the Tohono O'Odham Nation, adopted by the**
32 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
33 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
34 **18, 1934 (48 Stat. 984).**
35

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Felicia Nunez for
Verlon M. Jose, Legislative Chairman

17th day of March, 2009

ATTEST:

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

13 day of March, 2009.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 17th day of March, 2009 at 3:30 o'clock, P.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 Nunez for
Verlon M. Jose, Legislative Chairman

APPROVED

on the 18 day of March, 2009

DISAPPROVED

at 2:00 o'clock, P.M.

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

Returned to the Legislative Secretary on the 18 day of

March, 2009, at 3:15 o'clock, P.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary