



# GILA RIVER INDIAN COMMUNITY

## SACATON, AZ 85147

### ORDINANCE GR-001-19

**THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY REPEALING CURRENT TITLE 16, CHAPTER 11 AND ENACTING THE APIARY (BEEHIVE) REGISTRATION CODE AS TITLE 18, CHAPTER 8 OF THE GILA RIVER INDIAN COMMUNITY CODE**

**WHEREAS,** the Gila River Indian Community Council (the "Community Council") is the governing body of the Gila River Indian Community (the "Community" or "GRIC"); and

**WHEREAS,** the Community Council is empowered through Article XV, § 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) ("Constitution") to promote and protect the health, peace, morals, education, and general welfare of the Community and its members; and

**WHEREAS,** the Community Council is empowered through Article XV, § 1(a)(19) of the Constitution to enact ordinances and laws necessary or incidental to the exercise of the powers granted to the Community Council; and

**WHEREAS,** the power to enact ordinances and laws is an inherent function of self-government that the Community has exercised over the years; and

**WHEREAS,** on October 2, 1985, the Community Council, through Ordinance GR-06-85, adopted the 1985 Beehives Ordinance, which is now codified at Gila River Indian Community Code, Title 16, Chapter 11; and

**WHEREAS,** on December 6, 2017, the Community Council, through Resolution GR-229-17, approved a Temporary Moratorium on Issuing Beehive Permits ("Moratorium") until a new apiary ordinance was created to replace the 1985 Beehives Ordinance; and

**WHEREAS,** the Department of Environmental Quality desires to amend Title 16, Chapter 11 by repealing the 1985 Beehives Ordinance and enacting the Apiary Registration Code to be codified under Title 18, Chapter 8; and

**WHEREAS,** the 1985 Beehives Ordinance bifurcates the administrative and enforcement functions amongst the Office of the Treasurer and the Department of Environmental Quality, and does not address mechanisms necessary to implement the Ordinance; and

**WHEREAS,** enacting the 2018 Apiary Registration Code (“Apiary Registration”) formalizes and establishes uniform requirements and procedures for the registration of apiaries within the Reservation, in order to protect the public health, safety, and environment of the Community and of all individuals living or working within the Reservation; and

**WHEREAS,** registration of commercial beekeeping operations will ensure that apiary placement does not infringe on land use restrictions and will improve awareness of pest management businesses and agricultural growers who apply pesticides, in order to decrease the likelihood of accidental destruction of bee colonies within the Reservation; and

**WHEREAS,** the Legislative Standing Committee and Natural Resources Standing Committee recommend enactment of the 2018 Apiary Registration Code; and

**WHEREAS,** the Community Council has reviewed the attached 2018 Apiary Registration Code and finds the Apiary Registration to be in the best interest of the Community; and

**WHEREAS,** the 2018 Apiary Registration Code has complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the 2009 Gila River Indian Community Code by publication in the *Gila River Indian News* and presentation at all seven district service centers.

**NOW, THEREFORE, BE IT ENACTED,** that the Gila River Indian Community Council hereby amends the 2009 Gila River Indian Community Code by repealing current Title 16, Chapter 11, and enacts and codifies the 2018 Apiary Registration Code as Title 18, Chapter 8, which is attached to this ordinance, effective on the date enacted by the Community Council.

**BE IT FURTHER ENACTED,** the Gila River Indian Community Council hereby rescinds Resolution GR-229-17 upon enactment of the 2018 Apiary Registration Code.

**BE IT FINALLY ENACTED,** that the Governor or, in the Governor's absence, the Lieutenant Governor is hereby authorized to take all the necessary steps to carry out the intent of this enactment.

**CERTIFICATION**

Pursuant to authority contained in Article XV, Section 1 (a) (7), (9), (18),(19) (b) (10) and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Ordinance was adopted on the 16<sup>th</sup> day of January, 2019, at a Regular Community Council Meeting held in District 3, Sacaton, AZ, at which a quorum of 14 members were present by a vote of: 13 FOR; 1 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

  
GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY



RECEIVED PIMA AGENCY

JAN 28 2019

BUREAU OF INDIAN AFFAIRS  
SACATON, ARIZONA

TITLE 18

ENVIRONMENT

**Chapter 8. Apiary Registration**

- 18.801. General Provisions.
- 18.802. Definitions.
- 18.803. Registration and Requirements.
- 18.804. Fees; Program Income Account.
- 18.805. Violations.
- 18.806. Civil Enforcement of Violations.
- 18.807. Appeals.
- 18.808. Effective Date.
- 18.809. Retroactive.

**CHAPTER 8. APIARY REGISTRATION**

**18.801. General Provisions.**

**A. Title.**

This chapter may be cited and referred to, and shall be known as, the Gila River Indian Community Apiary Registration Code (the “Apiary Registration Code”).

**B. Purpose.**

The intent and purpose of this chapter is to establish uniform requirements and procedures for the registration and placement of apiaries within the exterior boundaries of the Gila River Reservation, in order to protect the public health and safety of the Community and of all individuals living or working within the Reservation. Its provisions shall be liberally construed to facilitate the accomplishment of these purposes.

**C. Applicability.**

1. This chapter shall apply to all persons who conduct commercial beekeeping activities, or operate and/or maintain apiaries within the external boundaries of the Reservation.
2. Compliance with this chapter shall not exempt a person from complying with other laws, agreements, regulations, or ordinances of, or enforced by, the Community.

**D. Powers and Duties of the Department of Environmental Quality.**

1. The Department of Environmental Quality (“DEQ” or “Department”) is hereby designated responsible for administering this chapter, and is authorized to exercise all of the legal authority necessary for this purpose including, but not limited to, the following:
  - a. Approving or denying apiary registrations;
  - b. Enforcement of this chapter, consistent with the provisions specified herein, including but not limited to issuing violation notices, assessing fines, suspending or revoking registrations, and imposing emergency restrictions and controls;
  - c. Adopt reasonably necessary regulations, policies, and procedures consistent with requirements under Community law;
  - d. Maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension, or revocation of registrations;
  - e. Monitor activities regulated under this chapter; and
  - f. Perform other duties and responsibilities as it deems necessary to implement this chapter.

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### E. **Uses of Reported Information.**

1. All information reported to the Department will be used by the Department to determine compliance with the rules set forth in this chapter and may be used by the Department as evidence in any enforcement case arising under the rules of this chapter.
2. Except for data determined to be confidential under Section 18.801.E.3, any records, reports, or information obtained from any person, including all information submitted, reported, or noticed to the Department under the rules of this chapter, shall be available to the public at the Department's offices.
3. Any records, reports, or information obtained from any person under this chapter, including those obtained or prepared by the Department, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:
  - a. a showing, satisfactory to the director of the Department, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person; or
  - b. a determination by the director of the Department that disclosure of the information, or a particular part of the information, would be detrimental to an ongoing investigation by the director.
4. Notwithstanding Section 18.801.E.3, the director may disclose any records, reports, or information obtained from any person under this chapter, including records, reports, or information obtained by the Department, to:
  - a. other Community departments; and all other Community officers, employees, or representatives concerned with administering this chapter or if relevant to any administrative or judicial proceeding under this chapter.

### F. **Sovereign Immunity.**

1. Nothing in this chapter, nor any action or agreement of the Department, shall be interpreted or construed as a waiver or modification of the Community's sovereign immunity, or consent by the Community to jurisdiction or suit against it.
2. The Community, the Community Council and its members; the Department and its members; and all other Community officers, employees, or representatives, thereof, who are performing their duties by implementing or enforcing this chapter, are immune from suit for monetary damages in any court of law, and they do not waive any of their sovereign rights or immunities, executive privileges, or right to privacy or confidentiality.

G. **Reservation of Rights.** The authority, power, and remedies provided in this chapter are in addition to, and not a limitation of, any authority, power, or remedies provided in any other ordinances, tribal sovereign authority, federal law, or as provided under common law.

H. **Severability.** The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

**18.802. Definitions.**

A. As used in this chapter, or when used for purposes of application of this chapter, the terms set forth below shall have the following meanings.

1. *Apiary* means any place where one or more colonies of bees are kept.
2. *Beekeeper* means any person who owns, maintains, or leases one or more colonies of bees within the exterior boundaries of the Reservation.
3. *Bee(s)* means honey-producing insects of the genus *Apis*, including all life stages of such insects. The term is not limited to the common honeybee but includes Africanized bees.
4. *Colony* means the hive and its equipment, including: bees, comb, honey, and brood.
5. *Commercial Beekeeping* means the regulated activity of managing bee colonies as livestock to service pollination contracts with agricultural growers or to support honey production for profit.
6. *Community* or *GRIC* means the Gila River Indian Community.
7. *Community Council* means the Gila River Indian Community Council.
8. *Community Court* means the trial court of the Gila River Indian Community.
9. *Department* means the Gila River Indian Community, Department of Environmental Quality.
10. *Director* means the Executive Director of the Gila River Indian Community, Department of Environmental Quality.
11. *Equipment* means hives, supers, frames, veils, gloves, any apparatus, tools, machines, or other devices used in the handling or manipulation of bees, honey, wax, or hives.
12. *Executive Office* means the Governor, or the Chief Executive Officer, of the Community pursuant to the Constitution and Bylaws of the Community, approved March 17, 1960, or his or her designee.
13. *Office of General Counsel* means the Gila River Indian Community Office of General Counsel attorney(s) or staff, or counsel retained by the Community.
14. *Departmental approval* means any of the methods the Department uses to allow a person to establish an apiary. Examples of Department approval include, but are not limited to, registrations

and approval letters.

15. *Person* means any individual, public or private corporation, company, partnership, firm, business, association or society of persons, whether incorporated or not, or any governmental agency or other governmental subdivision, including the Community and any of its divisions, departments, programs, enterprises, or companies, unless expressly provided otherwise.
16. *Property owner* means the person, including a lessee, who has actual use and exclusive possession of the land.
17. *Reservation* means any land within the exterior boundaries of the Gila River Indian Reservation, including fee patented and allotted lands used or claimed by any person, without regard to such person's membership in the Gila River Indian Community, and any land outside such boundaries held in trust for the Community or any of its members by the United States, including the Toka Sticks Golf Course located at 6910 Williams Field Road in Mesa, Arizona, and any other land constituting Indian Country within the meaning of 18 U.S.C. § 1151 or any successor provision.

### **18.803. Registration and Requirements.**

A. **Apiary Registration.** All apiaries, established for the purpose of commercial beekeeping, kept within the exterior boundaries of the Reservation, are subject to the jurisdiction of the Community Courts and shall be registered with the Department of Environmental Quality.

B. **Apiary Identification.** Each apiary shall be identified by posting the name and telephone number of the beekeeper on or visibly within 10 feet of the apiary. The lettering and numbering of the posting shall be at least one inch high and legible. Failure to identify each apiary shall deem the apiary, all equipment, and bees to be abandoned and subject to seizure.

C. **Agricultural Contract Required.** Beekeepers may only place apiaries on land owned or leased by an agricultural grower while under formal written contract. Written evidence of such contract shall be furnished at the time of registration and any time upon the request of the Department.

D. **Denial of Registrations.** The Department may deny a request for a registration if the Department determines:

1. The applicant does not or will not meet the requirements of this chapter; or
2. An otherwise qualified applicant had a similar registration revoked, and may continue to deny the registration for up to three years from the date of the initial revocation of the registration.

E. **Duration of Registrations.** An apiary registration shall remain valid for either one or two years, unless revoked, suspended, or voluntarily surrendered. A beekeeper may apply to renew his/her apiary registration no sooner than 30 days prior to the expiration date of the current registration.

F. **Exemptions.** The following are exempt from registration and agricultural contract requirements:



1. Beekeepers who own or possess beekeeping equipment but do not own or possess bees; or
2. Private apiaries established on land which the apiary operator currently resides.

**18.804. Fees; Program Income Account.**

A. The Community Council maintains authorization of a program income account for Department use in administering and enforcing this chapter. The Department may use funds for, but not limited to, purchasing education and outreach materials, sampling equipment, laboratory testing, compliance and enforcement, staff training, legal fees, and document review and preparation.

1. All fees and any monies collected as a result of violations of this chapter shall be deposited with the Community Treasurer to be credited to the Pesticide Fund. The Department shall report annually to the Community Council on the sums deposited into the fund and uses thereof.
2. Any monies contained in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for appropriation as provided in this section.

B. Community departments, Community enterprises and their employees; Community member owned businesses, and Community members are exempt from all fees.

C. Renewal applications received later than 30 calendar days after the expiration date of the permit or certification shall be subject to the new application fee schedule.

D. All fees shall be non-refundable.

E. **Registration Fees.** The applicant for an apiary registration shall submit fees with the application according to the following schedule:

<b>Duration of Apiary Registration</b>	<b>New Application Fee</b>	<b>Renewal Application Fee</b>
1-Year Apiary Registration	\$75	\$50
2-Year Apiary Registration	\$100	\$75

**18.805. Violations.**

A. **General Provisions.** In addition to any prohibitions set forth in this chapter, violations of this chapter include, but are not limited to:

1. A person who violates any requirement of this chapter or regulation issued pursuant to any requirement or provision of this chapter;
2. A person who conducts a commercial beekeeping activity before obtaining a registration or other Departmental approval required under this chapter;

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3. A person who violates any condition of a registration;
4. A person who aids or abets any person to evade the provisions of this chapter or allows one's registration to be used by another person;
5. A person who makes fraudulent records, reports, or proposals, or falsifies any other documents required by this chapter;
6. A person who misrepresents a material fact in obtaining a registration or other Departmental approval required under this chapter; or
7. A person who refuses the Department lawful access to an apiary to conduct an inspection of a beekeeping activity or to take documentary or physical samples.

B. **Nuisances.** An apiary, regardless of registration status, that becomes a nuisance, as defined under the Nuisance Ordinance, Section 8.1203, Acts Constituting Nuisance, shall be subject to the provisions and scope of GRIC Code, Title 8, Chapter 12, Nuisances.

C. **Notice of Violations.** The Department will issue a written notice of violation for each act of noncompliance, unless an emergency exists. Compliance must be achieved within 14 calendar days of the issuance of the notice, unless otherwise specified in the notice. A notice of violation shall state with reasonable specificity the nature of the violation, including the requirement or provision of this chapter and/or the terms or conditions of a registration issued under this chapter, which has been violated. Written notice of violation issued by the Department shall be delivered to the alleged violator by certified mail or by personal service.

### **18.806. Civil Enforcement of Violations.**

#### A. **General Provisions.**

1. The Department is authorized to enforce any provision of this chapter, as described in this section.
2. The Department may take immediate action in response to an imminent or substantial endangerment to human health or the environment.

#### B. **Inspections and Entry.**

1. The Department shall inspect and investigate as necessary any person or entity engaging in beekeeping activities to ensure compliance with the provisions of this chapter.
2. The Department and any of its duly authorized inspectors, presenting proper identification, may enter the property of any person engaging in beekeeping activities at reasonable times to conduct an inspection or for purposes of investigation.

3. In the event entry is withheld or barred, the Department may exercise its right to suspend or revoke a person's registration pursuant to Section 18.806.C., or other penalty as provided for under this chapter.

**C. Registration Suspension or Revocation.**

1. The Department may suspend or revoke a registration issued under this chapter for good cause, including, but not limited to, the following reasons:
  - a. Misrepresentation, submittal of false or inaccurate information, or failure to fully disclose all relevant facts in a registration application;
  - b. Refusing to allow the Department access and inspection of the facility/site premises and records;
  - c. Failure to meet compliance schedules; or
  - d. Violation of any requirement set forth in this chapter or violation of any terms or conditions of a registration issued under this chapter.
2. Before suspending or revoking a registration, the Department shall provide notice to the registered person by certified mail of the Department's intent to suspend or revoke the registration. Such notice may include an administrative compliance order issued by the Director, ordering that noncompliance with registration requirements be corrected within a specified timeframe. If the registered person fails to correct the noncompliance within the timeframe specified by the administrative compliance order, the registration shall be deemed suspended.
3. The Department may immediately suspend a registration and require the cessation of any activity for any suspected violation that would constitute a serious violation or present a risk to public health and safety, and such suspension shall remain in effect for a minimum of 30 calendar days to allow the Department to investigate the suspected violation.
4. A decision by the Department to revoke a registration is appealable to the Director of the Department of Environmental Quality. The Director's final decision is not appealable to the Community Court.

**D. Civil Penalties.**

1. A person who is found to be in violation of this chapter, a compliance order issued pursuant to Section 18.805.C., or any provision of a registration issued under this chapter, shall be subject to an order imposing an administrative civil penalty fine up to \$1,000.00 per day for each violation.
2. Each day of a failure to perform any act or duty for which a civil penalty may be assessed pursuant to this section constitutes a separate offense.

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3. The Office of General Counsel may file an action in the Community Court to recover penalties provided for in this section at the request of the Director.
4. The Director shall consider the following factors to determine the amount of a civil penalty:
  - a. The violator's full compliance history and good faith efforts to comply;
  - b. Self-reporting of the violation;
  - c. The duration of the violation as established by any other credible evidence;
  - d. The hazard or potential hazard created to the health or safety of the public;
  - e. Payment by the violator of penalties previously assessed for the same violation;
  - f. The economic damage to the property or the environment caused by the violation;
  - g. The economic benefit of non-compliance to the violator;
  - h. The seriousness of the violation;
  - i. If applicable, the size of the business and the economic impact of the penalty on the business; and
  - j. Any other matters that justice may require.

### **18.807. Appeals.**

- A. Actions by the Department under this section are not appeals to the Community Court, only to the Director of the Department.
- B. **Appeals Procedures.** This section applies to the following Department actions:
  1. The approval or denial of a registration authorized by this chapter;
  2. Revocation or suspension of a registration authorized by this chapter;
  3. The issuance of a compliance order; and
  4. The imposition, by order, of an administrative civil penalty.
- C. **Notice of Appealable Department Action: Hearing.**
  1. At the time an action is taken that is appealable under this chapter, the Department shall serve notice of the action pursuant to Section 18.807.D. The notice shall identify the Apiary Registration Code, rule, registration and/or provision that is alleged to have been violated or on which the action is based, and shall include a description of the person's right to request a hearing on the matter.

2. A person may request a hearing on an appealable Department action by filing a notice of appeal with the Director of the Department of Environmental Quality within 30 days after receiving the notice prescribed in Section 18.807.C.1. The notice may be filed by a party whose legal rights, duties, and privileges were determined by the appealable Department action. A notice of appeal may also be filed by a party who will be adversely affected by the issuance or denial of a registration and who exercised any right to comment on the action as provided by law or rule, provided that the grounds for appeal are limited to issues raised in that party's comment. The Director has the discretion to accept notices that are filed late due to circumstances beyond the party's control.
3. The notice of appeal shall identify the party, the party's address, the action being appealed, and shall contain a concise statement of the reasons for the appeal.

**D. Process Service.**

1. Every notice or decision under this section shall be served by personal delivery, certified mail with return receipt requested, or by any other method reasonably calculated to effect actual notice to every party to the action. Upon written agreement of the parties, electronic service may be utilized.
2. Notice shall be served to the party's last address of record with the Department. Each party shall inform the Department and, if applicable, the administrative law judge of any change of address within five days of the change.

**E. Scheduling of Hearing.**

1. Except as provided in Section 18.807.E.3, below, hearings for appealable Department actions shall be held within 60 days after the notice of appeal is filed with the Department Director.
2. The Director shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing. The notice shall include:
  - a. A statement of the time, place, and nature of the hearing;
  - b. A statement of legal authority and jurisdiction under which the hearing is to be held;
  - c. A reference to the particular sections of the chapter involved; and
  - d. A short and plain statement of the matters asserted.
3. Notwithstanding Section 18.807.E.1, a hearing shall be expedited upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal have actual notice of the hearing date. Any party to the appeal may file a motion with the administrative law judge asserting the party's right to an expedited hearing.

**18.808. Effective Date.**

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This chapter shall become effective the date of its enactment by the Community Council. Any person engaging in beekeeping activities within the Reservation shall comply with this chapter on the effective date unless otherwise exempted from compliance under the provisions hereof.

### **18.809. Retroactive.**

If any person engaged in beekeeping activities prior to the effective date of this chapter that requires the person to make an application for a registration, such person shall come into compliance with this chapter by submitting all documentation and applying for a registration required within 90 calendar days of the effective date.