



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

ORDINANCE GR-06-13

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY AMENDING TITLE 6, CHAPTER 6, DRIVING UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES

- WHEREAS,** the Gila River Indian Community Council (the “Community Council”) is the governing body of the Gila River Indian Community (the “Community”), a federally recognized and sovereign Indian tribe; and
- WHEREAS,** the Community Council is authorized by Article XV, Section 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) (the “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 authorized by Article XV, Section 1(a)(19) of the Constitution to pass ordinances necessary or incidental to the exercise of any of their powers authorized by Article XV, Section 1(a) of the Constitution; and
- WHEREAS,** the power to enact laws and ordinances is an inherent function of self-government which the Community has exercised over the years; and
- WHEREAS,** the safety of the Community and protection of Community members from drivers who are under the influence of intoxicating substances is important to the Community; and
- WHEREAS,** on July 6, 2011, the Community Council directed the implementation of enhanced sentences (up to three years per criminal offense and up to nine years per criminal proceeding) under the Tribal Law and Order Act of 2010 (“TLOA”); and
- WHEREAS,** the amendments to Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, were suggested when the TLOA workgroup (comprised of representatives from Community Departments and other organizations including the Gila River’s Office of the General Counsel, Office of the Prosecutor, Defense Services Office, Police Department, Department of Rehabilitation and Supervision, Judicial Department, Probation, Tribal Social Services; and GRHC Behavioral Health, Four Rivers Indian Legal Services, and Tribal Court Advocate), which included Community members, met to revise the Criminal Code in 2011 and most of 2012; and
- WHEREAS,** the amendments to Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, include mandatory minimum sentences of incarceration and a new offense for the possession of an alcoholic beverage in a motor vehicle; and

WHEREAS, the amendments to Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, have 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 Community News and posting at all seven district service centers. Additionally, the amendments to the Traffic Code were presented at all seven district meetings during March, 2013 and April, 2013; three public hearings for Community member employees on March 21, 2013; and one public hearing for Community member employees on March 28, 2013; and

WHEREAS, the Legislative Standing Committee recommends enactment of the amendments to the Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving.

NOW, THEREFORE, BE IT ENACTED, the Community Council hereby amends Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, as attached.

BE IT FURTHER ENACTED, that Title 6, Traffic Code shall be made publically available at all District Service Centers and the Ira Hayes Library, made available at the Department of Rehabilitation and Supervision, and made available on-line by January 1, 2014; and any future appellate court decisions concerning the Traffic Code shall be made available in the same manner within two weeks of the release and publication of the appellate decision.

BE IT FURTHER ENACTED, that the amendments to Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, shall become effective for any citation or criminal complaint alleging an act constituting a violation of Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, occurring on or after January 1, 2014.

BE IT FURTHER ENACTED, that any acts constituting a violation of Title 6, Traffic Code, Chapter 6, Driving Under Influence of Intoxicating Substances and Reckless Driving, committed prior to January 1, 2014 shall be punished as if the law had not been amended or repealed and that upon the conclusion of any criminal proceeding for acts committed prior to January 1, 2014, Title 6, Chapter 6, of the 2009 Gila River Indian Community Code shall be repealed.

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

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (17), (18), (19), (b) (8), (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 **15th** of **May 2013**, at a regular Community Council meeting held in **District 3, Sacaton, Arizona** at which a quorum of **14** Members were present by a vote of: **12** FOR; **2** OPPOSE; **0** ABSTAIN; **3** ABSENT; **0** VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



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TITLE 6 - TRAFFIC CODE

CHAPTER 6. DRIVING UNDER INFLUENCE OF INTOXICATING SUBSTANCES

6.601. Driving or Actual Physical Control While Under the Influence.

A. **Definition.** It is unlawful for any person to drive or be in actual physical control of any vehicle within the Gila River Reservation if the person:

1. Is under the influence of intoxicating liquor, any controlled substance, marijuana, a vapor releasing substance containing a toxic substance, or any combination thereof, if the person is impaired to the slightest degree, or
2. Has a blood or breath alcohol concentration of or exceeding 0.08 (80 mg/dL) percent within two hours of driving or being in actual physical control of a vehicle, and that alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
3. The fact that a person charged with a violation of this Subsection is entitled to lawfully use such intoxicating liquor, controlled substance, or vapor-releasing substance containing a toxic substance is not a defense against any charge of violating Section 6.601.A.1 or 6.601.A.2.

B. **Presumptions.** In any criminal prosecution for a violation of Section 6.601.A.1, relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumption:

1. If there was at that time 0.05 (50 mg/dL) or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 (50 mg/dL) but less than 0.08 (80 mg/dL) by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time 0.08 (80 mg/dL) or more by weight of alcohol the presumption shall arise that the defendant was under the influence of intoxicating liquor.

4. Sections 6.601.B.1., 2. and 3. shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

C. **Sanction.** A person convicted of violating this Section shall be punished by detention for not more than 90 days or a fine not to exceed \$500.00, or both.

D. **Second or Subsequent DUI Offense within 60 Months.** If within a period of 60 months a person is convicted of a second or subsequent violation of this Section, or is convicted of a violation under this Section and has previously been convicted of a violation of Section 6.602 or Section 6.603, the person:

1. Shall be sentenced to no less than 30 days and no more than 180 days in jail; and
2. May be fined no less than \$500.00 and no more than \$800.00.
3. The defendant may be sentenced to perform community service and court-ordered alcohol or drug screening and education program and be placed on probation for a period not to exceed 180 days; and
4. The sentencing judge may include time spent by the defendant in an in-patient residential treatment facility in any sentence imposed.

HISTORY: GRIC Code §6.601 (2009).

6.602. Extreme Driving Under Influence or Actual Physical Control.

A. **Definition.** It is unlawful for a person to drive or be in actual physical control of a vehicle within the Gila River Reservation if the driver has an alcohol concentration of 0.15 (150 mg/dL) or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while being in actual physical control of the vehicle.

B. **Sanction.** Any person who is convicted of violating this Section shall be sentenced to at least 90 days and not more than 365 days in jail and fined \$750.00, without the possibility of probation or commuted sentence, except that the sentencing judge may include time spent by the defendant in an in-patient residential treatment facility. The defendant may also be ordered to perform community service, and complete alcohol and drug abuse screening. In addition to the mandatory jail sentence that cannot be commuted or suspended for probation, the Court may impose an additional term of supervised probation, so long as the total jail and probation sentence does not exceed 365 days.

C. **Second or Subsequent Violation within 60 Months.** If within a period of 60 months, a person is convicted of a second or subsequent violation of this Section, or has been convicted of a violation of this Section and has previously been convicted of a violation of Section 6.601 or Section 6.603, the person shall be:

1. Sentenced to no less than 120 and no more than 365 days detention, without the possibility of probation or commuted sentence, and with any such detention sentence being served consecutively;
2. Fined no less than \$750.00 and no more than \$1,000.00;
3. Ordered to perform community service, submit to alcohol or drug abuse screening or other substance abuse treatment programs.
4. The sentencing judge may include time spent by the defendant in an in-patient residential treatment facility in any sentence imposed.
5. In addition to the mandatory jail sentence that cannot be commuted or suspended for probation, the Court may impose an additional term of supervised probation, so long as the total jail and probation sentence does not exceed 365 days.

HISTORY: GRIC Code §6.602.E (2009).

6.603. Aggravated Driving or Actual Physical Control While Under the Influence.

A. **Definition.** A person is guilty of aggravated driving or actual physical control while under the influence if the person does any of the following:

1. Commits a violation of this Section, Section 6.601 or Section 6.602 while their driver's license or privilege to drive is suspended, canceled, revoked, or refused, or while a restriction is placed on the person's driver license or privilege to drive as a result of violating this Section, Section 6.601 or Section 6.602.
2. Within a period of 60 months is convicted of a third or subsequent violation of this Section, Section 6.601 or Section 6.602 of this Section and has previously been convicted of any combination of convictions of this Section, Sections 6.601 or Section 6.602, without regard as to the order in which the violations occurred.
3. Commits a violation of Section 6.601 or Section 6.602 while a person (or persons) under 16 years of age is in the vehicle.

B. **Sanction.** A person convicted of violating Section:

1. Section 6.603.A.1 shall be sentenced to no less than 90 days and no more than 365 days in jail, fined \$500.00, undergo substance abuse screening, education, and treatment.
2. Section 6.603.A.2 shall be sentenced to no less than 120 and no more than 365 days in jail, fined \$1,000.00, undergo substance abuse screening, education, and treatment. A person convicted of a violation of Section 6.603.A.2, who has also

been convicted of any combination of two or more prior violations of Section 6.602 or Section 6.603 within a 60-month period, shall be sentenced to no less than 180 days but no more than 365 days in jail, fined \$1,000.00, and their sentence shall not be served on probation and shall not be commuted.

3. Section 6.603.A.3 shall be sentenced to no less than 60 days and no more than 365 days in jail and fined \$500.00, and may be ordered to perform community service, complete alcohol and drug abuse screening, and may be ordered to supervised probation, so long as the jail and probation sentences combined do not exceed 365 days.

HISTORY: GRIC Code §6.602.D (2009).

6.604. Permitted Use and Proof of Prior Offenses.

A. A prior offense, as contemplated in Sections 6.601.D, 6.603.C or 6.603 may be based upon any prior conviction for any offense similar to Sections 6.601, 6.602 or 6.603, in any jurisdiction, for driving while intoxicated (DWI), driving while under the influence (DUI), or other similar offense.

1. While the charging document must provide notice that a defendant is being charged with a second or subsequent offense, the prior offense is not an element of the crime.
2. Proof of a prior offense may be made through a certified copy of a judgment and sentence or a citation containing a sufficient notation of conviction for the offense. The Community shall provide the defendant copies of any prior convictions it intends to use at a pretrial hearing, trial, or sentencing hearing.

B. In any prosecution for a violation of this Section, the Community shall allege, for the purpose of classification and sentencing pursuant to this Section, all prior convictions of violating Section 6.601, 6.602 or 6.603 occurring within the past 36 months, unless there is an insufficient legal or factual basis to do so.

HISTORY: GRIC Code §6.601.F (2009).

6.605. Revocation of License.

The Community Court may revoke the right to drive on the Reservation of any person who has been convicted a second time in any twelve-month period under any combination of Sections 6.601, 6.602 or 6.603, and in such event, shall notify the agency licensing such driver of the action taken by the Community Court. In addition, the Community Court may transmit any investigative documentation to the driver's licensing agency.

HISTORY: GRIC Code §6.601.E (2009).

6.606. Implied Consent.

A person who operates a motor vehicle or motorcycle within the exterior boundaries of the Gila River Indian Reservation gives consent to a test or tests of the person's blood, breath, urine, or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter.

HISTORY: GRIC Code §6.603 (2009).

6.607. Possession of Alcoholic Beverage in a Motor Vehicle.

A. A person commits possession of alcoholic beverage in a motor vehicle that is located on a roadway within the Community if he possesses an open container of any alcoholic beverage in a passenger area of a motor vehicle.

B. This Section does not apply to:

1. A passenger in any bus, limousine or taxi; and
2. A passenger in the living quarters of a motor home.

C. For purposes of this Section:

1. *Open container* means any bottle, can, jar or other receptacle that contains any amount of alcoholic beverage that has been opened, has had its seal broken or the contents of which have been partially removed.
2. *Passenger Compartment* means the area of a motor vehicle designed for the seating of the driver and passengers of the vehicle, including an unlocked glove compartment.

D. **Sanction.** The penalty for misdemeanor possession of alcoholic beverage in a motor vehicle shall be a fine not to exceed \$500.00.

HISTORY: New offense.

6.608. Reckless Driving.

A. A person who drives a vehicle in reckless disregard for the safety of persons or property is guilty of reckless driving.

B. The Community Court may revoke the right to drive on the Reservation of any person who has been convicted a second time in any twelve-month period under this Section and shall notify the agency licensing such driver of the action taken by the Community Court.

C. Sanction.

1. A conviction under this Section shall result in imprisonment for not more than 90 days, a fine not to exceed \$300.00, or both.
2. A second or multiple convictions under this Section that occurs within 12 months of the preceding conviction shall result in imprisonment not to exceed 180 days, a fine not to exceed \$500.00, or both.

D. The dates of the commission of the offense are the determining factor in applying Subsection C of this Section. A second or subsequent violation for which a conviction occurs as provided in this Section does not include a conviction for an offense arising out of the same series of acts.

HISTORY: GRIC Code §6.604 (2009).