

**WHITE MOUNTAIN APACHE**  
**HEALTH AND SAFETY CODE**

*Effective January 21, 2014*

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# **WHITE MOUNTAIN APACHE HEALTH AND SAFETY CODE**

## **CHAPTER ONE GENERAL PROVISIONS**

[NOTE: Chapter One is derived from Ordinance No. 25: Public Health Code, enacted August 1, 1955.]

### **SECTION 1.1      WHITE MOUNTAIN APACHE BOARD OF HEALTH**

The White Mountain Apache Board of Health is hereby created, consisting of the Senior Doctor appointed by the U.S. Public Health Service, and two (2) members to be elected by the Tribal Council, one (1) for one year and one (1) for two years, upon enactment of the following Public Health Laws and thereafter every two years.

### **SECTION 1.2      MEETINGS**

Meetings of the Board shall be at the request of any member of the Board to decide any questions. Compensation for attendance at meetings shall be paid the tribal member according to a schedule set up by the Tribal Council.

### **SECTION 1.3      DUTIES**

Duties of the Health Officer are those prescribed by the U.S. Public Health Service, Division of Indian Health. The two members of the Board other than the Doctor shall act as Deputy Health Officers at the request of the Health Officer.

### **SECTION 1.4      POWERS OF THE BOARD OF HEALTH**

The White Mountain Apache Board of Health shall have general supervision over all matters relating to the preservation of health and life of citizens of the Fort Apache Indian Reservation. The Board of Health may submit to the Tribal Council recommendations for such additional reasonable rules and regulations as it may deem necessary, and such rules and regulations will be effective only upon the approval of the Tribal Council.

### **SECTION 1.5      ENFORCEMENT**

The Health Officer, Sheriffs, Constables, Policemen, Marshals, and all other persons in charge of public buildings and institutions and all other public officers and employees shall respect and enforce this Code and all lawful rules, orders and regulations adopted in pursuance hereof in every particular affecting their respective localities and duties.

**SECTION 1.6            PENALTY**

Each and every person violating any of the provisions of the Act or refusing or neglecting to obey any lawful order, rule or regulation of the White Mountain Apache Board of Health shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum up to fifty dollars (\$50.00), or by imprisonment not to exceed 30 days in jail, or by both fine and imprisonment, except for Sections 1.13 and 1.18, which carry their own penalty.

**SECTION 1.7            TREATMENT BY INDIAN DOCTORS OR SPIRITUAL MEANS**

A.        None of the laws of this Reservation regulating the practice of medicine or healing shall be construed to interfere with the treatment by prayer, or with any person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure of disease be compelled to submit to any form of medical treatment, except in the case of a dangerous communicable disease, nor any person be removed to any isolation hospital or camp without their consent, except in the case of a dangerous communicable disease.

B.        The Healer must report all cases coming to him for treatment to the Board of Health, and instruct the patient to submit to examination only that the nature of the disease may be ascertained and if quarantine or isolation is necessary, that it may be carried out in accordance with the Public Health laws.

**CHAPTER TWO  
SANITATION AND CONTAGIOUS DISEASES**

[NOTE: Chapter Two is derived from Ordinance No. 25, enacted August 1, 1955; amended by Ordinance No. 39, enacted March 1, 1960; and amended by Ordinance No. 267, enacted January 21, 2014.]

**SECTION 2.1      ADOPTION OF ARIZONA QUARANTINE LAWS, SANITARY CODE**

The Quarantine Laws and Sanitary Code shall be the same as those of the State of Arizona, with no changes. Nothing in this Act shall be construed as permitting the State of Arizona to enforce such laws and code unless and until said authority shall be passed to the State of Arizona by due process of law through the Congress of the United States of America, and the concurrence of the Tribal Council.

**SECTION 2.2      SANITATION OF CAMPS**

A. For every camp there shall be provided convenient and suitable privy or other toilet facilities, which shall be kept in a clean and sanitary state. A privy other than watercloset shall consist of a pit at least two feet deep with suitable shelter over same, and the openings of shelter and pit shall be enclosed. No privy pit shall be filled with excreta and the pit shall be covered with earth, ashes, lime, or other suitable substance.

B. All garbage, kitchen wastes and other rubbish in such camp shall be deposited in suitable covered receptacles, which shall be emptied daily or oftener if necessary, and the contents burned, buried, or otherwise disposed of in such a way as not to be or become offensive or unsanitary.

**SECTION 2.3      DEAD ANIMALS, GARBAGE, ETC.**

A. Dead animals as the term is used in this Act are defined as all dead animals or parts thereof.

B. Dirt is defined to include loose earth, ashes, manure from barns, stables, corrals and pens, offal from butchering, and all foul and filthy substances.

C. Garbage is defined to include solid or semisolid kitchen refuse subject to decay or putrefaction, and market wastes of animal or vegetable matter which has been or was intended to be used as food for men or animals.

D. Rubbish is defined as old tin cans, iron or other metallic cans, and containers of like materials, wood and paper boxes, old metals, wire, rope, cordage, bottles, bags and bagging, rubber and rubber tires and tubes, paper, and all used and cast-off article or materials, including old plaster, brick, cement, glass, stoves, tanks, refrigerators, ice boxes, and all old building materials.

E. It shall be unlawful for any person to throw away, set aside, store in the open, or abandon any stove, tank, refrigerator, ice box, or any other container which may be entered by a child and the opening thereto closed. The lids, cover, doors, or other closures shall be removed or destroyed before the article is placed among rubbish.

F. It shall be unlawful for any person to throw away or deposit or cause to be thrown away or deposited on any public highway within the limits of the Reservation or within a distance of one-thousand feet from the center of any public highway, any dead animal, dirt, garbage, or rubbish as defined by this Act.

## **SECTION 2.4      INVOLUNTARY CONFINEMENT OF CONTAGIOUS PERSONS**

A. There are members of the White Mountain Apache Tribe who are afflicted with contagious or infectious diseases and who will not submit to voluntary treatment, and the presence of these people at large upon the reservation subjects others to the risk of infection. This Section is enacted to provide legal means to prevent these people from mingling with others or compelling them to accept treatment.

B. Any member of the White Mountain Apache Tribe, residing upon the Fort Apache Indian Reservation, who has been diagnosed by a Public Health or Private Physician as being afflicted with active tuberculosis, or any other contagious or infectious diseases and arrangements have been made for isolation and treatment but the patient refuses such isolation and treatment, he will be deemed guilty of an offense and upon conviction thereof, shall be imprisoned in solitary confinement for a period of not to exceed six months, the imposition of this sentence may be suspended by the court provided the patient accepts voluntary isolation and treatment in an approved hospital, sanitarium or rest home.

## **SECTION 2.5      CONTAGIOUS DISEASES IN SCHOOLS**

A. **Duty of Health Officer.** Upon the appearance of any dangerous contagious disease in a school, it shall be the duty of the Health Officer to notify at once the principal or teachers of such school. Rules of the White Mountain Apache Board of Health provide for the exclusion from school of teachers, or pupils from homes where such disease exists. The health officer shall request the principal of the school to exclude from school attendance all such persons until a written order signed by the health officer permitting attendance at school is presented.

B. **Duty of Principal or Teacher.** Whenever the principal or teachers of the school have been notified of the presence of a dangerous contagious disease in the school district, or whenever the principal or teacher knows or believes that a dangerous communicable disease is present in the school district, it shall be the duty of such principal or teacher to at once notify the health officer of such sickness. The health officer shall then investigate all such cases, to determine whether or not a dangerous contagious disease is present in such a family, and take proper action.

C. **Exclusion from School.** Parents, guardians or persons having custody of any child or children shall not knowingly permit such child or children, if affected with a dangerous contagious disease, to attend school.

**SECTION 2.6**            **PLACARDING**

Premises where contagious or communicable disease exists shall be placarded in accordance with the rules of the State of Arizona.

**SECTION 2.7**            **VENEREAL DISEASE**

A. Venereal diseases as referred to in this Act includes syphilis, gonorrhea, chancroid, lymphogranuloma, venereum, and granuloma inguinale.

B. Every Indian, or other person on this Reservation, who shall infect another person with a venereal disease shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of not to exceed three months. The White Mountain Apache Indian Court shall have authority to order and compel the medical examination and treatment of any person charged with violation of this section. Every Indian found by a Medical Officer or any other licensed physician to be suffering from a venereal disease shall be reported by said physician to the Judge of the White Mountain Apache Indian Court. Every effort shall be made by the physician to persuade said afflicted Indian to take the prescribed treatment, but if he shall fail, neglect, or refuse to do so, he shall be guilty of an offense and upon conviction thereof, shall be sentenced to jail for a period not exceeding three months, and to take treatment as prescribed by the Physician.

**SECTION 2.8**            **CONTAGIOUS DISEASE BEDDING**

No person shall knowingly use or have about his or her premises, or convey or cause to be conveyed into any neighborhood, any clothing, bedding, or other substance, used by or in taking care of any person afflicted with smallpox, or other infectious or contagious disease, or infected thereby, or shall do any other act with the intent to, or necessarily tending to the spread of such disease into any neighborhood or locality. The Court trying any such offender, may also include in any judgment rendered an order to the effect that the clothing or other property infected be burned or otherwise destroyed and shall have the power to carry such order into effect.

**SECTION 2.9**            **PEST HOUSE**

The Board of Health has the rights to commandeer the use of any suitable vacant house to be used as Pest House when necessary to prevent the spread of such contagious diseases as it may deem necessary to control.

**SECTION 2.10      COMPULSORY VACCINATION AND INOCULATION**

No person shall refuse to comply with the advice of the Medical Officer for vaccination against Smallpox, or inoculation against Diphtheria, Typhoid Fever, or other deadly contagious disease.

**SECTION 2.11      MARRIAGE EXAMINATION**

[NOTE: Repealed by Ordinance No. 267, effective January 21, 2014.]

**SECTION 2.12      SELLING DISEASED FLESH**

No person shall knowingly sell any flesh of any diseased animal.

**SECTION 2.13      SELLING IMPURE MILK**

No person shall knowingly sell or exchange, or expose for sale or exchange any impure, adulterated, or unwholesome milk.

**SECTION 2.14      ADULTERATION OF MILK**

No person shall adulterate milk with a view of offering the same for sale or exchange, or shall keep cows for the production of milk for market, or for sale or exchange, in a crowded or unhealthy condition, or feed same on food that produces impure, diseased or unwholesome milk.

**CHAPTER THREE  
POLLUTION AND POISONS**

[NOTE: Chapter Three was derived from Ordinance No. 25, enacted August 1, 1955;  
and amended by Ordinance 267, enacted January 21, 2014.]

**SECTION 3.1        POISONING FOOD OR WATER**

No person shall willfully mingle poison in any food, drink or medicine intended or prepared for the use of a human being, and no person shall willfully poison or pollute any spring, well, stream, river, reservoir, or other water. This shall be considered a crime punished under the Tribal Code.

**SECTION 3.2        DEPOSIT OF UNWHOLESOME SUBSTANCE**

No person shall deposit, leave or keep on or near a highway any unwholesome substance, or shall establish, maintain or carry on, upon or near a highway or route of public travel, any business, trade or manufacture which is detrimental to the public health; or shall deposit or cast into any lake, creek, rivers, well, reservoir, or other waters, wholly or partly, the offal from or the dead body of any animals.

**SECTION 3.3        POLLUTION OF WATERS**

No person or person shall deposit on any of the water or the rivers, streams and ditches in or running into, out of or through the Reservation, any sawdust, pulp, oils, rubbish, filth, or poisonous or deleterious substance which affects the health of persons, fish, or livestock, or render said waters unpalatable, distasteful, or unsafe.

**CHAPTER FOUR  
NUISANCE**

[NOTE: Chapter Four was derived from Ordinance No. 25, enacted August 1, 1955.]

**SECTION 4.1        PUBLIC NUISANCE DEFINED, PROHIBITED**

- A.     No public nuisance shall be committed.
  
- B.     A public nuisance is a crime against the order and economy of the Reservation.
  - (1)    No person shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons.
  
  - (2)    No person shall offend public decency
  
  - (3)    No person shall unlawfully interfere with, befoul, obstruct or tend to obstruct, or render dangerous for passage a stream, canal ditch, mill-race or basin, or a public park, square, street, alley, bridge, culvert, causeway or highway.
  
  - (4)    No person shall in any way render a considerable number of persons insecure in life or the use of property.

**SECTION 4.2        MAINTAINING A NUISANCE**

- A.     No person shall commit or maintain a public nuisance for which no special punishment is prescribed; or shall willfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and no person shall let or permit to be used any building or portion thereof knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance.
  
- B.     The Court before whom there may be pending any proceedings for a violation of the next preceding paragraph, shall in addition to any punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant.

**CHAPTER FIVE  
BURIAL**

[NOTE: Chapter Five was derived from Ordinance No. 25, enacted August 1, 1955.]

**SECTION 5.1      BURIAL PERMIT**

A permit issued by a Register or Sub-Register or Vital Statistics of the State of Arizona is necessary to bury a body, or to exhume or disinter any body buried in the ground.

**SECTION 5.2      BURIAL OF THE DEAD**

A. All dead bodies must be buried in the ground at least six feet deep and in a location designated as a cemetery.

B. Any body dying of a deadly contagious disease must immediately be placed in a coffin, the coffin sealed, not reopened, and buried within twenty-four (24) hours after death.

D. All unembalmed bodies must be buried within forty-eight (48) hours after death.

## **CHAPTER SIX EXPLOSIVES**

[NOTE: Chapter Six was derived from Ordinance No. 34, enacted July 1, 1959;  
and amended by Ordinance No. 267, enacted January 21, 2014.]

### **SECTION 6.1      POSSESSION OF EXPLOSIVES RESTRICTED**

It shall be unlawful for any person, firm, company, association or corporation to keep, store or possess dynamite, gun cotton, nitroglycerin, giant powder or other highly explosive material, or torpedoes, mines, bombs or grenades on the Fort Apache Indian Reservation unless duly authorized by the White Mountain Apache Tribal Council, or unless the explosive is used in the regular course of construction or other works supervised by some department of the Federal, State or County Government or in any other construction or mining operation authorized by the White Mountain Apache Tribe, or unless said explosive is used in some project connected with and authorized by an enterprise of the White Mountain Apache Tribe.

### **SECTION 6.2      USE OF EXPLOSIVES RESTRICTED**

It shall be unlawful for any person to explode or to attempt to explode, at, in, under, or near any building, automobile, theater, school house, church, dwelling house or other places where human beings usually inhabit, assemble, frequent or pass on the Fort Apache Indian Reservation, any chemical compound or explosive unless duly authorized by the White Mountain Apache Tribal Council, or unless the explosive is used in the regular course of construction or other works supervised by some department of the Federal, State, or County Government or in any other construction or mining operation authorized by the White Mountain Apache Tribe, or unless said explosive is used in some project connected with and authorized by an enterprise of the White Mountain Apache Tribe, and then only provided that all laws and regulations relative to the use of explosives in the State of Arizona are complied with.

### **SECTION 6.3      PENALTIES: MEMBER; NON-MEMBER**

A. Any member of the White Mountain Apache Tribe who shall violate this Chapter, or any part thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00) or by imprisonment in the Tribal Jail for a period not to exceed 90 days, or both fine and imprisonment.

B. Any non-member who shall violate this Chapter, or any part thereof, as provided in the Tribal Code, may be expelled from this Reservation; and in addition, if the violation of this Chapter is also a violation of the Criminal Code of the State of Arizona, then said non-member shall be taken before the appropriate state court for punishment.

**CHAPTER SEVEN  
FOOD ESTABLISHMENTS**

[NOTE: Chapter Seven was derived from Ordinance No. 88, enacted September 10, 1970.]

**SECTION 7.1        PURPOSE**

The United States Public Health Service has assumed responsibility for health and sanitation on the Fort Apache Indian Reservation; and it is the responsibility of the United States Public Health Service to inspect all food establishments on the reservation; and there is need for routine inspection of all food establishments, including: Restaurants, Cafes, Bakeries, Grocery Stores, Trading Posts, and itinerant food establishments on the reservation.

**SECTION 7.2        PUBLIC HEALTH SERVICE INSPECTION REQUESTED; REPORTS**

A.     The United States Public Health Service is hereby requested to provide periodical inspections of all such establishments on the Fort Apache Indian Reservation.

B.     Reports of these inspections shall be made available to the Chairman of the Tribal Council and the Superintendent of the Fort Apache Indian Agency.

**SECTION 7.3        FAILURE TO CORRECT UNSANITARY CONDITIONS;  
SUSPENSION OF LICENSE**

If any trader fails to correct any of the unsanitary conditions as recommended at the Public Health Service for a period of thirty (30) days, his trader's license shall be terminated.

**CHAPTER EIGHT  
CIVIL DEFENSE**

[NOTE: Chapter Eight was derived from Ordinance No. 78, enacted July 13, 1966.]

**SECTION 8.1            ADOPTION OF ARIZONA CIVIL DEFENSE STATUTE**

The White Mountain Apache Tribal Council hereby adopts those portions of Title 26, Chapter 2, Arizona Revised Statutes, as pertaining to County Civil Defense Agencies as its Civil Defense Law.

**SECTION 8.2            AUTHORITY OF TRIBAL CHAIRMAN TO ENTER AGREEMENTS  
WITH ARIZONA PERTAINING TO CIVIL DEFENSE**

The Chairman of the White Mountain Apache Tribal Council is hereby empowered to enter into agreement with the State of Arizona whereby the Tribal Council will assume the status similar to that of a County for the purpose of receiving support from the State of Arizona for active participation by the Tribal Council in the Civil Defense and Emergency Planning Programs.

**CHAPTER NINE  
REGULATION OF SALE OF TOXIC SUBSTANCES,  
GASOLINE, AND TOBACCO TO MINORS**

[NOTE: Except as noted, Chapter Nine was derived from Ordinance No. 119,  
enacted March 4, 1981, which amended Ordinance No. 117.]

**SECTION 9.1        DEFINITIONS**

A.     **Person** - shall mean a natural person, Indian or non-Indian, or any individual employed by a business.

B.     **Business** - a profession, trade or occupation or other calling carried out for profit of livelihood, or any employee or agent of the same.

C.     **Agency** - Any organizational unit engaged in carrying out business on the Fort Apache Indian Reservation, i.e., United States Government, White Mountain Apache Tribe or Non-Tribal Government.

D.     **Psycho Toxic Chemical Solvents or Toxic Substance** - As used in this section the terms Psychotoxic chemical solvents and toxic substances shall be used interchangeable and include any glue, cement or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, methyl alcohol, methyl ethyl, ketone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or of the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

E.     **Tobacco** - Any substance derived from the tobacco leaf. Cigarettes, cigars, snuff, chewing tobacco, and loose tobacco.

**SECTION 9.2        SALES TO PERSONS UNDER EIGHTEEN PROHIBITED**

It shall be unlawful for any business or person to sell, permit the sale of, attempt to sell, conspire to sell, trade, give, or transfer any psychotoxic chemical solvents or tobacco products to any person under the age of eighteen (18) years of age.

**SECTION 9.3      DIRECT INTRODUCTION INTO MOTOR VEHICLE FUEL TANK PERMITTED**

It shall be unlawful for any person or business engaged in the sale of Psychotoxic chemical solvents to permit the sale of said Psychotoxic chemical solvents to any person under the age of eighteen (18) years of age. It will only be permitted if the substance is directly introduced into a motor vehicle fuel tank.

**SECTION 9.4      RESTRICTED STORAGE AND DISPLAY REQUIRED**

All business on the Fort Apache Indian Reservation engaged in the sale of Psychotoxic chemical solvents and tobacco products will place such products behind counters or in locked display counters and in any way make them inaccessible to persons under the age of eighteen (18) years of age, and prohibit the sale of these items to such minors.

**SECTION 9.5      LOCKING GAS CAPS REQUIRED**

All White Mountain Apache Tribe, and other Non-Tribal, Non-Federal Governmental Agencies on the Fort Apache Indian Reservation shall install locking gas caps on their respective vehicles.

**SECTION 9.6      DESTRUCTION OR SAFEKEEPING OF CHEMICALS**

All business operating on the Fort Apache Indian Reservation will destroy or remove all Psychotoxic chemical solvents and their containers when no longer in use. All toxic substances shall be placed in a safe locked place when not in use.

**SECTION 9.7      LOCKING OF GAS DISPENSING TANKS AND PUMPS REQUIRED**

All construction companies and United States Government Agencies, shall lock all gas dispensing tanks and pumps when unattended or not in regular use.

**SECTION 9.8      TOBACCO SALES TO PERSONS UNDER EIGHTEEN PROHIBITED**

A business or person violates this Chapter if it or he sells to, or otherwise obtains for or arranges for the obtaining of tobacco or a tobacco product for a person under the age of eighteen (18) years of age, or knowingly permits such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management of operation.

**SECTION 9.9        PENALTIES FOR VIOLATION**

Any person or business found guilty of violating this Chapter or committing unlawful acts against this Chapter shall be punished by a Civil Penalty of not less than Twenty-Five (\$25.00) dollars or more than Two Hundred (\$200.00) Dollars.

**SECTION 9.10       LICENSE SUSPENSION OR REVOCATION**

Any Indian or Non-Indian business licensee violating any provision of this Chapter shall be subject to a business license suspension of not less than two (2) days or not more than fourteen (14) days. Failure to comply with the suspension shall result in the business license being revoked.

**SECTION 9.11       SEVERABILITY**

If any provision of this Chapter, or the application thereof, is held invalid, the remainder of this Chapter, or other applications of such provisions, shall not be affected.

## CHAPTER TEN DOMESTIC ANIMALS

[NOTE: Chapter Ten has been amended by Ordinance No. 195, enacted March 8, 1995;  
and amended by Ordinance No. 267, enacted January 21, 2014.]

### POLICY STATEMENT

The Fort Apache Indian Reservation has become overpopulated with domesticated animals. Several animals are sick, starving, neglected or homeless. These animals pose a threat to the residents of the reservation by roaming throughout the communities uncontrolled. In order to protect our residents, livestock, natural resources, and control animal neglect, starvation, disease and overpopulation, the following Animal Control Ordinance shall become effective.

#### SECTION 10.1      DEFINITIONS

In this Ordinance, unless the context otherwise requires, or unless otherwise defined for a particular purpose herein:

A.      "**Animal**" means any domesticated animal of a species that is susceptible to rabies, except man.

B.      "**At large**" means being neither confined by rope, pasture, pen, enclosure nor physically restrained by a leash or harness.

C.      "**Animal Control Officer**" means a civilian appointed by the Chief of Police whose work within the Whiteriver Police Department shall be to enforce applicable provisions of the Health and Safety Code of the White Mountain Apache Tribe.

D.      "**Tribal Pound**" means any establishment authorized by the Tribal Council for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the Animal Control Officer in the performance of his official duties.

E.      "**Impound**" means the act of taking or receiving into custody by the Animal Control Officer of any dog or other animal for the purpose of confinement in a tribal pound in accordance with the provisions of this Ordinance.

F.      "**Kennel**" means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs under controlled conditions.

G.      "**Harboring**" means the keeping of an animal by the occupant of any premises on which said animal is kept or to which customarily returns daily for food and care for a period of three or more consecutive days.

H. **"Collar"** means a band, chain, harness or other suitable device worn around the neck of an animal to which a license can be attached.

I. **"Leash"** means a line made of rope, chain or other suitable material not less than one-fourth inch in diameter for the purpose of restraining an animal.

J. **"Livestock"** means cattle, horses, sheep, goats, swine, mules or burros.

K. **"Owner"** means any person keeping an animal other than livestock for more than six consecutive days.

L. **"Stray dog"** means any dog four months of age or older running at large that is not wearing a valid license tag.

M. **"Vaccination"** means the administration of an anti-rabies vaccine to animals by a veterinarian.

N. **"Veterinarian"**, unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.

O. **"Vicious animal"** means any animal of the order carnivora that has a propensity to bite human beings without provocation, or any animal that, while at large, kills or causes injury to domestic animals.

P. **"Aggressive Dog"** means any dog of the following breed: hybrid wolves, german shepard, doberman pinscher, pitbull, rottweiler.

## **SECTION 10.2      ANIMAL CONTROL OFFICER**

A. The position of Animal Control Officer is established by the Tribal Council and replaces the position of "Special Officer" for the purposes of this code.

B. The Animal Control Officer shall enforce the provisions of this code and any other regulations pertaining thereto. He shall be empowered to issue summons, citations and complaints relating to this code.

C. The Animal Control Officer shall be under the employ and control of the Whiteriver Police Department.

## **SECTION 10.3      REGISTRATION; ISSUANCE OF DOG TAGS**

A. Every dog owned within the exterior boundaries of the Fort Apache Indian Reservation shall be registered with the Animal Control Officer by the owner within thirty (30) days of the date that the dog was acquired by the owner. The registry of ownership shall

contain the following information: name, breed (if known), sex, color and location of the residence where the animal resides. The name of the owner shall also be included.

B. Upon completion of the registration, a certificate shall be issued to the owner. A metal tag shall be also issued to the owner with a number and date of issue. The tag shall be attached to a collar or harness which shall be worn by the dog at all times while running at large, except as otherwise provided in this ordinance. Whenever a dog tag is lost, a duplicate tag shall be issued upon application by the owner and payment of a fee established by the Tribal Council. Without the tag, the dog will be considered unregistered and will be dealt with as shown in this code. The number of the tag shall also be recorded in the registry. The period of registration is one year and must be renewed thereafter. The tag is non-transferable. The fee for such a tag is in the fee schedule as approved by the Tribal Council.

C. Proof of vaccination is required before a registration certificate can be issued. This proof and the vaccination is obtained through the Indian Health Service Hospital in Whiteriver, Arizona. If the dog has been previously registered elsewhere, then the appropriate documentation must be provided before the registration can be final. The Indian Health Service shall provide a list of all animals vaccinated each year to the Animal Control Officer.

D. Any person who knowingly fails within fifteen (15) days after written notification from the Animal Control Officer to obtain registration for a dog required to be licensed, counterfeits an official dog tag, removes such tag from any dog for the purpose of intentional and malicious mischief or places a dog tag upon a dog unless the tag was issued for that particular dog is guilty of an offense and is subject to the penalties set forth in Section 10.13 of this Code.

#### **SECTION 10.4 DOGS NOT PERMITTED AT LARGE; WEARING LICENSES**

A. Neither a female dog during her breeding or mating season nor a vicious dog shall be permitted at large.

B. Any dog over the age of four (4) months running at large shall wear a collar or harness to which is attached a valid license tag, and must be physically restrained by a leash.

C. No person in charge of any dog shall permit such dog in any public place unless the dog is physically restrained by a leash, enclosed in a car, cage or similar enclosure.

**SECTION 10.5**      **ESTABLISHMENT OF POUNDS; IMPOUNDING AND DISPOSING OF DOGS AND CATS; RECLAIMING IMPOUNDED DOGS AND CATS**

A.      The Tribal Council may provide or authorize a pound or pounds or enter into a cooperative agreement with a veterinarian or an Arizona incorporated humane society for the establishment and operation of a pound.

B.      Any stray dog shall be impounded. All dogs and cats impounded shall be given proper care and maintenance.

C.      Each stray dog or any cat impounded shall be kept and maintained at the pound for a minimum of seventy-two (72) hours unless claimed by its owner. Upon such an action, the Animal Control Officer will make every attempt to notify the owner where the animal can be redeemed. Any person may purchase such a dog or cat upon expiration of the impoundment period, provided such person pays all pound fees established by the Tribal Council and complies with the licensing and vaccinating provisions of this ordinance. If the animal is not redeemed within the seventy-two (72) hour period, then it shall be sold to the public to the highest bidder. A bill of sale shall be tendered to the highest bidder at the time of sale. Should there be no bidder, then the animal shall be destroyed. The Animal Control Officer may destroy impounded sick or injured dogs or cats whenever such destruction is necessary to prevent such dog or cat from suffering or to prevent the spread of disease.

D.      Any impounded licensed dog or any cat may be reclaimed by its owner or such owner's agent provided that the person reclaiming the dog or cat furnishes proof of right to do so and pays all pound fees established by the Tribal Council. If the dog or cat is not reclaimed within the impoundment period, the Animal Control Officer shall take possession and may place the dog or cat for sale or may dispose of the dog or cat in a humane manner. Any person purchasing such a dog or cat shall pay all pound fees established by the Tribal Council.

**SECTION 10.6**      **HANDLING OF BITING ANIMALS; RESPONSIBILITY FOR REPORTING ANIMAL BITES; AUTHORITY TO DESTROY ANIMALS**

A.      An unlicensed dog or unvaccinated dog or cat that bites any person shall be confined and quarantined at the home of the owner or upon request of and at the expense of the owner, at a veterinary hospital, for a period of seven to ten days. A dog properly licensed and vaccinated pursuant to this ordinance, that bites any person, shall be confined and quarantined at the home of the owner or wherever the dog is harbored and maintained with the consent of and in a manner prescribed by the Animal Control Officer.

B.      Any animal other than a dog or cat that bites any person shall be confined and quarantined at the home of the owner, or upon the request of and at the expense of the owner, at a veterinary hospital for a period of seven to ten days. If the animal is a caged rodent, it

shall be confined and quarantined at the home of the owner or where it is harbored or maintained, for the required period of time, with the consent of and in a manner prescribed by the Animal Control Officer.

C. Any wild animal which bites any person may be killed and submitted to the Animal Control Officer or his deputies for transmission to an appropriate diagnostic laboratory.

D. Whenever an animal bites any person, the incident shall be reported to the Animal Control Officer immediately by any person having direct knowledge.

E. The Animal Control Officer may destroy any animal confined and quarantined pursuant to this section prior to the termination of the minimum confinement period for laboratory examination for rabies if:

1. Such animal shows clear clinical signs of rabies, or
2. The owner of such animal consents to its destruction.

F. Any animal subject to licensing under this article found without a tag identifying its owner shall be deemed unowned.

G. The Animal Control Officer shall destroy a vicious animal upon an order of a tribal court judge. A Tribal Court judge may issue an order after notice to the owner, if any, and a hearing.

#### **SECTION 10.7      DISEASED ANIMAL**

A. Any animal afflicted with a contagious or infectious disease shall, at all times, be confined by a fence or pen and shall not be removed from such enclosures, even when held by a leash, except for the purpose of being transported to a licensed veterinarian.

B. It shall be unlawful for any animal owner, or other person, knowing that an animal has rabies, or has been exposed to rabies, to remove the animal from the owner's residence or from the Fort Apache Indian Reservation, except under the order of the Animal Control Officer through the Chief of Police.

C. If any owner, Animal Control Officer, or other person knows, or has reason to believe, that an animal has rabies, or has been exposed to rabies, they shall report this to the Chief of Police, who in turn will notify the Indian Health Service.

#### **SECTION 10.8      NEGLECTED ANIMALS**

A. It shall be unlawful for any animal owner to neglect their pet by failure to provide food, water, shelter, grooming and protection.

B. It shall be unlawful for any animal owner or other person, to dispose of unwanted animals at any place other than the Tribal Pound.

**SECTION 10.9      CONTROL OF VICIOUS ANIMALS/AGGRESSIVE DOGS**

A. Any animal declared vicious by a Judge of the Tribal Court after a hearing about the animal's behavior shall be summarily destroyed by the Animal Control Officer or restrained at the premises of the owner by means of a locked pen, depending upon the decision of the Judge.

B. If a vicious animal is out of the pen, then it must be on a secure leash, under direct control of the owner.

C. Any aggressive dog shall be strictly required to be controlled by chain or pen, and under no circumstances shall be allowed to roam freely.

**SECTION 10.10      PUBLIC NUISANCE**

A. An animal shall be considered a public nuisance under the following conditions:

1. Molests passersby or passing vehicles;
2. Attacks other animals;
3. Barks, howls, crows or creates other animal noises so as to corrupt the peace and quite of people;
4. Is repeatedly at large, especially on school grounds;
5. Overturns or spreads garbage about;
6. Runs through or tears up gardens, landscaping or lawns.

B. Anyone who harbors, owns or controls such an animal is guilty of the offense of "Public Nuisance" as set forth in the Tribal Code.

**SECTION 10.11      UNLAWFUL INTERFERENCE WITH ANIMAL CONTROL OFFICER**

A. It is unlawful for any person to interfere, threaten or harass the Animal Control Officer in the performance of his duties.

B. Anyone found guilty of unlawful interference with the Animal Control Officer shall be punished as prescribed in Section 2 of the Tribal Code.

**SECTION 10.12      REMOVING IMPOUNDED ANIMALS**

No person may remove or attempt to remove an animal which has been impounded or which is in the possession of the Animal Control Officer except in accordance with the provisions of this ordinance and the regulations promulgated thereunder.

**SECTION 10.13      DOGS; HOUSEHOLD LIMIT/UNLAWFUL HARBOR**

A.      The maximum number of dogs permitted for each household on the Fort Apache Indian Reservation shall be two (2).

B.      In cases where a dog owner maintains more than two dogs on his property, he must obtain a special permit from the Animal Control Officer. The Animal Control Officer shall issue a special permit to a dog owner to maintain more than two dogs for good cause, i.e., breeding, kennel, hunting/tracking, etc. There shall be no fee to obtain this permit.

C.      It is unlawful for a person to keep, harbor or maintain a dog within the Fort Apache Indian Reservation except as provided by the terms of this article.

**SECTION 10.14      VIOLATION; PENALTIES**

A.      Any person who fails to comply with the requirements of this ordinance, or violates any of its provisions, is guilty of an offense and can be punished up to and including a fine of One hundred fifty (\$150.00) dollars, ten (10) days in jail, or both.

B.      Any civil penalties brought forth in a suit for damages are in addition.

**SECTION 10.15      DOGS; LIABILITY**

Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted.

**SECTION 10.16      FEE SCHEDULE**

- A.      Initial Registration ..... \$5.00
- B.      Annual Renewal ..... \$1.00
- C.      Impoundment Fee Per Day ..... \$1.00
- D.      Voluntary Request by Owner to Destroy Animal.....No Charge

**CHAPTER ELEVEN  
ALCOHOLIC BEVERAGE CONTROL**

[NOTE: Chapter Eleven was derived from Ordinance No. 125, enacted November 4, 1981 (Ordinance No. 125 repealed all prior alcohol control ordinances, including Ordinance Nos. 115, 92, 84, 81, 50, 26 and 5); Ordinance No. 148 amended Ordinance No. 125, enacted April 16, 1986; and Ordinance No. 265, enacted November 1, 2013.]

**SECTION 11.1      DECLARATION OF PUBLIC POLICY AND PURPOSE**

A.      The introduction, possession, and sale of liquor on the White Mountain Apache Reservation has since executive order time, been clearly recognized as a matter of special concern to the White Mountain Apache Tribe.

B.      Federal Law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. §1154), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. §1161).

C.      The Tribal Council finds that a complete ban on liquor within the Fort Apache Indian Reservation is ineffective and unrealistic. However, it recognizes a need still exists for strict regulation and control over liquor transactions within the reservation because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, and consumption of liquor. The Tribal Council finds that strict control and regulation of liquor is necessary to achieve maximum economic benefit to the tribe, to protect the health and welfare of our tribal members, and to address specific tribal concerns relating to alcohol use on the reservation.

D.      The enactment of a tribal ordinance governing liquor sales on the Fort Apache Indian Reservation and providing for exclusive purchase and sale through a tribally owned and operated establishment will enhance the ability of the tribal government to control reservation liquor distribution and possession, and at the same time, will provide an important source of revenue for the continued operation of the tribal government and the delivery of essential tribal social services.

E.      This chapter shall be cited as the "White Mountain Apache Tribal Liquor Control Ordinance" and under the inherent sovereignty of the White Mountain Apache Tribe, shall be deemed an exercise of the Tribe's power pursuant to 18 U.S.C. 1161, for the protection of the welfare, health, peace, morals, and safety of the people of the tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the traffic in alcoholic beverages because it affects the public interest of the people, should be regulated to the extent of prohibiting all traffic of liquor, except as provided in this Chapter. It is also declared to be public policy that the enforcement of this Ordinance on the Fort Apache Indian Reservation by federal authorities pursuant to 18 U.S.C. 1154 is hereby authorized and encouraged.

## SECTION 11.2 DEFINITIONS

As used in this Chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) **Alcohol** is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) **Alcoholic Beverage** is synonymous with the term liquor as defined in Section 11.2(o) of this Chapter.

(c) **Application** shall mean a formal written request for the issuance of a license supported by a verified statement of facts.

(d) **Beer** - means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

(e) **Board** - means the White Mountain Apache Liquor Board as constituted under this Chapter.

(f) **Broken Package** - means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed.

(g) **Bulk Container** - shall mean any package, or any container within which container are one or more packages.

(h) **Club** - includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:

(1) A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary and which is a post, chapter, camp or other local unit composed solely of veterans which has been chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes, and which has, as the owner, lessee or occupant, operated an establishment for the purpose in this state.

(2) A chapter, aerie, parlor, or other local unit of an American national fraternal organization which has as the owner, lessee or occupant operated an establishment for fraternal purposes in this state. An American national fraternal organization as used in this subdivision shall actively

operate in not less than thirty-six (36) states or have been in active continuous existence for not less than twenty (20) years.

(3) A hall building association of such a local unit mentioned in subdivision (1) and (2), all of the capital stock of which is owned by the local or the members, and which operates the club room facilities of the local unit.

(4) A golf club which has more than fifty bona fide members which owns, maintains or operates a bona fide golf links together with a club house.

(5) A social club with more than one hundred bona fide members who are actual residents of the county in which it is located, which own, maintains or operates club quarters, and which is authorized and incorporated to operate as a non-profit club under the laws of this state, and has been continuously incorporated and operating for a period of not less than one year, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the subjects of the club. The club's memberships shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one percent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than thirty days prior to the filing of the petition. The club shall qualify for exemption from the payment of state income taxes under the provisions of Title 43, it being the intent of this paragraph that a license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purpose of the club.

(l) **Company and Association** - when used in reference to a corporation includes successors or assigns.

(j) **Distillery, Winery, and Brewery** - shall mean not only the premises wherein alcohol is distilled, or rectified wine is fermented or beer is brewed, but in addition a person owning, representing, or in charge of such premises and the operations conducted thereon, including the blending and bottling or other handling and preparation of intoxicating liquor or beer in any form.

(k) **Election days** - means the biennial primary election for the nomination of United States, state, county and precinct officers, a special election

called pursuant to Section 1, Article 21 of the Constitution of the State of Arizona, the biennial general election of the State of Arizona and all White Mountain Apache tribal elections.

(l) **Foreign Corporation** - shall mean any corporation not incorporated under the laws of the White Mountain Apache Tribe.

(m) **Legal Age** - shall mean the age requirements as defined in this Chapter.

(n) **Liquor Store** - shall mean any store, established by Apache Enterprise for the sale of alcoholic beverages.

(o) **Liquor** - includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor, or otherwise intoxicating; and every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semi-solid, or solid substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(p) **Malt Liquor** - means beer, ale, stout, and porter.

(q) **Package** - shall mean the bottle or immediate container of any alcoholic beverage.

(r) **Package Dealer** - shall mean the White Mountain Apache Tribe as distinguished from a distiller, manufacturer, or wholesaler, that sells, or keeps for sale, any alcoholic beverage authorized under this Chapter for consumption of the premises where sold.

(s) **Person** - includes partnership, association, enterprise, company or corporation, as well as a natural person.

(t) **Public Places** - means a place where the public has an interest as effecting the safety, health, welfare and morals of the community.

(u) **Sale and Sell** - include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

(v) **Spirituos Liquor** - includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture or any of them or of any of them with any vegetable or other

substance, alcohol bitters, bitters containing alcohol and any liquid mixture or preparation whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent of alcohol by volume.

(w) **Stamp** - shall mean the various stamps required by this Chapter to be affixed to the package or bulk container, as the case may be, to evidence payment of the tax prescribed by this Chapter.

(x) **Vehicle** - means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

(y) **Veteran** - means a person who served the United States during war time or in any expedition of the United States armed forces as a member of the United States Army, Air Force, Navy, Marine Corps, Nurse Corps of any branch of the armed services; as a member in any other branch of the United States Armed Services; or as an active nurse in the services of the American Red Cross provided that such person has received a discharge other than a dishonorable one.

(z) **Wholesaler** - shall mean any person other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating liquor or low-point beer; no wholesaler shall be permitted to sell for consumption upon the premises.

(aa) **Wine** - means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four (24) percent of alcohol by volume.

(bb) **Public Modern Dance** - as used in this Chapter shall be any public gathering, dance, party or other social event held for any purpose other than a traditional tribal ceremony.

(cc) **Bootlegging:** means the illegal manufacture, sale, possession, or transporting of liquor as defined in Section 11.2 (o) of this Chapter.

[NOTE: Subsection 11.2(cc) was derived from Ordinance 206, enacted October 17, 1996.]

### **SECTION 11.3      GENERAL PROHIBITION**

A. It shall be unlawful to manufacture, sell, offer, keep for sale, possess or transport liquor except upon the terms, conditions, limitations, and restrictions specified in this Chapter.

B. All liquor manufactured, sold, possessed or transported in violation of this Chapter is hereby declared contraband and in addition to any penalties or fines imposed by

the court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set forth in Rule 2.5 of the White Mountain Apache Rules of Criminal Procedure governing the disposition of seized property.

[NOTE: Subsection 11.3B was derived from Ordinance 206, enacted October 17, 1996.]

### **SECTION 11.3.1 TULAPAI EXEMPTION**

It shall not be a violation of this Chapter to manufacture, possess or consume Tulapai for ceremonial purposes.

[NOTE: Subsection 11.3.1 was derived from Ordinance 206, enacted October 17, 1996.]

### **SECTION 11.4 LIQUOR AGENCY CREATED**

There is hereby established a branch of White Mountain Apache Tribal Enterprises known as the Liquor Agency. This branch shall be constituted as an agency and department of the White Mountain Apache Tribal Government and be known as Apache Enterprise.

### **SECTION 11.5 WHITE MOUNTAIN APACHE LIQUOR BOARD**

A. **Liquor Board Established - Composition.** There is hereby established a White Mountain Apache Liquor Board. The members of the White Mountain Apache Tribal Council shall serve as the White Mountain Apache Liquor Board. The Board is empowered to:

(1) Administer this Chapter by exercising general control, management, and supervision of all liquor sales, places of sale, and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Chapter;

(2) Adopt and enforce rules and regulations in furtherance of the purposes of this Chapter and the performance of its administrative functions;

(3) Employ managers and such other persons as shall be reasonably necessary to allow the Board to perform its functions. Pursuant to authority, the Board shall appoint a manager who shall have the powers and perform the duties set forth in Section 11.6;

(4) Bring suit in the appropriate court to enforce the provisions of this Chapter with the consent of the White Mountain Apache Tribal Council. The Board shall not, without the specific consent of the Council, waive the Board's or the Tribe's immunity from suit.

**SECTION 11.6      LIQUOR BUSINESS MANAGER**

A.     **Powers and Duties.** The manager appointed by the Board shall have the following powers and duties in regard to the Liquor Agency:

(1)     To manage the Liquor Agency for the benefit of the White Mountain Apache Tribe.

(2)     To purchase, in the name of the White Mountain Apache Tribe, liquor products from wholesale distributors, and distribute them to such tribal liquor outlets as he deems appropriate.

(3)     To establish, with the Board and subject to its approval, such administrative procedures as are necessary to govern the operation of the Liquor Agency.

(4)     To report and account to the board at least four times a year regarding the operation and financial status of the Liquor Agency. The Board and the manager shall establish the dates on which such accounting shall take place. The Board may require more frequent accounting if deemed necessary.

(5)     To hire and set the salaries of additional personnel, subject to Board approval, as he deems necessary to the successful operation of the Liquor Agency.

(6)     To supervise all persons employed by the Liquor Agency.

(7)     To purchase, with Board approval, and to maintain the Liquor Agency's real and personal property.

(8)     To collect the White Mountain Apache Liquor excise tax.

(9)     To transfer all tax revenues and gross proceeds of the Liquor Agency to the tribal treasurer for disposition in accordance with Section 11.13.

(10)    To set the retail price for liquor in cooperation with and subject to the approval of the Board.

(11)    To obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Board. The policy shall contain the stipulation that the Tribe shall be given ten days notice of the proposed cancellation or expiration of such policy. The manager shall submit to the Board a certificate of insurance from such policy and shall have available for inspection, a complete copy of such policy.

(12) The manager shall be bonded for such additional amount and for such additional purposes as the Board shall determine to be appropriate in managing the Liquor Division.

**SECTION 11.7      SOVEREIGN IMMUNITY PRESERVED**

Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the White Mountain Apache Tribe. No manager or employee of the Liquor Agency shall be authorized nor shall he attempt to waive the immunity of the Tribe.

**SECTION 11.8      SALES**

A.      **Only Tribal Sales Allowed.** No sales of alcoholic beverages shall be made within the exterior boundaries of the Fort Apache Indian Reservation except at the Tribal Liquor Store Outlets, the Sunrise ski area, and other locations which from time to time, the Liquor Agency Manager with the Liquor Board's approval may designate.

B.      **All Sales Cash.** All sales at tribal liquor stores shall be on a cash only basis and no credit shall be extended to any person, organization, or entity except by means of recognized bank and other credit cards.

C.      **All Sales for Personal Use.** All sales shall be for the personal use of the purchaser, and resale for profit of any alcoholic beverage purchased at a tribal liquor store is prohibited within the Fort Apache Indian Reservation. The purchase of an alcoholic beverage at a tribal store and subsequent resale of that beverage for profit, whether in the original container or not, shall be a violation of this Chapter and the violator shall be subject to the penalties prescribed in Section 11.11.

D.      **Tribal Property.** The entire stock of liquor and alcoholic beverages referred to under this Chapter shall remain tribal property, owned and possessed by the White Mountain Apache until sold.

**SECTION 11.9      TAXATION**

A.      **Tax Imposed.** There is hereby levied and shall be collected, a tax on each retail sale of alcoholic beverages on the Fort Apache Indian Reservation in the amount of five percent (5%) of the retail sales price. The tax imposed by this title shall apply to all retail sales of liquor on the Reservation and shall preempt any tax imposed on such liquor sales by the State of Arizona. No municipality, city, town, county, nor the State of Arizona shall have any power to impose an excise tax on liquor or alcoholic beverages as defined by this Chapter, or to govern or license the sale or distribution thereof in any manner within the Fort Apache Indian Reservation, not to be effective until ordered by the Tribal Council or the White Mountain Apache Liquor Board.

B. **Distribution of Taxes.** All taxes from the sale of alcoholic beverages on the Fort Apache Indian Reservation by or through the Board shall be paid over to the tax fund of the White Mountain Apache Tribe and be subject to distribution by the White Mountain Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services. Provided, however, that priority in funding shall be given to those tribal programs which demonstrate the greatest need and past successful performance in providing community services to tribal members, with specific consideration to the Detox Program as more fully set forth in Section 11.13 of this Chapter.

## **SECTION 11.10      ILLEGAL ACTIVITIES**

[NOTE: Sections 11.10 (15), (17) and (18) were derived from Ordinance No. 206, enacted October 17, 1996.]

### A. **Violations.**

(1) **Liquor Stamp Contraband.** It shall be a violation of this Chapter for any person to sell alcoholic beverages on the Fort Apache Indian Reservation without a stamp of the Board affixed to the package. All alcoholic beverages not so stamped which are sold or held for sale on the Fort Apache Indian Reservation are hereby declared contraband and in addition to any penalties or fines imposed by the court for violation of this section, shall be confiscated and forfeited in accordance with the procedures set out in the White Mountain Apache Tribe Court Rules and Civil Procedure governing forfeiture of contraband.

(2) **Use of Seal.** It shall be a violation of this Chapter for any person, other than an employee of the Board, to willfully keep or have in his possession any legal seal prescribed under this Chapter unless the same is attached to a package which has been purchased from a tribal liquor store, or to willfully keep or have in his possession any design in imitation of any official seal prescribed under this Chapter or calculated to deceive by its resemblance to any official seal, or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked.

(3) **Illegal Sale of Liquor by Drink or Bottle.** It shall be a violation of this Chapter for any person to sell by the drink or bottle any liquor, except as otherwise provided in this Chapter.

(4) **Illegal Transportation, Still, or Sale Without Permit.** It shall be a violation of this Chapter for any person to sell or offer for sale or transport in any manner any liquor in violation of this Chapter, or to operate or have in his possession without a permit, any mash capable of being distilled into liquor.

(5) **Illegal Purchase of Liquor.** It shall be a violation of this Chapter for any person within the boundaries of the Fort Apache Indian Reservation to buy liquor from any person other than at a properly authorized tribal liquor store or approved outlet or location.

(6) **Illegal Possession of Liquor - Intent to Sell.** It shall be a violation of this Chapter for any person to keep or possess liquor upon his person or in any place or on premises conducted or maintained by him as a principal or agent with the intent to sell it contrary to the provisions in this Chapter.

(7) **Sales to Persons Apparently Intoxicated.** It shall be a violation of this Chapter for any person to sell liquor to a person apparently under the influence of liquor.

(8) **Possession and Use of Liquor by Minors.** Except in the case of liquor given or permitted to be given to a person under the age of twenty-one (21) years by his parent or guardian, for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes; it shall be a violation of this Chapter for any person under the age of twenty-one (21) years to consume, acquire, or have in his possession any alcoholic beverage except when such beverage is being used in connection with religious services.

(9) **Furnishing Liquor to Minors.** It shall be a violation of this Chapter for any person to permit any other person under the age of twenty-one (21) to consume liquor on his premises under his control, except in those special situations set forth in Section 11.10A(8).

(10) **Sales of Liquor to Minors.** It shall be a violation of this Chapter for any person to sell any liquor to any person under the age of twenty-one (21) years.

(11) **Unlawful Transfer of Identification.** It shall be a violation of this Chapter for any person to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor; provided, that corroborative testimony of a witness other than the minor shall be a requirement for conviction.

(12) **Possession of False or Altered Identification.** It shall be a violation of this Chapter for any person to attempt to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

(13) **Identification - Proof of Minimum Age.** Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows correct age and bears his or her signature and photograph:

(a) Liquor Control Authority Card of Identification of any state.

(b) Driver's License of any state or an identification card issued by any State Department of Motor Vehicles.

(c) United States Active Duty Military Identification.

(d) Passport.

(14) It shall be a violation of this Chapter to employ a person under the age of twenty-one (21) years to manufacture, sell or dispose of spirituous liquors.

(15) It shall be a violation of this Chapter to employ a person under the age of nineteen (19) years in any capacity connected with the handling of spirituous liquors.

(16) It shall be a violation of this Chapter to engage in the following: For an employee of a tribally owned liquor outlet, during his working hours or in connection with his employment, to give to or purchase for any other person, accept a gift or purchase for himself or consume spirituous liquors.

(17) It shall be a violation of this Chapter for an employee of a tribal liquor outlet to sell, dispose of, deliver or give spirituous liquor to a person, or to allow a person to consume spirituous liquors on the outlet premises, between the hours of one o'clock a.m. and six o'clock a.m. on week days and Saturdays and one o'clock a.m. and ten o'clock a.m. on Sundays.

(18) ***Rescinded by Ordinance 206, enacted October 17, 1996.***

(19) It shall be a violation of this Chapter for an employee of a tribal liquor outlet to sell spirituous liquors except in the original container, to permit spirituous liquor to be consumed on the outlet premises, or to sell spirituous liquor in a container having a capacity of less than eight ounces except as approved by the liquor business manager and Board.

(20) It shall be a violation of this Chapter for a person to consume spirituous liquor from a broken package in a public place, through fare or gathering except as approved by the liquor business manager and Board.

(21) It shall be a violation of this Chapter for a person to have in his possession or to transport spirituous liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and the State of Arizona.

(22) It shall be a violation of this Chapter for an employee of a tribal liquor outlet, when engaged in waiting on or serving customers, to consume spirituous liquor or remain on or about the premises while in an intoxicated or disorderly condition.

(23) It shall be a violation of this Chapter for any person to be in a state of

intoxication or to sell, attempt to sell, solicit, consume, possess, acquire or transfer liquor within three hundred (300) feet of a Sunrise Dance or Painting Ceremony.

(24) **Public Modern Dances** - All public modern dances are hereby imposed with a curfew of 1:00 a.m. It shall be a violation of this Chapter for any person to sponsor or participate in any public modern dance past the hour of 1:00 a.m.

(a) Any sponsor of a public modern dance shall be responsible for clean-up of the public area. Failure of any sponsor to clean-up any public area where a public modern dance is held shall be a violation of this Chapter and said sponsor shall be subject to civil liability for the cost of clean-up.

## **SECTION 11.11 TRIBAL COURT JURISDICTION; ENFORCEMENT**

[NOTE: Section 11.11(F) was amended by Ordinance No. 248, enacted December 13, 2010.]

A. **Jurisdiction.** The White Mountain Apache Tribal Court of the White Mountain Apache Tribe, Arizona, shall have jurisdiction over all offenses and unlawful acts enumerated in this Chapter when committed by an Indian, be they members or non-members of the White Mountain Apache Tribe.

B. **Proof of Unlawful Sale - Intent.** In any proceeding under this Chapter, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this Chapter.

C. **General Penalties.** Any person adjudged to be in violation of this Chapter shall be subject to a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each such violation. The Board may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Thousand Dollars (\$5,000.00) limitation set forth above.

D. **Illegal Items Declared Contraband.** Alcoholic beverages which are possessed contrary to the terms of this section are declared to be contraband. Any tribal law enforcement officer who issues a citation under this section shall seize any contraband in a manner consistent with the White Mountain Apache Tribal Constitution and the applicable provisions of 25 U.S.C. 1302.

E. **Preservation and Forfeiture.** Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare an inventory. Upon entry of judgment, any person adjudged to be in violation of this Chapter shall forfeit all right, title and interest in the items seized, which shall be disposed of in accordance with Tribal law governing the disposition of seized contraband; provided, however, that the items so forfeited shall not be sold to any person not entitled to possess them under applicable law.

F. **Criminal Penalties.** Any person subject to tribal criminal jurisdiction and prosecution and adjudged to be in violation of any provision of this Chapter may be subject to a criminal penalty of up to Three Hundred Sixty-Five (365) days imprisonment and/or a maximum fine of Five Thousand Dollars (\$5,000.00).

## **SECTION 11.12      ABATEMENT**

A. **Declaration of Nuisance.** Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Chapter or any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

B. **Institution of Action.** The Chairman of the Board shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. The plaintiff shall not be required to give bond in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings against the defendant, and upon final judgment against the defendant the Court may also order the room, house, building, boat, vessel, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient surety to be approved by the court in the sum of not less than One Thousand Dollars (\$1,000), payable to the tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of therein in violation of the provisions of this Chapter or any other applicable tribal law, and that he will pay all fines, costs, and damages assessed against him for any violation of this Chapter or other tribal liquor laws. If any condition of the bond be violated, the whole amount may be recovered as a penalty for the use of the tribe. Any action taken under this section shall be in addition to any other penalties provided for in this Chapter.

C. In all cases where any person has been adjudged to be in violation of this Chapter or tribal laws relating to the manufacture, importation, transportation, possession, distribution, or sale of liquor, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action, a certified copy of the record of such judgment shall be admissible in evidence as prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

## **SECTION 11.13      PROFITS**

A. **Distribution of Profits.** The gross proceeds collected by the Board for all sales of alcoholic beverages on the Fort Apache Indian Reservation shall be distributed as follows:

- (1) For the cost of goods;
- (2) For the payment of taxes provided in Section 11.9 of this Chapter if authorized by the Tribal Council;
- (3) For the payment of all necessary personnel, administrative costs of the liquor business management and board;
- (4) To the White Mountain Apache Tribe's Alcohol Detox Program, in an amount of at least 0% of the total tax received.
- (5) The remainder of the taxes received shall be turned over to the general fund of the White Mountain Apache Tribe on a monthly or other periodic payment schedule established by the Board and shall be expended by the White Mountain Apache Tribal Council for the general governmental service of the tribe;
- (6) The remainder of all gross proceeds shall be paid over to Apache Enterprise except for those monies paid over in items 1 through 5 inclusive, and except for the gross proceeds obtained from the sale of alcoholic beverages at Sunrise Ski Complex and hotel.

#### **SECTION 11.14     SEVERABILITY AND REVISION**

A. If any section of this Chapter or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the Chapter shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be invalid.

B. **All Prior Ordinances and Resolutions Repealed.** All prior ordinances and resolutions or provisions thereof that are repugnant or inconsistent to any provisions of this Chapter are hereby repealed.

C. **Application of 18 U.S.C. §1661.** All acts and transactions under this Chapter shall be in conformity with this Chapter and in conformity with the laws of the State of Arizona as that term is used in 18 U.S.C. §1161.

**CHAPTER TWELVE  
REGULATION OF MOTOR VEHICLES**

**Article 1  
General Provisions**

[NOTE: Section 12.1 was derived from Ordinance No. 101, enacted November 3, 1976, which expressly repealed Ordinance No. 23; and amended by Ordinance No. 267, enacted January 21, 2014.]

**SECTION 12.1      ARIZONA LAW ADOPTED**

A.      The Tribal Council of the White Mountain Apache Tribe hereby adopts as tribal law, the traffic laws of the State of Arizona as set forth in the Arizona Revised Statutes at this date, and any amendments thereto, with the following exception:

(1)      All references in the Arizona laws to "local authorities", "State of Arizona", "Superior Court", or any related state agencies shall mean the corresponding authorities of the tribal government of the White Mountain Apache Tribe.

(2)      Any tribal laws, duly authorized by the Tribal Council of the White Mountain Apache Tribe, at this date or hereinafter passed which are inconsistent with the traffic laws of the State of Arizona shall be deemed amendments to the tribal traffic code, as herein adopted.

(3)      Nothing in this Chapter shall prohibit the Tribal Council from duly enacting traffic laws in addition to or inconsistent with those passed by the State of Arizona and herein adopted as tribal law.

B.      The interpretation of the traffic laws of the State of Arizona, as herein adopted, shall be made, as best as possible, consistent with tribal governmental structure and organization.

C.      Adoption of State of Arizona traffic laws does not grant jurisdiction to the State of Arizona over roads within the Reservation. Civil jurisdiction over all nonstate roads within the Reservation resides exclusively with the White Mountain Apache Tribe.

[NOTE: Section 12.1 C was amended by Ordinance 191, enacted September 7, 1994.]

**SECTION 12.2      PARTIES TO CRIME IN MOTOR VEHICLE CASES**

The Tribal Code of the White Mountain Apache Tribe and any ordinances appertaining to parties to a crime in Motor Vehicle Cases are hereby amended by eliminating therefrom any provision including, but without limitation, Section 28-1051, Arizona Revised Statutes Annotated.

## **SECTION 12.3      SPECIAL TRUCK PROVISIONS**

[NOTE: Section 12.3 B was amended by Ordinance 191, enacted September 7, 1994.]

A.      **Speed Limit.** There is an established speed limit of twenty-five miles an hour on all trucks of one and one half ton capacity or more on roads where school buses transport children and thirty-five (35) miles an hour on all other roads of the Fort Apache Indian Reservation.

B.      **Logging Trucks.** All logging trucks using reservation roads shall have the logs tied and secured with two wrappers of chain or cable or combination thereof and secured with a binder or boomer and one gut wrapper if there are courses of logs above the top of the stakes. Logging trucks operating on the Reservation under contract to Fort Apache Timber Company need not be registered by any state to operate on nonstate roads within the Reservation.

C.      **Violations.** A violation of this section by any person will be grounds for expulsion by the Tribal Council of said driver from the Fort Apache Indian Reservation and a termination of the contract whereby and under which the driver was operating the truck.

D.      **Misdemeanor.** It is a misdemeanor for any member of the White Mountain Apache Tribe to violate any of the speed provisions of this section, and every person convicted of said misdemeanor is punishable by a fine of not more than three hundred dollars (\$300.00), by imprisonment for not more than six (6) months, or both.

E.      **Exception.** This section is not applicable to roads which the State of Arizona has been granted an easement or right-of-way on which Arizona State laws govern.

## **SECTION 12.4      OFF-ROAD TRAVEL WITHOUT CONSENT OF PROPERTY OWNER**

A.      To drive a motor vehicle on the Fort Apache Indian Reservation outside of designated or traveled roads without the consent of the beneficial owner of the land over which the motor vehicle is driven is a public offense punishable upon conviction by a fine up to One Hundred (\$100.00) Dollars or up to thirty (30) days in jail, or both.

B.      Any motor vehicle driven in violation of subsection A of this section shall be impounded and a description thereof, including license plate numbers, serial numbers, and the name and address of the driver and of the owner thereof, together with a Notice of Impoundment, shall be given to the Clerk of the White Mountain Apache Tribal Court at Whiteriver, Arizona. If the name and address of the driver or of the owner of the motor vehicle be not known or be not given, the Court shall make every reasonable effort to ascertain the name and address of the driver and of the owner and shall give notice by certified mail to, or cause notice to be served on, the driver and on the owner of such motor vehicle, notifying such driver and owner of the place and the time, not less than two (2) nor more than thirty (30) days after impoundment, of the hearing to ascertain damages, if any, caused by the impounded motor vehicle. If name and address of either the driver or owner

cannot be reasonably ascertained, notice of such hearing shall be caused to be posted in three (3) public places at least five (5) days before hearing. Damages, if any, being assessed by the White Mountain Apache Tribal Court after hearing, shall be entered as a judgment against the motor vehicle and the driver thereof. The motor vehicle shall be released from impoundment upon payment to the Clerk of the Tribal Court of the amount of damages, if any be assessed, or upon the Court's determination that there were no damages or the motor vehicle was being driven with the consent of the beneficial owner of the land.

C. If in judgment of the Court damages are assessed and the same are not paid within thirty (30) days after judgment, the Court shall cause the motor vehicle to be sold at public auction after reasonable notice by certified mail or personal service has been given to the owner as shown on the Court record and by posting in not less than three (3) public places on the Fort Apache Indian Reservation. Proceeds of the sale necessary for satisfaction of the judgment of the Court shall be paid by the Clerk of the Tribal Court to the Fort Apache Indian Agency, Bureau of Indian Affairs, Whiteriver, Arizona, for the benefit of the beneficial owners of the land as damages, and any excess over such judgment shall be paid to or held for the owner of the motor vehicle.

## **Article 2**

### **Abandoned Vehicles**

#### **SECTION 12.5      PURPOSE**

The purpose of this Article is to clear the roadways and public business areas of abandoned vehicles which may cause a threat to the life and/or property of the Fort Apache Indian Reservation, and to clear the roadways of abandoned vehicles which clutter these roadways and surrounding areas.

#### **SECTION 12.6      DEFINITIONS**

A.      **Abandoned Vehicle:** Any motor vehicle left without supervision on a tribal roadway for a period greater than forty-eight (48) hours.

B.      **Disabled Vehicle:** Any motor vehicle which is currently inoperable because it has malfunctioned.

C.      **Roadways:** Any public road, street, highway, freeway, or other area designated and ordinarily used.

D.      **Unattended Vehicle:** Any motor vehicle which is operable and is clearly in use but has been temporarily left unsupervised.

**SECTION 12.7      LIBERAL CONSTRUCTION**

This Article shall be liberally construed so as to effect its objects and to promote justice.

**SECTION 12.8      SAVING CLAUSE**

This Article does not affect the rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

**SECTION 12.9      SCOPE**

This Article shall apply to all abandoned vehicles located within the exterior boundaries of the Fort Apache Indian Reservation.

**SECTION 12.10      STOPPING, STANDING OR PARKING OUTSIDE OF BUSINESS OR RESIDENCE DISTRICT**

A.      Upon any roadway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the roadway when it is practicable to stop, park or so leave the vehicle off that part of the roadway, but in every event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicles shall be available from a distance of two hundred feet in each direction upon the roadway.

B.      This section shall not apply to the driver of any vehicle which is disabled while on the paved or main traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

**SECTION 12.11      OFFICERS AUTHORIZED TO REMOVE ILLEGALLY STOPPED VEHICLES**

A.      When any tribal police officer finds a vehicle standing upon a roadway in violation of the provisions of Section 12.10, the officer is authorized to move the vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of the roadway.

B.      Any tribal police officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, cause-way, or in any tunnel, in such position or under such circumstances as to obstruct the normal movement of traffic.

C. Any tribal police officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway:

(1) When a report has been made such vehicle has been stolen or taken without the consent of its owner;

(2) When the person or persons in charge of such vehicles are unable to provide for its custody or removal;

(3) When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay;

(4) When any vehicle is left unattended for more than four hours upon the right-of-way of any roadway which has full control of access and no crossings at grade.

(5) When any vehicle is left unattended for more than two hours upon the right-of-way of any roadway, within the boundaries of a city, which has full control of access and no crossings at grade;

(6) When a vehicle has been left unattended for 48 hours or more on a public street, road, roadway, or alley; or

(7) When a vehicle has been left unattended for more than 72 hours in a public business place without the consent of the owner of such establishment but only at the request of the business owner.

## **SECTION 12.12 GUIDELINES FOR REMOVAL OF ABANDONED VEHICLES**

A. A red warning label shall be placed upon any vehicle which is to be towed. This label shall state the date and time when the officer discovered the abandoned vehicle and the mile post location or address where the vehicle stands. The warning shall state that the vehicle will be towed 48 hours from the time posted on the label.

B. Exception to subsection A of this Section are those vehicles described in Section 12.11A, 12.11B, 12.11C(1), 12.11C(3), 12.11C(5).

C. All vehicles shall be towed by the nearest towing garage and upon express order of the Tribal police officer who located the vehicle.

D. A complete inventory and legal description of the vehicle to be towed shall be made by the police officer, and placed on file at the Tribal Police Department in Whiteriver, Arizona along with information regarding the towing company and its location.

**SECTION 12.13      TOWING FEES**

A.      The White Mountain Apache Tribe and the White Mountain Apache Tribal Police Department and any agent thereof shall not be liable for any expenses incurred by the towing company for towing and storing an abandoned vehicle.

B.      All expenses for the towing and storage of an abandoned vehicle shall be the sole liability of the vehicle's owner; and shall be collected by the towing company that moved and stored the vehicle.

C.      The towing company shall have the sole responsibility for collecting the expenses incurred by the towing company from the owner of the vehicle. The towing company shall have no claim for these expenses against the Tribal Police Department.

D.      A complete inventory and legal description of the vehicle to be towed shall be made by the police officer; and placed on file at the Tribal Police Department in Whiteriver, Arizona along with information regarding the towing company and its location.

**SECTION 12.14      ARTICLE NOT WAIVER OF SOVEREIGN IMMUNITY OR CONSENT TO BE SUED**

Nothing in this Article constitutes consent by the White Mountain Apache Tribe, its sub-organizations, or any agent thereof to be sued in any Court. This Article does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose. The right to protection under the Tribe's sovereign immunity is in no way waived by the Tribe's sub-organizations, Tribal Councilmen and officials, and Tribal employees.

**SECTION 12.15      SEVERABILITY CLAUSE**

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**CHAPTER THIRTEEN  
SUNRISE PARK TRESPASS REGULATIONS**

[NOTE: Chapter Thirteen was derived from Ordinance No. 132, enacted November 16, 1990, which was rescinded and amended by Ordinance No. 160, enacted January 9, 1991; Ordinance No. 254, enacted July 11, 2012, rescinded and amended Ordinance No. 160.]

**SECTION 13.1      SHORT TITLE**

This act may be cited as "The Sunrise Park Trespass Ordinance" or "The Sunrise Park Trespass Regulations".

**SECTION 13.2      PURPOSE**

The purpose of this act is to promote safety and protect the public by limiting and restricting persons including snow skiers, snowboarders, cyclists, hikers, archery competitors and other visitors on the Fort Apache Indian Reservation at Sunrise Park from entering Sunrise Park when Sunrise Park is not open for business to the public, when that person has not purchased a ski pass, a lift pass, or other permit for admission to Sunrise Park, when a person does not leave Sunrise Park after the person has been told to leave Sunrise Park by Sunrise Park employees or other Tribal official, and when a person goes out of bounds, beyond the area open for skiing, snowboarding, cycling, hiking, archery and other activities at Sunrise Park; and to impose civil restitution fees and liability for expenses incurred in enforcing this Chapter and in finding, locating, aiding and transporting persons who go out of bounds and beyond the Sunrise Park area boundaries.

**SECTION 13.3      SCOPE**

This Chapter shall apply to all persons including snow skiers, snowboarders, cyclists, hikers, archery competitors and other visitors to the Fort Apache Indian Reservation at or within five (5) miles of the Sunrise Park boundaries.

**SECTION 13.4      DEFINITIONS**

A.      **Emergency Assistance:** Any and all assistance rendered by the Tribe, or non-Indian search and rescue and medical teams which enter the Fort Apache Indian Reservation and render rescue, medical and other services to persons who become lost outside the boundaries of Sunrise Park.

B.      **Open Areas:** The area delineated by trail maps, boundary signs, ropes, tape or other delineation at Sunrise Park Resort for the purpose of snow skiing, snowboarding, cycling, hiking, archery and other uses by visitors to Sunrise Park.

C.      **Out of Bounds; Prohibited Area:** Any and all areas outside of the Open Ski Area or the Sunrise Park boundaries. These prohibited areas are not for snow skiing,

snowboarding, hiking, cycling, archery, exploring or any other activities. Skiers, snowboarders and other persons may not use these areas for skiing, snowboarding, hiking, exploring or any other purpose unless expressly authorized by the Tribe in writing. Persons found Out of Bounds or in Prohibited Areas will be considered trespassers and subject to arrest, fines and penalties, and other sanctions as permitted by Tribal Law.

D. **Reservation:** The Fort Apache Indian Reservation also known as the White Mountain Apache Reservation.

E. **Sunrise Park Resort:** This includes the Sunrise Park Resort, its skiing and snowboarding areas, areas open for cycling, archery competitions, other recreational activities, lodges, and any additional facilities provided for the purposes of recreation or otherwise.

F. **Trespassing:** Trespassing means:

(1) The unauthorized entry of any person onto the Sunrise Park resort for any purpose when Sunrise Park Resort is not open for business to the public;

(2) Entering the Sunrise Park Resort and using Sunrise Park Resort facilities (e.g. skiing, snowboarding, cycling, using any ski lift or other use of Sunrise Park facilities) without purchasing a ski pass, a lift pass, or other permit to use the Sunrise Park facilities;

(3) The failure of any person to leave the Sunrise Park Resort when told to do so by Sunrise Park employees, by White Mountain Apache police, or by other Tribal officials; and

(4) The unauthorized entry of a person into Out of Bounds areas or Prohibited Areas of the Reservation without a permit or other authorization to do so by the Sunrise Park Resort Manager or the Tribe.

G. **Tribe:** The White Mountain Apache Tribe of the Fort Apache Indian Reservation.

H. **Trespasser or Violator:** Any person who violates the provisions of this Chapter.

### **SECTION 13.5 SUNRISE PARK USE RESTRICTED TO OPEN AREAS**

All snow skiing, snowboarding, cycling, hiking, archery competition, ski lift scenic rides and other uses on the Fort Apache Indian Reservation at Sunrise Park Resort and the use of Sunrise Park Resort facilities is restricted to Open Areas. The use of Tribal lands in Out of Bounds areas or Prohibited Areas is strictly forbidden and punishable by arrest, fines and penalties, recovery of the costs of search and rescue operations, recovery or arrest operations, and medical treatment by Sunrise and other Tribal personnel.

**SECTION 13.6**      **CONCURRENT ENFORCEMENT OF GAME AND FISH CODE**

This act is to be enforced in addition to and in conjunction with the White Mountain Apache Game and Fish Code, as amended.

**SECTION 13.7**      **LIBERAL CONSTRUCTION**

This act shall be liberally construed to effect its purposes which are to protect the public from going beyond the boundaries of the Sunrise Park Resort into areas which are not controlled or patrolled by personnel at Sunrise. This Chapter is also to help conserve Tribal resources by expressly providing for reimbursement for the costs of search and rescue operations, recovery or arrest operations, medical treatment furnished by Tribal personnel or by personnel from other federal, state, county, municipal or other governmental agency when persons violate this Chapter and when persons go beyond the boundaries of the Sunrise Park Resort and trespass onto other Tribal or State lands.

**SECTION 13.8**      **NO DUTY; VIOLATIONS; CIVIL LIABILITY**

A.      Neither the Tribe nor Sunrise Park Resort owes any duty to a person trespassing on the Fort Apache Indian Reservation at Sunrise Park Resort including persons who go into Out of Bounds areas or Prohibited Areas or beyond the Open Areas as delineated from time to time by Sunrise Park Resort or the Tribe.

B.      Any person violating this Chapter by trespassing or by going into Out of Bounds areas or Prohibited Areas or beyond the Open Areas as delineated from time to time by Sunrise Park Resort or the Tribe shall be cited and required to pay a civil restitution fee not greater than One Thousand Dollars (\$1,000.00) in addition to restitution amounts equal to the costs and expenses incurred by the Tribe, its employees or other federal, state, county, municipal or other governmental agencies for search and rescue operations, recovery or arrest operations, and/or medical treatment when persons go Out of Bounds or into Prohibited Areas and trespass onto other Tribal or State lands. See Section 13.8B, which follows.

C.      Any person who receives or causes search and rescue operations, recovery or arrest operations, and/or medical treatment by any Tribal search and rescue team, the Sunrise Ski Patrol or other Sunrise employees, any other employee or agent of the Tribe, or other federal, state, county, municipal or other governmental agencies for search and rescue operations, recovery or arrest operations, and/or medical treatment to that violator, shall be held liable to the full amount of the costs incurred to provide such services. These costs shall be assessed in addition to the civil restitution fee imposed by this Act in Section 13.8A.

**SECTION 13.9**      **FAILURE TO PAY RESTITUTION; REPEATED VIOLATIONS**

Failure to pay the restitution and expenses described in Section 13.8; or a repeated trespass and violation of this act may result in further legal action against the trespasser or violator by the White Mountain Apache Tribe for civil damages.

**SECTION 13.10      NO WAIVER; RIGHT TO SUE**

Allowing a violator to return to the reservation or failure to pay the fees and expenses incurred does not constitute a waiver of the Tribe's right to sue for repeated violations or to pursue any other rights or remedies.

**SECTION 13.11      FEDERAL PROSECUTION**

A.      This Chapter shall not preclude federal prosecution of non- Indians or other persons who are not enrolled members of the Tribe pursuant to 18 U.S.C. §1164 who trespass on the reservation. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided by this Chapter.

B.      This Chapter has been enacted to protect the health, safety and welfare of those who use the Sunrise Park Resort and adjacent Tribal or State lands, and to preserve and protect the resources and property of the White Mountain Apache Tribe.

C.      The use or taking of Tribal property, assets or services contrary to this Chapter constitutes theft of Tribal assets. This Chapter does not preclude Tribal or federal prosecution of violators under 18 U.S.C. §1163 for theft of Tribal assets. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

D.      This Chapter shall not preclude federal prosecution of violators of this Chapter under the Lacey Act Amendments of 1981, Public Law 97-79. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of other enforcement procedure provided for by this Chapter.

**SECTION 13.12      NO WAIVER OF SOVEREIGN IMMUNITY OR CONSENT TO BE SUED**

Neither the use of Sunrise Park by non-members nor any provision provided in this Chapter constitutes consent by the White Mountain Apache Tribe to be sued in any federal or state Court. The Tribe may only be sued in the White Mountain Apache Tribal Court when authorized by this Tribal Code or by applicable federal law. This Chapter does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose.

**SECTION 13.13      SAVINGS CLAUSE**

This Chapter does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

**SECTION 13.14     SEVERABILITY**

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are severable.

## CHAPTER FOURTEEN SKI SAFETY AND LIABILITY

**NOTE: Chapter Fourteen was amended by Ordinance No. 162, enacted January 9, 1991; by Ordinance No. 172, enacted July 25, 1991; by Ordinance No. 197, enacted March 8, 1995; and amended by Ordinance No. 254, enacted July 11, 2012.]**

### SECTION 14.1      TITLE

This Chapter shall be known and may be cited as the Ski Safety and Liability Regulations.

### SECTION 14.2      PURPOSE OF CHAPTER

The purpose of this Chapter is to help protect the health, safety and welfare of persons who use the ski runs, ski lifts, and the other facilities at Sunrise Park Resort and to protect Tribal resources by limiting the responsibility and liability of the Tribe and Sunrise Park Resort in accordance with industry standards. There are inherent risks in using ski lifts, in the sport of skiing, and in recreating on mountainous terrain which should be understood by each person and which are essentially impossible to eliminate by the Tribe or by Sunrise Park operators. It is the purpose of the Ski Safety Chapter to define those areas of responsibility and affirmative acts for which the Tribe, Sunrise Park Resort or any ski area operator shall be liable for loss, damage or injury, and those risks which the skier and other persons using Sunrise Park Resort facilities expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery; to defend the legal responsibilities of the Tribe, Sunrise Park Resort, ski area operators and their agents and employees; to define the responsibilities of skiers and other persons using the facilities at such ski areas, and to define the rights and liabilities existing between the skier and the Tribe, Sunrise Park Resort, ski area operators, and between skiers.

### SECTION 14.3      DEFINITIONS

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

A.      **Skier** means any person admitted to Sunrise Park Resort and those persons who purchase or use ski lift passes or permits at Sunrise Park Resort for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas in the Park and includes any person using a ski lift, and includes any person utilizing a ski area for the purpose of skiing or for the purpose of sliding on snow or ice on skis, which includes by definition alpine skis, cross country skis, snowboards, monoskis, sleds, toboggans, saucers, trays, and any other device used for the purpose of skiing or sliding on snow or ice, including those devices used by disabled skiers. Skiers shall also include persons who are not skiing but who use the ski lifts, the ski runs and other facilities at Sunrise Park Resort.

B. **Passenger** means any person who is being transported or conveyed by a ski lift and includes a person, skier or non-skier who gets on or off of or is transported by a ski lift, regardless of whether the ski lift is being used during the ski season or during other times of the year.

C. **Ski Slopes or Ski Trails** means those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (1) of this section. Ski slopes or trails shall be set forth on trail maps, if provided, and designated by signs indicated to the skiing public the intent that only such areas are to be used by skiers for the purpose of skiing.

D. **Ski Area** means all ski slopes or trails and other places under the control of Sunrise Park Resort and which are directly supervised within the boundaries and the designated Open Areas of Sunrise Park Resort. Ski area also includes the terrain and facilities within the Sunrise Park Resort used by persons for other snow recreational activities including sledding, tubing, hiking, and other recreational activities at Sunrise Park Resort.

E. **Ski Area Operator** means the White Mountain Apache Tribe as the owner/operator of Sunrise Park Resort, its ski school instructors, ski patrol, employees, agents, managers, and representatives.

F. **Ski Lift** means a device for transporting persons uphill with or without skis. A ski lift is usually suspended in the air by the use of cables, chains, belts or ropes, and is usually supported by trestles or towers with one or more spans. Ski Lift includes any mechanical device used to move persons uphill including the following devices:

(1) **Chairlift:** a device on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, or similar devices;

(2) **J-bar, T-bar or Platter Pull:** devices that pull skiers standing on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans or similar devices;

(3) **Rope Tow:** a device with one span and no intermediate towers that pulls skiers riding on skis as they grasp a rope manually, or similar devices;

(4) **Wire Tow Rope:** a device with one span and no intermediate towers by which skiers are pulled on skis while manually grasping a bar attached to a wire hauling cable; and

(5) **Carpet Lifts:** a mat or carpet-like device upon which a person stands or sits and is moved uphill.

G. **Ski Retention Device** means a device designed to prevent runaway skis.

H. **Conditions of Ordinary Visibility** means daylight and, when applicable, nighttime in non-precipitating weather.

I. **Snowmobile** means any of a variety of motorized sleds designed to carry passengers or to tow a non-motorized sled on snow.

J. **Tree Skiing** means skiing in areas where there are trees, other than on designated ski slopes or ski trails. Tree skiing is very hazardous and any person tree skiing at Sunrise Park Resort assumes all risk of injury or death to himself or others.

K. **Jumping** means becoming or attempting to become airborne by whatever means while skiing. Jumping also includes jumping out of a ski lift at other than designated unloading points. Jumping is allowed in terrain parks and other areas designated for jumping by Sunrise Park Resort. Jumping is very hazardous and any person jumping at Sunrise Park Resort assumes all risk of injury or death to himself or others.

L. **Tribal Member** means any person who is a member of the White Mountain Apache Tribe.

M. **Non-Tribal Member** means any person who is not a member of the White Mountain Apache Tribe.

#### **SECTION 14.4 DUTIES OF SUNRISE PARK WITH RESPECT TO SKI AREAS**

A. Skiing, as a recreational sport, is hazardous to skiers regardless of all feasible safety measures which can be taken. A skier expressly assumes the risk of any legal responsibility for any loss or damages that result from skiing, including but not limited to: losses or damages caused by jumping, tree skiing, collisions with other skiers, variations of terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, stumps and other forms of forest growth or debris; lift towers and their components either above or below the snow surface; utility poles; and plainly marked or visible snowmaking, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants; racing or running gates for competitive or recreational purposes, regardless of the course construction or layout; use of a snowboard terrain garden.

B. The Sunrise Park Resort will:

(1) Mark all trail maintenance vehicles and furnish such vehicles with orange, red, yellow or other bright color paint markings, or with lights, flags or other markings which shall be visible whenever the vehicles are working or are moving in the ski area during regular business hours;

- (2) Mark all snowmobiles with at least one of the following:
  - (a) Orange, red, yellow or other bright color paint markings;
  - (b) An Indicator Flag;
  - (c) A Headlight; or
  - (d) A Rotating or Flashing Light;
- (3) Mark the top (the beginning) of each ski slope or trail with an appropriate symbol for its relative degree of difficulty; and those slopes or trails which are closed shall be marked at the top with the appropriate symbol;
- (4) Maintain one or more trail map boards at prominent locations of each ski area, displaying the areas network of ski trails and slopes with each trail and slope rated thereon as to its relative degree of difficulty;
- (5) Make ski area trail maps available to skiers at the ski area;
- (6) Place, or cause to be placed, whenever snow grooming or snow-making operations are being undertaken upon any trail or slope when such trail or slope is open to the public, a conspicuous notice to that effect at or near the top (the beginning) of such trail or slope;
- (7) Post notice that ski retention devices are required for all skiers. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;
- (8) Provide a ski patrol trained in first aid, winter rescue and toboggan handling to serve injured skiers and to provide personnel trained for the evacuation of passengers from stalled ski lifts; and
- (9) Post a sign at the entrance of the Sunrise Park notifying visitors that use of the Park is regulated by this Chapter.
- (10) Upon finding a person skiing in a careless and reckless manner, which includes but is not limited to jumping, tree skiing, or skiing beyond ski area boundaries or beyond designated trails and slopes within the ski area boundaries, may revoke that person's ski pass and skiing privileges. Sanctions in this Chapter are in addition to those found in Chapter 13 of the Health and Safety Code of the White Mountain Apache Tribe.

C. The Tribe and Sunrise Park Resort and their employees and agents shall have no duty or liability of any kind:

(1) To any person jumping (whether in terrain parks, other designated areas, or any other area), skiing out of control, skiing faster than conditions safely allow, tree skiing, skiing in any manner that causes the skier to collide with any other person or object, violating any skier duty as defined in this Chapter, skiing beyond the ski area boundaries, or skiing outside or beyond designated trails and slopes within the Sunrise Park boundaries;

(2) To eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection 14.4A above;

(3) To any person injured by colliding or contacting other skiers or objects;

(4) For any injury, harm or damage suffered by a person as a result of the negligence, intentional act or omission or other fault of any person not employed by the Tribe or Sunrise Park Resort; and

(5) For any injury, harm or other damage for acts undertaken by the Tribe or Sunrise Park Resort in an attempt to eliminate, alter, control, warn of, or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection 14.4A above.

**SECTION 14.5 DUTIES OF THE SUNRISE PARK - SIGNS REQUIRED FOR SKIERS' INFORMATION**

A. The Sunrise Park shall maintain a sign system with information required by this Chapter. Signs shall be readable under conditions of ordinary visibility. Signs shall be posted as follows:

(1) At or near the loading point of each passenger ski lift, regardless of the type, advising that any person not familiar with the operation of the lift device shall ask the operator of the device for assistance and instruction;

(2) At all chairlifts, J-bars, T-bars, Platter Pulls, Rope Tows, and any other surface lift stating the following:

(a) **"Prepare to Unload"** which shall be located ahead of the unloading area;

(b) **"Keep Ski Tips Up"** which shall be located ahead of any

point where the skis may come in contact with the platform or the snow surface;

(c) **"Unload Here"** which shall be located at the point designated for unloading;

(d) **"Safety Gate"** which shall be located where applicable; and

(e) **"Remove Pole Straps From Wrist"** which shall be located at each loading area.

B. Other signs not specified by Subsection A of this section may be posted at the discretion of Sunrise Park, but are not required.

C. Sunrise Park, before opening any ski lift to the public, shall inspect such ski lift for the presence and visibility of the signs required by Subsection A of this Section.

D. Evidence that the signs required by Subsection A of this Section were present, visible, and readable on any given date raises the irrebuttable presumption that all persons have seen, read and understood said signs.

E. Trail maps shall display the following signs and symbols:

(1) Sunrise Park's least difficult trails and slopes shall be designated by a green circle, green lines or coloring, and/or the words "Easier or Easiest";

(2) Sunrise Park's most difficult trails and slopes shall be designated by a black diamond, black lines or coloring, and/or the words "Most Difficult"; and

(3) Sunrise Park's trails and slopes with a degree of difficulty between the Easier and Most Difficult trail designations shall be designated by a blue square, blue lines or coloring, and/or the words "More Difficult".

## **SECTION 14.6 DUTIES OF PASSENGERS**

A. No passenger shall board or attempt to board a ski lift if he does not have sufficient physical dexterity, ability, and knowledge to embark upon or disembark from or use such equipment safely, or until such passenger has asked for and received information or assistance sufficient to enable him to use the equipment safely. The passenger is required to follow any written or verbal instructions that are given to him regarding the use of the ski lift.

B. No passenger shall:

- (1) Jump or otherwise get on or off a ski lift except at a designated area, except in the event of stoppage of the ski lift, and then only under the supervision of the operator, or unless necessary in the event of an emergency to prevent injury to the passenger or others;
- (2) Throw or expel any object from any ski lift while riding on such device, except as permitted by the operator;
- (3) Act in any manner that may interfere with proper or safe operation of such ski lift;
- (4) Engage in any type of conduct which may contribute to or cause injury to any person;
- (5) Place in an uphill track of a J-bar, T-bar, Platter Pull, Rope Tow, or any other surface lift, any object that could cause another skier to fall;
- (6) Embark upon a ski lift marked as closed;
- (7) Disobey any instructions posted in accordance with this article, which appear on Sunrise Park ski area trail maps, or any verbal instructions by the ski area operator regarding the proper or safe use of a ski lift;
- (8) Willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;
- (9) Wear skis without properly secured ski retention devices;
- (10) Use a ski lift while intoxicated or under the influence of any controlled substance;
- (11) Use a ski lift while impaired to the slightest degree or under the influence of any intoxicating liquor, controlled substance or any other substance; or
- (12) Do any act which interferes with the running or operation of the ski lift.

#### **SECTION 14.7 DUTIES OF SKIERS**

A. Skiing is a recreational sport which is inherently hazardous to skiers, regardless of all feasible safety measures which can be taken. It is the duty of each skier to conduct himself in accordance with this Chapter. A person who takes part in the sport of skiing assumes as a matter of law the dangers inherent in the sport. Each skier expressly assumes the risk of and the legal responsibility for any injury to person or property which

results from participation in the sport of skiing at Sunrise Park Resort, including any injury caused by the following:

- (1) Variations in terrain;
- (2) Surface or subsurface snow or ice conditions including conditions created by snow making equipment;
- (3) Natural objects above or below the snow surface in areas designated for skiers, including but not limited to bare spots, rocks, trees, tree stumps, or other forms of forest growth or debris;
- (4) Manmade objects above or partially below the snow surface which are visible or marked in accordance with this Chapter, including but not limited to lift towers and components thereof, utility poles, snowmaking, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants;
- (5) Racing or running gates for competitive or recreational purposes, regardless of the course construction or layout;
- (6) Use of snowboard terrain garden;
- (7) Jumping;
- (8) Tree skiing;
- (9) Collisions with other skiers, persons, or objects; or
- (10) Any other risk inherent in the sport of skiing.

B. Each skier shall:

- (1) Have the sole responsibility for knowing the range of his/her own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own liability;
- (2) Maintain control of speed and course at all times while skiing and maintain a proper lookout so as to be able to avoid other skiers and objects;
- (3) Refrain from jumping (except in terrain parks and other designated areas), tree skiing, or acting or skiing in a manner which may cause or contribute to his injury or to the injury of any other person;

(4) Not stop in a place so as to obstruct a trail or cease to be visible to skiers above;

(5) Yield to other skiers when entering a trail or starting down hill;

(6) Use ski retention devices to help prevent runaway skis;

(7) Ski only in areas which are designated for skiing by Sunrise Park Resort;

(8) Read and obey all posted signs. There shall be an irrebuttable presumption that skiers have seen, read and understood all signs and information posted in accordance with this Chapter. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with this Chapter;

(9) Not use any ski slope or trail which his/her ability to do so is impaired to the slightest degree or while he/she is under the influence of intoxicating liquors, controlled substances or any other substance; and

(10) Not cross the uphill track of a surface lift except at locations designated by the operator.

C. The responsibility for collisions by any skier with any person or object, shall be solely that of the individual or individuals involved in such collisions, except where such collision resulted from any breach of duty imposed upon Sunrise Park Resort under the provisions of this Chapter. The primary duty shall be on the person skiing or moving downhill to avoid collisions with any persons or objects below him.

D. When involved in a skiing accident in which another person is involved who needs medical assistance or other assistance, a skier shall have the responsibility to report the accident immediately to Sunrise Park Resort employees, to obtain assistance for the injured person, and to provide the other person with name and other contact information.

E. When injured at Sunrise Park Resort or when involved in a collision with another skier or object in which an injury results, a skier shall not leave the ski area before giving his/her name, current address and contact information, the location where the injury or collision occurred, and the circumstances thereof to Sunrise Park Resort.

#### **SECTION 14.8      LIMITATION OF SUNRISE PARK'S LIABILITY**

Sunrise Park shall not be liable for personal injury or property damage caused solely or in part by any of the following:

A. To any person who acts in violation of this Chapter.

B. To any person who is not legally entitled to be in Sunrise Park, e.g. has not purchased a ski lift pass or permit.

C. By any object dropped, thrown or expelled by a passenger from a ski lift.

D. Collisions between a skier and any natural, manmade, or other object or person unless such other person is employed by and acting within the course and scope of his/her employment with Sunrise Park Resort.

E. Improper use of ski lifts as defined in this Chapter.

#### **SECTION 14.9 STATUTE OF LIMITATIONS**

A. All actions arising from this Chapter to recover damages for injury or death to persons or damage to property shall be commenced as required by the White Mountain Apache Tribe Tort Claims Act.

#### **SECTION 14.10 PENALTIES**

A. Any passenger who violates any of the provisions of this Chapter shall be subject to immediate forfeiture of his/her ski lift pass or permit and of any further use of the ski lifts and other ski area facilities.

B. Any skier who violates any of the provisions of this Chapter shall be subject to immediate forfeiture of his/her ski lift pass or permit and of any further use of the ski lifts and other ski area facilities.

C. Any tribal member who violates any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of at least Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00).

D. Any non-tribal member who violates any of the provisions of this Chapter may be civilly sanctioned for at least Three Hundred Dollars (\$300.00) but no more than One Thousand Dollars (\$1,000.00).

**CHAPTER FIFTEEN  
ELDERLY AND INCAPACITATED ADULT PROTECTION**

[NOTE: Chapter Fifteen was amended in its entirety by Ordinance No. 186, enacted January 5, 1994.]

**SECTION 15.1      DECLARATION OF PURPOSE**

It is the tradition and custom of the White Mountain Apache people to honor and protect their elderly as they are the possessors of the spiritual and collective wisdom and traditions of the White Mountain Apache Tribe of the Fort Apache Indian Reservation which are passed on from generation to generation. As such, the elderly of the White Mountain Apache Tribe warrant the special concern and protection of the people of the White Mountain Apache Tribe. This Elderly Protection Chapter is to be liberally construed for their protection.

**SECTION 15.2      DEFINITIONS:**

A. In this Chapter, unless the context otherwise requires:

(1) **"Abuse"** means:

- (a) Intentional infliction of physical and or emotional harm;
- (b) Injury caused by negligent acts or omissions;
- (c) Unreasonable confinement; or
- (d) Sexual abuse or sexual assault.

(2) **"Adult"** means any person who is eighteen years of age or older.

(3) **"Exploitation"** means the illegal or improper use of an elderly person or an incapacitated adult or his resources for another's profit or advantage.

(4) **"Elderly"** shall mean any person who has reached the age of sixty (60) years or older.

(5) **"Incapacity"** means an impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

(6) **"Neglect"** means a pattern of conduct resulting in deprivation of necessities to maintain physical and mental health.

(7) **"Protective services worker"** means a person who has been trained and employed to provide protective services to the elderly and incapacitated; and shall consist of, but not be limited to, Elderly Services Staff, Social Services Staff and any other person specifically employed to protect the best interest of the elderly and incapacitated adults.

### **SECTION 15.3 PROTECTIVE SERVICES WORKERS; POWERS AND DUTIES**

A. Protective Services Workers shall:

(1) Receive oral or written reports of abused, exploited or neglected incapacitated adults and elderly persons.

(2) Upon receipt of such information, determine if the incapacitated adult or elderly is in need of protective services.

(3) File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator as provided for in Chapter Four, Section 4.2B of the White Mountain Apache Probate Code. When filing petitions for Guardianship or Conservator, the Protective Services Worker shall try to locate a responsible and willing person to accept the responsibility of guardian and/or conservator. Every attempt shall be made to notify immediate members of the family of any guardianship proceedings.

(4) The Protective Services Worker shall immediately file a report with the Tribal Prosecutor for investigation in all cases of possible abuse, neglect or exploitation of elderly or incapacitated persons. In cases of physical abuse, the prosecutor shall cause the case to be investigated within 12 hours of receiving the report.

B. A member of the Protective Services Staff may not be appointed as guardian, conservator or temporary guardian for their own clients. Persons convicted of violation of this Chapter shall not be appointed as guardian, temporary guardian, or conservator.

C. The Protective Services Workers are immune from civil liability for applying for or filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

D. Notwithstanding the provisions of Section 4.5 of the White Mountain Apache Probate Code, a guardian need not be a member of the White Mountain Apache Tribe or

reside on the Fort Apache Indian Reservation if the Court determines it would be in the best interest of the client to appoint a person as guardian who does not meet these qualifications.

**SECTION 15.4**      **IMMUNITY OF PARTICIPANTS; NON-PRIVILEGED COMMUNICATION**

A. Any person making a complaint, furnishing a report, information or records required or authorized by this chapter or otherwise participating in the program authorized by this chapter or in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the adult or elderly in question. Except as provided in subsection B of this section the physician-patient privilege, husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which an investigation of an adult's or elderly's exploitation, abuse or neglect is being conducted by a peace officer or a protective services worker.

B. In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of an adult or elderly is an issue, a clergyman, priest or recognized traditional Medicine Man or Medicine Woman shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman, priest or Medicine Man or Medicine Woman in the course of the discipline enjoined by the church to which he belongs.

**SECTION 15.5**      **DUTY TO REPORT ABUSE, NEGLECT AND EXPLOITATION OF INCAPACITATED ADULTS OR ELDERLY PERSONS; DUTY TO MAKE MEDICAL RECORDS AVAILABLE; VIOLATION; CLASSIFICATION**

A. A physician, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of an adult or elderly who suffers from incapacity and whose examination or observation of the adult or elderly yields a reasonable basis to believe that abuse or neglect of the adult or elderly has occurred or the exploitation of the adult's or elderly's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight (48) hours or on the next working day if the forty-eight hours expires on a weekend or holiday.

B. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an adult or elderly who suffers from incapacity or a person who has responsibility for any other action concerning the use or preservation of the adult's or elderly's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's or elderly's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker.

C. Reports pursuant to subsections A and B shall contain:

(1) The names and addresses of the adult or elderly and any persons having control or custody of the adult or elderly, if known.

(2) The adult's or elderly's age and the nature and extent of his incapacity.

(3) The nature and extent of the adult's or elderly's injuries or physical neglect or of the exploitation of the adult's or elderly's resources.

(4) Any other information that the person reporting believes might be helpful in establishing the cause of the adult's or elderly's injuries or physical neglect or of the exploitation of the adult's or elderly's property.

D. Any person other than one required to report or cause reports to be made in subsection A who has a reasonable basis to believe that abuse or neglect of an incapacitated adult or elderly has occurred may report the information to a peace officer or a protective services worker.

E. When a report has been filed and upon written request from a peace officer or a Protective Services worker, a person having custody or control of medical or financial records of an incapacitated adult or elderly shall make such records, or copy of such records, available for inspection and copying. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report filed under this section.

F. If reports pursuant to this section are received by a peace officer, he shall notify the adult protective services worker.

G. A person required to receive reports pursuant to subsection A, B, or D may take or cause to be taken photographs of the abused adult or elderly and the vicinity involved. Medical examinations including radiological examinations of the involved adult or elderly may be performed. Accounts, inventories or audits of the exploited adult's or elderly's property may be performed. The person, department, agency, or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the

abuse, neglect or exploitation of an incapacitated adult or elderly in a criminal or civil action, the tribal court may order the person to make restitution as the court deems appropriate.

H. If psychiatric and/or psychological records are requested pursuant to subsection E, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

(1) Personal information about individuals other than the patient.

(2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist or psychologist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

I. If any portion of a psychiatric or psychological record is excised pursuant to subsection H, the tribal court, upon application of a peace officer or protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer, or elderly protective services worker investigating the abuse or neglect.

J. A person found guilty of violating any provision of this section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

**SECTION 15.6**      **PERMITTING LIFE OR HEALTH OF AN INCAPACITATED ADULT OR ELDERLY TO BE IMPERILED BY NEGLIGENCE; VIOLATION; CLASSIFICATION; CIVIL REMEDY; REGISTRY; DEFINITION**

A. Any person who inflicts physical injury on, exploits or abuses an elderly or incapacitated person is guilty of a criminal offense, punishable by imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed five thousand dollars (\$5,000.00) or both.

B. A person who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to an incapacitated adult or elderly and who causes or permits the life of the adult or elderly to be endangered, his health to be injured or to be imperiled by neglect, is guilty of a criminal offense, punishable by imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed five thousand dollars (\$5,000.00) or both.

C. An incapacitated adult or elderly whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may file an action in tribal court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such incapacitated adult or elder, for having caused or permitted such conduct.

D. The tribe may file an action pursuant to this section on behalf of those persons endangered, injured or imperiled to prevent, restrain, or remedy the conduct described in this section.

E. The tribal court has jurisdiction to prevent, restrain and remedy the conduct described in this section, after making provision for the rights of all innocent persons affected by such conduct and after hearing or trial, as appropriated, by issuing appropriate orders.

F. Prior to a determination of liability, the orders may include, but are not limited to, appointment of guardian, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

G. After a determination of liability such order may include, but are not limited to:

(1) Ordering the restitution of actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those persons injured by the conduct described in this section.

(2) Ordering the restitution of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the tribe as appropriate, to be paid to the general fund of the Tribe.

H. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For the purpose of this subsection, a conviction may result from a verdict or pleas, including a plea of no contest.

I. The initiation of civil proceedings pursuant to this section shall be commenced within seven years after actual discovery of the cause of action.

J. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.

K. The tribal prosecutor may, upon timely application, intervene in any civil action or proceeding brought under this section if the tribal prosecutor certifies that in his opinion the action is of special public importance. Upon intervention, the tribal prosecutor may assert any available claim and is entitled to the same relief as if the tribal prosecutor has instituted a separate action.

L. In addition to the tribe's right to intervene as a party in any action under this section, the tribal prosecutor may appear as a friend of the court in any proceeding in which

a claim under this section has been asserted or in which a court is interpreting Section 15.4 of this Chapter.

M. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.

N. The tribal prosecutor shall maintain a registry containing such public records as are available identifying the names of persons and enterprises against whom civil or criminal complaints have been filed with the court pursuant to this Chapter, the dates of the conduct set forth in the complaint, the general nature of the complaint and the disposition of the complaint, if known. This information is available to the public on written request. A person or agency that distributes information in the registry in good faith is immune from civil liability or criminal penalty based on the release of the information. Any person or enterprise desiring to do so may present a written statement in his own behalf to the custodian of the registry, and such statement becomes a part of the record for distribution in response to all inquiries concerning that person or enterprise.

O. The cause of action or the right to bring a cause of action pursuant to subsection B or C of this section shall not be limited or affected by death of the incapacitated person.

P. In this section, "enterprise" means any corporation, partnership, association, labor union, or other legal entity, or any group of persons associated in fact although not a legal entity, which is involved with providing care to an incapacitated adult or elderly.

#### **SECTION 15.7      TRADITIONAL MEDICINE**

Nothing in this Chapter shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

#### **SECTION 15.8      SEVERABILITY**

If any provision of this Chapter or the application thereof is held invalid, the remainder of this Code, or other applications of such provision, shall not be affected.

## CHAPTER SIXTEEN EMERGENCY AID

[NOTE: Chapter Sixteen was derived from Ordinance No. 167, enacted February 13, 1991.]

### SECTION 16.1 HEALTH CARE PROVIDER; TRIBAL EMPLOYEE; OR ANY OTHER PERSON EMERGENCY AID; NON-LIABILITY

Any health care provider licensed or certified to practice as such on the White Mountain Apache Reservation or in any state, or elsewhere, or a tribal employee, including police officers, Game and Fish Officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence in good faith shall not be liable for any civil or other damages as a result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured or ill persons, unless such person, while rendering such emergency care, is found guilty of gross, willful negligence.

### SECTION 16.2 LIMITED LIABILITY FOR EMERGENCY HEALTH CARE AT ATHLETIC EVENTS

A health care provider licenses or certified to practice as such on the White Mountain Apache Reservation or in any state, or elsewhere or a tribal employee, including police officers, Game and Fish officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence who agrees with any person, a school or with Sunrise Park employees to attend an amateur athletic practice, contest or event to be available to render emergency health care within the provider's authorized scope of practice to an athlete or competitor injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith, unless such person, while rendering such emergency care is guilty of gross, willful negligence.

### SECTION 16.3 LIMITED LIABILITY FOR TREATMENT RELATED TO DELIVERY OF INFANTS

A. A health care provider licensed or certified to practice as such on the White Mountain Apache Reservation or in any state, or elsewhere, or a tribal employee, including police officers, Game and Fish officers, ski patrolmen, ambulance attendants, or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence shall not be liable to a pregnant female patient, the child or children delivered, or their families for medical negligence related to labor or delivery

rendered on an emergency basis, unless the patient was previously treated for the pregnancy by the very same licensed physician who was rendering treatment on an emergency basis.

B. This section does not apply to treatment rendered in connection with labor and delivery if the patient has been seen regularly by or under the direction of the licensed physician attending the patient during an emergency labor and delivery.

C. For the purposes of this Section, "Emergency" means when labor has begun or a condition exists in a pregnant woman requiring the delivery of a child or children.

#### **SECTION 16.4      PUBLIC HEALTH SERVICE**

Sections 16.1 through 16.3 of this Chapter shall not apply to the rendering of emergency care at the Public Health Service Hospital in Whiteriver, Arizona, or the Public Health Service Cibecue Clinic in Cibecue, Arizona, within the exterior boundaries of the Fort Apache Indian Reservation.

**CHAPTER SEVENTEEN  
PROTECTIVE CUSTODY AND INVOLUNTARY COMMITMENT**

[NOTE: Chapter Seventeen was derived in its entirety from Ordinance No. 221, enacted September 26, 2006;  
Sections 17.5A and 17.7A were amended by Ordinance No. 257, enacted April 24, 2013; and  
Section 17.1 through Section 17.14 were amended by Ordinance No. 265, enacted November 1, 2013.]

**SECTION 17.1      STATEMENT OF PURPOSE**

As directed by its tradition, custom, and Constitution, the White Mountain Apache Tribe seeks to protect and promote the health and welfare of its people and community members, including those who may present a danger to themselves or others due to mental disorder or illness, or due to expressed suicidal ideation, threats of suicide, or one or more attempts to commit suicide. Under Tribal custom, any act of violence to self or others, whether intentional or occasioned by mental illness or emotional despondency, inflicts unacceptable harm to the individual and causes pain and loss to the family and community. To that end, the Tribe enacts this Protective Custody and Involuntary Commitment Chapter to the Health and Safety Code to establish procedures to review and enforce mandatory treatment and confinement orders for those in need of behavioral health professional care, while upholding strict due process standards respecting the rights of those persons subject to the provisions of this Code.

**SECTION 17.2      DEFINITIONS**

In this Chapter, unless the context requires another meaning:

A.      **“Dangerous to Others,”** means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand his or her need for treatment and, as a result of a mental disorder, the person’s continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

B.      **“Danger to Self,”** means:

(1)      Behavior which, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual’s previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(2)      Behavior which, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior which establishes only the condition of gravely disabled.

C. **“Detention,”** means the taking into custody of a person.

D. **“Detention Facility,”** means a facility in which a person may be held pending treatment, evaluation, or court review, pursuant to the authority granted under this Chapter. The Detention Facility selected shall be the least restrictive alternative, and may include, but shall not be limited to, a criminal detention facility if no other appropriate facility is available. Notwithstanding the foregoing, the confinement or detention authorized under this Chapter shall not be considered a criminal detention, nor shall the detention be deemed punishment, but rather, is an action authorized solely for the safety and well-being of the person and others.

E. **“Evaluation,”** means the professional analysis described in Section 17.7, as required for an involuntary commitment hearing before the Tribal Court.

F. **“Gravely Disabled,”** means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for his or her basic physical needs.

G. **“Initial Screening,”** means the mental health status examination described in Section 17.4 which may be conducted to determine whether to commence Involuntary Commitment proceedings.

H. **“Mental Disorder,”** means for purposes of this Chapter, a substantial disorder of the person’s emotional processes, thought cognition, or memory. “Mental Disorder” is distinguished from:

(1) Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.

(2) The declining mental abilities that directly accompany impending death.

(3) Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by law.

I. **“Mental Health Provider,”** means any physician or provider of mental health or social welfare services involved in caring for, treating, or rehabilitating a patient, or conducting an initial screening, or an evaluation of a proposed patient.

J. **“Patient,” “Person,” or “Proposed Patient,”** means the person, whether adult or minor, who is subject to, or being considered for, the commitment proceedings set

forth in this Chapter. If the person is a minor, the provisions of this Chapter shall be implemented and enforced under the jurisdiction of the Tribal Juvenile Court.

K. **“Persistently or Acutely Disabled,”** means a severe mental disorder that meets all the following criteria:

(1) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(2) Substantially impairs the person’s capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(3) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

L. **“Expressed Suicidal Ideation,”** means words, gestures, or artwork, whether addressed to oneself or others, that would indicate to a reasonable person an interest, desire, or intent to take one’s own life.

M. **“Threats of Suicide,”** means one or more statements to others stating an intent, either absolute or conditional, on the part of the speaker to commit suicide.

N. **Suicide Attempt,”** means any act, however trivial or preliminary, in furtherance of the taking of one’s own life.

O. **“Suicide Risk,”** means a person who is in danger of committing suicide, as demonstrated by expressed suicidal ideation, threats of suicide, or one or more suicide attempts.

P. **“Reporting Party,”** means a person who reports to police that another person has expressed suicidal ideations, has threatened suicide, or has attempted suicide.

### **SECTION 17.3 SUICIDE**

A. **Protective Custody.** Any person who is aware of expressed suicidal ideation, threats of suicide, or suicide attempts by another person (the “suicide risk”) may report such conduct to the White Mountain Apache Tribal Police. Upon receipt of such report, the Tribal Police shall investigate the report, and if the investigating officers find probable cause to believe that the person who is the subject of the report is in danger of committing suicide.

they shall arrest the subject and place him or her in protective custody of the WMAT Department of Corrections. The arresting officers shall write a report stating the specific facts supporting their determination of probable cause that the subject was in danger of committing suicide, and shall forward said report to the Office of the Tribal Prosecutor as with any other report of arrest.

B. **Detention and Evaluation of Suicide Risk.** The WMAT Department of Corrections shall take the Suicide Risk into its custody, taking care to prevent the subject from harming himself or herself, for a period of no less than twenty-four (24) hours. During the following business day, the Department of Corrections shall arrange with Apache Behavioral Health Service for a psychological evaluation of the Suicide Risk while the subject is in custody. Apache Behavioral Health Service shall perform a psychological evaluation of the Suicide Risk as soon as possible, but no later than twenty-four (24) hours (excluding weekends and holidays) after notification of the detention of the Suicide Risk in protective custody.

C. **Disposition of Suicide Risk.** If in the professional opinion of the Mental Health Professional performing the evaluation, the Suicide Risk is in need of Involuntary Commitment to a secure Mental health facility, the Mental Health Professional shall forward the evaluation to the Tribal Prosecutor for Involuntary Commitment proceedings in accordance with this Chapter. Based upon the recommendations of the psychological evaluation, the Department of Corrections shall:

- (1) Hold the Suicide Risk pending Involuntary Commitment proceedings as herein provided or criminal charges as provided in the WMAT Criminal Code; or
- (2) Hold the Suicide Risk pending voluntary transfer to a treatment program as recommended by Apache Behavioral Health Service, in which case a Petition to Hold shall be filed in Tribal Court within twenty-four (24) hours of the evaluation (excluding weekends and holidays); or
- (3) Release the Suicide Risk as no longer in danger of suicide.

D. If a Petition to Hold is filed pursuant to Subsection C(2), it shall contain a statement of facts supporting the assertion that the Suicide Risk remains a danger to either himself or others, and that continued detention is the least restrictive means to alleviate that danger. The Court may either rule upon the contents of the Petition, or set the matter for hearing within forty-eight (48) hours.

#### **SECTION 17.4 PETITION FOR EVALUATION, DETENTION**

A. **Grounds for Petition.** A licensed physician, mental health provider, police officer, the Tribal Prosecutor or the Tribal Attorney, either upon request by an interested party or upon his or her own volition, may petition for a court-ordered evaluation of a person

who is alleged to be suffering from a mental disorder, persistently or acutely disabled, or who is gravely disabled and who is incapable of or unwilling to undergo a voluntary evaluation.

B. The Petition shall contain the following information:

(1) The name and address of the person making the petition and his or her interest in the case.

(2) The name of the person to be evaluated and, if known or readily discoverable, the address, age, marital status and occupations of the person, and the name and address of the person's nearest relative.

(3) The facts which called the person to be evaluated to the attention of the petitioner.

(4) The facts upon which the allegations are based, including statements by the petitioner of the specific nature of the danger or grave disability.

(5) Other information that the court by rule or order may require.

C. The Petition shall be filed with the Tribal Court in accordance with rules that the Court may establish.

D. **Detention.** In addition to a petition for an evaluation, as set forth in Subsection A., a petition may request the involuntary detention of the proposed patient on the grounds that the proposed patient is suffering from a mental disorder and is a danger to self or others. The Court may order the apprehension, transportation and custodian detention by Tribal Police or other appropriate agency of a person for the purpose of a mental health evaluation if the petition for evaluation the Court determines there is reasonable cause to believe that the person is likely to present a danger to self or others as a result of a mental disorder. Any detention of a person under the authority of this Chapter shall be conducted pursuant to accepted medical standards, as may be directed by a licensed physician, to provide for the humane care and appropriate mental health needs and safety of the patient. The patient shall be informed of the reasons for the detention and that he or she must submit to a mental health evaluation. The period of detention shall not extend beyond the conclusion of the court proceedings, and as needed for the subsequent transfer to a treatment facility.

## **SECTION 17.5      EMERGENCY APPREHENSION AND INITIAL SCREENING**

A. Notwithstanding any other provision of this Chapter, a police officer may apprehend, without a warrant or order, a person who the officer has reasonable cause to believe poses an immediate danger to self or to others due to a mental disorder and is in need of immediate care and treatment.

B. All persons so apprehended shall be transported to the Whiteriver Service Unit Emergency Room for an initial screening. The initial screening shall be conducted by a licensed physician and licensed psychologist, or other mental health provider licensed to conduct a mental status examination. In the event the person cannot be immediately subjected to an initial screening because of intoxication or other impairment from drugs, the person may be held in a detention facility for a reasonable period of time until his or her condition will allow an initial screening.

C. In the event the initial screening indicates the person suffers from a mental disorder and is a danger to others or a danger to self, a licensed physician may direct that the person be immediately detained in a detention facility, provided that a petition for involuntary confinement and treatment for court review, pursuant to the provision of Section 17.4, is filed no later than the succeeding court day. Child Protective Services shall be immediately notified if the person detained is a minor.

D. An initial screening may be conducted at a location other than the Emergency Room when circumstances so warrant.

## **SECTION 17.6      COURT REVIEW**

A. **Court Review / Scheduling.** Upon receipt of a petition filed with the Court pursuant to Section 17.4, the Court shall immediately, after verifying that the petition complies with the requirements of this Chapter, order an evaluation of the proposed patient as provided in Section 17.7, and the appointment of legal counsel for the proposed patient if the proposed patient is not already represented. If the proposed patient has been taken into custody for any reason other than the commission of a criminal offense, the court shall schedule a hearing to be held not later than ninety-six (96) hours after receipt of the petition. The Court may, for good cause, extend the period for the hearing date up to fourteen (14) days if the proposed patient is not in detention. In the event that the proposed patient cannot be located in time to comply with the schedule set forth in this Section, the Court hearing shall occur forty-eight (48) hours following the evaluation when completed. Prior to scheduling a hearing as set forth in this subsection, upon request, or its own action, the Court may direct that an initial screening pursuant to Section 17.5 be first conducted and that the report be submitted to the Court.

B. **Appointment of Legal Counsel.** The Court shall appoint legal counsel for the proposed patient, unless it determines that the proposed patient has legal counsel or is otherwise able to obtain and pay for the services of such counsel. The Court shall provide notice of the appointment and hearing to the proposed patient and legal counsel not less than seventy-two (72) hours prior to the hearing. The Court may, when circumstances warrant, appoint a guardian to act on behalf of the interests of the proposed patient.

C. **Order for Evaluation.** The Court shall order an evaluation of the proposed patient, as provided in Section 17.7. The evaluation results shall be made available to the

petitioner, the Court, the proposed patient, and the proposed patient's legal counsel not less than twenty-four (24) hours prior to the hearing.

D. **Order for Detention.** The Court may also order the detention of the proposed patient prior to the hearing if the circumstances warrant such detention.

E. **Independent Evaluation.** Upon request, the Court shall permit the proposed patient to obtain a separate and independent evaluation to introduce into the Court hearing, provided that a copy of the evaluation report is made available to the Court and to the petitioner within a reasonable time period prior to the hearing, as established by the Court.

F. **Calculation of Time.** All calculations of time pursuant to this Section, whether by days or hours, shall not include weekends and court holidays.

## **SECTION 17.7 COURT ORDERED EVALUATION**

The evaluation ordered pursuant to Section 17.6 C. shall be a professional analysis of the proposed patient's psychological condition and shall serve as a key evidentiary base for the Court hearing. The evaluation shall assess a broad range of relevant information about the patient's background, identity, mental status, and condition. The evaluation shall be conducted by a licensed physician and licensed psychologist, but the input of and evaluation by other mental health providers is encouraged to promote a balanced and professional multi-disciplinary analysis. The evaluation results may be issued in either a joint report or separate report, as agreed by the examiners.

## **SECTION 17.8 HEARING PROCEDURES**

A. **Witnesses.** The proposed patient and the petitioner, or the Tribal Prosecutor or Tribal Attorney on behalf of the petitioner, may present and cross-examine witnesses. The testimony of examiners shall not be admitted into evidence unless, (1) the examiner is present and is subject to cross-examination, (2) in the event that the examiner, for good cause, is unable to attend, appears via telephone so that all parties and counsel may hear the testimony and cross-examine the witness; or (3) the parties stipulate to its admission. The judge may sequester any witness or witnesses.

B. **Conduct of Hearing.** The hearing shall be governed by the established rules of Tribal Court and the rules of evidence, subject to the provisions on confidentiality, as set forth in Section 17.10 of this Chapter.

C. **Standard of Proof.** If the Court finds by clear and convincing evidence that the person, as a result of a mental disorder, is a danger to self, is a danger to others, or is gravely disabled and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the judge shall order such person to undergo inpatient treatment. The judge shall consider reasonable alternatives to commitment including, but not limited to,

dismissal of the petition, voluntary outpatient care, and voluntary admission to a treatment facility.

D. **Court Power / Jurisdiction.** The Court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available, including outpatient as well as combined inpatient and outpatient treatment where appropriate. Placement into an inpatient setting pursuant to this Chapter shall not be deemed to change the legal residence of the patient, nor to remove the Court's jurisdiction over the patient or proceedings arising under this Chapter.

E. **Court Order.** The Court shall direct the entry of judgment, and may find the facts specifically. The order shall be filed with the Clerk of the Court. Where the Tribal court orders involuntary commitment for treatment, an authenticated copy of the order may be filed with the Clerk of the Superior Court of Arizona, or a court of another state or Indian tribe, as appropriate, if needed to direct placement within a facility outside the jurisdiction of the Tribe. The Tribal Court judge, or other appropriate Tribal official, is authorized to submit other documentation and verification concerning the Tribal Court proceedings and concerning the identity and address of the proposed patient, as may be needed for recognition of the Tribal Court order by another court. The Order may identify the agency responsible for transportation of the patient, direct that the patient be held in an appropriate detention facility pending transfer to the treatment facility, and provide for follow-up coordination with the treatment facility. In addition, the Court's order shall include the following:

- (1) The legal and factual basis for the Court's jurisdiction;
- (2) Confirmation that the patient was provided notice of the proceedings and the opportunity to be heard;
- (3) Confirmation that the ruling is based upon the diagnosis of a licensed physician; and
- (4) Confirmation that the treatment order is the least restrictive alternative, and the patient is unwilling or unable to receive the treatment voluntarily.

F. The maximum periods of inpatient treatment which the court may order are as follows:

- (1) Ninety (90) days for a person found to be a danger to self.
- (2) One-hundred eighty (180) days for a person found to be a danger to others.
- (3) One-hundred eighty (180) days for a person found to be persistently and acutely disabled.

(4) Three-hundred sixty-five (365) days for a person found to be gravely disabled.

**SECTION 17.9      PATIENT'S RIGHTS AT HEARINGS**

A. At all hearings conducted pursuant to this Chapter, a person shall have the right to an evaluation of his or her psychological condition by an independent evaluator who is either a licensed physician or certified psychologist selected by the patient or the patient's legal counsel.

B. Information, admissions, or confessions given by a person to a mental health provider during the course of initial screening, evaluation, or treatment as ordered by the Court cannot be used against the person at a trial where he or she is a criminal defendant charged with violating a Tribal law.

C. For purposes of transportation of persons to and from hearings, detention, and commitment under this Chapter, the Tribal Court shall be the temporary guardian of the person while in transit.

**SECTION 17.10      CONFIDENTIAL RECORDS**

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the hearing requirements of this Chapter may necessitate a different procedure. Information and records may only be disclosed to:

A. The proposed patient and individuals legally representing the proposed patient.

B. Mental health providers involved in assessing, caring for, treating, or rehabilitating the person.

C. Individuals to whom the person has given consent to have information disclosed.

D. The judge to whom the case is assigned, the Tribal Prosecutor or Tribal Attorney, and/or the petitioner.

E. Individuals authorized by court order.

**SECTION 17.11      VOLUNTARY ADMISSION**

In order to assist individuals in obtaining the treatment options identified in this Chapter, any person, eighteen years of age or older, who manifests the capacity to give and gives informed consent may be hospitalized for evaluation, care and treatment by voluntarily

making written application. In the event such consent is given, any Tribal Court proceedings which may have been pending concerning the person's involuntary commitment shall be stayed during the time that the voluntary commitment and prescribed treatment are occurring. In the event the patient revokes the voluntary consent, or otherwise fails to comply with the prescribed treatment or commitment, the Court proceedings will immediately resume. No Court proceeding will otherwise commence upon the submission of a voluntary application for evaluation and treatment.

**SECTION 17.12      TRAINING**

To promote coordination among all involved agencies and departments, and to provide a broader understanding of the unique challenges and needs presented by those persons who pose a risk to self or others because of mental illness, the Tribal Social Service and Behavioral Health programs shall conduct comprehensive training sessions not less than once per year for all social service, law enforcement, and mental health personnel and others who provide services for the individuals subject to the provisions of this Chapter.

**SECTION 17.13      LIMITATION ON LIABILITY**

There shall be no liability for any mental health provider, physician, officer, attorney, Tribal official or representative, or any other person for actions and conduct authorized pursuant to this Chapter. This Section shall not apply to criminal conduct or conduct found to be grossly or willfully negligent.

**SECTION 17.14      SEVERABILITY**

If any provision of this Chapter, or the application thereof, is held invalid, the remainder of this Chapter, or other application of such provisions, shall not be affected.