

**WHITE MOUNTAIN APACHE**  
**GOVERNMENT CODE**

*Effective December 13, 2010*

**WHITE MOUNTAIN APACHE  
GOVERNMENT CODE**

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MOUNTAIN APACHE TRIBE - CODIFIED AS THE  
WHITE MOUNTAIN APACHE GAMING CODE]

# WHITE MOUNTAIN APACHE GOVERNMENT CODE

## CHAPTER ONE GENERAL PROVISIONS

[NOTE: This Chapter is derived from Ordinance No. 118, Part 1, Definitions.]

### SECTION 1.1 DEFINITIONS

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

- A. **"Adult"** means a person who is eighteen (18) years of age or older.
- B. **"Code" or "Tribal Code"** means the White Mountain Apache Tribal Code, as adopted by the White Mountain Apache Tribal Council.
- C. **"Council" or "Tribal Council"** means the White Mountain Apache tribal Council duly assembled.
- D. **"Indian"** means any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that Tribe, and any other person recognized by federal law as an Indian for any purpose, and denotes both the singular and the plural.
- E. **"Member"** means an enrolled member of the White Mountain Apache Tribe.
- F. **"Non-Member"** means any person who is not a member.
- G. **"Non-Indian"** means a person who is not an Indian.
- H. **"Person"** means a natural person, Indian or non-Indian, and where relevant, a corporation, partnership, or unincorporated association.
- I. **"Property"** means both real and personal property.
- J. **"Reservation"** means the area within the exterior boundaries of the Fort Apache Indian Reservation.
- K. **"Tribal Court"** means the Court of the White Mountain Apache Tribe.

L. **"Tribal Judge"** means a judge of the Tribal Court of the White Mountain Apache Tribe and includes regular and visiting judges of the trial court, the juvenile court, and the Court of Appeals.

M. **"Tribe"** means the White Mountain Apache Tribe, an unincorporated association organized under Section 16 of the Indian Reorganization Act, 25 U.S.C. §476, *et seq.*, (48 Stat. 984) its enterprises, subdivisions, and departments, and its agents acting within the scope of their authority.

N. **"Visiting Judge"** means a Judge of another Indian Tribe, a former Judge of the White Mountain Apache Tribe, or a state or federal Court Judge, magistrate, or justice of the peace who has been designated by the Chief Judge of the Tribal Court to hear and determine a case.

O. **"Signature"** means the name of a person in his handwriting or printing, or his mark or thumbprint witnessed by two persons who sign their names as witnesses to his making of the mark or thumbprint.

## **SECTION 1.2      PRINCIPLES OF CONSTRUCTION**

The following principles of construction apply to the Tribal Code unless a different construction is obviously intended or is necessary to obtain a reasonable result:

A. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

B. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

C. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.

D. If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code, and its application to any other person or circumstance shall not be affected thereby and to this end the provisions of this Code are severable.

E. All other issues of construction shall be decided using generally accepted principles of construction to affect the underlying principles and purposes of this Code.

## **SECTION 1.3      AUTHORITY**

This compilation of the laws of the White Mountain Apache Tribe, which is to be known as the White Mountain Apache Tribal Code, is adopted pursuant to the authority

vested in the White Mountain Apache Tribal Council by virtue of its inherent tribal sovereignty and the Constitution and Bylaws of the White Mountain Apache Tribe.

**SECTION 1.4      REFERENCES TO THE TRIBAL CODE**

This Code may be referred to as the White Mountain Apache Tribal Code, or where the context suitably identifies it, as the Tribal Code. Subdivisions of this Code which are identified by a name referring to the particular body of law they contain may be identified by that name, for example, Game and Fish Code.

**SECTION 1.5      PRIOR ORDINANCES REPEALED**

All prior ordinances are hereby repealed. Any and all resolutions or other enactments of the Tribal Council which conflict with the provisions of the Tribal Code are hereby repealed to the extent of such conflict.

**SECTION 1.6      AMENDMENTS**

This Code may be amended by the adoption of ordinances by the Tribal Council. Amendments shall become a part of this Code for all purposes and shall be codified and incorporated into the Code in a manner consistent with its numbering and organization.

**SECTION 1.7      SOVEREIGN IMMUNITY**

The White Mountain Apache Tribe, as a sovereign government, is absolutely immune from suit, and its Tribal Council, officers, agents, and employees shall be immune from any civil or criminal liability arising or alleged to arise from their performance or non-performance of their official duties. Nothing in this Code shall be deemed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe except as expressly provided herein or by action of the Tribal Council.

**SECTION 1.8      ADOPTION OF FOREIGN LAW BY REFERENCE OR INCORPORATION**

A. The adoption of any law or other document into this Code by reference or incorporation shall not constitute a waiver or cession of any sovereign power of the White Mountain Apache Tribe to the jurisdiction whose law is adopted, or in any way diminish such sovereign power, but shall result in the law becoming the law of the White Mountain Apache Tribe.

B. Whenever a law or other document of another jurisdiction is adopted by reference or incorporation as White Mountain Apache law, the omission of any part of that law from the portion adopted shall not be construed as a negative statement regarding the principles embodied in the omitted part, unless such a negative statement is expressly made.

C. Whenever a law or other document of another jurisdiction is adopted by reference or incorporation as White Mountain Apache law, the decisions of the courts of that jurisdiction interpreting such law or other document shall not be binding on the White Mountain Apache Tribal Courts unless this Code expressly so provides, but shall be considered as merely advisory.

**CHAPTER TWO  
TRIBAL CHAIRMAN**

[NOTE: This Chapter is derived from Ordinance No. 1, Enacted November 7, 1938.]

**SECTION 2.1      CHAIRMAN TO SIGN DOCUMENTS APPROVED BY COUNCIL**

The Chairman of the Tribal Council will sign all documents favorably passed and approved by the Council, until rescinded. This authority includes all ordinances, resolutions and any other orders in the form of business transacted by the Council in regular or special session.

**CHAPTER THREE  
ELECTIONS**

**[NOTE: Chapter Three - Elections, has been amended and rescinded by  
the White Mountain Apache Tribal Election Code, Enacted May, 1997.]**

**CHAPTER FOUR  
TRIBAL MEMBERSHIP**

**[NOTE: Chapter Four - Tribal Membership, has been amended and rescinded  
by the White Mountain Apache Tribal Enrollment Code, Enacted April 9, 1992.]**

**CHAPTER FIVE  
EXCLUSION AND REMOVAL OF NON-MEMBERS  
EXECUTIVE CLOSURE OF RESERVATION**

**SECTION 5.1      DECLARATION OF PURPOSE**

Whereas it is the sacred duty and obligation of the Tribal Council of the White Mountain Apache Tribe to safeguard, protect, manage, administer and develop the natural resources of the ancestral lands of the White Mountain Apache Tribe for the sole economic, cultural, and social benefit of the people of the White Mountain Apache Tribe; and whereas pursuant to the inherent sovereign power and authority reposing in the White Mountain Apache Tribe as reaffirmed by the Indian Reorganization Act of 1934 and the Tribal Constitution enacted pursuant thereto which was duly ratified by the Secretary of the Interior as principal agent for the trustee United States; the Tribal Council possesses the authority and constitutional obligation to initiate proceedings in order to protect its people, their natural resources, land, water rights, fish and wildlife, from any threat or conduct by non-members of the White Mountain Apache Tribe which might diminish, denigrate, damage, injure or threaten those natural resources or the social, cultural and economic well being of the people of the White Mountain Apache Tribe in any manner whatsoever; the Exclusion and Removal and Executive Closure provisions set forth in this Chapter are hereby enacted to carry out and implement this Declaration of Purpose and the Tribal Constitutional obligations of the Tribal Council.

**SECTION 5.2      DEFINITIONS**

A.     **TRIBE** as used in this Ordinance refers to both the singular and plural and represents each and every enrolled member of the White Mountain Apache Tribe, an unincorporated association organized pursuant to §16 of the Indian Reorganization Act of 1934.

B.     **PERSON** and **NON-MEMBER** as used in this Ordinance means any individual, corporation, partnership, association, state, or county government and any of their respective agencies who are not enrolled members of the White Mountain Apache Tribe, and denotes both the singular and plural wherever used.

\* [This portion of section disapproved by Bureau of Indian Affairs]

C.     **PERSON** and **NON-MEMBER** as used in this Ordinance also means any Federal employee of the Department of Interior or any of its contractors who are engaged in any activity on the Fort Apache Indian Reservation which is found to be:

- (1)    Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

- (2) Contrary to constitutional right, power, privilege or immunity; or
- (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
- (4) Without observance of procedure required by law; or
- (5) A direct conflict of interest of the Secretary of the Interior's trustee responsibilities to protect, preserve and utilize the resources of the Fort Apache Indian Reservation for the improvement of the economic well being of the White Mountain Apache Tribe.

**SECTION 5.3**      **EXECUTIVE ORDER CLOSURE OF ALL OR PART OF RESERVATION; FIRE PREVENTION ORDERS**

A. The Chairman of the White Mountain Apache Tribal Council, or in his absence the Vice-Chairman of the White Mountain Apache Tribal Council, is empowered to close any or all of the Fort Apache Indian Reservation to non-members whenever the presence of such non-members would constitute a threat or danger to life, property, or the sovereign interest of the White Mountain Apache Tribe. The exclusion order may permit certain named individuals (or classes of individuals) to remain and may provide for a procedure whereby individual or classes of individual may seek entry or reentry to closed areas. No such closure may continue for more than 30 days without concurrence by the White Mountain Apache Tribal Council by Council Resolution.

B. The Chairman of the White Mountain Apache Tribal Council, or in his absence the Vice-Chairman of the White Mountain Apache Tribal Council, is empowered to issue fire prevention orders to respond to actual or potential threats of fire on the Fort Apache Indian Reservation. All orders shall be based upon the most current information available to the Chairman or Vice-Chairman at the time the order is issued, and shall be reasonably tailored to reduce actual or potential threats of fire, including threats to natural resources, wildlife, economic resources, or to Tribal health or welfare. Orders shall state the basis for issuance, and may cover, among other things, the following:

- (1) The closure of any portion of the Fort Apache Indian Reservation to non-members and/or members of the Tribe. Such an order may permit certain individuals or classes of individuals to remain and may provide for a procedure whereby individual or classes of individuals may seek entry to closed areas;
- (2) The restriction or prohibition of open burning, including the burning of garbage or refuse at residences or at garbage disposal areas;
- (3) The restriction or prohibition of activities that pose fire hazards, including, but not limited to, camp fires, barbeques, camp stoves, and smoking.

(4) The restriction or prohibition of wood cutting otherwise permitted under the Tribe's Natural Resources Code; or

(5) Any other restrictions or prohibitions consistent with this Paragraph.

No restrictions or prohibitions issued pursuant to this Paragraph may continue for more than 90 days without concurrence by the White Mountain Apache Tribal Council by Council Resolution.

C. In addition to other civil or criminal sanctions set forth in this Chapter, any person, Indian or non-Indian, who is found guilty of any conduct or act prohibited by an order issued pursuant to Section 5.3(B) of this Code, or who intentionally or negligently causes a fire on the Fort Apache Indian Reservation, shall be guilty of an offense and punished as follows:

#### **INDIAN OFFENDERS**

(1) If an Indian, imprisonment of up to fifty (50) days and a fine of up to One Thousand Dollars (\$1000.00), or both fine and imprisonment.

(2) Alternatively, or in addition to the punishment prescribed in Section 5.3(C)(1), the Court may require any Indian convicted of violating this section to perform not less than twenty-five (25) but not more than two hundred fifty (250) hours of community service for the White Mountain Apache Tribe.

(3) Alternatively, or in addition to the punishment prescribed above, the Court may order an Indian who intentionally or negligently causes a fire on the Fort Apache Indian Reservation to pay restitution to the Tribe for damages caused by such fire, including, but not limited to costs for rehabilitation, reforestation, loss of future revenue, loss of productivity, damage to other forest resources, and all costs expended by the Tribe to respond to the fire.

#### **NON-INDIAN OFFENDERS**

(4) Non-Indian violators shall be subject to prosecution pursuant to applicable federal law, and to tribal civil penalties and remedies as follows:

(a) A civil penalty of not less than Five Hundred (\$500.00) Dollars or more than Two Thousand Dollars (\$2,000.00).

(b) In addition to civil penalties, if a fire is negligently or intentionally caused on the Fort Apache Indian Reservation by a non-Indian or if a fire so caused spreads onto the Fort Apache Indian Reservation, the court may order such person to pay restitution to the Tribe for

damages caused by such fire, including, but not limited to, rehabilitation, reforestation, loss of future revenue, loss of productivity, damage to other forest resources, and all costs expended by the Tribe through all phases of its response to the fire.

(5) The court may also charge any Indian or non-Indian found guilty or liable to the Tribe under this section with payment of all reasonable costs associated with the enforcement of these regulations, beginning with detection and including all processes through prosecution and collection of the settlement, such as field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorneys' fees.

(6) Payment of civil or criminal penalties or restitution to the Tribe may involve collection of cash, forfeiture of real and personal property, and garnishment. Any cash shall be applied to expenses incurred by tribal enforcement agencies. After disposition of real and personal property to pay court ordered civil liability penalties, restitution, and enforcement costs, any residual or left over funds shall be returned to the trespasser/violator.

D. Tribal Game and Fish officers, Tribal police, and designated and properly trained personnel from Tribal Forestry, the Fire Department, and Bureau of Indian Affairs Forestry and Criminal Investigations, as well as other Federal law enforcement officers, may, upon probable cause that a person has violated this Section, issue citations giving notice to such persons that a violation of this section has occurred. The citation shall provide a basis for the determination that a violation has occurred, as well as notice of the location of the tribal court and a date by which the citation must be answered. Any person issued a citation under this Paragraph shall be required to sign a consent for appearance, and if such person refuses to sign the consent, he or she may be arrested and taken to the Whiteriver jail for booking and arraignment before the Tribal Court. Non-Indians shall be turned over to the custody of Bureau of Indian Affairs law enforcement or Federal Marshall, as appropriate.

E. In addition to the civil penalties and remedies specified herein, violations of this section by a non-Indian or non member of the White Mountain Apache Tribe may result in a petition for his or her exclusion from the reservation or referral to the United States Magistrate, the Bureau of Indian Affairs, or U.S. Attorney for prosecution.

**SECTION 5.4            EXCLUSION OR REMOVAL OF NON-MEMBERS AFTER HEARING; INTERIM EXCLUSION OR REMOVAL PENDING HEARING; PENALTIES**

[NOTE: Section 5.4 was amended by Ordinance No. 246, enacted December 13, 2010.]

A. A non-member of the White Mountain Apache Tribe may be excluded or removed from the Fort Apache Indian Reservation after a hearing and the entry of an exclusion or removal order, or in cases involving a threat or danger to the public health.



(1) Unauthorized prospecting for petrified wood or artifacts, antiquities, wood collecting, timber cutting, surveying, damaging or using property of the White Mountain Apache Tribe or any resident thereof without permission, disturbing any gravesite, or conducting any scientific study of minerals, water wildlife, vegetation, soil composition, or any sociological, or anthropological studies without prior Tribal Council permission; or

(2) Entry into any White Mountain Apache home without the consent of the occupants; or if consent is revoked, refusing thereafter to vacate the premises; or

(3) Interference with or unauthorized photographing of any White Mountain Apache traditional ceremony without permission of the White Mountain Apaches involved; or

(4) Unauthorized or unlicensed trading or peddling; or

(5) Unauthorized entering of an area of the Fort Apache Indian Reservation closed to non-members; or

(6) Removal by a non-member from the Fort Apache Indian Reservation of any member of the White Mountain Apache Tribe under the age of 18, or under guardianship, except by Order of the Courts of the White Mountain Apache Tribe pursuant to and in compliance with White Mountain Apache law or in conjunction with a sectarian program administered by the White Mountain Apache Tribe or the Bureau of Indian Affairs; or

(7) Violating any Federal or Tribal Game and Fish Regulations applicable within the exterior boundaries of the Fort Apache Indian Reservation; or

(8) Committing frauds, confidence games, or usury against Apache people, or inducing them to enter into grossly unfavorable contracts of any nature; or

(9) Defrauding any Apache of just compensation for his labor or service of any nature done at the request of the non-member.

C. Any person not a member of the White Mountain Apache Tribe who commits or is convicted of committing any act on the Fort Apache Indian Reservation which is a crime under State or Federal Law, or which would have constituted a violation of the criminal code of the White Mountain Apache Tribe if it had been committed by a member of the White Mountain Apache Tribe, may be removed and excluded from the Reservation pursuant to the provisions of this Chapter or, prior to conviction, taken into custody by a Tribal Police Officer or Game Ranger for delivery to State or Federal authorities for prosecution.

**SECTION 5.6            PROTECTION OF NATURAL RESOURCES**

Entering upon the Fort Apache Indian Reservation by any non-member of the White Mountain Apache Tribe for purposes of conducting any study, surveying or mapping of the land, water resources, soil, geology, topography, forest, grazing lands, atmosphere, fish and wildlife, minerals, or White Mountain Apache culture or people for any purposes without the prior consent and approval of the Tribal Council of the White Mountain Apache Tribe shall constitute grounds for the immediate removal and exclusion of said person from the exterior boundaries of the Fort Apache Indian Reservation pending an exclusionary hearing as set forth in this Chapter.

**SECTION 5.7            DURATION OF EXCLUSION**

An exclusion or removal order entered by a Court of the White Mountain Apache Tribe shall either be for a definite period, or may, under appropriate circumstances, be permanent. A non-member excluded or removed may petition the Court for modification of an exclusion or removal order at any time after the order is entered but may not file a petition to modify more than once every three months.

**SECTION 5.8            COURT JURISDICTION**

The Courts of the White Mountain Apache Tribe are vested with civil jurisdiction over all non-members with respect to the exclusion or removal of non-members of the White Mountain Apache Tribe from the Fort Apache Indian Reservation.

**SECTION 5.9            NOTICE OF EXCLUSION OR REMOVAL**

The Chairman or in his absence, the Vice Chairman of the Tribal Council may petition the Tribal Court for a notice of exclusion or removal to be served personally or by registered mail upon any non-member whenever either or such officers believes cause may exist for exclusion or removal of such non-member, or whenever the Tribal Council orders either officer to cause such notice to be served. Such notice shall state the reason for the proposed exclusion or removal and shall name a time and place where the non-member may appear before the Tribal Court to show cause why he should not be excluded from the exterior boundaries of the Fort Apache Indian Reservation.

**SECTION 5.10          HEARING; ORDER OF EXCLUSION**

A. After notice to the non-member proposed for exclusion or removal, the Tribal Court shall hold a hearing no later than ten days thereafter to decide whether or not the non-member shall be excluded from the exterior boundaries of the Reservation. Such non-member shall be given an opportunity to present his defense at such hearing and may be represented by counsel.

B. After hearing, or after the time set for such hearing, if after notice the non-member proposed for exclusion or removal does not appear, the Tribal Court may order that such non-member may remain upon the Fort Apache Indian Reservation on such conditions as the Court sees fit to impose; or may order said non-member to leave or be removed from the Fort Apache Indian Reservation. All orders of exclusion or removal shall remain in force until revoked by the Tribal Court, unless the order specifically provides otherwise.

C. The Tribal Attorney or in his absence, the Tribal Prosecutor, shall represent the White Mountain Apache Tribe, the chairman of the Tribal Council or in his absence the Vice Chairman of the Tribal Council in any and all exclusion or removal proceedings initiated in Tribal Court pursuant to this Chapter.

#### **SECTION 5.11      ENFORCEMENT OF EXCLUSION OR REMOVAL ORDER**

A. If any non-member ordered removed or excluded from the Fort Apache Indian Reservation by the Tribal Court does not promptly obey the order, the Chairman of the Tribal Council or, in his absence the Vice Chairman of the Tribal Council, may petition the Tribal Court for appropriate enforcement action, or he may refer the matter directly to the United States Attorney; or both.

B. Upon receipt of a Petition for Enforcement of the Tribal Court's previous Removal or Exclusion Order, the Tribal Court shall immediately order the White Mountain Apache Tribal Police or Tribal Game Rangers to bodily remove the non-member and/or to remove the property of such non-member from within the exterior boundaries of the Fort Apache Indian Reservation. The Police Officer or Game Ranger executing such order shall use only so much force as is necessary to effect the removal or exclusion.

#### **SECTION 5.12      FORCIBLE REMOVAL OF PERSONS AND PROPERTY PRIOR TO HEARING**

A. In extreme cases involving grave danger to the life, health, morals, or property of the Tribe or any of its members or because of a violation of Section 5.6, the Chairman of the Tribal Council, or in his absence from the Reservation, the Vice Chairman of the Tribal Council may petition the Tribal Court, without notice, for an Order directing any White Mountain Apache Police Officer or Game Ranger to bodily remove a non-member and/or to remove any property of such non-member from Tribal land, before such non-member has been ordered excluded by the Tribal Court as provided in Section 5.10B. The Police Officer or Game Ranger executing such order shall use only so much force as is necessary to effect the removal.

B. If service of the notice provided for in Section 5.9 has not already been made on such non-member, the Court shall cause the police Officer or Game Ranger to serve such notice upon the non-member at the time of removal, or he shall cause the notice to be served as soon after removal as possible.

C. In all cases where the non-member has not already been ordered excluded by the Tribal Court the Court shall notify the non-member of a place on the Reservation Boundary where he may reenter in the company of a White Mountain Apache Police Officer or Game Ranger who is to accompany such non-member while he is on the Reservation traveling to and leaving his hearing.

D. Any non-member ordered by the Tribal Court to leave the Reservation, pursuant to Section 5.4, Section 5.6, Section 5.10B, Section 5.1a, or Section 5.12, may be delivered to the custody of state or federal authorities for prosecution.

**SECTION 5.13      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 SIX  
TRIBAL UTILITY AUTHORITY**

**Article 1  
Establishment of Authority**

[NOTE: Article 1 is derived from Ordinance 93, enacted November 1, 1972.]

**SECTION 6.1            ESTABLISHMENT OF TRIBAL UTILITY AUTHORITY;  
BY-LAWS; PLAN OF OPERATION**

- A.     There is hereby established the White Mountain Apache Utility Authority.
  
- B.     The Utility Authority shall be governed by the By-Laws and the Plan of Operation approved by the Tribal Council on November 1, 1972, as amended.
  
- C.     A copy of the By-Laws and Plan of Operation of the Utility Authority, as amended, shall be available for public inspection during business hours at the office of the Utility Authority.

**Article 2  
Notice and Hearing Requirements**

[NOTE: Article 2 is derived from Ordinance 144, enacted on April 18, 1984.  
Ordinance 144 rescinded Ordinance 136.]

**SECTION 6.2            DECLARATION OF PURPOSE**

The purpose of this Article is (1) to require the Utility Authority to provide notice to customers that their utility account is delinquent and their services are subject to disconnection unless the account is paid by a specified date; (2) to provide an opportunity for the customer to be heard before a Utility Grievance Committee so that the customer may show just cause as to why his or her utility services should not be disconnected; (3) to provide for emergency situations where a customer is unable to appear before the disconnection date; and (4) to provide penalties against the Utility Authority for failure to provide proper notice and a grievance procedure to a customer.

**SECTION 6.3            LIBERAL CONSTRUCTION**

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

## **SECTION 6.4**      **DEFINITIONS**

For the purposes of this Article the following words and phrases have the meanings ascribed to them in this section:

A.      **"conspicuous print"**: Lettering which is in clear black form, positioned so that a customer may find it, and large enough to be easily seen.

B.      **"disconnection notice"**: A warning mailed at the end of the 15 day payment period to pay the monthly bill which notifies a customer that he/she has 10 days from the postmarked mailing date to either pay the bill or file a timely appeal. It is mailed separately from the monthly bill.

C.      **"emergency"**: Any unexpected situation which suddenly arises and necessitates the immediate departure of the customer to a place other than the Fort Apache Indian Reservation so as to prevent the customer from making arrangements for timely payment of his/her month bill.

D.      **"just cause"**: Any reason designated by the Grievance Committee as one justifying a reasonable person not to pay his/her utility bill on time. Guidelines for determining "just cause" will be prepared by the Grievance Committee.

E.      **"utility billing card"**: The monthly statement reflecting the amount due for services rendered by the Authority; the type and amount of services rendered; the due date; the debtor's name and address; creditor's name, address, and telephone number; the Utility collection policy, and notification to the customer of his/her right to an appeal.

F.      **"Utility Grievance Committee"**: The committee of three individuals appointed by the Tribal Council who will hear appeals and issue directives regarding a matter which has been appealed.

G.      **"working days"**: Any regular day of business Monday through Friday, not including weekends and holidays.

## **SECTION 6.5**      **SAVING CLAUSE**

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

## **SECTION 6.6**      **JURISDICTION**

The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all legal proceedings arising out of this Article after administrative procedures before the Utility Authority have been exhausted.

**SECTION 6.7      NOTICE OF COLLECTION POLICY; NOTICE OF RIGHT TO APPEAL**

A.      A collection policy notice and a notice of right of appeal shall appear on the reverse side of each utility billing card. This notification shall be printed conspicuously in plain English.

B.      Collection Policy Notice. The collection policy notice shall be printed conspicuously and shall read as follows:

**COLLECTION POLICY**

ALL BILLS ARE DUE AND PAYABLE UPON RECEIPT. THEY ARE PAST DUE 15 DAYS AFTER THE STATEMENT DATE. IF PAYMENT IS NOT RECEIVED WITHIN 10 DAYS AFTER THE PAST DUE DATE, THE BILL IS DELINQUENT AND YOUR WATER AND SEWER SERVICE MAY BE DISCONNECTED. IF YOU NEED TO MAKE PAYMENT ARRANGEMENTS ON YOUR ACCOUNT CALL 338-4825.

C.      Notice of Right to Appeal. Notice of the right to an appeal shall be printed below the collection policy notice on each billing card. This notice shall be printed conspicuously and shall read as follows:

**RIGHT TO APPEAL**

IF YOU ARE DISSATISFIED WITH THE RESULTS OBTAINED BY AN INVESTIGATION OF YOUR BILL OR SERVICE COMPLAINT BY UTILITY PERSONNEL YOU HAVE A RIGHT TO APPEAL TO:

UTILITY GRIEVANCE COMMITTEE  
UTILITY AUTHORITY  
P.O. BOX 517  
WHITERIVER, ARIZONA 85941  
(602) 338-4825

YOU HAVE TWO WORKING DAYS FROM RECEIPT OF A DISCONNECTION NOTICE TO FILE AN APPEAL.

**SECTION 6.8      DISCONNECTION NOTICE**

A.      If a customer does not pay his or her bill within the twenty-five (25) days specified in the monthly bill, a second notice shall be issued to the customer by the Utility Authority. This notice is the disconnection notice and shall give the customer ten days from the postmarked date to contact the Utility Authority regarding payments or to pay the bill for utilities. The notice shall specify the amount due and time allowed for the

customer to pay the entire bill or to make arrangements with the Authority. This notice shall be printed conspicuously and shall include the following:

### **DISCONNECTION NOTICE**

YOUR WATER AND SEWER SERVICE ACCOUNT IS NOW DELINQUENT AND YOUR SERVICE WILL BE DISCONNECTED IF YOU DO NOT MAKE PAYMENT ARRANGEMENTS WITH THE UTILITY AUTHORITY WITHIN TEN DAYS OF THE DATE OF THE POSTMARK ON THIS NOTICE.

B. Every disconnection notice shall also contain the Notice of Right to Appeal prescribed by Section 6.7C.

C. No water or sewer service provided by the Utility Authority shall be disconnected and/or discontinued if the notices required by Section 6.7 and Section 6.8 have not been issued to the customer.

### **SECTION 6.9 RIGHT TO HEARING, PROCEDURES, UTILITY GRIEVANCE COMMITTEE, DECISIONS**

A. Any customer, who wants to show just cause as to why his or her services should not be disconnected, may request a hearing of the Utility Grievance Committee by contacting the Utility Authority within 2 working days after receipt of disconnection notice.

B. Disconnection of service shall not occur until there is a final resolution of the matter by the grievance committee.

C. Once a request for hearing has been filed with the Utility Authority, a date shall be set for a hearing. The hearing shall be held within 5 working days from the date of request.

D. A utility Grievance Committee shall hear the matter to determine if the customer has shown just cause as to why his water and sewer services should not be suspended. If just cause is shown, the committee shall issue a directive to the Utility Authority on how to resolve the bill. If a further dispute exists on behalf of the Utility Authority, the matter may be pursued by either party in the Tribal Court for resolution. Services shall not be suspended during this appellate period.

E. The Utility Grievance Committee shall consist of three members appointed by the Tribal Council and shall be appointed for a term of 2 years each. Committee members shall be granted administrative leave for the time they are in committee session.

**SECTION 6.10      EMERGENCY PROVISION**

Whenever a customer has been called away on an emergency outside the exterior boundaries of the Fort Apache Indian Reservation, said emergency shall constitute just cause not to disconnect his or her water and sewer services. The customer shall inform the Authority of this emergency verbally prior to departure and in writing at the commencement of any Utility Grievance Committee proceedings. Reasonable arrangements for payment of the customer's bill shall be made upon his or her return from the emergency. Service shall not be disconnected pending the customer's return to the reservation.

**SECTION 6.11      PENALTY FOR FAILURE TO COMPLY WITH ARTICLE**

Where the Utility Authority disconnects service without issuing the notices required by Section 6.7 and 6.8 and/or without justifiable cause, the Utility Authority shall be liable for triple damages to the customer unless the lessor, or the lessor's agent, or the customer's landlord have made the request for disconnection. Triple damages shall be based upon three times the sum of the cost of resumption of services and the amount of the bill outstanding at the time of the disconnection.

**SECTION 6.12      SOVEREIGN IMMUNITY NOT WAIVED**

This Article shall not constitute consent by the White Mountain Apache Tribe, its sub-organizations, or any agent thereof to be sued in any Court. This Article does not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe for any purpose.

**SECTION 6.13      SEVERABILITY CLAUSE**

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

**CHAPTER SEVEN  
HAZARDOUS MATERIALS COMMISSION**

**[Chapter Seven - Hazardous Materials Commission, has been rescinded in its entirety  
by Ordinance No. 194, codified as Chapter One of the White Mountain Apache  
Environmental Code.]**

**CHAPTER EIGHT  
PRESERVATION OF RELIGIOUS SITES**

[NOTE: Chapter Eight is derived from Ordinance 163, enacted December 13, 1991.]

**SECTION 8.1      STATEMENT OF TRIBAL POLICY AND LEGISLATIVE INTENT**

The right of religious freedom is guaranteed to Indian people by the American Indian Religious Freedom Act, the First and Fourteenth Amendments of the Constitution of the United States, the Indian Civil Rights Act and Tribal law and custom. Recognizing this right and that the White Mountain Apache People alone have the absolute, inherent, retained sovereign right to use and enjoy the White Mountain Apache Reservation, and to govern its use by members and non-members, the Tribal Council intends that tribal members shall be afforded the greatest possible freedom to practice traditional religion, to have access to religious sites and to protect such sites from desecration and destruction.

**SECTION 8.2      PURPOSE**

The Tribal Council of the White Mountain Apache Tribe has the obligation and possesses the authority to set aside for the protection of the people of the White Mountain Apache Tribe certain plots of land as religious sites for exclusive use of persons practicing traditional Apache religion. Pursuant to said obligation and authority the Tribal Council of the White Mountain Apache Tribe hereby sets aside certain portions of land described in this Chapter as designated sacred and religious sites for exclusive use by persons practicing traditional Apache Religion.

**SECTION 8.3      RESTRICTED USE OF RELIGIOUS SITES**

A.      It shall be unlawful for any person other than persons practicing traditional Apache religion to enter any area designated as a religious site without the express permission of the White Mountain Apache Tribal Council or the express permission of those persons practicing traditional Apache religion at such sites.

B.      It shall be unlawful for any person to excavate, remove, alter or deface any area designated as a religious site or any property found therein.

**SECTION 8.4      DESIGNATED RELIGIOUS SITES**

A.      The following areas shall be designated as sacred and Religious Sites and are hereby set aside for the exclusive use of persons practicing traditional Apache Religion and are subject to the restrictions promulgated by this Chapter:

(1)      The area known as the Holy Grounds, more properly described in Apache as "The Place of the Sacred Cane" and legally described below:

A PARCEL OF LAND SITUATED IN THE KINISHBA AREA, WITHIN THE NE ¼ SECTION 18 T5N, 522E, G&SRB&M, ON THE FORT APACHE INDIAN RESERVATION, GILA COUNTY, STATE OF ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP LOCATED AT THE EAST QUARTER CORNER OF SECTION 18, T5N, R22E, AND RUNNING;

THENCE N 48°56'30" W FOR A DISTANCE OF 2212.65 FEET TO THE TRUE POINT OF BEGINNING;

THENCE S 63°34'12" E FOR A DISTANCE OF 581.38 FEET; THENCE S 22°29'05" W FOR A DISTANCE OF 465.00 FEET; THENCE N 67°30'55" W FOR A DISTANCE OF 310.00 FEET; THENCE N 38°27'36" W FOR A DISTANCE OF 308.87 FEET; THENCE N 22°29'05" E FOR A DISTANCE OF 355 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 5.99 ACRES MORE OR LESS.

## **SECTION 8.5      CIVIL REMEDIES**

A. Recognizing the White Mountain Apache tradition of using restitution as a remedy for injustice or wrong doing, the Tribal Council hereby declares that this code is civil in nature and that restitution shall be the primary remedy for its violation, except that as to persons subject to the criminal jurisdiction of the White Mountain Apache Tribe, criminal sanctions may also be imposed as provided in Section 8.6 of this Chapter.

B. Except as otherwise provided in this Chapter, all matters arising under this Chapter shall be adjudicated in the White Mountain Apache Tribal Court following the filing of a civil complaint, naming the White Mountain Apache Tribe as plaintiff by the authorized officer alleging the violation, or by legal counsel for the Tribe.

C. Any violator of this Chapter, who is adjudicated and found guilty by the Tribal Court for violation of this Chapter, may be charged a restitution fee not to exceed Five Thousand Dollars (\$5,000.00) plus all expenses incurred for case investigation, court costs and attorney's fees.

## **SECTION 8.6      CRIMINAL SANCTIONS**

Any person who is subject to the criminal jurisdiction of the White Mountain Apache Tribe and is found guilty of a violation of this Chapter, may be imprisoned for a period of not to exceed one year and be fined in an amount not to exceed Five Thousand Dollars (\$5,000.00) or both.

## **SECTION 8.7      REPRESENTATION OF THE TRIBE IN ACTIONS ARISING UNDER THIS CHAPTER**

The Tribal Prosecutor or, in the case of conflict of interest, such other counsel for the Tribe as the Tribal Council may designate, shall represent the Tribe in all actions

arising under this Chapter to which the Tribe is a party, whether such actions are civil or criminal.

**SECTION 8.8      TRESPASSING**

Violation of this Chapter by non-members of the White Mountain Apache Tribe constitutes immediate revocation of express or implied permission to remain on or enter the reservation and shall be considered a trespass in violation of the laws of the White Mountain Apache Tribe.

**SECTION 8.9      FEDERAL PROSECUTION**

This Chapter has been enacted to protect the resources of the White Mountain Apache Tribe, and the taking or using of tribal property or services contrary to the terms of the Chapter constitutes theft of tribal assets. Nothing in this Chapter shall be deemed to preclude the federal prosecution under 18 U.S.C. §1165 of non-members 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 for by this Chapter.

**SECTION 8.10     EXCLUSION**

Nothing in this Chapter shall be deemed to preclude the use of the remedy of exclusion of non-members for violation of this Chapter and any authorized officer may follow the procedure provided by Tribal law to initiate an action for exclusion in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

**SECTION 8.11     DISPOSITION OF RESTITUTION AND FINES**

Any funds received from fines or restitution shall be utilized for the reconstruction and/or repair of religious sites or property therein.

## **CHAPTER NINE PERMANENT TRUST FUND**

[NOTE: Chapter Nine is derived from Ordinance 175, enacted October 3, 1991; Ordinance 175, providing for the Permanent Trust Fund, was originally codified as Chapter Eight of the Government Code, however, due to a previous codification of Ordinance 163 as Chapter Eight of the Government Code, Ordinance 175 has been recodified as Chapter Nine; Chapter 9.5(B) and (C) were amended by Ordinance 233, enacted June 3, 2008; Chapter 9.6 was amended by Ordinance 235, enacted September 29, 2008.]

### **SECTION 9.1        PURPOSE**

In past years, the White Mountain Apache Tribe accumulated substantial surplus earnings primarily through its major enterprise, the Fort Apache Timber Company. Necessary reductions in the annual allowable cut to preserve the Tribe's forests for future generations requires that the Tribal Council establish a permanent and dependable source of revenue into the future to protect against loss of revenue as natural resources become significantly reduced or depleted and to enable the White Mountain Apache Tribe to become less dependant on outside sources for income. Accordingly, a permanent trust fund is established as protection and security for the Tribe and its future generations.

### **SECTION 9.2        AUTHORITY TO ESTABLISH PERMANENT TRUST FUND**

A. Article V, Section 1 of the Amended Constitution and Bylaws of the White Mountain Apache Tribe provides that in addition to all powers vested in the White Mountain Apache Tribal council by existing law, the White Mountain Apache Tribal Council shall exercise certain enumerated powers conferred by Section 16 of the Act of June 18, 1934 (48 Stat. 984) as amended, which enumerated powers shall not be construed pursuant to Article V, Section 1(u) of the Constitution, to limit the powers of the White Mountain Apache Tribe.

B. Article V, Section 1(a),(b),(h),(i) and (k) collectively provide in pertinent part that the Tribal Council shall represent the tribe and act in all matters that concern the welfare of the tribe, negotiate, make and perform contracts and agreements of every description, regulate the uses and disposition of tribal property, manage all economic affairs and enterprises of the tribe, appropriate tribal funds for tribal purposes and to expend such funds in accordance with an annual budget approved by the Secretary of the Interior.

### **SECTION 9.3        TRUST FUND ESTABLISHED**

A. The Tribal Council of the White Mountain Apache Tribe, pursuant to the authority set forth in Section 9.2 hereby establishes a permanent nonexpendable trust fund for the welfare of the Tribe in accordance with provisions of this Chapter.

**SECTION 9.4**            **INITIAL AND SUBSEQUENT DEPOSITS BY TRIBAL  
TREASURER**

A.        The Treasurer of the White Mountain Apache Tribe shall transfer an initial amount of \$1 million dollars into a trust fund to be called the Permanent Trust Fund.

B.        Monies deposited into the Permanent Trust Fund pursuant to this Chapter shall not be encumbered, subject to, pledged or assigned as collateral or security for any tribal debt, letter of credit, loan or note of any kind whatsoever.

C.        The Tribal Chairman and the Tribal Treasurer of the White Mountain Apache Tribe shall act on behalf of the White Mountain Apache Tribe in respect to the establishment and operation of trust accounts associated with the Permanent Trust Fund.

**SECTION 9.5**            **CONTRIBUTION REQUIREMENT**

After the initial deposit of \$1 million dollars has been made by the Tribal Treasurer to establish the Permanent Trust Fund, eight (8%) percent of the total revenue, exclusive of other financing sources and uses, of the General Fund of the Tribe adjusted by the net operating interfund transfers of the General Fund exclusive of interfund transfers to the Permanent Trust Fund, shall be deposited in the Permanent Trust Fund. The transfer of said funds to the Permanent Trust Fund shall be made in twelve monthly installments. The calculation of the annual amount contributed to the Permanent Fund will be prepared by the Tribal Treasurer within 30 days of the receipt of the audited financial statements of the Tribe. The Tribe's independent auditors will provide to the Tribal Council a letter which opines on the appropriateness of the calculation prepared by the Tribal Treasurer.

A.        Any change in the Contribution Requirement shall require a two-thirds (2/3) majority vote of the Tribal Council, provided that in no event shall the Annual Contribution Requirement exceed 12% or be less than five (5%) percent or Two Hundred Thousand Dollars (\$200,000.00), whichever is greater.

B.        The funds transferred by the Treasurer of the Tribe to the Permanent Trust Fund shall be retained by the Tribe, invested by direction of the Tribal Council and accumulated for the future welfare of the Tribe. Neither the principal of said fund nor the net investment income earned, including unrealized gains and losses on the investment securities or any other investments by said fund, shall be expended until April 30, 1996, except for expenses associated with administration of the fund; provided, however, that net investment income earned after such date, but not any net investment income earned prior to such date nor the monies contributed to said fund at any time by the Tribe, may be expended. Thereafter, all income from the Permanent Trust Fund after adjustment for inflation may be expended, but only by Tribal Council Resolution, pursuant to an approved budget.

C. Debt Obligations. Net investment income earned after the Sunset Date of April 30, 1996, may be pledged, assigned, or otherwise used as security or collateral, in whole or in part, for credit or debt obligations extended to the Tribe as may be required from time to time. Any credit or debt accommodation seeking to utilize such net investment income of the Permanent Trust Fund shall require the recommendation of the Tribe's Treasurer and review thereof by the Tribe's Investment Committee and the Budget and Finance Committee, and approved by the Tribal Council.

## **SECTION 9.6      INVESTMENT POLICY**

A. Permanent Trust Fund monies shall not be invested in the following:

- (1) Investments in Tribal entities other than loans permitted by this Section 9.6;
- (2) Commodities;
- (3) Options of Futures Contracts;
- (4) Real Estate;
- (5) Non-investment grade debt securities;
- (6) Equity securities or other equity interests not actively traded on a national securities market.
- (7) Any other speculative investments that do not meet the criteria of investment policies established by the Tribal Council.

B. Loans to Tribal Entities. Permanent Trust Fund monies may be loaned to Tribal entities in accordance with the following conditions:

- (1) Payments of interest and principle of all loans shall be made directly to the Permanent Trust Fund.
- (2) Interest charged on all loans shall be at or near market rates but in no event shall the nominal rate of interest be less than four and one half percent (4½%).
- (3) Any other term or condition that the Tribal Council or its designee shall deem to be necessary, proper, necessary, proper, advisable, appropriate or convenient.

C. Investment Policy and Management of Trust Funds. After the initial \$1 million dollar deposit is made by the Tribal Treasurer to establish the fund, the Tribal Council shall direct the Tribal Treasurer to prepare comprehensive investment policies and procedures for the Permanent Trust Fund for approval by the Tribal

Council. Modification of the policies so developed shall require approval by a two-thirds majority vote of the Tribal Council.

**SECTION 9.7            SITUS OF THE PERMANENT TRUST FUND**

The construction and validity of the Permanent Trust Fund established herein shall be governed by the laws of the White Mountain Apache Tribe and such federal laws as may be applicable.

**SECTION 9.8            REPEAL**

This Ordinance shall not be repealed except by referendum pursuant to Article X of the Amended Constitution and Bylaws of the White Mountain Apache Tribe.

**SECTION 9.9            SAVINGS CLAUSE**

In the event any provision of this Ordinance is determined to be unlawful or invalid for any reason, the remaining provisions shall continue to be valid and in full force and effect.

**CHAPTER TEN  
BINGO AND GAMING REGULATIONS**

**[NOTE: Chapter Ten – Bingo and Gaming Regulations, has been rescinded in its entirety by the approved gaming Ordinance of the White Mountain Apache Tribe, codified as the White Mountain Apache Gaming Code.]**