

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council, by previous Resolution No. 09-89-222, enacted Ordinance No. 160, the Ski Safety and Liability Ordinance of the White Mountain Apache Tribe of the Fort Apache Indian Reservation; and

WHEREAS, the Ordinance contains provisions affecting criminal penalties among Indians on the reservation, and pursuant to Article IV, Section 1(q) of the Amended Constitution and Bylaws of the White Mountain Apache Tribe, all Tribal Ordinances affecting criminal penalties are subject to review and approval by the Secretary of the Interior; and

WHEREAS, the Ordinance as enacted by Resolution No. 09-89-222 was not submitted to the Bureau of Indian Affairs within ten days of enactment as is required by the Bureau of Indian Affairs in their interpretation of Article VI, Section 1(a) of the Amended Constitution and Bylaws of the White Mountain Apache Tribe; and

WHEREAS, it is the opinion of the Tribal Council that Council Resolution No. 09-89-222 enacting Tribal Ordinance No. 160, should be reaffirmed and resubmitted to the Bureau of Indian Affairs, and that Resolution No. 09-89-222 should be amended by adding into the constitutional authorization and enabling provision a reference to Article V, Section 1(q) as authority for enactment of those portions of Ordinance No. 160 which include provisions affecting law enforcement among Indians on the reservation.

THEREFORE, BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby reaffirms Resolution No. 09-89-222, enacting Tribal Ordinance No. 160, the Ski Safety and Liability Ordinance of the White Mountain Apache Tribe of the Fort Apache Indian Reservation; and

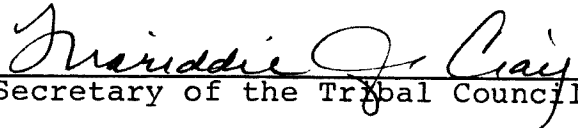
BE IT FURTHER RESOLVED the Tribal Council amends Resolution No. 09-89-222 by inserting in the Constitutional authorization and enabling provision a reference to Article V, Section 1(q) as authority for enacting those provisions of the Ordinance which relate to law enforcement among Indians on the reservation;

BE IT FINALLY RESOLVED that the Chairman of the Tribal Council and his designated representatives, including the General Manager of the Sunrise Ski Resort, are fully authorized to do all things necessary to carry out the intent and purposes of the Resolution, Resolution No. 09-89-222 and Ordinance No. 160.

The foregoing resolution was on December 14, 1989, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1(a), (h), (i), (n), (q) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

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For signature of the Secretary
White Mountain Apache Tribe

SKI SAFETY AND LIABILITY ORDINANCE
OF THE WHITE MOUNTAIN APACHE TRIBE, OF
THE FORT APACHE INDIAN RESERVATION

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe in Council regularly assembled, that Ordinance No. 160 providing for ski safety and liability of the White Mountain Apache Tribe is hereby enacted to amend the Health and Safety Code of the White Mountain Apache Tribe as follows:

CHAPTER FOURTEEN
SKI SAFETY AND LIABILITY

SECTION 14.1 Title.

This Ordinance shall be known and may be cited as the "Ski Safety Ordinance".

SECTION 14.2 Purpose of the Ordinance.

The Tribal Council, by this Chapter, finds and declares that it is in the interest of the White Mountain Apache Tribe to establish reasonable safety standards for the operation of ski areas within the boundaries of the Fort Apache Indian Reservation and for the skiers using them. It is recognized that there are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate by the ski area operator. It is the purpose of the Ski Safety Chapter to define those areas of responsibility and affirmative acts for which a ski area operator shall be liable for loss, damage or injury, and those risks which the skier 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 define the legal responsibilities of ski area operators and their agents and employees; to define the responsibilities of skiers using such ski areas; and to define the rights and liabilities existing between the skier and the ski area operator 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 a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas 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 downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or any other device or object.

(B) "Passenger" means any person who is being transported or conveyed by a ski lift, or is in the act of embarking upon, waiting to embark or has recently disembarked from a ski lift and is in the immediate vicinity, and includes a person, skier or non-skier, who boards, disembarks from, or is transported by a ski lift, regardless of whether the ski lift is being used during the ski season or non-skiing season, and includes a person waiting in the immediate vicinity of a ski lift for transportation or conveyance, or moving away from the loading or unloading point of a ski lift.

(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 (A) of this section. Ski slopes or trails shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that only such areas are to be used by skiers for the purpose of skiing. Nothing in this subsection (C) or in subsection (A) of this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subsection (A) of this section.

(D) "Ski Area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this jurisdiction.

(E) "Ski Area Operator" means a person or organization that is responsible for the operation of a ski area, and includes any person, partnership, corporation or the commercial entity and its agents, officers, employees or representatives, and any governmental entity, who has operational responsibility for any ski area or ski lift.

(F) "Ski Lift" means a device for transporting persons uphill on skis or suspended in the air by the use of cables, chains, belts or ropes, and ususally supported by trestles or towers with one or more spans. Ski Lift includes 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.

(G) "Ski Retention Device" means a device designed to prevent runaway skis.

(H) "Competitor" means a skier actually engaged in a competition or in practice therefore with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.

(I) "Conditions of Ordinary Visibility" means daylight and, where applicable, nighttime in non-precipitating weather.

(J) "Snowmobile" means any of a variety of motorized sleds designed to carry passengers or to tow a non-motorized sled on snow.

(K) "Tree Skiing" means skiing in areas where there are trees, other than designated ski slopes or ski trails.

(L) "Jumping" means intentionally becoming or attempting to become airborne by whatever means. Jumping also includes jumping out of a ski lift at other than designated unloading points.

(M) "Tribal Member" means any person who is a member of the White Mountain Apache Tribe.

(N) "Non-Tribal Member" means any person who is not a member of the White Mountain Apache Tribe.

SECTION 14.4 Duties of Ski Area Operators with Respect to Ski Areas.

(A) The Tribal Council recognizes that skiing, as a recreational sport, is hazardous to skiers regardless of all feasible safety measures which can be taken. It further recognizes that a skier expressly assumes the risk of and legal responsibility for any loss or damages that result from skiing, including but not limited to, losses or damages caused by variations in 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 equipment.

(B) Therefore, every ski area operator shall have the following duties with respect to their operation of a ski area:

(1) To mark all trail maintenance vehicles and to furnish such vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are moving in the ski area;

(2) To mark all snowmobiles with at least one of the following:

- (a) Indicator Flag
- (b) Headlight
- (c) Rotating/Flashing Light

(3) To visibly mark the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;

(4) To mark conspicuously the top or entrance to each slope or trail or area, with an appropriate symbol for its relative degree of difficulty; and those slopes, trails, or areas which are closed, shall be marked at the top or entrance with the appropriate symbols.

(5) To maintain one or more trail map boards at prominent locations at 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;

(6) To make ski area trail maps available to all skiers and passengers at the ski area;

(7) To place, or cause to be placed, whenever snow grooming or snowmaking operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of such trail or slope;

(8) To post notice of the requirements of this ordinance concerning the use of ski retention devices. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;

(9) To provide a ski patrol trained in first aid, and also trained in winter rescue and toboggan handling to serve the anticipated number of injured skiers and to provide personnel trained for the evacuation of passengers from stalled ski lifts. A first aid room or building shall be provided with adequate first aid supplies and properly equipped rescue toboggans shall be made available at all reasonable times at the tops of ski slopes and trails to transport injured skiers from the ski slopes and trails to the first aid room.

(10) Post a sign or signs notifying skiers and passengers of where they can obtain a copy of this Chapter.

(11) The ski area operator shall have no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries marked as required by this section, or to any skier "tree skiing" or skiing beyond designated areas, trails and slopes within the area boundaries.

(12) The ski area operator, upon finding a person skiing in a careless and reckless manner, which shall include but is not limited to "Jumping", "Tree Skiing", or skiing beyond ski area boundaries or beyond designated areas, trails and slopes within the ski area boundaries, may revoke that person's skiing privileges.

(13) Not to intentionally or negligently cause injury to any person; provided, that except for the duties of the operator set forth in subsections 1 through 13 of this section, the operator shall have no duty to eliminate, alter, control or lessen the risk inherent in the sport of skiing, which risks include but are not limited to those described in Subsection (A) above, and that no activity which is undertaken by the operator in an attempt to eliminate, alter, control or lessen such inherent risk shall be deemed to impose on the operator any duty to accomplish such activities pursuant to any standard of care.

SECTION 14.5 Duties of Operators - Signs Required For Skiers' Information

(A) Every ski area operator shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of skiers and passengers. Signs shall be prominently placed on each passenger skilift, readable under conditions of ordinary visibility, and, where applicable, adequately lighted for nighttime passengers. Signs shall be posted as follows:

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

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

(a) "Prepare to Unload", which shall be located not less than 50 feet ahead of the unloading area;

(b) "Keep Ski Tips Up", which shall be located at the head 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;

(e) "Remove Pole Straps From Wrist", which shall be located prominently at each loading area;

(f) "Check For Loose Clothing and Equipment", which shall be located before the "Prepare to Unload" sign.

(B) Other signs not specified by subsection (A) of this section may be posted at the discretion of the ski area operator.

(C) The ski area operator, before opening any ski lift to the public each day, shall inspect such ski lift for the presence and visibility of the signs required by section A of this section.

(D) The extent of the responsibility of the ski area operator under this section shall be to post and maintain such signs as are required by subsection (C) of this section, in such condition that they may be viewed during conditions of ordinary visibility. Evidence that the signs required by subsection (A) of this section were present, visible, and readable on any given date raises the presumption that all passengers using said devices have seen and understand said signs.

(E) Signs shall be placed in prominent locations at each ski area depicting and explaining the signs and symbols which the skier may encounter at the ski area as follows:

(1) The ski area's least difficult trails and slopes, designated by a green circle and the words "Easier or Easiest";

(2) The ski area's most difficult trails and slopes, designated by a black diamond and the words "Most Difficult";

(3) The ski area's trails and slopes which have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and 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 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) embark upon or disembark from 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 reasonably 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 while riding on a ski lift, 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 or any verbal instructions by the ski area operator regarding the proper or safe use of a ski lift unless such verbal instructions are contrary to this article or the rules promulgated under it, or contrary to posted instructions;
- (8) willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;
- (9) use any ski lift without engaging such safety or restraining devices that may be provided;
- (10) wear skis without properly securing ski retention devices; or
- (11) use a ski lift while intoxicated or under the influence of any controlled substance.
- (12) Do any act which shall interfere with the running or operation of the ski lift.

SECTION 14.7 Duties of Skiers.

(A) It is recognized that skiing as a recreational sport is inherently hazardous to skiers, regardless of all feasible safety measures which can be taken. It is the duty of each skier to conduct him/herself carefully and in accordance with the Skiers Responsibility Code. The person who takes part in the sport of skiing accepts as a matter of law the dangers inherent in that sport insofar as they are obvious and necessary. Each skier expressly assumes the risk of and legal responsibility for any injury to person or property which results from participation in the sport of skiing in the ski area, 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 or other forms of forest growth or debris;
- (4) Manmade objects above or below the snow surface which are plainly visible or plainly marked in accordance with this ordinance, including but not limited to lift towers and components thereof, pole lines, hydrants, and snowmaking equipment;
- (5) Any other risk inherent in the sport of skiing except those resulting from any breach of duty imposed upon ski area operators pursuant to the provisions of this ordinance.

(B) Each skier shall:

- (1) Have the sole individual 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 ability;
- (2) Maintain control of speed and course at all times while skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects;
- (3) Refrain from acting or skiing in a manner which may cause or contribute to his or her 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 devices to prevent runaway skis.
- (7) Keep off closed trails and posted areas and observe all posted signs.

(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 the ski

area operator is involved in such collision or where such collision resulted from any breach of duty imposed upon the ski area operator under the provisions of this Ordinance, and the primary duty shall be on the person skiing downhill to avoid collisions with any persons or objects below him. It shall be presumed, unless shown to the contrary by clear and convincing evidence, that the responsibility for collisions by skiers with any person, natural object, or moveable object or structure is solely that of the skier or skiers involved and not that of the ski area operator.

(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 obtain assistance for the injured person when the skier knows that a person involved in the accident is in need of medical or other assistance, to notify the proper authorities, and

(E) When injured at the ski area 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 name and current address to the ski area operator, or representative or employee of the ski area operator and the location where the injury or collision occurred and the circumstances thereof. [provided, however, in the event a skier fails to give the notice required by this paragraph, a court in determining whether or not such failure constitutes a violation of this ordinance, may consider the reasonableness or feasibility of giving such notice.]

(F) In addition, each skier shall have the following duties and responsibilities:

(1) Skiers shall ski only in areas which are designated for skiing by the ski area operator.

(2) Each skier shall stay clear of snow grooming equipment, all vehicles, lift towers, signs, and any other equipment at a ski area.

(3) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others. There shall be an irrebuttable presumption that skiers have seen and understood all signs and information posted in accordance with this Ordinance. 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 Ordinance.

(4) Each ski used by a skier while skiing shall be equipped with a strap or other retention device capable of stopping the ski should the ski become unattached from the skier. This requirement shall apply to cross country and tele skis also.

(5) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty to avoid moving skiers already on the ski slope or trail.

(6) No person shall move uphill on any ski lift or surface lift, or use any ski slope or trail while such person's ability to do so is impaired by alcohol or any drug.

(7) No skier shall cross the uphill track of a surface lift except at locations designated by the operator.

SECTION 14.8 Liability of Ski Area Operators.

(A) Any ski area operator shall be liable for loss or damages caused by the failure to follow the duties set forth in Sections 14.5 and 14.6 where the violation of duty is causally related to the loss or damage suffered, and shall continue to be subject to liability in accordance with common law principles of vicarious liability for the willful or negligent actions of its principals, agents or employees which cause injury to a passenger, skier or other person. The ski area operator shall not be liable to any passenger or skier who acts in violation of the duties set forth in Sections 14.4 and 14.7 where the violation of duty is causally related to the loss or damage suffered.

(B) The ski area operator shall not be liable for any injury or damage to a person who is not legally entitled to be in the ski area; or for any loss or damage caused by any object dropped, thrown or expelled by a passenger from an aerial passenger ski lift or who is struck by another skier not employed by the ski area.

SECTION 14.9 Liability of Passengers

Each passenger shall be solely liable for loss or damage resulting from violations of the duties set forth in this Chapter and shall not recover from the ski area operator for any loss or damage where the violation of the passengers duty or the inability of the passenger to properly use the lifts is causally related to the loss or damage suffered.

SECTION 14.10 Liability of Skiers

Each skier shall be solely liable for loss or damage resulting from his/her violation of the duties set forth in this Ordinance. A skier shall not recover damages for personal injury or property damage from the ski area operator for any losses or damages where the skier's violation of a duty set forth in this Chapter is a proximate cause of the loss or damage suffered. A skier's willful or negligent violation of the duties imposed by this Chapter shall be a complete bar to recovery of damages for personal injury or property damage.

SECTION 14.11 Accident Causing Injury to Another Person; Notification; Identification; Penalty for Willful Failure to Give Identification or Notification.

A skier involved in an accident causing injury to another person shall to the extent that he or she is reasonably able to do so, immediately notify the ski patrol or the operator, a law enforcement officer or other emergency personnel, and shall clearly identify himself. A skier who willfully fails to give identification after involvement in a skiing accident with another person, or a skier who is reasonably able to do so but who fails to notify the proper authorities or to obtain assistance when the skier knows that another person involved in the accident is in need of medical or other assistance, is guilty of a misdemeanor, and shall be subject to the penalties outlined in Section 14.16.

SECTION 14.12 Accident Causing Injury to Skier; Notification of Hazardous Condition.

A skier involved in an accident causing an injury to himself, but not to another person, shall immediately notify the ski patrol or the operator, a law enforcement officer or other emergency personnel, and shall give his name, address and the location where the accident occurred.

SECTION 14.13 Negligence - Civil Actions.

(A) A violation of this Chapter shall constitute negligence per se on the part of the person or entity violating such requirement.

(B) A person is barred from recovery of damages from a ski area operator for loss or damage arising out of any risk inherent in the sport of skiing, or resulting from a violation of any duty imposed upon a skier or passenger by this Chapter.

(C) Unless a ski area operator is in violation of this Chapter with respect to the skiing area and the ski lifts, and the violation is a proximate cause of the injury complained of, no action shall lie against such ski area operator by any skier or passenger or any representative of a skier or passenger for damages for any injury, death, or property loss. This prohibition shall not prevent the bringing of an action against the ski area operator for damages arising from injuries caused by negligent operation, maintenance, or repair of a ski lift, if such negligence is causally related to the damages.

SECTION 14.14 Competition.

(A) The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to held.

(B) The competitor shall be held to assume the risk of all course conditions, including, but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury or death of any competitor proximately caused by such assumed risk.

(C) The duties of this section shall be set forth on a form to be signed by all competition skiers, or by his parent or legal guardian where the competition skier is under the age of 18, before competition in any event.

SECTION 14.15 Statute of Limitation.

(A) All actions arising from this Chapter to recover damages for injury or death to persons or damage to property shall be commenced within one year after the cause of action accrues and not thereafter.

SECTION 14.16 Penalties.

(A) Any passenger who violates any of the provisions of Section 14.6 of this Chapter shall be subject to immediate forfeiture of any further use of the ski lifts.

(B) Any skier who violates any of the provisions of Section 14.7 of this Chapter shall be subject to immediate forfeiture of any further use of the ski area.

(C) Any tribal member who violates any provision of Subsections E, F(1) and F(6) of Section 14.7 of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of at least Three Hundred Dollars (\$300.00), but no more than One Thousand Dollars (\$1,000.00).

(D) Any non-tribal member who violates any of the provisions of Subsection E, F(1), and F(6) of Section 14.7 of this Chapter shall be civilly fined at least Three Hundred Dollars (\$300.00), but no more than One Thousand Dollars (\$1,000.00).