

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

- WHEREAS,** the Fort Apache Indian Reservation has recently experienced two major forest fires that destroyed significant tribal resources and threatened the health and welfare of Tribal members and others; and
- WHEREAS,** the Southwest region of the United States, which includes the Fort Apache Indian Reservation, is experiencing one of the worst droughts in recent memory, and conditions are expected to worsen through the summer season; and
- WHEREAS,** fire poses a significant threat to the Tribe's economic security and the health and welfare of it's members; and
- WHEREAS,** the Tribal Council understands the need for authority to be vested in the Chairman of the Tribal Council to quickly and effectively respond to ever changing conditions that affect the degree and nature of the threat fire poses to Tribal resources and Tribal communities; and
- WHEREAS,** the Tribal Council has reviewed recommended revisions to the Government Code empowering the Chairman of the Tribal Council, or in his absence the Vice Chairman, with the authority to issue fire prevention orders reasonably tailored to reduce actual or potential threats posed by fire; and
- WHEREAS,** the Tribal Council recommends that said proposed amendments attached hereto be posted for public comments as required by the Constitution.
- BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post the proposed amendments to the Government Code in each District for ten days as required by the Constitution.
- BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that, in light of the urgency posed by the current conditions on the Fort Apache Indian Reservation, the Tribal Council delegates to the Chairman of The White Mountain Apache Tribal Council the authority to issue executive orders to respond to severe fire conditions until the above reference amendments to the Government Ordinance becomes effective, or for 90 days from the date of this Resolution, whichever is less. Section 5.3(B) of the proposed amendment to the Government Code shall be used as guidance for any such orders.


**Resolution No. 05-96-100**

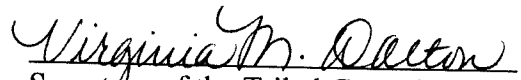
The foregoing resolution was on May 02, 1996, duly adopted by a vote of ten for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (f), (h), (i) and (t) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 15 of the Act of June 18, 1934 (48 Stat. 984).

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OR  
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Chairman of the Tribal Council

  
Secretary of the Tribal Council

**PROPOSED  
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 that it hereby amends Chapter 5, Section 5.3 of the White Mountain Apache Government Code as follows:

**SECTION 5.3**            **EXECUTIVE ORDER CLOSURE OF ALL OR PART OF THE 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 ~~or~~ by Council Resolution.

**THE FOLLOWING TEXT IS NEW IN ITS ENTIRETY**

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.

The foregoing ordinance was on May \_\_, 1996 duly adopted by a vote of \_\_ for and \_\_ against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a) (f) (h) (i) (q) and (t) of the Constitution of the Tribe, ratified by the Tribe

September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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Chairman of the Tribal Council

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Secretary of the Tribal Council