

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

WHEREAS, the Tribal Council by previous resolution directed that an amendment to the Exclusionary Ordinance No. 129 be posted for a period of ten days for public comment as required by the Constitution and By-Laws of the White Mountain Apache Tribe, and

WHEREAS, the required posting time has transpired and the Tribal Council has not received any public comments which would indicate that the proposed ordinance should not be enacted, and

WHEREAS, the Tribal Council concludes that the proposed amendment to the Exclusionary Ordinance should be enacted for the welfare and benefit and best interest of the people of the White Mountain Apache Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts effective immediately, the amendment to the Exclusionary Ordinance in the form and content attached hereto.

BE IT FURTHER RESOLVED that the Exclusionary Ordinance as amended shall be known as TRIBAL ORDINANCE NO. 142.

The foregoing resolution was on December 14, 1983 duly adopted by a vote of 9 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i & q) of the Amended Constitution and By-Laws 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).



[Handwritten Signature]

Chairman of the Tribal Council

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Secretary of the Tribal Council

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WHITE MOUNTAIN APACHE TRIBE

TRIBAL ORDINANCE NO. 142 OF THE
WHITE MOUNTAIN APACHE TRIBE
OF THE FOPE APACHE INDIAN RESERVATION
AMENDING ORDINANCE NO. 129

PROVIDING FOR THE
EXCLUSION AND REMOVAL OF
NON MEMBERS FROM TRIBAL LAND;
CLOSURE OF RESERVATION BY
EXECUTIVE ORDER

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe in Council regularly assembled, that Ordinance No. 129, as amended, providing for the Exclusion and Removal of Non-Members of the White Mountain Apache Tribe is hereby enacted as follows:

§1000 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 Ordinance set forth herein is hereby enacted to carry out and implement this Declaration of Purpose and the Tribal Constitutional obligations of the Tribal Council.

§1001 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.

(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:

(a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege or immunity;

(c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(d) without observance of procedure required by law;

(e) 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.

§1002 CLOSURE OF ALL OR PART OF THE RESERVATION BY EXECUTIVE ORDER:

(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 part 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 interests 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 individuals or classes of individuals may seek entry or reentry to closed areas. No such closure may continue for more than 30 days without concurrency by the White Mountain Apache Tribal Council or Council Resolution.

NON-MEMBERS: EXCLUSION OR REMOVAL

(b) 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, safety, or sovereignty of the White Mountain Apache Tribe or for violating §1004, pending such a hearing, upon order of a Tribal Judge of the White Mountain Apache Tribe. Such interim exclusion or removal of the non-member from the Fort Apache Indian Reservation shall only be ordered in cases involving a threat to the public health, or sovereignty of the White Mountain Apache Tribe and for a period no longer than necessary for an exclusion hearing to be held.

§1003 GROUNDS FOR EXCLUSION OR REMOVAL OF NON-MEMBERS

An Order of Exclusion or Removal may be entered by the Tribal Court after a hearing except as provided in §1002(b) as follows:

(1) When the non-member is accused of conduct within the Fort Apache Indian Reservation which would be punishable under the laws of the White Mountain Apache Tribe or the United States, if committed by a member of the White Mountain Apache Tribe; and

(a) Such non-member declines to give written consent to the jurisdiction of the Courts of the White Mountain Apache Tribe over such non-member with respect to such conduct; and

(b) Such non-member either admits such conduct in the removal or exclusion proceedings, or is found by a preponderance of the evidence in the exclusion or removal proceedings to have committed the act in question; or

(2) When the non-member either admits in an exclusion or removal proceeding or is found by a preponderance of the evidence presented in an exclusion or removal proceeding to have engaged in any of the following acts:

(a) 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

(b) 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

(c) Interference with or unauthorized photographing of any White Mountain Apache traditional

ceremony or other religious ceremony without permission of the White Mountain Apaches involved; or

(d) Unauthorized or unlicensed trading or peddling; or

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

(f) 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 the White Mountain Apache Indian Child Welfare Act Ordinance or in conjunction with a sectarian program administered by the White Mountain Apache Tribe or the Bureau of Indian Affairs; or

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

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

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

(3) 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 provisions of Ordinance No. 129, as amended, or if the act is being committed or was committed prior to conviction, taken into custody by a Tribal Police Officer or Game Ranger for delivery to State or Federal authorities for prosecution.

§1004 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, culture or people for any purpose 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 Ordinance.

§1005 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 by 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.

§1006 COURT JURISDICTION

(a) 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.

§1007 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 of 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.

§1008 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 Ordinance.

§1009 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 remove the non-member and/or property of such non-member bodily from within the exterior boundaries of the Fort Apache Indian Reservation. The Policeman or Game Ranger executing such order shall use only so much force as is necessary to effect the removal or exclusion.

§1010 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 §1004, 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 Policeman or Game Ranger to remove a non-member and/or any property of such non-member bodily from Tribal land, before such non-member has been ordered excluded by the Tribal Court as provided in §1008(b). The Policeman 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 §1007 has not already been made on such non-member, the Court shall cause the Policeman 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.

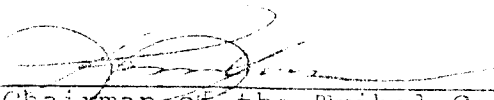
(c) In all cases where the non-member has not already been ordered excluded by the Tribal Court, the Court shall notify the non-member of a place on the Reservation Boundary where he may reenter in the company of a White Mountain Apache Policeman or Game Ranger who is to accompany such non-member while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

(d) Any non-member ordered by the Tribal Court to leave the Reservation, pursuant to §1002(b), §1004, §1008(b), §1009(a)(b), and §1010, may be delivered to the custody of state or federal authorities for prosecution.

§1011 SEVERABILITY

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

The foregoing Amended Ordinance No. 142 was on December 14, 1983, duly enacted by a vote of 9 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V Section 1 (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

APPROVED:

Henry A. Dodge, Superintendent
Fort Apache Agency
Whiteriver, Arizona

Statutory Source:

This amends previous Ordinance No. 129,
Ordinance No. 128, Ordinance No. 127,
as amended from Chapter VI, Section 61.1-61.3

ORDINANCE NO. 142