

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

WHEREAS, the Tribal Council is very concerned about the number and frequency of motor vehicle accidents on the Fort Apache Indian Reservation involving pedestrians and animals, particularly livestock on roadways throughout the reservation; and

WHEREAS, it is recommended to the Tribal Council that Ordinance No. 99 be amended to provide that any qualified person appointed by the Tribal Council may enforce its provisions as presently there is no general livestock coordinator or manager which the present form of the Ordinance empowers to enforce the Ordinance.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Attorney to draft an amendment to Ordinance No. 99 to provide that a person designated by the Tribal Council be authorized to enforce the provisions of Ordinance No. 99 and that said amendment be posted by the Tribal Council Secretary as required by the Tribal Constitution and Bylaws.

The foregoing resolution was on July 9, 1987, duly adopted by a vote of ELEVEN 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 (i) 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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Fort Apache Indian Agency
Whitewater, Arizona

ORDINANCE NO. 99

ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESEPVATION

BE IT ENACTED by the White Mountain Apache Tribal Council,
in council regularly assembled, that livestock be controlled
as follows:

LIVESTOCK IN TRESPASS

ARTICLE I

Section 1. Definitions

a) "General Livestock Coordinator" shall mean the person who coordinates and manages the General Livestock Association, ~~or~~ his authorized representative(s); or an independent person appointed by the Tribal Council of the White Mountain Apache Tribe to specifically enforce this Ordinance.

b) "Livestock" shall include horses, burros, mules, cattle and sheep of every kind and description.

c) "Highway" shall mean a paved roadway for which the State of Arizona or the U.S. Federal Government has a right-of-way through the Reservation, and shall include all the land specified in said right-of-way.

d) "Tribal Court" shall mean the Tribal Court of the White Mountain Apache Tribe, Whiteriver, Arizona.

e) "Compound" shall mean any area of land within the reservation reserved for a public use, or for which there is a permit, lease or assignment issued for a public purpose.

f) "Reservation" shall mean all land within the exterior boundaries of the Fort Apache Reservation.

g) "Livestock Association" shall mean an association formed on the Reservation for the care, custody and control of particular livestock within its designated district.

SECTION II. Regulations

a) No Livestock shall be permitted to roam or graze within the following areas on the Reservation:

1. Any Highway;
2. Any other public community roadway; and the land contingent thereto if said land is abutted by a fence;
3. Any school or government compound, including but not limited to those at Alchesay High School, Alchesay and Williams Creek Fish Hatcheries, the Bureau of Indian Affairs, Cedar Creek, Cibecue, Theodore Roosevelt School at Fort Apache, and the Tribal Business Area.
4. Any other areas where livestock threatens the public health, safety, or welfare, as defined by the Tribal Council.

b) All livestock found grazing or roaming within the areas described in subsection (a) herein shall be deemed in trespass.

c) The General Livestock Coordinator shall be responsible for the enforcement of this Article.

d) The Tribal Council is specifically authorized to grant EXEMPTIONS from the operation of these regulations, in whole or in part, for any activity which serves the public interest or welfare, education or entertainment, or similar purposes of public benefit.

Section III. Impoundment

a) All livestock in trespass, as provided in Section II, shall be subject to immediate impoundment and sale under the provisions and restrictions of this Section, unless otherwise disposed of pursuant to the provisions of Ordinance 31 of the Law and Order Code of the White Mountain Apache Tribe and its amendments.

b) Livestock in trespass shall be taken by the General Livestock Coordinator to any available holding pen and therein impounded.

c) Immediately upon impoundment of any livestock under the provisions of this Ordinance, the General Livestock Coordinator shall take all action possible to (1) ascertain ownership of the impounded livestock, including, but not limited to checking for brands and registration on the Tribal Brand Record, and inquiring of residents, if any, in the locale where the livestock was found; and (2) to determine which livestock association, if any, is in charge of the care and custody of the livestock so impounded.

d) Written notice shall be sent as soon as possible by the General Livestock Coordinator to the owner or owners, and to the Livestock Association in charge of said livestock, if any; said notice shall describe the livestock impounded, the location and the date of its trespass, the basis for believing it is owned by the person(s) notified, or controlled by the livestock association notified, the amount of fees as provided herein for the release of the livestock, the deadline for redemption, the possible disposition of the livestock not redeemed and the right of the owner to a hearing as provided in Article II.

e) The owners or livestock association properly notified shall have five (5) working days after notice is sent in which to contact the General Livestock Coordinator and personally acknowledge in writing their ownership, and their intent to redeem the impounded livestock upon payment of fees required. Such acknowledgement shall not serve as a waiver of any rights provided under Article II of this Ordinance.

Section IV. Fees; Sale

a) The following fees shall be assessed as compensation for the costs of impoundment of livestock in trespass:

1. An initial gathering fee of \$5.00 per head of livestock, due upon impoundment of any animal, and payable within the first 24 hours after impoundment;
PLUS

2. An impoundment fee of \$2.00 per day per head of livestock impounded, due after the first 24 hours of impoundment and payable after proper notice is given.

b) Livestock may be redeemed upon cash payment of the required fees, or in the case of a livestock association, upon written authorization for a deduction from sale proceeds.

c) All livestock unredeemed within 20 days after Notice of Impoundment is sent or any unowned/impounded livestock shall be sold at public auction no sooner than 21 days after impoundment and at such times and places as the General Livestock Coordinator shall establish; Provided that notice of such auctions shall be given to the owner(s) and livestock association, if any, at least five (5) days prior to the auction.

d) All fees and proceeds of sales obtained under the provisions of this Ordinance shall be paid to the General Livestock Association as compensation for impoundment and auction costs; Provided that proceeds from the sale of any unclaimed livestock whose owner or Livestock Association was properly sent Notice of Impoundment shall be paid to such owner or Livestock Association, less the amount of assessed fees for impoundment and reasonable costs of the auction.

Section V. Interpretation

a) It is intended that this Ordinance shall be enforced in addition to and not in conflict with the provisions of Ordinance 31 of the Law and Order Code of the White Mountain Apache Tribe and its amendments.

b) Nothing in this Ordinance is intended to create ground for any potential civil liability based on claims of negligence against any person(s) or livestock association whose livestock may be involved in a vehicle accident or other injury within the areas defined in Section II herein; nor is it intended that anything in this Ordinance shall act as a waiver or sovereign immunity of the White Mountain Apache Tribe.

ARTICLE II

Section I. Right to Hearing

a) Any party aggrieved or injured pursuant to the enforcement of this Ordinance has a right to a hearing in Tribal Court, if a petition for a hearing is timely made as provided herein;

b) Written requests for a hearing shall be timely made within three (3) days from the date of the notice of the acts or events which aggrieved or injured the petitioner, and shall set forth the nature of said acts or events, the date of their occurrence, date of notice of the acts or events, and the relief sought by the petitioner.

Section II. Procedures at Hearing.

a) The Tribal Court shall hear the matter within seven (7) days from the date the hearing is requested. The Court shall follow its regular procedures for hearing civil actions; Provided that the Court shall hear evidence only on the issue or issues raised in the Petition.

b) Upon a determination based on the evidence presented at the hearing, the Tribal court may order such relief as it deems proper, including that any unpaid impounded livestock, if any, or prior to the release of any proceeds of sale, if any; or that any paid impoundment fees or auction costs not owed shall be returned.

c) Any notice required by this Ordinance is sufficient if the person to receive it has actual or constructive knowledge of the matters of which he is to be notified. Such knowledge is presumed, unless otherwise rebutted if the notice required is timely mailed or delivered in writing AND is verified by a mailing or delivery affidavit.

The foregoing Ordinance was on _____ duly enacted 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 V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe ratified by the Tribe on 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).