

Resolution No. 01-91-08

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

WHEREAS, pursuant to prior Tribal Council Resolution NO. 11-90-250, the Tribal Council directed that the Tribal Council Secretary post a proposed ordinance providing for the Sunrise Park Trespass Ordinance; and

WHEREAS, the Tribal Council is advised that said proposed ordinance was posted in accordance with the requirements of the Tribal Constitution for a period of at least ten days in each district for purposes of obtaining public comment; and

WHEREAS, the Tribal Council concludes that said ordinance should be enacted this date.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby enacts the Sunrise Park Trespass Ordinance of the White Mountain Apache Health and Safety Code effective this date.

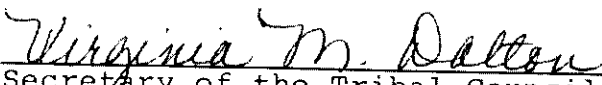
The foregoing resolution was on January 9, 1991, duly adopted by a vote of ten for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (a) (g) (u) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe 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).

RECEIVED

JAN 16 1991

FORT APACHE INDIAN AGENCY  
WHITERIVER, ARIZONA

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

RECEIVED

JAN 18 1981

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

WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE, ARIZONA

BE IT ENACTED by the White Mountain Apache Tribal Council in Council Assembled that the Chapter Thirteen of the Health and Safety Code of the White Mountain Apache Tribe be amended as follows:

**CHAPTER THIRTEEN**

**SUNRISE PARK TRESPASS REGULATIONS**

**SECTION 13.1 SHORT TITLE**

This act may be cited as "The Sunrise Park Trespass Ordinance" or "The Sunrise Park Trespass Regulations".

**SECTION 13.2 PURPOSE**

The purposes of this act are to restrict snowskiers and other visitors on the reservation at Sunrise Park from going beyond the area open for skiing, and to impose civil restitution fees and liability for expenses incurred in locating, aiding and returning the violators of this ordinance to the unrestricted ski areas.

**SECTION 13.3 LIBERAL CONSTRUCTION**

This act shall be liberally construed to effect its purpose.

**SECTION 13.4 DEFINITIONS**

A. Emergency Assistance: Any and all assistance rendered by the Tribe, or non-Indian rescue and medical teams which enter the Fort Apache Indian Reservation and render services to locate and aid a violator of this act.

B. Open Ski Area: The area delineated by boundary signs at Sunrise Park for the purpose of snowskiing and visiting by guests.

C. Prohibited Area: Any and all areas outside of the Sunrise Park boundary which encompasses the open ski area. These prohibited areas are not for snow skiing. Skiers and visitors of Sunrise Park may not use these areas for skiing or any other unauthorized purpose.

D. Reservation: The Fort Apache Indian Reservation also known as the White Mountain Apache Reservation.

E. Sunrise Park: This includes the Sunrise Park, its skiing areas, lodges, and any additional facility provided for the purpose of snowskiing or a Sunrise Park related activity.

F. Trespassing: In accordance with the Tribal Game and Fish Code, Trespassing is the unauthorized entry of a person or any part thereof into an area of the reservation which is not open for the purpose of that entry by that individual or part thereof. "Part thereof" shall include any extension of a person as long as it touches or belongs to that person.

G. Tribe: The White Mountain Apache Tribe of the Fort Apache Indian Reservation

H. Violator: Any person who violates the provisions of this act or the White Mountain Apache Tribal Game and Fish Code.

#### SECTION 13.5 SAVING CLAUSE

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

#### SECTION 13.6 SCOPE

This act shall apply to all snow skiers and other visitors who enter upon the Fort Apache Indian Reservation for the purpose of snow skiing or otherwise using the facilities or premises of the Sunrise Park or any area or annex thereof.

**SECTION 13.7 PARK USE RESTRICTED TO OPEN AREAS**

All snow skiing and use of Park facilities is restricted to open areas which are clearly within the boundary signs surrounding the ski area.

**SECTION 13.8 VIOLATIONS; CIVIL LIABILITY**

A. Any person violating Section 13.7 of these trespass regulations by trespassing beyond the open ski areas shall be cited and required to pay an amount equalling a civil restitution fee not greater than One Hundred Dollars (\$100.00) and an amount equal to any expenses incurred by the Tribe or its agents in locating and removing the violator from the prohibited area.

A. Any violator of this act requiring emergency assistance from a tribal search and rescue team, or any other agent of the Tribe, including but not limited to any rescue or medical team coming onto the Fort Apache Indian Reservation to provide emergency services to that violator, shall be held liable to the full amount of the costs incurred to provide such services. These costs will be assessed in addition to the civil restitution fee imposed by this Act in Section 13.8A.

**SECTION 13.9 CONCURRENT ENFORCEMENT OF GAME AND FISH CODE**

This act is to be enforced in addition to and in conjunction with the White Mountain Apache Game and Fish Code, as amended.

**SECTION 13.10 REPEATED VIOLATIONS**

Failure to pay the fees and expenses described herein; or a repeated trespass and violation of this act may result in further legal action against the violator by the White Mountain Apache Tribe.

**SECTION 13.11 RIGHT TO SUE**

Allowing a violator to return to the reservation or failure to pay the fees and expenses incurred does not constitute a waiver of the Tribe's right to sue for repeated violations or to pursue any other rights or remedies.

**SECTION 13.12 CHAPTER NOT WAIVER OF IMMUNITY OR CONSENT TO BE SUED**

Neither the use of Sunrise Park by non-members nor any provision provided in this Chapter constitutes consent by the White Mountain Apache Tribe to be sued in any Court. This Chapter does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose.

**SECTION 13.13 FEDERAL PROSECUTION**

A. This Chapter shall not preclude federal prosecution of non-members under 18 U.S.C. §1164 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 by this Chapter.

B. This Chapter has been enacted to protect the property of the White Mountain Apache Tribe. Taking or using tribal property or services contrary to this Chapter constitutes theft of tribal assets. This Chapter does not preclude federal prosecution of violators under 18 U.S.C. §1163 for theft of tribal assets. 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.

C. This Chapter shall not preclude federal prosecution of violators of this Chapter under the Lacey Act Amendments of 1981, Public Law 97-79. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of other enforcement procedure provided for by this Chapter.


**SECTION 13.14 SEVERABILITY**

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

The foregoing Amendment to Chapter Thirteen of the Health and Safety Code was on January 9, 1991, duly enacted 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 V,

Section 1(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 19, 1958, 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

APPROVED:

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Superintendent, Fort Apache Agency