

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 Ski Safety and Liability Regulations; 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 Ski Safety and Liability Regulations 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).



Chairman of the Tribal Council



Secretary of the Tribal Council

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JAN 16 1991

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA

RECEIVED

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

JAN 18 1991
FORT APACHE INDIAN AGENCY
WHITE RIVER, ARIZONA

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Council in Council Assembled that Chapter Fourteen of the Health and Safety Code of the White Mountain Apache Tribe be rescinded and amended as follows:

CHAPTER FOURTEEN

SKI SAFETY AND LIABILITY

SECTION 14.1 TITLE

This Chapter shall be known and may be cited as the Ski Safety and Liability Regulations.

SECTION 14.2 PURPOSE OF CHAPTER

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 operators. 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 defend 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 Sunrise Park 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, which includes by definition, snowboards and monoskis.

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.

D. Ski Area means all ski slopes or trails and other places under the control of the ski area operator and administered within the boundaries of Sunrise Park.

E. Ski Area Operator means the White Mountain Apache Tribe as administrator of Sunrise Park, its ski school instructors, ski patrol, employees, agents and representatives.

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 usually 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, when 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 SUNRISE PARK WITH RESPECT TO SKI AREAS

A. Skiing, as a recreational sport, is hazardous to skiers regardless of all feasible safety measures which can be taken. A skier expressly assumes the risk of any 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. The Sunrise Park shall:

(1) Mark all trail maintenance vehicles and 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) Mark all snowmobiles with at least one of the following:

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

(3) Mark conspicuously the top of each slope or trail with an appropriate symbol for its relative degree of difficulty; and those slopes or trails, which are closed, shall be marked at the top with the appropriate symbols;

(4) 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;

(5) Make ski area trail maps available to skiers at the ski area;

(6) Place, or cause to be placed, whenever snow grooming or snowmaking operations are being undertaken upon any trail or slope which 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;

(7) Post notice that ski retention devices are required for all skiers. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices.

(8) Provide a ski patrol trained in first aid, winter rescue and toboggan handling to serve 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 first aid supplies and equipped rescue toboggans shall be made available at the tops of ski slopes and trails to transport injured skiers from ski slopes and trails to the first aid room.

(9) Post a sign at the entrance of the Sunrise Park notifying visitors that use of the Park is regulated by this Chapter.

(10) Have no duty to any skier skiing beyond the area boundaries marked as required by this section, or to any skier "tree skiing" or skiing beyond designated trails and slopes within the Sunrise Park boundaries.

(11) Upon finding a person skiing in a careless and reckless manner, which includes but is not limited to "Jumping", "Tree Skiing", or skiing beyond ski area boundaries or beyond designated trails and slopes within the ski area boundaries, may revoke that person's skiing privileges. Sanctions in this subsection are in addition to those found in Chapter 13 of the Health and Safety Code of the White Mountain Apache Tribe.

(12) Have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection A. above.

(14) have no liability for any act or acts undertaken in an attempt to eliminate, alter, control, or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in subsection A. above.

SECTION 14.5 DUTIES OF THE SUNRISE PARK - SIGNS REQUIRED FOR SKIERS' INFORMATION

A. The Sunrise Park shall maintain a sign system with information required by this Chapter. Signs shall be readable under conditions of ordinary visibility. 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 lift device shall ask the operator of the device for assistance and instruction;

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

(a) "Prepare to Unload" which shall be located ahead of the unloading area;

(b) "Keep Ski Tips Up" which shall be located ahead 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 at each loading area;

B. Other signs not specified by subsection A. of this section may be posted at the discretion of Sunrise Park.

C. Sunrise Park, 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 subsection A of this section.

D. 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 visitors have seen, read and understood said signs.

E. Trail maps shall explain the following signs and symbols:

(1) Sunrise Park's least difficult trails and slopes shall be designated by a green circle and/or the words "Easier or Easiest";

(2) Sunrise Park's most difficult trails and slopes shall be designated by a black diamond and/or the words "Most Difficult";

(3) Sunrise Park's trails and slopes with a degree of difficulty between the green circle and black diamond designation shall be designated by a blue square and/or 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 or assistance sufficient to enable him to use the equipment safely. The passenger is required

to follow any written or verbal instruction that are given to him regarding the use of the ski lift.

B. No passenger shall:

(1) get on or off 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 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 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;

(8) willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;

(9) wear skis without properly secured ski retention devices; or

(10) use a ski lift while intoxicated or under the influence of any controlled substance;

(11) get on or off or ride a ski lift without first removing ski pole straps from hand or wrist;

(12) do any act which interferes with the running or operation of the ski lift.

SECTION 14.7 DUTIES OF SKIERS

A. Skiing is a recreational sport which is inherently hazardous to skiers, regardless of all feasible safety measures which can be taken. It is the duty of each skier to conduct himself in accordance with this Chapter. A person who takes part in the sport of skiing assumes as a matter of law the dangers inherent in the sport. Each skier expressly assumes the risk of and the legal responsibility for any injury to person or property which results from participation in the sport of skiing at the Sunrise Park, 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, tree stumps, or other forms of forest growth or debris;
- (4) Manmade objects above or partially below the snow surface which are plainly visible or plainly marked in accordance with this Chapter, 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 Sunrise Park pursuant to this Chapter.

B. Each skier shall:

- (1) Have the sole 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 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 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 ski retention devices to prevent runaway skis.

(7) Ski in areas which are designated for skiing by Sunrise Park.

(9) Read and obey all posted signs. There shall be an irrebuttable presumption that skiers have seen, read and understood all signs and information posted in accordance with this Chapter. 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 Chapter.

(10) Not use any ski slope or trail while his ability to do so is impaired by alcohol or any drug.

(11) Not cross the uphill track of a surface lift except at locations designated by the operator.

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 Sunrise Park is involved in such collision or where such collision resulted from any breach of duty imposed upon Sunrise Park under the provisions of this Chapter. 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, manmade object or structure, is solely that of the skier or skiers involved and not that of Sunrise Park.

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.

E. When injured at Sunrise Park 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 Sunrise park, the location where the injury or collision occurred and the circumstances thereof.

SECTION 14.8 LIMITATION OF SUNRISE PARK'S LIABILITY

Sunrise Park shall not be liable for personal injury or property damage caused solely or in part by any of the following:

- A. To any person who acts in violation of this Chapter.
- B. To any person who is not legally entitled to be in Sunrise Park.
- C. By any object dropped, thrown or expelled by a passenger from a ski lift.
- D. Collisions between a skier and any natural, manmade, or other object or person unless such other person is employed by Sunrise Park.
- E. Improper use of ski lifts as defined in this chapter.

SECTION 14.9 COMPETITION

A. Sunrise Park 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 be 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 14.10 STATUTE OF LIMITATIONS

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 14.11 PENALTIES

A. Any passenger who violates any of the provisions 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 this Chapter shall be subject to immediate forfeiture of any further use of Sunrise Park.

C. Any tribal member who violates any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of at least Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00).

D. Any non-tribal member who violates any of the provisions of this Chapter may be civilly sanctioned for at least Three Hundred Dollars (\$300.00) but no more than One Thousand Dollars (\$1,000.00).

The foregoing Amendment to Chapter Fourteen of the Health and Safety Code of the White Mountain Apache Tribe 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 (g) 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)



Chairman of the Tribal Council



Secretary of the Tribal Council

APPROVED:

Superintendent, Fort Apache Agency