

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

WHEREAS, the Tribal Council of the White Mountain Apache Tribe, by prior resolution, enacted Ordinance No. 164 known as the White Mountain Apache Bingo and Gaming Ordinance; and

WHEREAS, the Bureau of Indian Affairs has disapproved the Ordinance based upon its disagreement with the definition of bingo to include what it regards as Class III Gaming; and

WHEREAS, the Tribal Council has appealed the Bureau's disapproval to the Interior Board of Indian Appeals on the grounds, inter alia, (1) that the Bureau has misunderstood the definition of bingo in the Tribe's Ordinance, (2) that the distinction between Class II and Class III games has not been defined by either the Federal Courts or the Indian Gaming Commission, and (3) that the Bureau of Indian Affairs lacks approval authority of tribal gaming ordinances as that authority did not reside in the Bureau of Indian Affairs prior to enactment of the Indian Gaming Regulatory Act; and

WHEREAS, the Tribal Council is of the opinion that it has a meritorious appeal before the Interior Board of Indian Appeals but for economic and gaming development reasons concludes that the definition of bingo and other gaming and other provisions contained in the Tribe's Bingo Gaming Ordinance should be amended in the form and content attached hereto and incorporated by reference herein.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post in each district for a minimum of ten (10) days the attached proposed amendment to the White Mountain Apache Bingo and Gaming Ordinance.

BE IT FURTHER RESOLVED by the Tribal Council that upon receipt of certification by the Office of the Tribal Chairman that the Tribal Council Secretary has posted the proposed Ordinance as required by the Constitution of the White Mountain Apache Tribe; final enactment of said amendment may be accomplished by either a walk-through resolution or during a regular or special Tribal Council meeting whichever comes first.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs the Tribal Attorney of the White Mountain Apache Tribe to submit the final enacted amendment to the Tribal Bingo Ordinance to the Interior Board of Indian Appeals with a request that the Tribe's appeal before that body be dismissed without prejudice with leave to refile in ninety (90) days in the event that for any reason the Bureau of Indian Affairs objects to the Proposed Amendment to the Definition Section of the Tribal Bingo Ordinance so that said appeal of said disapproval may be consolidated with the pending appeal before the Board.

The foregoing resolution was on October 22, 1991, duly adopted by a vote of eight 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) (i) (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

(ACTING)

  
\_\_\_\_\_  
Secretary of the Tribal Council

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OCT 23 1991

FORT APACHE INDIAN AGENCY  
WHITERIVER, ARIZONA

**ORDINANCE OF THE WHITE MOUNTAIN APACHE TRIBE  
BINGO/GAMING ORDINANCE**

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE AN ORDINANCE TO GOVERN, REGULATE, AND CONTROL BINGO AND GAMING ON THE FORT APACHE INDIAN RESERVATION.

**STATEMENT OF PURPOSE:**

An ordinance to govern and regulate the operation, conduct and playing of games of bingo and gaming on the Fort Apache Indian Reservation so that revenue may be produced for the support of tribal government programs which promote economic development and the health, education and welfare of the Tribe and its members.

**SECTION 1.        SHORT TITLE**

This ordinance may be cited as the bingo/gaming ordinance of the White Mountain Apache Tribe.

**SECTION 2.        INTERPRETATION**

This Ordinance shall be deemed an exercise of the sovereign power of the White Mountain Apache Tribe and all provisions of this ordinance shall be liberally construed for the accomplishment of the Statement of Purpose.

**SECTION 3.        POLICY**

A. The White Mountain Apache Tribe shall have the sole proprietary interest and responsibility for the conduct of any gaming activity conducted on the Fort Apache Indian Reservation.

B. The net revenues from any Tribal gaming activity are not to be used for purposes other than:

- (1) to fund tribal governmental operations and programs;
- (2) to provide for the general welfare of the Tribe and its members;
- (3) to promote tribal economic development;
- (4) to help fund local tribal and community

governmental operations.

C. An annual outside independent certified audit of bingo gaming activities shall be caused to be produced and shall be made available to any federal agencies authorized by federal statute to obtain a copy of the annual audit.

D. All contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually, except contracts for professional legal or accounting services, relating to Bingo activity shall be subject to such independent audits required in C. above.

E. The construction and maintenance of the gaming facility and the operation of that gaming shall be conducted in a manner which adequately protects the environment and the public health and safety.

F. Tribal officials may cooperate with law enforcement officials of the State of Arizona, the Bureau of Indian Affairs, the Federal Bureau of Investigation and other law enforcement agencies, when it is deemed to be in the best interest of the Tribe to assure that fair, honest and efficient Bingo and Gaming is operated by the Tribe.

**SECTION 4.        DEFINITIONS**

In this ordinance unless the context otherwise requires:

A. The term "**Class I Gaming**" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with tribal ceremonies or celebrations.

B. The term "**Class II Gaming**" means--

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)--

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that--

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any or if applicable) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games or in conformity with Federal Court Decisions interpreting the application of this section.

C. The term "**Class II Gaming**" does not include--

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), as defined and interpreted by the Indian Gaming Commission and Federal Court decisions; or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind as defined and interpreted by the Indian Gaming Commission and Federal Court decisions.

D. The term "**Class III Gaming**" means all forms of gaming that are not class I gaming or class II gaming as defined by regulations of the Indian Gaming Commission and Federal Court decisions interpreting the Indian Gaming Regulatory Act and regulations promulgated pursuant thereto.

E. **Person** means a natural person, firm, association, corporation or other legal entity.

F. **White Mountain Apache Tribe** refers to the White Mountain Apache Tribe of the Fort Apache Indian Reservation established pursuant to Executive Order on November 9, 1871.

G. **Owner** shall mean and refer to the White Mountain Apache Tribe. Hereinafter the words "owner" and "tribe" shall be defined and used interchangeable.

H. **Contractor** shall mean and refer to the management contractor who operates for the owner, tribal premises used for bingo. Hereinafter the words "contractor" and "manager"

shall be defined and used interchangeably.

I. **Player** shall mean any person paying some amount of United States Currency to the owner or the owner's management contractor or his agent, servant or employee, for admission to, or participation in, a bingo game, and who has some reasonable expectation of receiving a prize if one or more of his pre-numbered cards, or representations thereof, contains a sufficient amount of numbers which are the same as those selected during a bingo game.

J. **Prizes** shall mean and refer to any United States Currency, cash, or other property or thing of value awarded to a player of a bingo game, or players in a series of bingo games.

K. **Tribal Bingo Game** means a bingo game or games conducted or operated by the Tribe in accordance with the provisions of this Ordinance.

**SECTION 5.           GENERAL**

No person may hold, operate or conduct any bingo or gaming within the boundaries of the Fort Apache Indian Reservation except tribal bingo and gaming conducted, operated or licensed by the White Mountain Apache Tribe in accordance with the provisions of this Ordinance.

**SECTION 6.           TRIBAL BINGO AND GAMING**

A. The White Mountain Apache Tribe is authorized to hold, operate and conduct tribal bingo and gaming within the Fort Apache Indian Reservation.

B. The Tribal Council of the White Mountain Apache Tribe shall supervise the administration of this section, and may adopt, amend and repeal rules and regulations governing the holding, operating and conducting of tribal bingo and gaming which shall be in accordance with, and shall not violate the provisions of this Ordinance or of any management contract approved by the Tribal Council; may provide for the rental of premises and equipment repaired for the operation of tribal bingo games; and may provide that tribal bingo games shall be held, operated and conducted in conformity with the provisions of this Ordinance and of any management contract, if any, approved by the Tribal Council.

C. The Tribal Council shall have the authority to enter into a management agreement to operate tribal bingo and gaming on the Fort Apache Indian Reservation provided that said

management agreements are in conformity with the Indian Gaming Regulatory Act of 1988, Public Law 100-497, U.S.C. Section 2701, et seq.

D. Any contractor or management contractor, its primary management officials and key employees who operate for the tribe, premises used for bingo and gaming, shall be licensed by the White Mountain Apache Tribe. Said annual license fee shall be in the amount of \$5,000.00.

E. Background investigations shall be conducted of primary management officials and key employees of any manager contractor of the bingo gaming enterprise and an adequate system shall be in place to provide oversight of such officials and their management on an ongoing basis; provided, that any person whose prior activities, criminal record, if any, or reputation, or associations pose a threat to the public interest or to the effective regulation of gaming, bingo, or create or enhance the dangers of an unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming and bingo shall not be eligible for employment by the tribe as a management contractor; further provided that the Bureau of Indian Affairs or the National Indian Gaming Commission, established pursuant to the Indian Gaming Regulatory Act, as the case may be, shall be notified by the tribe of the results of such background checks before the issuance of any such license to primary management officials and key employees of the gaming enterprises.

F. The Manager, and employees responsible for the holding, operation and conduct of tribal bingo games, in accordance with the provisions of this Ordinance, shall be of good moral character and shall not have been convicted of any felony or misdemeanor involving moral turpitude or gaming offense in any court of competent jurisdiction.

G. The Manager shall maintain a permanent record containing the name and address of each player who receives a prize, if required by, and in accordance with the requirements of the Internal Revenue Code or any other enactments of Congress.

H. The Management contractor shall maintain adequate written records of bingo and gaming activities on the premises for a period of at least four years. These records shall include:

- (1) Gross receipts;
- (2) All payout for prizes, whether in cash or merchandise;

(3) Any and all operating expenses;

(4) Net profits.

I. Any Management Contract shall state that no elected member of the tribal government may be an employee of the contractor or of the bingo/gaming enterprise.

**SECTION 7.        OPERATIONS**

A. Days of Operation. Bingo and gaming may be conducted each and every day of the week and at any hour of the day or night at the discretion of the Tribe.

B. All persons involved in the conduct of bingo and gaming must be a bona fide employee of the Tribe or the management contractor.

C. No one under eighteen (18) years of age shall be allowed to play.

D. No person who holds, operates, conducts, or assists in holding, operating or conducting, gaming or bingo may play at the game at which such person is working.

E. Persons employed by any tribal bingo/gaming operation shall not be eligible to play at tribal bingo/gaming occasions or games and shall not be eligible to win prizes or anything of value, either on-duty or off-duty. A tribal bingo/gaming employee if terminated from employment shall not be eligible to participate in any tribal bingo or gaming or win any prize or anything of value for a least ninety (90) days after termination.

**SECTION 8.        NAME TAGS**

All persons operating or assisting the operation of conduct of any bingo game shall wear legible tags evidencing their name and the legend of the White Mountain Apache Tribe. Tags must be visible and worn or otherwise affixed to all persons operating or assisting in the operation of bingo and gaming.

**SECTION 9.        VIOLATION; JURISDICTION**

A. Any Indian person who violates any provision of this Ordinance or any rule or regulation authorized thereunder, shall be guilty of a criminal offense punishable by a fine of not more than five hundred dollars (\$500.00) or by imprison-



ment for not more than six (6) months, or both.

B. Any person who violates any provision of this Ordinance, or any rule or regulation authorized thereunder, shall be liable for a civil penalty not to exceed five hundred dollars (\$500.00), plus court costs, for each violation.

C. The Tribal Courts shall have jurisdiction over all violations of this Ordinance and over all persons who are parties to a management contract entered pursuant thereto, and may, in addition to the penalties prescribed in subsection A and B above, grant such other relief as is necessary and proper for the enforcement of this Ordinance and of the provisions of any management contract entered pursuant thereto, including but not limited to injunctive relief against acts in violation thereof, subject to arbitration procedures, if any, applicable to any management contract. Nothing, however, in this Ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians except to the extent allowed by any applicable present or future Act of Congress or any applicable federal court decision.

**SECTION 10. INTERNAL REVENUE SERVICE**

Provisions of the Internal Revenue Code of 1954, as amended, concerning the taxation and the reporting and withholding of taxes pursuant to the operation of the bingo games operated on the Fort Apache Indian Reservation shall apply to tribal bingo and gaming.

**SECTION 11. ORDINANCE SUPERSEDES FORMER GAMBLING ORDINANCE**

All statutory provisions formerly enacted regarding the subject matter of this Ordinance are hereby repealed. The provisions of this Ordinance supersede all such formerly enacted sections. This Ordinance is effective December 6, 1990.

**SECTION 12. SEVERABILITY CLAUSE**

The provisions of the White Mountain Apache Bingo Ordinance shall be severable and if any phrase, clause, sentence or provision of this Ordinance is found to be contrary to the Constitution of the White Mountain Apache Tribe, or declared to be in violation of applicable Federal law, or is held to be invalid, the validity of the remainder of this Ordinance shall not be affected and shall remain in

full force and effect.

The foregoing Ordinance No. 164 was on \_\_\_\_\_, 1991 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 V, Section 1 (a), (h), (i), (s), (t), and (u) 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).

\_\_\_\_\_  
Chairman of the Tribal Council

\_\_\_\_\_  
Secretary of the Tribal Council

APPROVED:

\_\_\_\_\_  
Superintendent  
Fort Apache Indian Agency  
Whiteriver, Arizona