



**ENACTMENT OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

**(Adopting Ordinance No. 252, Amending the
Election Code of the White Mountain Apache Tribe)**

WHEREAS, on August 19, 2011 the Tribal Council authorized the posting of Ordinance 252, which contained proposed amendments to the White Mountain Apache Tribe Election Code; and

WHEREAS, on September 21, 2011 the Tribal Council authorized the reposting of Ordinance 252, which contained additional amendments to the White Mountain Apache Tribe Election Code; and

WHEREAS, since that time the Office of the Tribal Council Secretary has received additional comments regarding the proposed changes; and

WHEREAS, the Council has reviewed proposed Ordinance No. 252 carefully as well as all comments submitted, and considered all recommendations and implications thereof in great detail and finds that adoption of proposed Ordinance No. 252 would greatly improve the efficiency of the Tribal election process and is in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 252, attached hereto and incorporated by reference, which amends multiple sections of the Election Code consisting of changes to Sections 1.1, 1.3, 2.1, 2.2, 3.1, 3.2, 3.3, 3.4, 4.4, 4.5, 4.6, 4.7, 4.9, 5.2, 5.3, 5.4, 5.5, 6.3, 6.4, 7.4, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, and 7.18, and adding Chapter Eight, is hereby adopted as an amendment to the Election Code.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

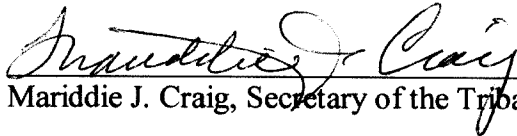
The foregoing resolution was on **NOVEMBER 16, 2011** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (q), (s), (t), and (u) of the Constitution of the

Resolution No. 11-2011-221
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Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Chairman of the Tribal Council



Mariddie J. Craig, Secretary of the Tribal Council

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 252, amending White Mountain Apache Election Code Sections 1.1, 1.3, 2.1, 2.2, 3.1, 3.2, 3.3, 3.4, 4.4, 4.5, 4.6, 4.7, 4.9, 5.2, 5.3, 5.4, 5.5, 6.3, 6.4, 7.4, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, and 7.18, and by adding Chapter Eight, as follows:

SECTION 1.1 PURPOSE

This Code is enacted pursuant to Article VI, Section 8 of the Constitution of the White Mountain Apache Tribe to govern the conduct of all White Mountain Apache Tribe elections, including elections for Tribal Council Chairman, Vice-Chairman and Council Members. This Code is to be interpreted and enforced with the goal of maintaining the integrity of the election process and protecting and promoting the rights of the voters of the Tribe to select their leadership and decide matters referred for their decision.

SECTION 1.3 DEFINITIONS

In this Code, unless the context otherwise requires:

A. “BALLOT” means a printed paper form containing the name of the candidate or text of a measure in a referendum on which votes are recorded.

B. “BALLOT BOX” means the container in which ballots are deposited after the ballots are voted.

C. “CODE” means the White Mountain Apache Tribe Election Code.

AD. “CONSTITUTION” means the Constitution of the White Mountain Apache Tribe.

BE. “COUNCIL” means the Tribal Council of the White Mountain Apache Tribe.

CE. “COUNCIL MEMBER” means any member of the Tribal Council and, except where the context indicates otherwise, includes the Tribal Council Chairman and Vice-Chairman.

G. “DAY” means a calendar day, unless otherwise indicated.

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D.H. “DEPOSE” means to make a statement or statements which are written down and sworn to.

I. “ELECTED OFFICE” means the office of Chairman of the Tribal Council, Vice-Chairman of the Tribal Council, or Tribal Council Member.

E.J. “ELECTIONEER” means to work for a political candidate or ballot issue with the intent to solicit votes or other support for the candidate or ballot issue.

F.K. “ELIGIBLE VOTER” means any enrolled member of the White Mountain Apache Tribe, eighteen (18) years of age or older, who is on the Eligible Voters List. The term “eligible voter” has the same meaning as “eligible voter,” “qualified voter,” “registered voter,” and “those entitled to vote” as those terms are used in the Constitution.

G.L. “ELIGIBLE VOTERS LIST” means the list of Eligible Voters.

H.M. “IMMEDIATE FAMILY” means spouse, son, daughter, mother, father, sister, or brother, and includes those of the foregoing who are formally adopted by court order.

I.N. “KNOWINGLY”, in reference to a violation of this Election Code, means consciously and intentionally; however, it does not require any knowledge of the unlawfulness of the act or admission.

J.O. “MEMBER” or “ENROLLED MEMBER” means an enrolled member of the White Mountain Apache Tribe.

K.P. “MONTH” means a calendar month unless otherwise ~~expressed~~ indicated.

Q. “NOMINATION APPLICANT” means a person who seeks to become candidate for elected office, but who has not yet been certified as a candidate.

L.R. “NOMINATION PETITION” means the petition to nominate a candidate for the office of Chairman, Vice-Chairman, or Council Member of a District.

M.S. “OATH” includes affirmation or declaration.

N.T. “PERSON” includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, the State of Arizona, the White Mountain Apache Tribe, ~~which may lawfully own any property, or a~~ and any other public or private corporation, or partnership or association which may lawfully own any property. When the word

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"person" is used to designate the violator or offender of any law, it includes a corporation, partnership or any association of persons.

U. **"PETITION"** means the forms attached in Appendix B-1, Appendix B-2, Appendix B-3, and Appendix D for the collection of signatures of eligible voters for the nomination of candidates or to petition for a referendum.

O.V. **"POLL WATCHER"** or **"WATCHER"** means a person designated by a candidate to observe the election process on the day of the election.

W. **"POLLING LOCATION"** means a place where voting is held in a Tribal election.

P.X. **"PRECINCT"** means the polling place where an eligible voter will be permitted to vote, as established by the Tribal Constitution, and as may be established by the Tribal Council by resolution for each district.

Q.Y. **"PRECINCT COMMITTEE"** means ~~that a~~ Election Precinct Committee appointed by the Election Commission.

R.Z. **"PRIMARY ELECTION"** means that election held on the first Wednesday of February of a regular or general election year, to determine the run off candidates for the regular/general election held on the first Wednesday of April of each such election year.

S.Aa. **"REGISTERED MAIL"** includes certified mail.

T.Bb. **"REGISTRAR"** means the Tribal Council Secretary and those persons authorized by the Tribal Council Secretary to register enrolled members 18 years of age or older ~~for tribal elections~~ on the Eligible Voters List.

U.Cc. **"REGISTRATION PERIOD"** means the period when enrolled members 18 years of age or older may become registered on the Eligible Voters List.

V.Dd. **"REGULAR ELECTIONS"** means those elections required by Article VI, Section One of the Tribal Constitution, to be held every two years on the first Wednesday in April for Council Members, and every four years for Chairman and Vice-Chairman, on the same day noted herein for Council Members. The term "General Election" may be used interchangeably with the term "Regular Election" for purposes of carrying out this Election Code.

W.Ee. **"RESERVATION"** means the Fort Apache Indian Reservation of the White Mountain Apache Tribe.

X.Ff. **"RESIDE"** means to have a residence.

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V.Gg. “RESIDENCE” means a person's place of abode where the person intends to remain for an undetermined period, having no present intention of removal from that place and to which, when he or she is absent, he or she intends to return.

Z.Hh. “RESIDENT” means any tribal member who lives in a residence within the Fort Apache Indian Reservation. For the limited purposes of registering to vote, voting, and signing nomination petitions, a person does not lose his or her resident status solely by his or her absence from the Reservation. Such absence, however, would render the person ineligible to become a candidate for elected office, until the person returns to and lives in a residence within the Reservation.

Aa.Ii. “RESIDENT ELIGIBLE VOTER” means an Eligible Voter who is registered to vote in a District. When used in reference to the election or nomination of the Tribal Council Chairman or Vice-Chairman, the term means an eligible voter residing anywhere within the Reservation.

Bb. ~~“SEAL” as used in reference to a paper issuing from a court or a public office to which the seal of such court or office is required to be affixed, means the impression on such paper, as well as the impression of the seal affixed thereto by means of a wafer or wax.~~

Cc.Jj. “SIGNATURE” includes a mark, made by a person who cannot write, with his or her name written near it, and witnessed by a person who writes his or her own name as witness.

Dd.Kk. “TRIBAL ELECTION” means elections of the White Mountain Apache Tribe, including general and primary elections and referendum elections. The term does not include any federal election, including a Secretarial election called to amend the Constitution, nor does it include any state or county election, or other election not provided for in the Constitution.

Ee.Ll. “TRIBAL ELECTION COMMISSION” or “ELECTION COMMISSION” or “COMMISSION” means the nine member Commission appointed by the Tribal Council to administer all elections of the White Mountain Apache Tribe pursuant to this Code.

Ff.Mm. “TRIBE” means the ~~federally recognized~~ White Mountain Apache Tribe of the Fort Apache Indian Reservation, a federally recognized Indian tribe.

Gg.Nn. “VOTER CENSUS NUMBER” means the number on record with the Tribal Council Secretary's Office which has been assigned to an Eligible Voter and which appears as such on an Eligible Voter's registration card.

Hh.Oo. “VOTING DISTRICT” or “DISTRICT” means those voting districts established pursuant to Article III, Section 2 of the Constitution of the White Mountain Apache Tribe.

SECTION 2.1 TRIBAL ELECTION COMMISSION

A. Composition. The Tribal Election Commission shall be composed of nine (9) members, appointed by the Tribal Council, who shall be responsible for administering all elections of the White Mountain Apache Tribe. The Commission shall serve from the day of appointment until six (6) months following the general election or for such term as designated by the Council. The Commission shall elect from its own membership a chairman and other officers as deemed necessary. ~~No elected official of the White Mountain Apache Tribe shall serve on the Commission. No candidate for office or person who is a member of the candidate's immediate family shall serve on the Commission.~~ No elected official of the Tribe, candidate for elected office or person who seeks to become a candidate for elected office, or immediate family member of an elected official, candidate or person who seeks to become a candidate for elected office shall serve on the Election Commission.

B. Authority and Responsibility. The Commission shall exercise independent judgment in order to uphold the impartiality and integrity of the election process. In so doing, the Commission shall have the authority to undertake the following:

~~The Commission shall have the authority to:~~

(1) ~~Promulgate~~ With Tribal Council approval, promulgate rules and regulations, ~~with Tribal Council approval,~~ not inconsistent with this Code, concerning any matter within its jurisdiction. After approval by the Tribal Council, such regulations shall have the force and effect of law of the White Mountain Apache Tribe.

(2) Review the qualifications and disqualify any candidate who does not meet the qualifications established by the Constitution for the office sought.

(3) Maintain a list of eligible voters of the Tribe ~~for conducting all tribal elections, for referendum measures and the resolution of election disputes.~~

(4) Exercise all reasonable powers necessary for conducting all Tribal elections, for referendum matters and the resolution of election disputes.

~~(4)~~(5) Appoint and supervise Precinct Committee members and provide them with proper instructions for performing their duties.

~~(5)~~(6) Prepare and be responsible for the safekeeping of the official ballot or ballots.

~~(6)~~(7) Enforce this Election Code and rules and regulations promulgated pursuant thereto.

C. Commission Conduct. Members of the Commission shall not be permitted to circulate, or assist in the circulation of, petitions for the nomination of any candidate or matter for referendum and shall not engage in other conduct which would be inconsistent with a Commission Member's duty of fairness and impartiality.

SECTION 2.2 TRIBAL ELECTION PRECINCT COMMITTEES

A. Composition.

Election Precinct Committees shall be appointed by the Commission. Each Election Precinct Committee shall consist of a Judge, one or more Marshals, two or more Clerks as determined necessary by the Commission, and alternates as necessary. No elected official of the ~~White Mountain Apache~~ Tribe, candidate for elected office of the Tribe, or immediate family member of an elected official or candidate shall serve on an Election Precinct Committee. One Precinct Committee will be appointed for each Polling Location.

B. Authority and Responsibility.

The Election Precinct Committees shall conduct elections at the voting places in each voting district and shall be empowered to carry out and enforce all rules and regulations promulgated and delegated by the Commission, ~~pursuant to Section 2.1,~~ for the orderly and fair conduct of all elections.

SECTION 3.1 ELIGIBILITY CRITERIA AND CONDITIONS

A. Any eligible voter shall be permitted to vote in Tribal Elections.

SECTION 3.2 VOTER REGISTRATION

A. The Election Commission shall maintain a permanent roll of eligible voters, and shall open ~~the such~~ roll for voter registration ~~of enrolled members eighteen (18) years of age or older~~ during all business hours, beginning the day after each Tribal election and continuing until 30 days prior to the date of the next election.

B. While the roll is open any person, upon proving to the Election Commission, or ~~any~~ designated registrar, that he or she is an enrolled member eighteen (18) years of age or older, shall be permitted to register, ~~provided that such person may register to vote only in the district of his or her residence.~~ The Election Commission or Registrar has the authority to preregister those persons whose eighteenth (18th) birthday occurs between the close of registration and the day of the election. A person may register only in the district in which he or she has been a resident for at least 120 days prior to registration. ~~In the event that~~ If a person's residence cannot be determined based on the criteria in this Code, the person shall be registered in the district where the seat of tribal government is located. ~~The Election Commission or Registrar has the authority to~~

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~~preregister those persons whose eighteenth (18th) birthday occurs between the close of registration and the day of the election.~~

~~D. At the close of the registration period, an alphabetically arranged list of all persons registered to vote in each election district shall be prepared by the Tribal Council Secretary. The list shall be certified by the Election Commission as accurate, and shall constitute the eligible voters list.~~

~~E.D.~~ Decisions on voter registration requests may be appealed by the applicant. Any person ~~desiring to register, but who is not permitted to register,~~ may appeal in writing to the Election Commission at least 30 days prior to the next election. The Election Commission must rule on the said appeal within 60 days of receipt of the appeal, but in any event, no later than 20 days prior to an election. All decisions of the Election Commission shall be final.

~~F. The Election Commission shall periodically examine the eligible voters lists and add or remove the names of all individuals as may be necessary to make the lists accurate.~~

~~G. The current lists of eligible voters are accepted as they now exist. All new registration of voters or changes of registration must meet the criteria established by this Chapter.~~

SECTION 3.3 **ELIGIBLE VOTERS LISTS**

A. The Election Commission shall maintain a list of eligible voters for each District. At the close of any voter registration period, and at other times on a periodic basis, the Commission shall prepare and certify the Eligible Voters list. Lists of the eligible voters of each District shall be prepared by the Election Commission. The Eligible Voters list shall be posted at the polling place location of the District at least ten (10) days prior to the election and a copy submitted to the Council at the same time.

B. The current lists of eligible voters are accepted as they now exist. All new registration of voters or changes of registration must meet the criteria established by this Chapter.

SECTION 3.4 **CONFIDENTIALITY OF VOTING PROCESS**

All voting shall be conducted by secret ballot. No procedure or regulation authorized by this Code shall be interpreted or enforced in a way which would compromise the confidentiality of a voter's ballot. Voting records may not be used for any purpose outside the scope of this Code, except as needed to compile a list of persons eligible for jury duty, or, subject to Tribal Council approval, for voter registration in a federal, state, or other public election, or for a purpose authorized by court order.

SECTION 4.4 **EXCLUSIVE PROCEDURE FOR NOMINATION**

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This Chapter shall govern the nomination of candidates for election to the Tribal Council and no other method of nominating candidates shall be allowed, and no person may become a candidate for elected office except by compliance with the nomination procedures set forth herein. No write in candidates shall be allowed and no person shall be a candidate for more than one ~~Tribal Council~~ elected office in the same election.

SECTION 4.5 NOMINATION OF CHAIRMAN AND VICE-CHAIRMAN

A. Any person who seeks to become a candidate for the office of Chairman or Vice-Chairman must complete and submit to the Commission, an affidavit, which shall be substantially the same form as shown in Appendix A-1, to demonstrate that he or she possesses the qualifications for the office sought. After verifying the qualifications from the affidavit, the Commission shall issue nomination petitions to the nomination applicant which shall be substantially the same form as shown in Appendix B-1 and B-2. The affidavit and nomination petition forms shall be released to the nomination applicant only, and not to any person acting on behalf of any nomination applicant and shall be available not sooner than sixty (60) days before the primary election.

B. Not less than forty-five (45) days before the primary election, the nomination applicant shall present nomination petitions signed by at least five percent of the resident eligible voters to the Tribal Council Secretary, or to the Tribal Chairman, or in his absence, to the Vice-Chairman.

~~A. Any person who seeks to become a candidate for the office of Chairman or Vice Chairman must:~~

~~(1) Meet the qualifications for office set forth in this Chapter; and~~

~~(2) Not less than forty five (45) days before the primary election, present nomination petitions signed by at least five percent of the resident eligible voters to the Tribal Council Secretary, or to the Tribal Chairman, or in his absence, to the Vice Chairman.~~

~~B. Candidates shall prove to the Commission, by completing the affidavit which shall be substantially the same form as shown in Appendix A-1, that they meet the qualifications for the office sought prior to receiving nomination petition forms. Petition forms shall be released to the candidates only, and not to any person acting on behalf of any candidate. Nomination petitions shall be on a form provided by the Tribal Council Secretary which shall be substantially the same forms as shown in Appendix B-1 and Appendix B-2 and shall be available for circulation no sooner than sixty days before the primary election.~~

SECTION 4.6 NOMINATION OF COUNCIL MEMBER CANDIDATES

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A. Any person who seeks to become a candidate for the office of Tribal Council member must complete and submit to the Commission, an affidavit, which shall be substantially the same form as shown in Appendix A-2, to demonstrate that he or she possesses the qualifications for the office sought. After verifying the qualifications from the affidavit, the Commission shall issue nomination petitions to the nomination applicant which shall be substantially the same form as shown in Appendix B-3. The affidavit and nomination petition forms shall be released to the nomination applicant only, and not to any person acting on behalf of any nomination applicant and shall be available not sooner than sixty (60) days before the primary election.

B. Not less than forty-five (45) days before the primary election, the nomination applicant shall present nomination petitions signed by at least five percent of the resident eligible voters of the district in which the nomination applicant seeks to be a candidate to the Tribal Council Secretary, or to the Tribal Chairman, or in his absence, to the Vice-Chairman.

~~A. Any person who seeks to become a candidate for the office of Tribal Council member must:~~

~~(1) Meet the qualifications for office set forth in this Chapter; and~~

~~(2) Not less than forty five (45) days before the primary election, present nomination petitions signed by at least five percent of the resident eligible voters of the district in which the candidate seeks election to the Tribal Council Secretary, or to the Tribal Chairman, or in his absence, to the Vice Chairman.~~

~~B. Candidates shall prove to the Commission, by completing the affidavit which shall be substantially the same form as shown in Appendix A-2, that they meet the qualifications for the office sought prior to receiving nomination petition forms. Petition forms shall be released to the candidates only, and not to any person acting on behalf of any candidate. Nomination petitions shall be on a form provided by the Tribal Council Secretary, which shall be substantially the same form as shown in Appendix B-3, and shall be available for circulation no sooner than sixty days before the primary election.~~

SECTION 4.7 SIGNING OF NOMINATION PETITION

A. Each resident eligible voter shall be permitted to sign only one nomination petition for the same ~~council~~ elected office unless more than one candidate is to be elected from the district to such office, and in that case, not more than the number of nomination papers equal to the number of candidates to be elected from the district to the office. Signatures of persons in violation of this Section shall be disregarded in determining the validity of the nomination petitions, however, nothing in this Section shall prohibit a resident eligible voter from signing one nomination petition for the office of Chairman and one for the office of Vice-Chairman.

SECTION 4.9 PREPARATION OF BALLOTS

A. Paper ballots upon which are printed the names of the candidates shall be used in the tribal elections. ~~It shall be the responsibility of the Tribal Council Secretary to prepare the ballots for each of the districts to which a Council Member is to be elected.~~ The printing of the ballots shall take place as soon as possible after all candidates have been certified by the Tribal Council. ~~Paper ballots upon which are printed the names of the candidates shall be used in the tribal elections.~~ The upper portion of the ballot shall contain the name of the candidates for Chairman, Vice Chairman and members of the Tribal Council, as the case may be. The ballots shall be numbered consecutively and provided in consecutive numbers to each precinct. It shall be the responsibility of the Tribal Council Secretary to prepare the ballots.

SECTION 5.2 ELECTION PROCEDURES

A. **Voting places and hours; notice.** An eligible voter may vote only in the District where registered and only at the polling location designated in the voter's registration card. ~~Voting places~~ Polling locations shall be designated by the Election Commission with Council approval, and shall be open during the hours of 6 a.m. to 7 p.m. Mountain Standard Time on the day of the election. The Election Commission shall announce all elections by special notice posted at least fifteen (15) days before the election at the voting places and other convenient public places.

B. **Manner of voting generally.** Voting shall be by secret ballot. Voters may vote for only one candidate for each open elected position. Except as otherwise provided, any eligible voter may vote by appearing at the voter's prescribed ~~voting place~~ polling location, announcing to the Election Precinct Committee his or her name and address, signing the ballot sign out sheet, and by marking and placing in the ballot box the ballot which shall be handed to the voter. The Election Precinct Committee may ask for proof of identification, such as a voter's registration card or drivers license, before permitting the eligible voter to vote. ~~Any eligible voter who will be unable to vote in person may vote by absentee ballot as prescribed in Section 5.3.~~

C. **Electioneering.** No person shall be allowed to electioneer within two hundred (200) feet of the entrance to any polling location while an election is in progress, nor shall any person, except election officials and other persons authorized by law, be allowed to approach the ballot box while an election is in progress or remain within 50 feet of the polling place except while actually voting. No written or printed material other than that provided by the Election Commission shall be publicly placed or exposed on public or private property within two hundred (200) feet of the entrance to any polling location while an election is in progress. ~~The Election Commission may, with Tribal Council approval, establish additional policies on electioneering.~~

D. **Voting by person with physical disabilities or language barriers.** If a voter presents himself and states that he or she, because of a physical disability or language barrier, is unable to mark the ballot, assistance shall be provided by at least two

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members of the Election Precinct Committee or Election Commission. At the request of the voter, a member of the voter's family may also be present to assist the voter.

E. Poll watchers. Candidates for the office of the Chairman, Vice Chairman, and each candidate for the Council may submit in writing two names each as their respective designated watchers at each polling place location. No candidate for any elected office of the White Mountain Apache Tribe shall be a watcher. Watchers are prohibited from conversing with voters and Election Precinct Committee members and shall be restricted to a location from which voters cannot be intimidated by their presence. Any disruption by watchers will be cause for their removal from the polling place. Poll watchers are to remain only in designated areas.

~~F. Voting Violations.~~ ~~A person is guilty of violation of this code who:~~

- ~~(1) Knowingly votes more than once at any election; or~~
- ~~(2) Not being entitled to vote, knowingly votes; or~~
- ~~(3) Hinders the voting of others; or~~
- ~~(4) After having received a ballot as a voter, knowingly fails to cast the ballot or return the ballot to the Election Precinct judge before leaving the polling place or going outside the voting area; or~~
- ~~(5) Knowingly adds a ballot to those legally cast at any election by fraudulently introducing the ballot into the ballot box or mixing the ballot with other ballots lawfully cast while they are being canvassed or counted; or~~
- ~~(6) Knowingly detains, destroys, alters, or mutilates a ballot or election returns; or~~
- ~~(7) Intentionally disables or removes from the polling place or custody of an election official, a voting machine, ballot box, or voting record; or~~
- ~~(8) While at a voting location, refuses to obey a lawful order of a member of the Election Commission or Precinct Committee.~~

~~G. Penalties.~~

- ~~(1) Any person violating the provisions of Subsection 5.2F is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed one thousand dollars (\$1,000.00), or a term of imprisonment not to exceed one hundred eighty (180) days, or both.~~
- ~~(2) Persons not subject to the criminal jurisdiction of the Tribal Court shall be subject to exclusion from the Reservation.~~

SECTION 5.3 ABSENTEE VOTING

A. Conditions for Voting by Absentee Ballot

Only the following persons may vote by absentee ballot:

(1) An eligible voter who lives more than 150 road miles from Whiteriver, Arizona; or

(2) An eligible voter who lives within 150 road miles of Whiteriver, Arizona, who is a resident of a nursing home, hospital or other long term care facility accredited by a federal agency or the local, tribal, or state jurisdiction in which it is located, and due to health reasons is unable to travel to the polling location.

AB. Request for ballot.

1. ~~Any~~ An eligible voter who satisfies the conditions of Subsection A wishes to ~~vote early and lives outside of a 150 road mile radius from Whiteriver, Arizona~~ may request an absentee ballot by either coming in person to the office of the Tribal Council Secretary and submitting a request in writing, or by sending a letter by U.S. Mail to the Election Commission, ~~— A person requesting an absentee ballot shall~~ identifying himself or herself using the name under which he or she is registered and shall state the district in which he or she is registered. The absentee ballot will be mailed out to a post office box number or to a physical address (via certified or registered mail) where the applicant signs for his or her absentee ballot. Except for ballots sent to residents in a facility specified in Section 5.3 A. (2), no more than three (3) five (5) absentee ballots will be mailed to one post office box number or physical address. Absentee ballots may not be sent by general delivery.

~~This process will be on a mail out basis only. The absentee ballot will be mailed out to a post office box number or to a physical address (via certified or registered mail) where the applicant signs for his or her absentee ballot. NO GENERAL DELIVERY.~~

~~No more than three (3) five (5) absentee ballots will be mailed to one post office box number or physical address. Requests for absentee ballots will not be accepted via fax or phone calls, only per written request.~~

2. The applicant for an absentee ballot shall complete and sign the application before a Notary Public. The Notary Public before whom the applicant completes the application shall impress his or her official seal on the application. Any person unable to sign the application shall sign his or her mark and have the

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application signed by a witness. Applications for absentee voter ballots shall be mailed to the Election Commission.

BC. Mailing of documents to applicant.

Unless it is evident that the applicant is not an eligible voter, and after verifying that the eligible voter is entitled to vote by absentee ballot, the Election Commission shall immediately cause the following documents to be mailed to such applicant.

- 1.** The official application.
- 12.** An official ballot for the proposed absentee voter's district.
- 2,3.** An affidavit envelope labeled "For Absentee Ballot Only" for the ballot to be put into after the voter has marked it.
- 3,4.** An envelope with the address of the Election Commission printed on its front.
- 4.** ~~The official application.~~

€D. Form of application.

1. The form of application for the absentee ballot shall be substantially as follows:

STATE OF _____)
) ss:
County of _____)

I, _____, do solemnly swear or affirm that I am an eligible voter of the White Mountain Apache Tribe registered in District _____; that I wish to vote ~~early~~ by absentee ballot because:

- i) I live more than 150 road miles from Whiteriver, Arizona; or
- ii) I am a resident of a nursing home, hospital or other long term care facility accredited by a federal agency or the local, tribal or state jurisdiction in which it is located, and due to health reasons I am unable to travel to my polling location.

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Voter Signature

Voter Name (Print)

Voter Census Number

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20 ____.

Notary Public or Commission Member

2. The Tribal Council Secretary shall supply printed instructions to absentee voters substantially as follows:

(d) Place the application for ballot, complete with signature and acknowledgment, together with the white envelope containing your ballot, in the enclosed self addressed envelope. Check to see that the application is not enclosed in the envelope marked, "For Absentee Ballot Only", and mail. The ballot and application must be in the office of the Tribal Council Secretary or the Tribal Election Commission before 7:00 p.m. Mountain Standard Time on Election Day. Any ballot received after that time will not be counted.

~~DE.~~ **Ballot affidavit; form.**

~~1.~~ The absentee ballot shall be accompanied by an envelope bearing upon the front a printed affidavit in substantially the following form:

~~EE.~~ **Receipt of voter's ballot.**

~~FG.~~ **Casting absentee ballot.**

~~GH.~~ **Retention of materials.**

SECTION 5.4 COUNT AND RETURN OF VOTES

D. The Election Commission shall store the ballots, ~~upon approval of the Council,~~ in such a manner that will insure the safekeeping of said ballots for a period of one year.

SECTION 5.5 RECOUNTS; AUTOMATIC AND REQUESTED

A. **Automatic Recount.** If the tally shows that the vote cast for the two candidates for an office with the highest vote is tied, or if the highest vote is ~~larger~~ greater than the next highest vote by less than 1% of the votes cast for that office, there shall be an automatic recount.

B. Request for Recount. Only candidates for office may ask for a recount and only for the office that he or she sought. A candidate requesting a recount shall file a written petition with the chairman of the Tribal Election Commission. An advance fee to cover costs of the recount of One Hundred Dollars (\$100) per polling location will be charged the candidate requesting the recount, and must accompany the written petition. Payment shall be by cashier's check or money order only. No personal checks will be accepted. The time limit for filing a request for a recount shall expire five (5) calendar days after the Election Commission's ~~be from the first calendar day following the Tribal Council's certification of election results and shall continue for five (5) consecutive calendar days.~~ Recounts shall be conducted by the Tribal Election Commission.

SECTION 6.3 PROCEDURE FOR CHALLENGES

A. Challenges must be filed in writing under oath with the Election Commission on the complaint form provided by the Election Commission and which shall be substantially the same form as shown in Appendix C within 5 calendar days following the certification of the election by the Commission. The challenge must provide the necessary information required by Section 6.2 and be accompanied by a cash bond of five hundred dollars (\$500.00).

B. Upon receipt of a challenge the Election Commission shall review the challenge for complete compliance with this ~~Section~~ Chapter and if in compliance, shall forward the petition to the Chief Judge of the Tribal Court, or such other judge as the Chief Judge may assign. The Election Commission shall file a response or answer on or before the hearing date set by the Court. The judge shall hear and determine said issue without delay or continuance of more than five (5) days. On the day of the hearing, the challenged candidate may file an answer to such petition or may file a cross-petition, setting forth in detail, as required of a petitioner herein, such cross claims of fraud. ~~The decision of said judge shall be final as to any changes in the total votes, and a~~ A copy of ~~such the Judge's~~ judgment and decision shall be furnished to the Election Commission.

~~**C.** If fraud is proven on the part of a candidate, such candidate shall be declared ineligible for the office for which he or she was a candidate. In all cases where a petition is filed which alleges fraud, but after a hearing said allegations are not proven by clear and convincing evidence, the contestant shall be civilly liable in damages to the challenged candidate or Election Commission for all damages sustained, including reasonable attorney fees and all reasonable and proper costs of conducting such contest. The bond shall be forfeited to the extent necessary to pay attorney fees and costs.~~

~~**D.** If the challenger is able to prove a sufficient number of irregularities such that it is impossible to determine with mathematical certainty which candidate is entitled to be certified as a candidate or to have his or her name appear on the runoff ballot, or in an election concerning a proposed measure or issue, prove that the outcome of the election is impossible to determine with mathematical certainty, the judge shall notify the chairman of the Election Commission of same. It shall then be the duty of the Election~~

~~Commission Chairman to notify the Tribal Council of said decision. The Council shall then order a new election as soon as is practical in the same manner as the contested election, with the identical candidates or issues; provided that any candidate upon whom fraud has been proven shall not be a candidate in the new election.~~

E.C. The person or persons challenging the election results must prove by clear and convincing evidence that the Election Commission violated the Election Ordinance or otherwise conducted an unfair election and that the outcome of the election would have been different.

SECTION 6.4 **CHALLENGE OUTCOME**

A. **Challenges based on Fraud.** If fraud is proven on the part of a candidate, such candidate shall be declared ineligible for the office for which he or she was a candidate and a new election shall be conducted for the office. Except for the candidate who is declared ineligible, all other persons who were certified as candidates are entitled to run in the election. In all cases where a petition is filed which alleges fraud, but after a hearing said allegations are not proven by clear and convincing evidence, the contestant shall be civilly liable in damages to the challenged candidate or Election Commission for all damages sustained, including reasonable attorney fees and all reasonable and proper costs of conducting such contest. The bond shall be forfeited to the extent necessary to pay attorney fees and costs.

B. **Challenges based on Irregularities other than Fraud.** If the challenger is able to prove a sufficient number of irregularities such that it is impossible to determine with mathematical certainty which candidate is entitled to be certified as a candidate or to have his or her name appear on the runoff ballot, or in an election concerning a proposed measure or issue, prove that the outcome of the election is impossible to determine with mathematical certainty, the judge shall notify the chairman of the Election Commission of same. It shall then be the duty of the Election Commission Chairman to notify the Tribal Council of said decision. The Council shall then order a new election as soon as is practical in the same manner as the contested election, with the identical candidates or issues; provided that any candidate upon whom fraud has been proven shall not be a candidate in the new election.

SECTION 7.4 **SIGNATURES AND VERIFICATION**

A. Any eligible voter of the Tribe may sign a referendum petition upon any enacted or proposed ordinance or resolution of the Tribal Council which he or she is legally entitled to vote upon. Every eligible voter signing a petition shall do so in the presence of the person circulating the petition and who is to execute the affidavit of verification. At the time of signing, the eligible voter shall sign his or her first and last names in the spaces provided and the voter so signing or the person circulating the petition shall print his or her first and last names and write, in the appropriate spaces following the signature, the signer's voter census number, residence address, giving street and number, if any, and his or her post office address. The voter so signing or the person

circulating the petition shall write, in the appropriate spaces following the voter's address, the date on which the voter signed the petition.

SECTION 7.6 **PROHIBITION ON CIRCULATING OF PETITIONS BY MEMBERS OF THE TRIBAL ELECTION COMMISSION**

~~No member of the Tribal Election Commission shall circulate a referendum petition and all signatures verified by any such person as circulator affiant shall be void and shall not be counted in determining the legal sufficiency of the petition.~~

SECTION 7.7 **PROHIBITION ON SIGNING PETITION FOR PROFIT**

~~Any person who gives or receives money or any other thing of value for signing a referendum petition, excluding payments made to a person for circulating such petition, is guilty of a criminal offense, and upon conviction, shall be subject to a fine of not to exceed one thousand dollars, or by imprisonment not to exceed one year, or both. Any non-member not subject to the criminal jurisdiction of the Tribal Court who violates this section shall be subject to exclusion from the Reservation. Any signature obtained in violation of this section shall be void and shall not be counted in determining the legal sufficiency of the Petition.~~

SECTION 7.8 **UNLAWFUL ACTS; VIOLATIONS; PENALTY**

~~A. Any eligible voter of the Tribe may sign a referendum petition upon any enacted or proposed ordinance or resolution of the Tribal Council which he or she is legally entitled to vote upon.~~

~~B. A person signing any name other than his or her own to a petition, except in a circumstance where he or she signs for a person, in the presence of and at the specific request of such person, who is incapable of signing his or her own name, because of physical infirmity or knowingly signing his or her name more than once for the same measure, at one election, or who is not at the time of signing a qualified voter of the Tribe, or any officer or person wilfully violating any provision of this Chapter, shall be punished by a fine not exceeding one thousand dollars, by imprisonment not to exceed one year, or both. Any signature obtained in violation of this chapter shall be void and shall not be counted in determining the legal sufficiency of the Petition.~~

SECTION 7.9 **COERCION OR INTIMIDATION WITH RESPECT TO PETITIONS AND REFERENDUM ELECTIONS**

~~A. It is unlawful for a person, directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or herself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to sign or not to sign a referendum petition or to vote or refrain from voting for a particular~~

~~measure at any referendum election provided by this code, or on account of such person having voted or refrained from voting at a referendum election.~~

~~B. Any person violating the provisions of this section is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed five thousand dollars, or by imprisonment not to exceed one year, or both.~~

~~C. Persons not subject to the criminal jurisdiction of the Tribal Court shall be subject to exclusion from the Reservation.~~

SECTION ~~7.10~~ 7.6 FILING OF PETITION AND ELECTION

SECTION ~~7.11~~ 7.7 VERIFICATION OF ELIGIBLE VOTERS

SECTION ~~7.12~~ 7.8 DISPOSITION OF PETITIONS BY BOARD

SECTION ~~7.13~~ 7.9 FORM OF BALLOT

SECTION ~~7.14~~ 7.10 COUNTING AND CANVASSING VOTES; TRIBAL CHAIRMAN'S PROCLAMATION

SECTION ~~7.15~~ DESTROYING, SUPPRESSING OR FILING FALSE REFERENDUM PETITION; CLASSIFICATION

~~A person filing a referendum petition who, at the time of filing the petition, knows it is falsely made, or who knowingly destroys or suppresses a referendum petition, or any part thereof, which has been duly filed with the Tribal Election Commission or Tribal Council Secretary as provided by this Chapter is guilty of a criminal offense punishable by a fine of not less than \$500.00, nor more than \$1,000.00 and/or imprisonment for a term up to six months.~~

SECTION ~~7.16~~ 7.11 DEFEAT OF REFERRED MATTER

SECTION ~~7.17~~ 7.12 REFERENDUM PROCEDURES SUPERSEDED

SECTION ~~7.18~~ 7.13 CHAPTER THREE OF GOVERNMENT CODE REPEALED

**CHAPTER EIGHT
VIOLATIONS**

SECTION 8.1 VOTING VIOLATIONS

A. A person is guilty of violation of this Code who:

(1) Knowingly votes more than once or attempts to vote more than once at any one election; or

- (2) Not being entitled to vote, knowingly votes or attempts to vote; or
- (3) Hinders the voting of others; or
- (4) Threatens unlawful harm to any person with the purpose to influence a person's vote; or
- (5) Offers, confers, agrees to confer upon another, or solicits, accepts or agrees to accept from another any benefit including any pecuniary benefit as consideration for the recipient's vote; or
- (6) After having received a ballot as a voter, knowingly fails to cast the ballot or return the ballot to the Election Precinct judge before leaving the polling place or going outside the voting area; or
- (7) Knowingly adds a ballot to those legally cast at any election by fraudulently introducing the ballot into the ballot box or mixing the ballot with other ballots lawfully cast while they are being canvassed or counted; or
- (8) Knowingly detains, destroys, alters, or mutilates a ballot or election returns; or
- (9) Intentionally disables or removes from the polling place or custody of an election official, a voting machine, ballot box, or voting record; or
- (10) While at a voting location, refuses to obey a lawful order of a member of the Election Commission or Precinct Committee.

B. Penalties.

- (1) Any person violating the provisions of this Section is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed one thousand dollars (\$1,000.00), or a term of imprisonment not to exceed one hundred eighty (180) days, or both.
- (2) Persons not subject to the criminal jurisdiction of the Tribal Court shall be subject to exclusion from the Reservation.

SECTION 8.2 PETITION VIOLATIONS

A. A person is guilty of violation of this Code who:

- (1) Threatens unlawful harm to any person with the purpose to induce or compel a person to sign or not sign any petition; or

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(2) Offers, confers, agrees to confer upon another, or solicits, accepts or agrees to accept from another any benefit including any pecuniary benefit as consideration for the recipient to sign or not sign any petition; or

(3) Signing a petition using any name other than one's own name, except in a circumstance where he or she signs for a person, in the presence of and at the specific request of such person, who is incapable of signing his or her own name, because of physical infirmity; or

(4) Knowingly signing more than one petition for a person seeking to be candidate for one elected office or for the same measure at one election; or

(5) Knowingly signing a petition at a time at which the signer is not an eligible voter; or

(6) Knowingly destroying or suppressing a petition; or

(7) Providing false information on any petition; or

(8) Willfully violating any provision of this Code or regulation issued by the Commission in connection with the circulation, signing, or submission of any petition.

B. Penalties.

(1) Any person violating the provisions of this Section is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed one thousand dollars (\$1,000.00), or a term of imprisonment not to exceed one hundred eighty (180) days, or both.

(2) Any signature obtained in violation of this section shall be void and shall not be counted in determining the legal sufficiency of the petition.

(3) Persons not subject to the criminal jurisdiction of the Tribal Court shall be subject to exclusion from the Reservation.

SECTION 8.3 GENERAL VIOLATIONS

A. A person is guilty of violation of this Code who:

(1) Knowingly violates any provision of this Code or duly issued regulation of the Election Commission; or

(2) Knowingly making any false certification or false statement or representation in any document arising under this Code.

B. Penalties.

(1) Any person violating the provisions of the Section is guilty of a criminal offense, and upon conviction, shall be subject to a fine not to exceed one thousand dollars (\$1,000.00), or a term of imprisonment not to exceed one hundred eighty (180) days, or both.

(2) Persons not subject to the criminal jurisdiction of the Tribal Court shall be subject to exclusion from the Reservation.