



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 309, Amending the White Mountain Apache Tribe Rules of Criminal Procedure)

- WHEREAS,** Pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council (“Council”) may enact ordinances that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and
- WHEREAS,** The Office of the Attorney General has this day proposed revisions to the Rules of Criminal Procedure, as set forth in Ordinance No. 309, attached hereto; and
- WHEREAS,** Pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and
- WHEREAS,** The Council has reviewed Ordinance No. 309 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 309 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 309, which amends the Rules of Criminal Procedure, attached hereto, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 309, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 309 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council and the Attorney General’s Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action. Proof of posting should include start and end date of posting period, and locations of posting.

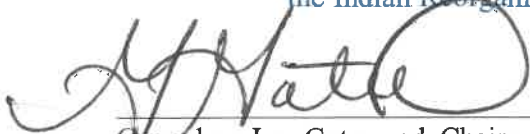
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

Resolution No. 12-2021-258
Ordinance No.309

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

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

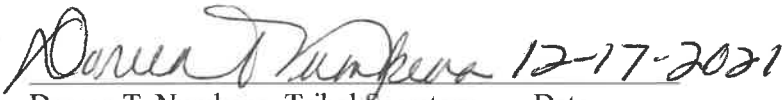
The foregoing resolution was on **DECEMBER 15, 2021** duly adopted by a vote of **ELEVEN** for, **ZERO** against, and **ONE** abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



Gwendena Lee-Gatewood, Chairwoman

12.17.21

Date



Doreen T. Numkena, Tribal Secretary

12-17-2021

Date

**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. 309, revising Rule 2.5 of the White Mountain Apache Rules of Criminal Procedure, as follows:

RULE 2.5 ~~DISPOSITION OF SEIZED PROPERTY~~ SEIZURE AND FORFEITURE

A. Definitions. In this Rule, unless the context otherwise requires:

1. "Forfeiture" means the involuntary relinquishment of property or assets as a consequence of the commission and conviction of a crime, and justified by the relation of the property or assets to that crime following compliance with the procedures set forth in this Rule;

~~1.2.~~ "Inventory" means a peace officer recording a count of the number of items seized pursuant to this Rule, and recording the number and description of the items seized on a property invoice;

~~2.3.~~ "Peace Officer" means any law enforcement officer of the Tribe including an officer of the White Mountain Apache Police Department, Game and Fish Department, Forest Ranger, or other officer deputized by one of the previously named Tribal agencies or Tribal Council; and

4. "Seizure" means the involuntary, temporary confiscation, by a peace officer, of property or assets incident to an arrest for a crime. Seizure includes but is not limited to items held for evidentiary purposes, and may be a precursor to forfeiture proceedings.

B. Seizure.

1. *Property Subject to Seizure.* A peace officer may seize assets or property at the scene of an arrest on probable cause that the property or assets were:

- a. Being used in the commission of a crime;**
- b. Intended to facilitate the commission of a crime;**
- c. Obtained as the result of the crime being committed;**
- d. Contain or constitute evidence of the crime; or,**
- e. Otherwise illegal to possess on the Reservation.**

2. Property subject to seizure under this Rule may be seized by a peace officer by placing the property under constructive seizure. Constructive seizure may be made by taking the items into police custody and inventorying them. The inventory of seized items must be made available for inspection to members of the public.

3. *Probable Cause for Seizure.* In establishing the probable cause necessary to execute a seizure, a rebuttable presumption exists that the property of any person is subject to forfeiture if the peace officer has evidence that suggests the following factors:

- a. The criminal conduct giving rise to the seizure occurred;**
- b. The property contains or constitutes evidence of a crime;**

- c. The person acquired the property during the period of the criminal conduct allegedly giving rise to seizure, or within a reasonable time before or after that period;
- d. There is no likely source for the property other than the criminal conduct allegedly giving rise to seizure;
- e. The items are otherwise illegal to possess under Tribal or federal law;
- f. That the person found in possession of the item is prohibited from possessing that item under a conviction, restraining or protection order, terms of probation or release, or other plea agreement;
- g. The items are of such a nature that they could be used in the commission of the offense the person was arrested for, or are likely to be the product of that crime; or
- h. The fact that money or other negotiable instrument, or fungible good, was found in the proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds of the offense or was used or intended to be used to facilitate the commission of the offense.

4. *Notice of Seizure.* Notice of the seizure of property shall include a list of the property seized, the date and place of seizure, the alleged crime associated with the seizure, and the contact information of the Police Department. Within seventy-two (72) hours of executing seizure of an item, the Police Department must serve notice on the owner of the seized property, in the form of a copy of the inventory sheet, of if the owner cannot be located and personally served with said copy, a list of items seized by mailing the notice of seizure to the owner by United States Postal Service, certified mail. If the owner of the property is not known, notice of seizure may be served by publication in a paper of wide distribution on the Reservation, for two consecutive weeks. If the owner of the property is in detention, then the notice may be personally served on the owner.

C. Forfeiture

1. Upon a person's conviction of a crime for which forfeiture is authorized by law, the Prosecutor may initiate forfeiture proceedings by filing a Petition for Forfeiture of Seized Items in the Tribal Court.
2. Upon the filing of a Petition for Forfeiture of Seized Items, the Court shall order that the items subject to the forfeiture continue to be held by police for a period of thirty (30) days, during which time reasonable notice shall be given to the person convicted of the crime, and to all others who have asserted an ownership interest in the items, in the same manner as provided for in Section B(1)(D) of this Rule.
3. During the thirty (30) day notice period, any person claiming a lawful interest in the items to which forfeiture is pending may file a claim with the Court for recovery of the items.
4. The Court shall conduct a forfeiture hearing within thirty (30) days of the filing of a claim of lawful interest in the property to be forfeited.
5. Upon motion by either party, the Court may combine a forfeiture hearing with another hearing in the criminal proceeding, provided that the deadlines herein shall still apply, unless waived by both parties.
6. Following the forfeiture hearing, the property shall be returned to the claimant if the claimant proves, by a preponderance of the evidence, that the claimant:

- a. Is the lawful owner of the property; and,
- b. That the unlawful possession, use or other act upon which the forfeiture is based occurred without the knowledge and consent of the claimant.

7. *Default Judgment.* If, thirty (30) days after giving notice, no claimant makes the proof required by subsection C(6), the Court shall declare the item forfeited to the Tribe. If the item is cash, the Court shall order it deposited for operational petty cash use by the Tribal Law Enforcement Agencies of the Tribe up to \$30,000.00 collectively, distributed amongst to the Police Department and Tribal Prosecution, otherwise, the Court shall order the item:

- a. Destroyed by the Police Department;
- b. Sold at public auction with the expenses of keeping and selling the item and the amount of any valid liens established by the Court paid-out to the proceeds of the sale, with the balance credited to the Police Department and Tribal Prosecution;
- c. Returned to the owner of a lien upon payment of expenses, if any; or
- d. Retained for official use by the Tribe, with expenses for keeping and transferring such property to be paid by the Tribe or Tribal Department which will use the property.

D. Items Seized as Evidence.

- 1. **Notice.** Items seized as evidence shall be subject to the same notice requirements as provided by B(4).
- 2. **Disposition.** Items seized and held as evidence shall be retained until conclusion of the Tribal case, and may be transferred to the federal custody should such a request be made by the appropriate federal agency, based upon contemplated or initiated federal investigation or prosecution.

~~A. — Any peace officer that seizes property by warrant or otherwise, shall make an inventory of all property seized, record the property seized on the property invoice, and any peace officer shall give or mail a copy of the property invoice to the person from whom the property was seized.~~

~~B. — Any peace officer, whether primary or assisting officer, shall take the seized and inventoried property to the White Mountain Apache Police Department evidence locker to be logged in and labeled.~~

~~1. — “Logged In” means when any peace officer or evidence technician completes the Property Invoice form for the seized and inventoried property.~~

~~2. — “Labeled” means when any peace officer or evidence technician places a label or tag on the seized and inventoried property or places the seized and inventoried property in a storage package. The tag, label, or storage package shall describe the item(s) seized, who it was removed from, and the DR number.~~

~~C. — After the entry of a judgment finally disposing of a case, a hearing shall be held by the Tribal Court to determine the disposition of all property seized by any tribal law enforcement agency in connection with that case. Upon satisfactory proof of ownership, the property shall be delivered to the owner unless such property is contraband or is to be used as evidence in a pending case.~~

~~D. — Property taken as evidence, other than contraband, shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the Tribe and may be either destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the court.~~

~~E. — Rule 2.5 shall become effective retroactively as of July 1, 2009.~~