

Law and Order Code of the Fort McDowell Yavapai Community, Arizona

Adopted by Resolution No. 90-30, July 9, 1990 and subsequently amended. [Includes amendments dated 2000.]

FORT MCDOWELL YAVAPAI NATION CHAPTER 15 - EXCLUSION ORDINANCE

By virtue of the authority vested in the Fort McDowell Yavapai Nation ("Nation") Tribal Council by Article V, Section 13(A) (14) of the Constitution, the Tribal Council hereby enacts this ordinance providing for the removal or exclusion of Non-Members from the Nation whose presence may be detrimental to the peace, health, morals or welfare of the National and/or who violate tribal laws or ordinances.

Sec. 15-1. PERSONS SUBJECT TO REMOVAL OR EXCLUSION.

- A. Any person, not a member of the Fort McDowell Yavapai Nation may be removed or excluded from the Fort McDowell Indian Reservation upon the grounds stated and in the manner provided in this ordinance with the exceptions contained in Section B.

- B. The provisions of this ordinance shall not apply to:
 - 1. Non-Members who are currently authorized by federal or tribal law to enter upon lands owned, leased or otherwise controlled by the Fort McDowell

Yavapai Nation or individual members thereof.

2. Non-Members who are traveling through the Reservation upon federal or state highways within the exterior boundaries of the Fort McDowell Indian Reservation.

Sec. 15-2. GROUNDS FOR REMOVAL OR EXCLUSION.

- A. Interference with the administration, operation and processes of Tribal government as authorized by the Constitution of the Fort McDowell Yavapai Nation.
- B. Commission of criminal offenses classified as a felony in the State of Arizona or a misdemeanor involving injury or damages or threats to persons or property in violation of Federal, State or Tribal law, regardless of whether such offense has been expunged or otherwise forgiven.
- C. Engaging in tortuous conduct in violation of Federal, State or Tribal law or that tortuous conduct would be a violation of state law had the conduct occurred off the reservation.
- D. Engaging in activities causing or resulting in breach of the peace, public unrest or other disruption of the peace, health, morals or welfare of the Nation.
- E. Engaging in exploratory, investigatory or other analytical activities involving, in any manner, Tribal natural resources without prior permission of the Nation.
- F. Solicitation for business, religious, or charitable purposes without prior permission of the Nation.
- G. Interference with tribal ceremonies without consent of the tribal members involved. Under this subsection the meaning of the term "interference" shall include but is not limited to intrusion upon, disruption of, photographing,

taping or other duplication of cultural and/or ceremonial activities.

- H. Establishing or attempting to establish upon any land or entering upon any land, either tribal or individually assigned, without first obtaining the consent of the Nation.

Sec. 15-3. EXCLUSION PROCEEDINGS: NOTICE, HEARING, APPEAL, ENFORCEMENT

A. **Notice.** An enrolled tribal member or a tribal agency or department upon the written request of a Tribal Member may initiate an exclusion proceeding. Upon a determination by either the Fort McDowell Navapai Nation Tribal Council or the Tribal Attorney that cause may exist for the exclusion of a Non-Member from the Reservation, the Tribal Council shall appoint an Administrative Hearing Officer. The Tribal Attorney shall cause notice to be served upon such person stating that proceedings have been initiated to exclude he/she from the Fort McDowell Indian Reservation. Notice under this subsection shall:

1. be by personal service or first class regular mail to the Non-Member's last known address. In the event of the latter, service shall be deemed complete upon the date of the return receipt. Notice shall be served no later than ten (10) days prior to the hearing date.
2. state specifically the date, time and place of the hearing before an Administrative Hearing Officer appointed by the Tribal Council at which exclusion shall be sought.
3. state the grounds and the areas for which exclusion is sought, including a brief summary of the facts which serve as the basis for the proposed exclusion and the name and addresses of witnesses to be

called in support of the proposed action.

4. inform the Non-Member of the right to be represented by private counsel, to present evidence and/or witnesses and to cross-examine adverse witnesses.
5. inform the Non-Member of his right to seek a continuance of the hearing date upon a showing of good cause. Provided however, that the decision to grant a continuance shall in all cases be discretionary with the Administrative Hearing Officer. The term "good cause" as used in this subsection includes but is not limited to illness, incarceration, undue hardship.

B. Hearing. After notice has been served as provided in subsection A above, the Administrative Hearing Officer shall hold a hearing to make proposed findings of fact and a proposed recommendation to the Tribal Council whether the Non-Member should be excluded from the reservation. The Administrative Hearing Officer shall either be a member of a bar association of any State or have at least one year experience as a tribal court judge. The hearing procedures are as follows:

1. If the Non-Member, after notice, fails to appear, the Administrative Hearing Officer may in his/her discretion recommend that the Tribal Council enter a default order, indicating its decision to exclude such person, giving the areas and the period of time for which such order shall apply. In the event a default order is entered, a certified copy thereof shall be sent by first class regular mail to the defaulting party at his last known address.
2. The hearing shall be recorded. The enrolled tribal member or tribal attorney shall establish the basis for the proposed exclusion action by presenting oral and

other tangible evidence (There shall be no formal rules for witness examination or the presentation of evidence in such proceedings). At the conclusion of the testimony of each witness, the Non-Member, or if represented by private counsel, his attorney may question each witness as to any matter within the scope of the statement given and may challenge the validity or accuracy of any evidence presented.

Once the tribal attorney presents the case for exclusion, the Non-Member, or his/her attorney may call witnesses and present evidence of any nature supporting non-exclusion. That person may direct questions to witnesses produced by the Non-Member and may challenge the validity or accuracy of the evidence presented by the Non-Member or his attorney.

Throughout the hearing, questions may be directed to either side relative to matters presented by the Administrative Hearing Officer.

3. Within seven (7) working days following the hearing, the Administrative Hearing Officer shall issue a proposed findings of fact, proposed conclusions of law, and a proposed recommended course of action to the Tribal Council. The Administrative Hearing Officer shall also transfer the record of the proceedings before him/her to the Tribal Council.
4. The Tribal Council shall meet in a closed session for deliberation. In such deliberations the following rules shall apply:
 - i. each decision shall be based only upon the evidence presented at the hearing.
 - ii. in all cases where permanent or indefinite exclusion is sought or where the proposed

ground for exclusion is violation of federal, state or tribal criminal laws and the factual basis therefor is disputed by the Non-Member, the Tribal Council shall find, as a condition to exclusion, that the facts supporting same have been established by clear and convincing evidence.

- iii. in all other cases of exclusion, the facts supporting a decision to exclude shall be found to exist by a preponderance of the evidence.

5. The Tribal Council may:

- i. adopt the findings and recommendations of Administrative Hearing Officer,
- ii. remand the case to the Administrative Hearing Officer for further testimony/consideration,
- iii. if substantial basis exists in the record, refuse to follow the recommendation by the Administrative Hearing Officer and make the order it deems appropriate.

6. The decision of the Tribal Council is final and is not subject to appeal.

C. **Enforcement.** Failure to promptly comply with the terms of the exclusion order shall result in appropriate enforcement action. Where necessary, and at the direction of the Tribal Council, the tribal police shall be directed to carry out the order or exclusion, using reasonable force when required under the circumstances.

Sec. 15-4. REMOVAL OF NON-MEMBERS WITHOUT A HEARING.

- A. **Conduct.** In circumstances where the presence of a Non-Member on the reservation presents: (1) a substantial and immediate threat to the safety and welfare of the Nation as a whole, any individual member thereof or any other person within the exterior boundaries of the reservation or (2) whose presence has caused, or threatens to cause, destruction, injury or other impairment to real or personal property, whether held by the Nation or by an individual, the President, or in his/her absence the Vice President, may order the immediate removal of such person from the reservation. In the absence of either the President or Vice President, any two members of the Tribal Council may order removal under this section.
- B. **Person Effecting Removal.** Any police officer of the Nation, or other appropriate police entity at the direction of the Tribal Council may secure the removal of Non-Members under this section.
- C. **Force.** Only the amount of force which is reasonably necessary to secure the removal of the Non-Member and to eliminate the threat that is posed shall be used.
- D. **Hearing.** At the time of removal under this section, the Non-Member shall be served with a notice of charges and the time and place at which a formal exclusion hearing shall be held. At such time, the person receiving such notice shall be informed of his/her right to request a hearing to be held within two (2) business days after receipt of notice. Such request shall be conveyed to the officer in charge of securing removal, whose responsibility it shall be, to notify the Tribal Council and the Tribal Attorney of the hearing demand. The Tribal Council shall then immediately appoint an Administrative Hearing Officer to hold a hearing within three (3) business days after service of the notice. In the event that no immediate hearing is requested, the hearing procedures set forth in Section 3 shall apply except that the notice

served under this section shall be deemed sufficient provided that it contains the information stated in Section 15-3 (A)(2-4).

Sec. 15-5. GENERAL POWERS.

Nothing contained in this ordinance shall be construed as abrogating existing law insofar as injurious conduct is concerned. The provisions of the ordinance, are ancillary to the powers of arrest, detention or incarceration possessed by the Nation.

Sec. 15-6. SEVERABILITY.

If any provision of this ordinance or the applicability thereof is held invalid, the remainder of this ordinance shall not be affected thereby.

**Ft. McDowell Mohave-Apache Indian Community
P.O. Box 17779 Fountain Hills, Arizona 85269
Phone (602) 837-5121 Fax (602) 837-1630**

President Dr. Clinton M. Pattea
Vice President Robin Russell
Treasurer Larry Doka
Council Member Gwen Bahe
Council Member Benedict Smith, Sr.

Resolution No. Ft. McD 2000-91

WHEREAS, The Fort McDowell Yavapai Nation ("Tribe") is a

sovereign Indian Tribe committed to fostering its own self-determination; and

WHEREAS, the Fort McDowell Yavapai Nation's Tribal Council safeguards the Reservation and enrolled tribal members; and

WHEREAS, the Tribal Council has the authority to remove and exclude those nonmembers from the Reservation whose presence may be injurious to the peace, health and welfare of the Tribe; and

WHEREAS, the Tribal Council wishes to revise the Tribe's current Exclusion Ordinance.

NOW THEREFORE BE IT RESOLVED, pursuant to Article V, Section 13(A)(14) of the Fort McDowell Yavapai Nation Constitution, the Tribal Council hereby adopts the attached revised Exclusion Ordinance to replace and supersede Ordinance No. 1-77 to the Tribe's Law & Order Code.

CERTIFICATION

Pursuant to the authority contained in Article V, Section 13A (1), (2), (3), (5), (14) and B of the Constitution of the Fort McDowell Yavapai Nation ratified by the Tribe on October 19, 1999 and approved by the Secretary of Interior on November 12, 1999, the foregoing Resolution was adopted this 29th, day of August 2000 at a Special Council Meeting held at Fort McDowell at which a quorum of 5 members were present, 0 absent, by a vote of 4 for and 0 opposed and 0 abstained.

Dr. Clinton M. Pattea
President, Tribal Council

Mona Nunez
Secretary

8-29-00
Date

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subsequently amended. [Includes amendments dated
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CHAPTER 19 - ANTIQUITIES AND ARCHAEOLOGICAL SITES

Sec. 19-1. TITLE.

This chapter shall be known as the "Antiquities
Ordinance."

Sec. 19-2. VIOLATIONS; PENALTIES.

Any person violating any of the provisions of this chapter
is guilty of an offense and shall upon conviction be
punished by a fine not exceeding five hundred dollars
(\$500.00) or by imprisonment for a period not to exceed
six (6) months, or both, and shall, in addition, forfeit to
the Fort McDowell Yavapai Indian Community all articles
and material discovered, collected or excavated, together
with all photographs and records relating to such objects.

Sec. 19-3. POLICY.

It is the policy of the Fort McDowell Yavapai Indian Community that sites within the external boundaries of the community reflecting historic or prehistoric evidence of human activity shall be preserved so that members of this community and others may gain greater knowledge concerning the historic and prehistoric habitation of this community.

Sec. 19-4. EXCAVATING OR EXPLORING ARCHEOLOGICAL SITE; TAKING OBJECTS.

No person, except when acting pursuant to a duly issued permit as provided for in section 19-5, shall excavate in or upon any historic or prehistoric ruin or monument, burial ground or site, including fossilized footprints, inscriptions made by human agency, or other archaeological or historical features, situated on lands within the external boundaries of the Fort McDowell Yavapai Indian Community, nor shall any person not a holder of a permit as provided in section 19-5 explore for or take any object of antiquity from such site.

Sec. 19-5. PERMIT; CONDITIONS.

Permits for the exploration and excavation of sites described in section 19-4 may be issued by the archaeological officer of the Fort McDowell Yavapai Indian Community only to reputable museums, universities, colleges or other recognized scientific or educational

institutions, scientists or their duly authorized agents, or other qualified archaeological research organizations. Such permits may be issued on condition that the permittee will restore the site excavated to the condition it was in prior to the excavation or such modification of such condition as may be appropriate, upon the condition that any objects of antiquity found in exploration and excavation be and remain the property of the Fort McDowell Yavapai Indian Community to be held by the community through its appropriate agencies or lent by the community to such other appropriate agencies for such period of time as seems reasonable to the archaeological officer of the Fort McDowell Yavapai Indian Community, and upon such other conditions as the archaeological officer of the Fort McDowell Yavapai Indian Community shall require or as shall be required by regulations adopted pursuant to this chapter. No permit shall be issued for a period of more than one year, but permits may be renewed.

Sec. 19-6. ARCHAEOLOGICAL OFFICER.

The director of the community development department or that director's designee shall be the archaeological officer of the Fort McDowell Yavapai Indian Community.

Sec. 19-7. ADMINISTRATIVE REGULATIONS.

The director of the community development department shall, within one hundred twenty (120) days of the enactment of this chapter, propose to the community council regulations not inconsistent with this chapter for the administration of this chapter. The proposed

regulations shall be deemed adopted, as they may have been modified by the community council, as of a date thirty (30) days after the date of submission to the community council. The regulations may be amended from time to time by the same process as required for adoption.

Sec. 19-8. FEES; BONDS.

- a. A uniform fee equal to twenty-five dollars (\$25.00) per week for each of the weeks for which a permit is to be issued shall be charged to the permittee. Payment of the fees shall be made for the total period of the permit at the time of the issuance of the permit. The fee is not payable for issuance of a permit to the Fort McDowell Yavapai Indian Community or any person or entity as described in section 19-5 who is retained by the Fort McDowell Yavapai Indian community.
- b. The permittee shall, prior to the issuance of the permit, post a bond payable to the Fort McDowell Yavapai Indian Community either in cash or its equivalent, or by a surety acceptable to the Fort McDowell Yavapai Indian Community, in an amount sufficient to assure the restoration of the sites to be explored and excavated, to assure that all antiquities discovered in such exploration and excavation will be promptly turned over to the Fort McDowell Yavapai Indian Community, and to assure performance of all the conditions of the permit, or in such other amount, as may be determined by the archaeological officer.

Sec. 19-9. DUTY TO REPORT DISCOVERIES.

Any, person in charge of any survey, excavation or construction on any lands within the Fort McDowell Yavapai Indian Community shall report promptly to the archaeological officer of the Fort McDowell Yavapai Indian Community the existence of any archaeological or historical site or object discovered in the course of such survey, excavation or construction and shall take all reasonable steps to secure its preservation. The archaeological officer may determine that all such survey, excavation or construction actions shall cease pending an investigation of the discovery of any such site or object.

Sec. 19-10. DEFACING SITE OR OBJECT.

No person, institution or corporation shall deface or otherwise alter any site or object embraced within the terms of section 19-5, except as has been specifically provided for in the permit granted pursuant to section 19-5.

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