

CIVIL EXCLUSION AND REMOVAL

_____ **Ordinance No.** _____

Section 1. Declaration of Purpose and Policy

The San Carlos Apache Tribal Council finds that the presence of certain non-members on the Reservation may prove injurious to the people of the San Carlos Apache Tribe. As a separate sovereign nation, and by virtue of the authority vested in the Tribal Council by Article V, Section 1(m) of the San Carlos Constitution, the Tribe has the inherent power to remove or exclude non-members from the Reservation. The purpose of the Civil Exclusion and Removal Ordinance is to protect the integrity and security of the Tribe as a whole, and enrolled tribal members as individuals and as a community.

Section 2. Definitions

Unless otherwise required by the context, the following definitions will apply:

- A. Non-member means an individual who is neither enrolled nor eligible for enrollment in the San Carlos Apache Tribe.
- B. Reservation means the San Carlos Apache Reservation.
- C. Exclusion and Removal means the temporary, conditional, or permanent expulsion of a non-member from within the exterior boundaries of the San Carlos Apache Reservation.
- D. Tribal Council means the San Carlos Apache Tribal Council, the duly constituted governing body of the San Carlos Apache Tribe, authorized to conduct and regulate the business of the Tribe and to act on behalf of the Tribe.
- E. Tribe or Tribal means the San Carlos Apache Tribe.
- F. Petitioner means an enrolled tribal member who has requested that the Tribal Council remove or expel a non-member from the Reservation.
- G. Respondent means a non-member who is the subject of a removal or expulsion request.
- H. Ordinance means the Civil Exclusion and Removal Ordinance of the San Carlos Apache Tribe.
- I. Code means that San Carlos Apache Law and Order Code.

Section 3. Persons Subject to Removal or Exclusion

Except for non-members who are authorized by federal or tribal law to be present on tribal land, all non-members may be removed or excluded upon a finding by the Tribal Council that their presence on the Reservation may be injurious to the people of the San Carlos Apache Tribe.

Section 4. Grounds for Removal or Exclusion

In addition to any other remedy or penalty provided by the San Carlos Apache Law & Order Code, a non-member may be subject to removal or exclusion under this Ordinance if his or her presence may be injurious to the people of the Reservation.

In determining whether to issue an Order of Exclusion, the Tribal Council shall consider the number and pattern of acts committed by such non-member and the history, circumstances and/or significance of each act.

Acts rising to the level of “injurious presence” may include, but are not limited to, the following:

- A. Conduct within the Reservation which constitutes a criminal offense under federal, state, or tribal law;
- B. Repeated conduct within the Reservation causing or resulting in breach of the peace, public unrest or other disruption of the peace, health, morals, welfare, or ceremonial activities of the Tribe;
- C. Hunting, fishing, or trapping within the Reservation without lawful authority, or in violation of tribal or federal law;
- D. Mining, cutting timber or vegetation or other activity causing physical loss or damage of any nature to the natural resources of the San Carlos Apache Tribe;
- E. Exploring or excavating archeological resources or sites of historic, religious, or scientific significance within the Reservation without lawful authority, or in violation of tribal or federal law;
- F. Peddling or conducting any commercial business within the Reservation without lawful authority, or in violation of tribal or federal law;
- G. Failing or refusing to pay any taxes, rents, fines or other charges justly due the Tribe or any tribal entity, after reasonable notice and an opportunity to pay;

- H. Inducing any tribal member or other resident of the Reservation to enter into an unconscionable or grossly unfair contract of any nature;
- I. Interfering with or photographing religious or traditional cultural ceremonies of the Tribe or any tribal member without prior permission or authorization.

Section 5. Procedures for Removal or Exclusion

A. Petition.

Any enrolled member or Department Director of the San Carlos Apache Tribe may petition the Tribal Council for the removal or exclusion of a non-member. A petition for removal or exclusion shall contain:

- 1) a brief statement of the grounds for the request,
- 2) a description of the non-member's behavior or actions,
- 3) an explanation of how the non-member's presence is "injurious to the people of the Reservation" and
- 4) a statement of the remedy sought.

B. Notice.

At the direction of the Tribal Council, the Tribal Secretary shall promptly cause notice of the petition to be served to the non-member, either personally or by registered mail. The notice shall contain:

- 1) a copy of the petition,
- 2) a statement of the time and place at which the non-member may appear and defend against the allegations,
- 3) a statement of the possible consequences of removal or exclusion, and
- 4) a copy of this Ordinance.

C. Presentation of Evidence.

At the discretion of the Tribal Council, testimony from the parties may be taken in open session. Both parties must give testimony under affirmation or oath. The Tribal Secretary shall administer the oath prior to the presentation of testimony.

The Council has the discretion to limit the testimony to those matters it considers relevant to the final outcome of the case. At its discretion, the Tribe may also limit the length of testimony of each party, although each party must be allotted equal time.

Either party may present any documents necessary to their case. Testimony by other witnesses will be allowed only upon a showing of good cause to a majority of the Tribal Council.

D. Order of Proceeding.

- 1) Petitioner is the first party heard. Petitioner's Opening Statement shall include the following:
 - a) a description of the basis for the request for exclusion
 - b) a description of the Respondent's behavior or actions
 - c) an explanation of how or why the Respondent's presence is "injurious to the people of the Reservation."
 - d) presentation of documents or other evidence
 - e) a statement of the remedy sought

All questioning of the Petitioner shall be conducted by the members of the Tribal Council. There shall be no direct questioning or cross-examination between the parties contesting the exclusion.

- 2) After Petitioner presents the case for exclusion, Respondent may answer. Respondent's Answer shall include the following:
 - a) an explanation of behavior or actions cited by Petitioner
 - b) a rebuttal of how or why Respondent's behavior or actions could not be considered "injurious to the people of the Reservation."
 - c) presentation of documents or other evidence

All questioning of the Respondent shall be conducted by members of the Tribal Council. There shall be no direct questioning or cross-examination between the parties contesting the exclusion.

3) Petitioner's Rebuttal

Petitioner will be given an opportunity to restate the issues and present any further arguments on behalf of exclusion.

4) Final Questioning

The Tribal Council shall have an opportunity to ask questions of either party. At this point, however, no new arguments or issues may be introduced.

5) Closing Arguments

Respondent may have the first opportunity to make a brief closing statement. Petitioner may then make a brief closing statement.

E. Deliberations by the Tribal Council.

Following the formal hearing, the Tribal Council shall deliberate in Executive Session. The deliberations must:

- 1) identify credible factual allegations of behavior or conduct specific to Respondent
- 2) determine whether the behavior or conduct is of an "injurious nature"
- 3) if so, then determine how or whether such behavior or conduct is "injurious to the people of the Reservation" pursuant to the language of the Constitution
- 4) if the Council determines that Respondent's presence is "injurious to the people of the Reservation," then Council must assign responsibility for drafting an exclusion order and identifying a reasonable timeline for Respondent's compliance with such order.

The Tribal Council may order a non-member permanently excluded, conditionally excluded, or make a finding of non-exclusion. If a non-member is conditionally excluded, the Tribal Council must specify the conditions under which the non-member may return to the reservation, and the duration of such order. A written decision shall be issued within a reasonable time not to exceed 45 days after close of deliberations.

The decision of the majority of the Tribal Council shall be final. In the event of a tie, the Chair shall cast the deciding vote.

Section 6. Procedures for Emergency Exclusion or Removal

- A. Any other section of this Ordinance notwithstanding, the San Carlos Police Department shall be privileged, for purposes of this Ordinance, to stop and detain without prior authorization from the Tribal Council, any non-member within the exterior boundaries of the San Carlos Apache Reservation when they have reasonable cause to believe that such non-member has committed or is about to commit an act injurious to the people of the Reservation pursuant to Section 4. Such detention may be effected for a reasonable period of time during which the officer may conduct further investigation.
- B. Upon probable cause to believe that the presence of a non-member on the Reservation presents 1) an immediate danger to the health, safety, welfare, or property of the Tribe or any enrolled member, and 2) where delay is likely to result in irreparable damage, such officer may petition the Chair or Vice-Chair of the San Carlos Apache Tribe for an immediate order removing such person from the Reservation. In the absence of either the Chair or Vice-Chair, any two members of the Tribal Council may order emergency removal under this Ordinance.
- C. 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. The Tribal Council shall schedule an Exclusion Hearing within ten (10) working days of such emergency removal.

Section 7. Qualified Immunity for Law Enforcement Officers

A law enforcement officer may not be held criminally or civilly liable in carrying out the provisions of this Ordinance, provided that the officer acts reasonably and in good faith.

Section 8. Enforcement of Orders of Exclusion and Removal

- A. In the event that a person fails to obey an order of exclusion or removal, or assists another person in violating such order, the Tribal Council may:
- 1) direct any tribal or BIA police officer to remove the non-member from the Reservation or portion of the Reservation covered by the exclusion order at the non-member's expense;
 - 2) direct any tribal or BIA police officer to prevent the non-member from reentry onto any portion of the Reservation covered by the exclusion order for so long as the order remains in effect;
 - 3) take any other action authorized under any applicable tribal, federal or state law.
- B. Any person who violates any order or part thereof issued pursuant to this Ordinance shall be deemed guilty of an offense and, upon failure to comply with the order of the Tribal Council, be sentenced to confinement for a period not to exceed 180 days, or to pay a fine of \$1,000.00, or both, with costs, and ordered to comply with the previous order of exclusion or removal.

Section 9. General Powers

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

Section 10. Severability

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

SAN CARLOS APACHE TRIBE
RESOLUTION TO ADOPT EXCLUSION ORDINANCE

Resolution No. _____

WHEREAS, the San Carlos Apache Tribe is a federally recognized Indian tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the San Carlos Apache Tribe is a sovereign Indian Tribe committed to fostering its own self-determination; and

WHEREAS, the San Carlos Apache Tribal Council is entrusted with the responsibility to safeguard the Reservation and enrolled tribal members; and

WHEREAS, the Tribal Council has the constitutional authority to remove and exclude those nonmembers from the Reservation whose presence may be injurious to the people of the Reservation, and

WHEREAS, the Tribal Council wishes to adopt an Exclusion Ordinance and Rules of Proceeding;

NOW THEREFORE BE IT RESOLVED, that the Tribal Council rescinds Chapter 7 of the San Carlos Law and Order Code, entitled "Removal of Non-Members"; and

NOW THEREFORE BE IT FINALLY RESOLVED, that pursuant to Article V, Section 1(m) of the San Carlos Apache Tribal Constitution, the Tribal Council hereby adopts the attached Exclusion Ordinance as part of the Tribe's Law & Order Code.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council, hereby certify that the Tribal Council is presently composed of 11 members, of whom _____, constituting a quorum, were present at a Council meeting held this _____ day of _____, 200____, and that the foregoing Resolution No. _____ was duly adopted, by a vote of _____ FOR; _____ OPPOSED; and _____ ABSTAINED; of the Tribal Council pursuant to Article V, Section 1(a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.

Ophelia T. James, Tribal Secretary