

# SAN CARLOS APACHE TRIBAL CODE<sup>1</sup>

Enacted by Council Resolution NV-15-211

On

November 3, 2015

## Title 1<sup>2</sup>

### General Provisions

#### Chapter

1. The Inherent Sovereignty of the San Carlos Apache Tribe
2. Constitutional Authority
3. Principles of Construction
4. The Great Seal and Flag of the San Carlos Apache Tribe
5. The Sovereign Immunity Act

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<sup>1</sup> Compilation of the Code in this format adopted by Tribal Council Resolution ---xx--.

<sup>2</sup> This volume shall be known as “The San Carlos Apache Tribal Code” and may be cited in the following form: “1 SCATC §1(1).”

## **Chapter 1. The Inherent Sovereign Authority of the San Carlos Apache Tribe**

### Section

100. Declaration of the Inherent Sovereign Authority of the San Carlos Apache Tribe

Section 100. Declaration of the Inherent Sovereign Authority of the San Carlos Apache Tribe.

- A. The Apache (Ndee'/Nnee') people have existed in this land since the time the Creator placed them here. By virtue of that endowment from the Creator and by the common consent of the Apache People, Apache leaders, medicine people and warriors have governed through the exercise of the inherent sovereignty they possessed. This inherent authority did not originate from the United States, nor with any of the previous colonial powers that have historically occupied Apache lands, but persists in spite of them.
- B. This inherent authority continues to be held by the members of the San Carlos Apache Tribe, and as entrusted in their elected officials.
- C. It is the official policy of the Tribe to vigilantly safeguard this inherent authority and protect against its erosion in regards to Tribal sovereignty over our lands, people, resources, culture, language, inter-governmental relations, and economy, among others matters.

## **Chapter 2. Constitutional Authority**

### Section

- 200. Authority to Organize Tribal Code
- 201. Authority to Enact Further Amendments

### Section 200. Authority to Organize Tribal Code.

The San Carlos Apache Tribal Code is organized pursuant to the Amended Constitution and Bylaws of the San Carlos Apache Tribe, Art. V, Sections (a),(m), and (q), and the inherent sovereignty of the San Carlos Apache Tribe.

### Section 201. Authority to Enact Further Amendments

- A. The Tribal Council shall have the authority to amend and add to the San Carlos Apache Tribal Code pursuant to the Amended Constitution and Bylaws of the San Carlos Apache Tribe, Art. V, Sections (a),(m), and (j).
- B. The voters of the San Carlos Apache Tribe may have the authority to amend the San Carlos Apache Tribal Code through referendum, as provided for by the Amended Constitution and Bylaws of the San Carlos Apache Tribe, Art. XI.

## Chapter 3. Principles of Construction

### Section

- 300. Severability
- 301. Rules of Construction.
- 302. Definitions

### Section 300. Severability

The laws of the San Carlos Apache Tribe are severable. If any word, clause, phrase, sentence, subsection, section, or other provision of any of the Tribe's laws or their application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect any other provisions nor applications of the law that can be given effect without the invalid provision or application.

### Section 301. Rules of Construction

- A. The rules as set forth in this chapter shall be observed in the construction and interpretation of the laws contained in the entire the San Carlos Apache Tribal Code unless such construction would be inconsistent with the manifest intent of the Tribal Council.
- B. Amendments to the San Carlos Apache Code shall be liberally interpreted by the courts to affect the goals and objectives of the laws and to promote justice.
- C. Words in the present tense include the future as well as the present.
- D. Repeal by implication. In order to promote uniformity of laws and mitigate any possible confusion surrounding the enactment of the San Carlos Apache Tribal Code, any and all prior, inconsistent ordinances, resolutions and codes enacted by the Tribal Council of the San Carlos Apache Tribe are superseded and repealed on the date of adoption of subsequent new, inconsistent acts, ordinances, codes, policies or regulations, except as provided below in Subsection E.
- E. The adoption and enactment of subsequent codes shall not be construed to repeal or in any way affect or modify any prior duly enacted:
  - 1. Budget or monetary appropriation;
  - 2. Special resolution of the Tribal Council stating the Tribe's opinion, policy or support of local or state entities;

3. Waiver of sovereign immunity adopted by resolution of the Tribal Council;
  4. Resolution authorizing, ratifying, confirming, approving or accepting any compacts, contracts, memoranda of understanding or the like with any states, tribes, local municipalities, private companies or tribal enterprises, or instrumentalities thereof, or;
  5. The effect of any resolution approving the levy of taxes.
- F. No fine, forfeiture or penalty incurred under civil or criminal laws existing prior to Effective Date of the enactment of the San Carlos Apache Tribal Code shall be affected by repeal of such existing laws, but the recovery of such fines and forfeitures shall be affected as if the repealed law had still remained in effect.

#### Section 302. Definitions

- A. Words and phrases shall be construed according to their common use and meanings. Technical words and phrases and those which have acquired a peculiar or particular meaning in the law or in specialized fields shall be construed according to such peculiar or particular meanings.
- B. The definitions as set forth in this chapter shall be observed in the construction and interpretation of the laws contained in the entire San Carlos Apache Tribal Code unless such construction would be inconsistent with the manifest intent of the Tribal Council.
- C. In the San Carlos Apache Tribal Code, unless the context requires otherwise:
  1. “the Bylaws” means the Bylaws of the San Carlos Apache Tribe, adopted in 1954.
  2. “the Code” means the San Carlos Apache Tribal Code.
  3. “The Constitution” means the Amended Constitution and Bylaws of the San Carlos Apache Tribe, adopted in 1954.
  4. “Non-Indian” means a person ineligible for enrollment in a federally recognized tribe, and who is not a descendent of a person enrolled in a federally recognized tribe.
  5. “the Reservation” means all lands, waters and air located within the exterior boundaries of the San Carlos Apache Reservation.

6. "San Carlos Apache Tribe" means, according to the context in which it is used, the tribal government of the San Carlos Apache People, as established by the Constitution and Bylaws of the San Carlos Apache Tribe, adopted in 1954.
7. "The Tribal Council" means the duly elected members of the San Carlos Council, as established by Article IV of the Constitution.
8. "Tribal Members" means enrolled members of the San Carlos Apache Tribe.

## Chapter 4. The Great Seal and Flag of the San Carlos Apache Tribe

### Section

- 400. The Great Seal
- 401. The Flag

### Section 400. The Great Seal

- A. The Great Seal below, created by Salton Reede Sr., is the emblematic representation of the San Carlos Apache Tribe.



- B. Adoption of the Great Seal. The adoption and use of the Great Seal is hereby re-affirmed by the Tribal Council.
- C. Use of the Great Seal. The Great Seal represents the San Carlos Apache Tribe. It shall only be used by the Tribe's government, departments, economic enterprises, and may be used by tribal members with the consent of the Tribal Council, by resolution.
- D. Unauthorized Use. Use of the Great Seal, by persons or entities which are not the Tribe, without the written consent of the Tribal Council is hereby forbidden, and shall constitute a civil infraction of the Code. The Tribal Council, through the Office of the Attorney General, may seek injunction against unauthorized use.

### Section 401. The Flag

- A. The Flag of the San Carlos Apache Tribe shall consist of a rectangular field of white with the Great Seal placed in the middle.
- B. Adoption of the Flag. The adoption and use of the Flag by the Tribal Council is hereby re-affirmed by the Tribal Council.
- C. Manner of Display. The Flag should be displayed above any flags on a single staff, except the United States flag, and, if several flags are displayed together,

the Flag should occupy the place of central or greatest prominence, except when the United States flag is displayed, in which case the Flag should be displayed immediately to the left and slightly lower than the United States flag.

- D. The Chairman, or his designee, is hereby authorized to order that the Flag be displayed at half-staff, whenever appropriate, and to prescribe the length of time the flag should be so displayed.



## **Chapter 5. The Sovereign Immunity Act**

### Section

- 500. Establishment
- 501. Definitions
- 502. General Principles of Sovereign Immunity
- 503. Exceptions and Waivers of Sovereign Immunity
- 504. Procedures with Respect to Actions Authorized by Waivers of Sovereign Immunity

### Section 500. Establishment.

- A. There is hereby established the San Carlos Apache Sovereign Immunity Act.

### Section 501. Definitions

- A. For the purposes of this Act, the terms “San Carlos Apache Tribe” and “Tribe” shall mean:
  - 1. The San Carlos Council, created Article IV, Section 1 of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, (“Tribal Council”);
  - 2. The Chairman of the Tribal Council, when acting within the scope of the office;
  - 3. The Vice-Chairman of Tribal Council, when acting within the scope of the office;
  - 4. The members of the Tribal Council, when acting within the scope of their office;
  - 5. The Tribe’s Departments;
  - 6. Wholly-owned or majority-owned enterprises of the Tribe;
  - 7. Districts of the Tribe;
  - 8. District enterprises;
  - 9. The San Carlos Apache Healthcare Corporation;
  - 10. The Tribe’s Gaming Authority;
  - 11. The Tribe’s Gaming Enterprise;
  - 12. Any college or post-secondary institution operated by the Tribe;

13. Boards and board members of any of the above entities, when acting within the scope of their responsibilities as board members;
14. Law enforcement officers and emergency responders employed by the Tribe or its departments;
15. All services and programs contracted by the Tribe under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638), unless otherwise provide for by federal law or regulation;
16. Officers, employees, agents, or volunteers of the Tribe for those acts committed or refrained from pursuant to and within the scope of their duties as officers, employees, or volunteers of the Tribe; and
17. All other entities of the Tribe that the Tribal Council hereafter resolves to share its sovereign immunity with.

#### Section 502. General Principles of Sovereign Immunity

- A. The San Carlos Apache Tribe is a sovereign nation and is immune from suit.
- B. The San Carlos Apache Tribe possesses sovereign immunity as an inherent attribute of its sovereignty. This immunity was not bestowed upon it by the United States or any other government. Its existence is not dependent upon interpretation by the courts of the United States or any other sovereign.
- C. Pursuant to Article V, Section 1(m) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, the Tribe's courts were established and governed under the authority of the Tribal Council. The jurisdiction and powers of the Tribe's courts to interpret the Tribe's sovereign authority are derived solely from, and limited by laws and resolutions enacted by the Tribal Council. In questions regarding the extent of the Tribe's sovereign immunity, or waivers thereof, the Tribe's courts shall consult with and defer to the judgment of the Tribal Council.
- D. Neither the Chairman, the Vice-Chairman, nor any member of the Tribal Council may be subpoenaed or otherwise compelled to testify in the courts of the Tribe, nor in any administrative or other proceeding that is under the jurisdiction of the Tribe, concerning any matter involving such official's actions pursuant to and in the scope of their duty.

### Section 503. Exceptions and Waivers of Sovereign Immunity

- A. The Tribe may be sued in the Federal Courts of the United States or the Tribe's Court when explicitly authorized by applicable federal law.
- B. The Tribe may be sued in the Tribe's courts when explicitly authorized by a duly enacted resolution of the Tribal Council. Any agreements purporting to waive the Tribe's immunity from suit or arbitration, in whole or in part, are ineffective without a duly enacted Tribal Council resolution approving of the same, regardless of who signed the agreement on the Tribe's behalf.
- C. Any waiver of the Tribe's sovereign immunity, and assumption of liability under this Act does not apply in circumstances in which such liability has been assumed by any third party.
- D. Appeals to administrative actions may be brought solely as provided for in the Tribe's Policy and Procedures Manuals, and only after those procedures have been reviewed and approved of by the Tribal Council.
- E. The Tribe may be sued only in the Tribe's courts with respect to any claim, authorized pursuant to this Section, which is within the express coverage and not excluded by either commercial liability insurance carried by the Tribe or established by the Tribe's self-insurance or other claims program established by the Tribe, approved and adopted pursuant to the laws of the Tribe, and subject to the following limitations:
  - 1. No judgment, order, or award pertaining to any claims permitted hereunder shall be for more than the limits of valid and collectable liability insurance policies carried by the Tribe covering each such claim and in force at the time of such judgment, including deductible amounts to the extent appropriated by the Tribal Council; nor for more than the amount of coverage provided for each such claim under established reserves as appropriated by the Tribal Council, or otherwise established pursuant to any self-insured liability and/or other of the Tribe's claims programs, approved and adopted by the Tribal Council;
  - 2. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Tribe which is in effect at the time of any such judgment, order or award. Regardless of the existence of applicable and collectable commercial insurance coverage at the time any cause of action arises or suit is filed against the Tribe, in no event shall any funds or other property of the Tribe be liable for satisfaction of any judgment against the Tribe or other insureds thereunder, beyond the limits of any amounts specifically appropriated and reserved therefor at the time of judgment;

3. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Tribe; nor against any officer, employee, volunteer, nor agent of the Tribe for actions taken or refrained from within the scope of their duties;
4. Notwithstanding any provisions of this Section, there shall be no exception to the sovereign immunity of public entities, officials, employees or agents of the Tribe from claims for injury or damage alleged to have been sustained by:
  - (a) Policy decisions or the exercise of discretion made by a public official, employee or agent in the exercise or judgment or discretion vested in the entity or individual;
  - (b) A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a public entity, officer, employee or agent from liability for false arrest, false imprisonment, or malicious prosecution;
  - (c) Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt as law or by failing to enforce a law, not including petitions to the Tribal Courts for extraordinary writs;
  - (d) Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, nor by the termination or reduction of benefits under a public assistance program; if the officer, employee or agent of the public entity is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended or revoked;
  - (e) Any events stemming from the probation, parole, furlough, release, or escape from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof, except under a showing of gross negligence;
  - (f) The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly authorized under this Act.
5. Subject to all other provisions of this Act, the express coverage of any commercial liability policy insuring the Tribe or of any self-insurance program established by the Tribe, for sums which the Tribe as insured shall become legally obligated to pay as damage because of personal injury or property damage shall include liability for such actual monetary loss and

damage which is established by clear and convincing evidence to be the direct and proximate result of acts or omissions by the Tribe.

Section 504. Procedures with Respect to Actions Authorized by Waivers of Sovereign Immunity

- A. Any person or party desiring to initiate suit against the Tribe of any officer, employee, agent or volunteer of the Tribe, as authorized by this Act and by an effective waiver of the Tribe's sovereign immunity, whether in whole or in part, to suit or to arbitration, shall, as a jurisdictional condition precedent, provide notice to the Chairman of the Tribe and to the Tribe's Attorney General, as provided herein.
1. Such notices shall be sent by registered mail, addressed to the Office of the Chairman and the Office of the Attorney General, return receipt requested. The time of such notice shall commence to run only from the date of the actual delivery of both notices as evidenced upon such receipts, and filed together with such notices with the court in which such action is subsequently to be commenced. The Chairman and the Attorney General of the Tribe shall ensure the availability during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.
  2. Such notices shall state:
    - (a) the name of each prospective plaintiff;
    - (b) the identity of each prospective defendant;
    - (c) the nature of all claims and relief which will be sought;
    - (d) the correct address, name and telephone number of each prospective plaintiff's attorney of counselor (if any), or the Plaintiff's address, name and telephone number if unrepresented.
  3. No action shall be accepted for filing against the Tribe or any officer, employee, agent, or volunteer of the Tribe unless the prospective Plaintiff has filed proof of compliance with this Section by service of the above required notices at least 30 days prior to the date on which the complaint or any other action is proposed to be filed with such court.
- B. In any action against the Tribe or any officer, employee, agent or volunteer of the Tribe, the time for responding to valid service of any summons or complaint shall be 60 days; to valid service of any order to show cause not less than 30 days; and to valid service of any motion, not less than 20 days. Any claim against the Tribe

or any officer, employee, agent or volunteer which is filed pursuant to this Act, is deemed generally denied 60 days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration period of 60 days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general denial thereof. These time periods may not be shortened by rule of court or judicial order, but shall be extended by any longer period provided by any other applicable law, rule, or order of court.

- C. Any person or party filing a complaint against the Tribe or any officer, employee, agent or volunteer of the Tribe shall serve by registered mail, return receipt requested, a copy of the complaint together with a summons duly issued, upon the Chairman of the Tribe and the Tribe's Office of the Attorney General. Service of summons and complaint against any officer, employee, agent or volunteer of the Tribe shall be made by the means required by the rules of court, provided that the time for response shall be as provided for herein.
- D. Representation. The Office of the Attorney General shall represent the Tribe in all suits and arbitrations brought against the Tribe, except:
  - 1. As provided for in insurance agreements, in which case the Office of the Attorney General shall co-counsel with insurance company counsel;
  - 2. When economic enterprises of the Tribe have contracted outside legal counsel, with the express approval of the Tribal Council; or
  - 3. When the Attorney General determines that it is appropriate to contract with outside legal counsel, who shall serve as co-counsel with the Attorney General in that matter.
- E. Right to Intervene
  - 1. The Tribe has a right to intervene in, appear as amicus curiae, or make a limited appearance to dismiss any action to determine the validity of one of the Tribe's laws, rules, policies, or regulations, if the Tribe is not named as a party in the suit.
  - 2. Notice. The party filing an action to determine the validity of one of the Tribe's laws, rules, policies, or regulations shall serve the Office of the Attorney General with the complaint, petition, or other pleading initiating the action in accordance with the applicable rules of court.