

**SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA**

RESOLUTION

No. MR-20-045

(Approving Emergency Amendment to Chapter Six of the San Carlos Law & Order Code)

WHEREAS, the San Carlos Apache Tribe (the "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 Council ("Council") has the authority, among other things, to "represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to [the Tribe's] Constitution and Bylaws," to "enact ordinances, subject to review by the Secretary of the Interior, establishing and governing tribal courts and law enforcement on the Reservation" and to "regulate its own procedures" pursuant to Article V, Sections 1(a), (m) and (o) of the Amended Constitution and By-Laws of the San Carlos Apache Tribe (1954); an

WHEREAS, pursuant to Resolution No. SEP-05-163, the Council enacted the San Carlos Law and Order Code; and

WHEREAS, since the Council declared a state of emergency due to the novel coronavirus (COVID-19), a number of false reporting about COVID-19 and the Tribe has occurred, thereby causing disturbance among the Tribe, its enrolled members, and communities; and

WHEREAS, to maintain law and order, and to provide for the safety and well-being of the Tribe, the Attorney General this day requests an emergency amendment to the Tribe's Law and Order Code to include section 5.5 Criminal Nuisance and section 17.8 False Reporting and amending section 17.1 Obstructing Tribal Operations to provide a mechanism for the Tribe to hold enrolled members and members of other federally-recognized tribes accountable for behavior that threatens the public order, health and safety; and

WHEREAS, the Council's Law and Order Committee has reviewed the proposed amendment, and recommends that the Council approve the emergency amendment for immediate effect; and

WHEREAS, the Council concurs with Law & Order Committee's recommendation and finds that approving an emergency amendment to the Law and Order Code Chapter 6 to include sections 5.5 Criminal Nuisance and section 17.8 False Reporting and amendment to section 17.1 Obstructing Tribal Operations would provide for the safety, health, and welfare of the Tribe, and would thus be in the best interest of the Tribe.

BE IT RESOLVED by the Council of the San Carlos Apache Tribe that:

1. The amendment of the San Carlos Law and Order Code to include section 5.5 Criminal Nuisance and section 17.8 False Reporting and amending section 17.1 Obstructing Tribal Operations, as attached and incorporated by this reference, is hereby approved to take immediate full force and effect, as a matter of compelling government interest, unless otherwise disapproved of by the Superintendent of the Bureau of Indian Affairs, San Carlos Agency.
2. The Attorney General is hereby directed to transmit copies of the certified resolution and the amendment to the Law and Order Code to the Superintendent of the Bureau of Indian Affairs, San Carlos Agency within six days of passage by the Council to approve or disapprove pursuant to Article VI of the Tribe's Amended Constitution.
3. The Superintendent of the Bureau of Indian Affairs, San Carlos Agency is hereby requested to review said amendment and provide written notice of the decision to approve or disapprove within six days of receipt.
4. The Attorney General is hereby directed to draft a press release regarding the enactment of said amendments.
5. The Chief Judge of the Tribal Courts is hereby directed to take judicial notice of said amendment, and make copies available to the general public and legal counsel practicing before the San Carlos Apache Tribe's Courts as members of the San Carlos Apache Bar Association.

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

CERTIFICATION

I, the undersigned, Secretary of the San Carlos Council, hereby certify that the Council is composed of eleven (11) members, of whom eleven (11), constituting a quorum, were at a Special Council Meeting hereto held on the 30th day of March, 2020, and that the foregoing Resolution No. MR-20-045 was duly adopted by a vote of FOR: 9; OPPOSED: 0; ABSTAINED: 1; 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.



Santana Dillon
Council Secretary
SAN CARLOS APACHE TRIBE

San Carlos Law & Order Code – Chapter Six

Resolution No. SEP-05-163

Title: An Amendment to Chapter Six of the San Carlos Law & Order Code

Chapter Six shall be amended to create **Section 5.5 Criminal Nuisance** as follows:

Section 5.5 Criminal Nuisance

- A. A person commits criminal nuisance:
1. If, by conduct either unlawful in itself or unreasonable under the circumstances, such person intentionally or recklessly creates or maintains a condition which endangers the safety, health, or welfare of others or the Tribe.
 2. If, by conduct either unlawful in itself or unreasonable under the circumstances, such person intentionally or knowingly utilizes social media, text messaging, electronic mail, an electronic application, radio or written media to transmit false information designed to alarm, frighten, create or maintain a condition which endangers the safety, health, or welfare of others or the Tribe.
 3. By knowingly conducting or maintaining any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.
 4. This shall apply to any Indian who is enrolled with the Tribe or an enrolled member of a federally recognized Indian tribe, even if the conduct arises outside of the exterior boundaries of the Reservation conditioned that the desired or actual effects of the conduct occur within tribal criminal jurisdiction.
- B. A person found guilty of criminal nuisance under Section A(1) or A(3) may be sentenced to a period of imprisonment not to exceed 180 days, a fine not to exceed \$1,000.00, or both, with costs imposed at the discretion of the Court. A person found guilty of criminal nuisance under Section A(2) may be sentenced to a period of imprisonment not less than 72 hours nor more than 365 days, a fine not less than \$1,000 nor more than \$5,000.00, with costs imposed at the discretion of the Court.

Chapter Six shall be amended to create **Section 17.8 False Reporting** as follows:

Chapter Six, Section 17.8 False Reporting

Section 17.8 False Reporting

- A. A person commits false reporting if the person initiates or circulates a report of a bombing, fire, offense or other emergency knowing that the report is false or baseless and intending or knowing:
 1. That it will cause panic and/or fear among tribal members; or
 2. That it will cause action of any sort by a tribal official, law enforcement, or any agency or volunteer agency organized to deal with emergencies; or
 3. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.
- B. A person who commits a violation of this section that results in an emergency response or investigation of false reporting and who is convicted of a violation of this section is liable for the expenses that are incurred incident to the emergency response or the investigation of the commission of false reporting, except that if the person is a juvenile who is adjudicated delinquent of a violation of this section, the court may order the juvenile to pay the expenses incurred under this subsection as restitution. The expenses are a debt of the person. The public agency, for profit entity or not-for-profit entity that incurred the expenses may collect the debt proportionally. The liability that is imposed under this subsection is in addition to any other liability that may be imposed.
- C. A person found guilty of false reporting may be sentenced to a period of imprisonment not to exceed 365 days, a fine not to exceed \$5,000.00, or both, with costs imposed at the discretion of the Court.
- D. For the purposes of this section:
 1. "Expenses" means any reasonable costs that are directly incurred by a public agency, for profit entity or not-for-profit entity that makes an appropriate emergency response to an incident or an investigation of the commission of false reporting. Expenses includes the costs of investigation by police officers or rangers, firefighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.
 2. "Public agency" the Tribe and any other public authority that is located in whole or in part on the San Carlos Apache Tribe Reservation and that provides police, fire fighting, medical or other emergency services.

Chapter Six, Section 17.1 Obstructing Tribal Operations shall be stricken and revised as follows:

Section 17.1 Obstructing Tribal Operations

- A. A person commits Obstructing Tribal Operations if, by using or threatening violence or physical force, such person knowingly obstructs impairs or hinders:
 - 1. The performance of a governmental function by a tribal employee acting in his or her official capacity; or
 - 2. The enforcement of penal law or the preservation of the peace by a law enforcement officer acting in his or her official capacity.

- B. A person found guilty of obstructing tribal operations under Section (A)(1) may be sentenced to a period of imprisonment not to exceed 365 days, a fine not to exceed \$5,000.00, or both, with costs imposed at the discretion of the Court. A person found guilty of obstructing tribal operations under Section (A)(2) will be sentenced to a period of imprisonment not less than 72 hours nor more than 365 days, a fine not less than \$1,500 nor more than \$5,000.00, with costs imposed at the discretion of the Court.